

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

RECEIVED

JUL 07 2014

SC Court of Appeals

Case No. 2012-213734

The State of South Carolina,..... Respondent,

v.

James Lamont Moore, ... Appellant.

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT #3 (DVD)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

JAMES LAMONT MOORE,

Defendant.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-GS-10-8446

VERDICT FORM

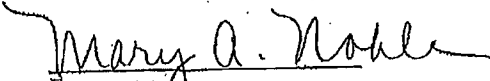
VERDICT

1. We, the Jury, find the Defendant NOT GUILTY. _____

OR

2. We, the Jury, find the Defendant GUILTY of Distribution of Cocaine Base. ~~X~~

I certify that this decision is the unanimous decision of the Jury.



Foreperson

October __, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

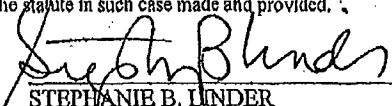
INDICTMENT

At a Court of General Sessions, convened on November 9, 2009 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base

That in Charleston County, South Carolina, on or about July 16, 2009, the Defendant, JAMES LAMONT MOORE, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SLB20090804745

WITNESSES

BRYANT GILMORE
Charleston City Police Department

AGENCY CASE NUMBER

0913284

ARREST WARRANT NUMBER

K342660

DATE OF ARREST

August 13, 2009

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

NOV 09 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1008446

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

November Term 2009

THE STATE

vs.

JAMES LAMONT MOORE
DOB: 1983
B/MIndictment for
Distribution of Cocaine Base**FILED**10/23/2012 9:05:11 AM
JULIE J. ARMSTRONG
CLERK OF COURT

09-4871-1

ARREST WARRANT
K- 342660
 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON
 THE STATE
 against

JAMES MOORE JR.
 Address **129B CONGRESS STREET**
CHARLESTON, SC 29403
 Phone **SSN**
 Box **M** Race **B** Height **Weight**
 DL State **DL#**
 DOB **Agency ORI#**
 Prosecuting Agency **CBD**
 Prosecuting Officer **SHEALY**
 Offense **DISTRIBUTION OF COCAINE BASE**
 Offense Code
 Code/Ordinance Sec. **44-53-375**

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of The accused
 is to be arrested and brought before me to be
 dealt with according to law

Signature of Judge (L.S.)
 Date

RETURN
 A copy of this arrest warrant was delivered to
 defendant **JAMES MOORE JR.**
 on **8-12-09**

Signature of Constable/Law Enforcement Officer
1548

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON

AFFIDAVIT

Form Approved by
 S.O. Attorney General
 April 21, 2005
 BGA 518

Personally appeared before me the affiant **INV. J. SHEALY** who
 being duly sworn deposes and says that defendant **JAMES MOORE JR.**
 did within this county and state on **07-16-09** violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **CHARLESTON**)
 in the following particulars:
DISTRIBUTION OF COCAINE BASE
44-53-375

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts.

SEE ATTACHED AFFIDAVIT

Signature of Affiant **Inv. J. Shealy**
 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON
 Affiant's Address **180 LOCKWOOD DRIVE**
CHARLESTON, SC 29403
 Affiant's Telephone **843-577-7434**

ARREST WARRANT
 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 I appearing from the above affidavit that there are reasonable grounds to believe that
 on **07-16-09** defendant **JAMES MOORE JR.**
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of **CHARLESTON**) as set forth below
DISTRIBUTION OF COCAINE BASE
44-53-375

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
 on **August 12, 2009**
Signature of Issuing Judge
Judge Code -5627/bcs
 Judge's Address **1720 SAM RITTENBERG BLVD.**
CHARLESTON, SC 29407
 Judge's Telephone **843-766-6531**
 Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by		WITNESSES	
Judge <u>Lombardo</u>	Name _____	Name _____	Address _____
on <u>AUG 14 2009</u>	Address _____	Address _____	Telephone _____
Type and Amount <u>25,000</u>	Telephone _____	Name _____	Address _____
Name of Surety _____	Address _____	Address _____	Telephone _____
PRELIMINARY HEARING held by		Telephone _____	Name _____
Judge _____	Name _____	Address _____	Address _____
on _____	Address _____	Telephone _____	Telephone _____
Defense Attorney _____	Name _____	Name _____	Address _____
Decision _____	Address _____	Address _____	Telephone _____
Judge _____	Telephone _____	Name _____	Address _____
on _____	Name _____	Address _____	Telephone _____
by _____	Address _____	Telephone _____	Name _____
(Indicate jury trial, bench trial, plea, not prog, etc)	Telephone _____	Name _____	Address _____
Disposition _____	Name _____	Address _____	Telephone _____
Sentence _____	Address _____	Telephone _____	Name _____
JURORS	Telephone _____	Name _____	Address _____
7534	Name _____	Address _____	Telephone _____
77 CASE # 4571	Telephone _____	CODEFENDANTS	
REPORT CODE 3009			
DISP. CODE 7900			

2008 AUG 18 P 12:24
 FILED
 CLERK OF COURT
 JUDGE LOMBARDI
 DISPOSITION BEFORE
 7534
 77 CASE # 4571
 REPORT CODE 3009
 DISP. CODE 7900

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, Inv. J. Shealy,
 who first being duly sworn deposed and says that, James Moore Jr.,
 did within this county and state on the 16 July 2009 violate the criminal laws of the State of South
 Carolina in the following particular:

DESCRIPTION OF OFFENSE

Distribution of Cocaine Base
 44-53-375

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth
 and that such probable cause is based on the following facts:

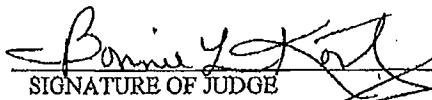
That on July 16, 2009 at approximately 1442hrs, while in the area of 7 Woolfe St., which is located in the City
 and County of Charleston South Carolina 29403, the above named defendant (James Moore Jr.) did knowingly,
 willingly, and unlawfully violate South Carolina Statute (44-53-375) Distribution of Cocaine Base in the
 following manner:

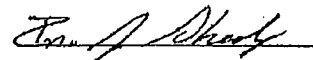
That on the above date, time, and location, the defendant did distribute 0.09 grams of an off white in color rock
 like substance consistent with that of Cocaine Base to a confidential informant (CI) working under the direction
 and control of the Charleston Police Department Narcotics Unit in exchange for a sum of prerecorded US
 Currency taken from the Official Narcotics Fund. Prior to the transaction, the CI was equipped with an
 audio/video recording device and the entire transaction was recorded. The Charleston Police Department
 Forensic Division tested the off white in color rock like substance to be positive as 0.09 grams of Cocaine Base.
 It should be noted that the transaction occurred less than a half mile from Frazier Elementary School at 63
 Columbus St., Charleston South Carolina 29403

The above is true and believable based on the observation and investigation of Sgt. Robertson, Inv. Shealy, Inv.
 Sigmon, Inv. Gilmore, Inv. Picuch, Inv. Grill, Inv. Springmeyer, PO Maurer, and PO Burke of the City of
 Charleston Police Department,

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 12th DAY OF August, 2009

 (L.S.)
 SIGNATURE OF JUDGE


 AFFIANT
 180 Lockwood Blvd.
 Charleston, SC 29403
 843-577-7434

COMPLAINT #: 0913284
 WARRANT# K- 342660
 CPD Form OT3

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
JAMES LAMONT MOORE

AKA: _____
 Race: BLACK Sex: M Age: 29
 DOB: [REDACTED] SS#: [REDACTED]
 Address: 129-B CONGRESS STREET
 City, State, Zip: CHARLESTON, SC 294030000
 DL#: _____ SID#: SC01331906

INDICTMENT/CASE#: 2009GS1008446A/W#: K342660Date of Offense: 7/16/2009S.C. Code §: 44-53-0375 (B)CDR Code #: 3039

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: PWID/Dist/Mfg Cocaine Base or Meth, 3rd offense☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375 (B) of the S.C. Code of Laws, bearing CDR Code # 3039
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: [Signature] 72656
 Clerk, Stephanie B. SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2993 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 256.40

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.
Clerk of Court/ Deputy Clerk [Signature]Court Reporter: N. Volpe

SCCA/217 (03/2011)

Presiding Judge [Signature]

Judge Code: _____

Sentence Date: 10/18/2012Sentence Unsettled
11/16/12(15-30 years)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 2009-GS-10-8446
JAMES LAMONT MOORE,)
DEFENDANT.)

OCTOBER 17 & 18, 2012
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE; AND A JURY.

A P P E A R A N C E S:

STEPHANIE LINDER, ASSISTANT SOLICITOR
RANDALL STONEY, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

JASON KING, ASSISTANT PUBLIC DEFENDER
MICHAEL COOPER, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER
CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

WEDNESDAY, OCTOBER 17, 2012

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(SW) JOSEPH ANCRUM:

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EXHIBITS

NO.	DESCRIPTION	ID.	EVD.
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<u>FOR THE COURT:</u>			
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5

1 Wednesday, October 17, 2012

2 MS. LINDER: Your Honor, we are here today for the
3 State vs. James Lamont Moore. I think it's important to
4 bring to the Court's attention that the defendant is not
5 present, and I believe -- I would be asking for a TIA in
6 this case, and I believe Mr. King will be asking for you
7 to issue a bench warrant.

8 I'm happy to go into the general history of the
9 case and why I think TIA is appropriate in this matter if
10 you would like to hear.

11 THE COURT: Well, first of all, where's your
12 client, Mr. King?

13 MR. KING: Your Honor, I've been trying since
14 yesterday.

15 THE COURT: Is he out on bond?

16 MR. KING: He is out on bond. He was here --

17 THE COURT: What does the bonds person say? Where
18 is the bondsman?

19 MR. KING: The bondsman is looking for him. She
20 has my cell numbers. He was here Monday. He was here
21 Monday, he left.

22 THE COURT: Did you see him, Ms. Linder?

23 MS. LINDER: He was here Monday and I'm happy to go
24 into more detail. He has, in my opinion, a selective
25 attendance record, report.

6

1 MR. KING: I tried calling yesterday and --

2 THE COURT: Do we know where he lives, where he
3 works?

4 MR. KING: The bondsman was told that he works for
5 Trojan Labor. She called Trojan Labor. They said, We
6 don't have a James Moore. So the bondsman has looked
7 into that, as far as talking to his mother. The bondsman
8 talked to his mother.

9 When I called it was -- it would ring. The message
10 said, This phone cannot receive voicemail at this time,
11 last night, up until, like, eight o'clock. Today I was
12 able to leave a voicemail. So I left a voicemail first
13 thing, Be here at one o'clock.

14 I kept calling periodically throughout the day,
15 called the bondsman. The bondsman is trying to call. I
16 did get -- someone answered the phone before I walked
17 over here, said it was his friend, he's at work. Just
18 get the same thing, that he's at work, Trojan Labor.

19 THE COURT: Trojan Labor, but Trojan Labor doesn't
20 know him?

21 MR. KING: According to the bail bondsman that's
22 what she said. She tried Trojan Labor and they don't
23 know him. I think that -- he has been on the docket a
24 lot and hadn't gone. I don't think he's necessarily run
25 away but maybe he just doesn't realize that it's going to

7

1 go or thinks maybe it's not going to go. But I would
2 request a bench warrant, Your Honor. He's looking at a
3 minimum 15, maximum 30. It's serious, serious charges.

4 THE COURT: We had a pretrial conference on this.
5 Did you indicate to him that he was number two?

6 MR. KING: I did, Your Honor.

7 THE COURT: Did you explain to him what that meant?

8 MR. KING: I told him we would probably either be
9 going Monday or today. That was what I told him.

10 MS. LINDER: And, Your Honor, to go on that, both
11 Mr. King and myself were in plea court Monday morning
12 after jury qualifications and about 12:30 I had went back
13 to my office and saw a message from Mr. Whetmore that you
14 were hoping to pick a second jury that day. I called
15 Mr. King and Mr. Moore came right back thinking that we
16 were going to pick a jury, and by the time we got here
17 y'all were arguing to the first motion hearing for Adam
18 Young. So he was well aware that he was -- actually
19 thought he was picking a jury Monday.

20 THE COURT: All right. Well, do we have another
21 case to try if I don't try this one in his absence, TIA?

22 MS. LINDER: Your Honor, I can contact Mr. Smiley
23 and try to get the next case, Norris Steplight, ready to
24 go if Your Honor would prefer that.

25 THE COURT: What's the likelihood he's going to be

1 here, Mr. King?

2 MR. KING: I've had no luck for the past two days.
3 I honestly don't know. Like I said, he showed up before.
4 You know, he's shown up, I think every time. There was
5 one time I didn't represent him he didn't show up on a
6 Monday and it was a holiday, but he generally shows up.
7 I apologize. I just don't know. I've tried everything
8 but I just can't get him on the phone.

9 THE COURT: Well, did you indicate to the bonds
10 person where we were procedurally with this, calling this
11 case for trial?

12 MR. KING: Absolutely, Your Honor. I told her
13 we're starting at 2:30. She was getting out the message
14 to be here at one, just like I had left on his voicemail,
15 so he would be here in plenty of time I could talk to
16 him. But, no, the bondsman didn't have any more
17 information to give me.

18 THE COURT: Is Mr. Smiley's case in custody?

19 MS. LINDER: No. He is out of jail.

20 THE COURT: Can we proceed with the motions without
21 your client, Mr. King?

22 MR. KING: Well, I would prefer if we just issued a
23 bench warrant and went forward because if -- I mean,
24 issue a bench warrant and go forward with another case.
25 I would prefer him to be here for this whole trial, if he

1 could be here.

2 THE COURT: What motions are we having today?

3 MR. KING: I was making a motion to go into the
4 record of the informant that are older than 10 years. He
5 has a record that's older than 10 years but not much in
6 the past 10 years. So I was making a motion to go beyond
7 the 10 years to impeach that informant, and I've got a
8 motion to redact some portions of the video, the video of
9 the alleged drug transaction, and we have an issue with
10 the confidential informant's file. There's a file.

11 You know, I think they are reluctant to just turn
12 over everything to me. I told them if they needed you to
13 review it in camera and decide what I should get, so
14 there's a motion regarding the CI's file.

15 THE COURT: Are you prepared on those?

16 MS. LINDER: Your Honor, the State is the prepared
17 to go forward on all three of those. I have the case
18 agent present and I also have the head of the narcotics
19 unit who is here with the CI file. The State would
20 respectfully request that if these motions are heard then
21 we do continue into selecting a jury tomorrow and
22 continuing on --

23 THE COURT: If they are heard; is that what you
24 said?

25 MS. LINDER: Yes, Judge.

10

1 THE COURT: How long do you think these motions
2 will take for me to hear, Ms. Linder?

3 MS. LINDER: Judge, I would say that it would take
4 maybe an hour total --

5 THE COURT: All right.

6 MS. LINDER: -- to take everything.

7 THE COURT: Out of an abundance of caution I'm
8 going to pass this case until 3:50, and hopefully by then
9 you'll have some information from your bonds person. Do
10 you want me to issue a warrant now?

11 MS. LINDER: If Your Honor would be willing to
12 issue a bench warrant at this time, yes. I can get the
13 paperwork within five minutes to Your Honor.

14 THE COURT: All right.

15 MS. LINDER: Thank you, Judge.

16 THE COURT: Thank you.

17 MR. KING: Thank you, Your Honor.

18 (WHEREUPON, the case was recessed.)

19 THE COURT: Is your client here?

20 MR. KING: No, Your Honor. I don't believe he's
21 coming.

22 THE COURT: All right. Well, I signed a bench
23 warrant so that's put in the system.

24 (Off the record.)

25 THE COURT: Did you explain to him that if he

11

1 doesn't come he's going to get locked up?

2 MR. KING: Yes, Your Honor, and that possibly the
3 trial might continue as well, but I don't think he's
4 coming from the conversation I had with him. He said he
5 was in Mount Pleasant. He was looking for a ride but
6 then, you know, the other part of the conversation --

7 THE COURT: I thought you told me he was on his
8 way, Mr. King?

9 MR. KING: He told me he was on his way. He would
10 be here in 15 -- he said he was coming, he would be here
11 in 15 minutes.

12 THE COURT: That was about an hour ago; is that
13 right? Well, maybe not quite an hour ago.

14 MR. KING: Right, Your Honor. Then he said he was
15 still looking for a ride. I don't believe that he's
16 coming. I honestly don't.

17 THE COURT: Okay.

18 MR. KING: And I would -- you're right that you
19 issue a bench warrant and we would not go forward with
20 the case at this time.

21 THE COURT: I've already issued the bench warrant
22 so...

23 MR. KING: And I can let the bail bondsman know.

24 THE COURT: The bail bondsman needs to know that we
25 are going to go forward with our hearings at a minimum.

12

1 (WHEREUPON, a conversation took place off the
2 record pertaining to an unrelated case.)

3 THE COURT: All right. Let's do our motions in
4 this case. I note your objections, Mr. King, and that
5 your client is not here but it is 4:20. I told you we
6 would begin at 2:30. I've given, I believe, ample time
7 and you've made ample efforts. So we are going forward
8 on the hearings. Thank you.

9 MR. KING: Yes, ma'am.

10 MS. LINDER: And, Your Honor, I would respectfully
11 request that -- with proceeding with these motions. I
12 understand that you did sign a bench warrant, that we
13 would be able to continue tomorrow if he has not shown up
14 tomorrow, into this trial.

15 THE COURT: I'm hoping that the bench warrant is
16 going to be effectuated some time today and that we can
17 proceed with him tomorrow.

18 MS. LINDER: My intention is once we get a copy of
19 the file I've got two people from the City here right now
20 and I'm sure they will gladly hand it out to the other --

21 THE COURT: And I'm sure the bonds person will be
22 in a position to assist.

23 All right. We have two motions from Mr. King, and
24 does the State have any motions?

25 MS. LINDER: No, Your Honor.

13

1 THE COURT: Ms. Linder, let's just do it the simple
2 way. Your position on the motion to use evidence of
3 convictions greater than 10 years?

4 MS. LINDER: Mr. Stoney is going to handle that
5 motion.

6 MR. STONEY: That's right.

7 THE COURT: All right, Mr. Stoney.

8 MR. STONEY: Your Honor, the State would oppose
9 allowing the -- I believe he wants to get the 1988
10 convictions in. The State would oppose allowing those in
11 under the Court of Appeals opinion State V. Williams in
12 which the Court of Appeals upheld Judge Dennis's denial
13 with those convictions in 2006. It was the same CI, the
14 same sort of scenario where it was a controlled buy under
15 the direction and control of the City of Charleston. In
16 that case, in Williams, the Court held under 609 that the
17 prior convictions --

18 THE COURT: Did you say that it was the same CI
19 that was used in that case?

20 MR. STONEY: Yes. Yes, Your Honor, and so we would
21 argue that if they weren't allowed in in 2006 --

22 THE COURT: Is that true, Mr. King?

23 MR. KING: I was the defense attorney and
24 Ms. Linder was the prosecutor, and it was the same CI.

25 THE COURT: Mr. Stoney, were you the law clerk?

14

1 MR. STONEY: I was not. I was in college, I
2 believe.

3 THE COURT: All right. Mr. King, so why should I
4 -- what's different?

5 MR. KING: Well, in the In Re: Williams case they
6 did note that the informant said on the witness stand I
7 spent half my life in prison. So I actually did get sort
8 of what I wanted in that trial.

9 THE COURT: Right.

10 MR. KING: And they ruled that it was a harmless
11 error, it is in the judge's discretion. There's been
12 some difference now, and since he's continued to get in
13 trouble, Your Honor. He's been --

14 THE COURT: The CI?

15 MR. KING: Yes, Your Honor. He's been arrested
16 for, you know, contempt of family court in three
17 different times; 2007, 8 and 2010. And also recently
18 he's had convictions for urinating in public and public
19 intoxication, and I put in my motion I wasn't intending
20 to go into those but I believe that he has continued to
21 break the law, you know, and that his subsequent history
22 is relevant in the case law or the Colf, C-o-l-f,
23 factors.

24 The CI's credibility is crucial to the trial. The
25 CI is going to have to explain what's going on in the

15

1 video. The video doesn't show everything so the
2 testimony of the CI and his credibility is very
3 important. The factors are -- oh, another thing. The
4 defendant's rights aren't implicated in this situation.
5 Some of the cases involved the defendant testifying and
6 going into a defendant's prior record. This isn't that
7 situation. So no defendant's rights are being
8 implicated. I think that weighs in my favor.

9 In the impeachment value of prior crimes, you know,
10 I'm only asking to get in dishonest crimes. There were
11 some other things on there. So I'm sticking with just
12 the larceny, forgery, grand larceny and armed robbery as
13 crimes of dishonesty. I think that they have a high
14 impeachment value.

15 I mentioned the subsequent histories of getting
16 arrested for family court contempts and urinating in
17 public and public intoxication. There's a factor of the
18 similarity of the past crimes and the crime charged.
19 That's not an issue here. I think that applies for a
20 defendant but there's no similarity. And it's just
21 credibility is the central issue in the case.

22 In order -- he has a bad record but it's old, and
23 recently, you know, other than those convictions I've
24 mentioned, you know, there's not a lot I can go into. I
25 think there's a receiving stolen goods around 2002. I

16

1 believe Ms. Linder was okay going into that one. She
2 doesn't have an objection to me asking about receiving
3 stolen goods in 2002 but that's it.

4 I don't think the jury can get a fair view of the
5 guy's credibility, of this witness's credibility without
6 knowing his full record, you know, because it's really
7 bad a long time ago. And since his credibility is so
8 important I think the jury should be able to hear his
9 entire record to be able to evaluate his credibility.

10 And I had cited to a case. There's a fairly new
11 case called State vs. Jason Ervin Black. That case, the
12 prior convictions were not allowed in but best
13 distinguishable from this case because they were prior
14 manslaughter convictions, which is a crime of violence
15 and doesn't have a high impeachment value because it's
16 not a crime of dishonesty. So these charges I'm trying
17 to get in, I believe, are all crimes of dishonesty.

18 THE COURT: And tell me again what's changed
19 between the prior case that the Court of Appeals has
20 ruled on -- excuse me, the Supreme Court. I'm sorry.
21 I'm looking at -- I had them all stacked up, the Court of
22 Appeals and this instant.

23 MR. KING: Well, first of all, I think it's in Your
24 Honor's discretion, so it's discretionary. I think, you
25 know, different judges could come to a different

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1 conclusion on it so, you know -- and the fact that he's
2 continued to get in trouble. That's the main thing
3 that's changed is he's continued to get arrested for --

4 THE COURT: But you are not asking me to allow you
5 to introduce those convictions, the misdemeanor, the
6 public and the urinating in public, correct?

7 MR. KING: That's right. I think that's just
8 evidence of his subsequent history that he has.

9 THE COURT: That you wish for me to consider in my
10 analysis; is that correct?

11 MR. KING: Yes. That's correct, Your Honor.

12 THE COURT: All right. Is there any reason I need
13 hear from you, Mr. Stoney?

14 MR. STONEY: No, Your Honor.

15 THE COURT: Mr. King, I am denying your request. I
16 find that they are too remote, and while several years
17 ago may have had significant impeachment value the
18 probative value at the time substantially outweighs the
19 prejudicial effect and the centrality of the credibility
20 issue to a 1988 armed robbery of the CI. So I note for
21 the record and I appreciate the argument and the cases
22 that you have cited. Thank you.

23 The motion to redact the statement?

24 MR. KING: Yes, Your Honor. There's really sort of
25 two issues going on there with the motion to redact.

18

1 I'll start off with the improper comments on the
2 defendant's character, and that I'm citing the State vs.
3 German, 325 S.C. 25. In that case, the police officer
4 testified that he had several tips that the petitioner
5 was distributing or selling crack cocaine, and that was
6 ruled to be improper.

7 In another case we cited in German where I think
8 the police were allowed to go into the fact that there
9 was a high drug area and that was the reason that there
10 was an investigation there. But once the comments refer
11 specifically to the defendant then under German that
12 would be an improper comment on issues on Mr. Moore's
13 character.

14 And what I'm talking about on the video, in the
15 beginning of the video they are preparing the
16 confidential informant. They are in a vehicle and they
17 are going to drive to the drop-off location.

18 The police officer is talking, there's also a
19 radio that's going on, and he's talking with the
20 informant and some statements are made such as, We're
21 going to drop you off at the same spot; the house across
22 from the gas station where the boys are always hollering
23 at you trying to do that. They are always out there,
24 always hollering at you.

25 Then a little bit later -- and this is the

19

1 beginning of the video, Your Honor. So I don't think it
2 is that relevant anyway. It's before the informant is
3 dropped off and begins to walk toward the targeted
4 location.

5 On the drive there there's a police radio and I
6 believe there -- you know, I believe they're maybe
7 surveilling the area, telling him that there's some
8 people out there, and they're talking about another guy
9 in front of the house, He's out there. There's a couple
10 of guys out there. They are right out there on the
11 corner past the gas station in a white T-shirt. One of
12 them has cast on, and that's supposed to be referring to
13 Mr. Moore, has alleged to have had a cast on at the time.

14 So these are, you know, preliminary discussions
15 which the implication being that, you know, Mr. Moore is
16 always out there trying to sell drugs, and I believe
17 that's the improper comment on his character. I don't
18 think it's relevant for anything.

19 It's the beginning of the video so it's really just
20 preparation for the CI and, you know, these comments can
21 easily seem to be saying that, you know, these are the
22 guys that are always out there, they are always yelling
23 at you, and it's implying that he's always out there
24 selling drugs. I believe that's unfairly prejudicial and
25 an improper comment on character and any probative value

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1 it would have is outweighed by its unfair prejudice.

2 There are more statements, Your Honor, during the
3 actual, what's supposed to be the transaction, and this
4 goes into the second part of the motion. The informant
5 is narrating on the video. He's talking so that the
6 officers listening in can hear him and he says again at
7 that point, referring to what's alleged to be my client,
8 That's the same guy that be in the yard all time, be
9 yelling at me.

10 You know, they keep saying the same thing over and
11 over again about him being in the yard all the time
12 yelling at him, again, the implication that he's always
13 out there trying to sell drugs to them.

14 The second part of the -- and that's right in the
15 middle of some statements that go into the second part of
16 my motion, which are the prior consistent statements.
17 During his narration you can't necessarily see everything
18 going on in the video so the informant is narrating.
19 He's getting ready to go across the street and go get it,
20 The one with the blue cast on. And that's mixed in with
21 the improper comments on his character of that's the same
22 guy that's in the yard all the time yelling at me.

23 And then he tells the police where he's going.
24 He's going in the yard. When you turn in on this street
25 it's the first, second, the third. He's telling which

21

1 house they are going to, and so I'm moving to keep those
2 out.

3 After the buy is over there are more what I would
4 say prior consistent statements. After the alleged buy
5 finishes he narrates again into the microphone that I got
6 it from -- I believe he says I got it from the guy with
7 the cast on. It says -- yes. After the alleged buy is
8 over he narrates into the microphone, The one with the
9 blue cast is the one I got it from, the white tank top
10 and black pants.

11 Then when he finally gets back to the car and at
12 the very end of the video he says again, I got it from
13 the dude with the cast on.

14 So I believe that those -- some of those are prior
15 consistent statements which will be bolstering and
16 hearsay, and other ones are improper comments on the
17 defendant's character, and in at least one part of the
18 narration they are sort of fixed together. So I would
19 ask to redact those portions. The informant can narrate
20 and testify on the stand and describe what's going on in
21 the video, and I think, you know, that would be
22 appropriate to explain that to the jury and it's not
23 necessary to have it played on the video.

24 Oh, and I left this out, too, Your Honor. When the
25 informant says on the video, I pass you all the time

22

1 sometimes, and that would go again into, you know, they
2 keep talking about how he's always out there. That's the
3 implication that I'm trying to prevent the jury from
4 hearing, is the idea that he's always out there yelling
5 at people and trying to sell drugs. It will make it
6 difficult to redact this, you know, and plus it being
7 mixed in with the consistent statements but I think
8 there's a way it can be done.

9 THE COURT: Whose argument is this?

10 MS. LINDER: Mine, Your Honor. First I'd like to
11 address kind of how Mr. King outlined the two separate
12 issues. There's the issue that he claims which is
13 comments on character. Mr. King pretty much stated it
14 accurately. As you watch the video you hear the two
15 agents in the car, the two investigators kind of speaking
16 to one another and then telling the confidential
17 informant, you know, where to go.

18 I would submit, Judge, that they are targeting a
19 location. They are not targeting a person. They don't
20 mention him by name. They mention, actually, a
21 description of multiple people who are out there, and
22 while them boys hollering may mean drug dealing to some
23 people it doesn't necessarily mean that to everyone.

24 And part of why they do this and why they discuss
25 this in a case is a lot of it is about safety. They've

23

1 got other officers, they are all talking on walkie
2 talkies --

3 THE COURT: Is that what that means, they are
4 always hollering at you, is drug dealing?

5 MS. LINDER: That is what Mr. King is saying.

6 MR. KING: I think that that's the implication
7 there. They are wanting to find someone to buy drugs
8 from. So they are targeting -- on the video there are
9 two people, and that's who they are talking about. Those
10 are the guys that are always out there yelling.

11 So I think that's the -- if that's the implication
12 why else would they be targeting these guys, is that they
13 are the ones always out there yelling at the -- I guess
14 to the informant. He says they are always yelling at
15 him. The implication is that he's yelling at them to
16 sell drugs to them, is the implication.

17 THE COURT: Okay.

18 MR. KING: It's not outright stated that he's
19 trying to sell -- always out there trying to sell drugs
20 but it's -- you know, it's --

21 THE COURT: Do you have the video?

22 MS. LINDER: I do, Your Honor. If you'd like to
23 watch it. We can mark it as a court's exhibit.

24 THE COURT: Show me that, about the hollering at
25 you. And what about the prior consistent statements?

24

1 MS. LINDER: As far as the prior consistent
2 statements, I'd actually classify that as pretty much the
3 exact definition of a present sense impression. He's
4 saying -- you know, you hear him because they drop him
5 off in a parking lot. He says, I'm passing Burris, I'm
6 passing a liquor store. I'm about to cross Meeting
7 Street.

8 THE COURT: How long is the video?

9 MS. LINDER: A total of, I think 10 minutes.

10 THE COURT: All right. Let me just see the video.
11 Wouldn't that be easier, Mr. King?

12 MR. KING: Yes.

13 THE COURT: Just watch the video, then how
14 difficult is it going to be redact it, if needed?

15 MS. LINDER: Your Honor, I would say that as far as
16 the beginning part with the officers commenting on
17 Mr. Kinley's character, I do not believe that would be
18 difficult. I believe if you take away one of the two
19 senses of an audio and video recording being sound I
20 think it more or less takes away -- it loses a lot of
21 what the whole case is.

22 THE COURT: All right. Let me watch it.

23 MS. LINDER: Would you like me to play it here or
24 hand it up to the Court?

25 THE COURT: Right there because you can see it on

25

1 here, right?

2 MS. LINDER: Yes, Judge.

3 THE COURT: We have the new equipment, we might as
4 well use it.

5 What time do you want the panel to report back,
6 Mr. King? What time do you want to get started in the
7 morning?

8 MR. KING: 9:30.

9 THE COURT: Does that work for you, Ms. Linder?

10 MS. LINDER: I'll be ready whenever you are.

11 THE COURT: Oh, I forget. I have something else
12 scheduled in the morning. Ten?

13 MR. KING: Yes, Your Honor.

14 THE COURT: Have the jury report back at ten. That
15 will give you time to tell your -- I want you all here at
16 9:30 in case there's any pretrials.

17 All right. Let me know, are we starting?

18 MS. LINDER: Yes.

19 (WHEREUPON, the video was played.)

20 THE COURT: All right. Pause it for just a second.

21 Mr. King, is that your position that that means
22 that they are trying to -- they want to sell him drugs?

23 MR. KING: I believe that the implication of that
24 is, is that they are always out there and they are
25 hollering at him, I believe that that can easily be

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1 interpreted that they are out there selling drugs. I
2 mean, I don't know what else -- that's what it sounds
3 like to me, and that's why he's -- that's why they are
4 the target, the guys that are always out there and always
5 yelling at you. Why would they target them if they are
6 just out there saying, Hey, how you doing?

7 The fact they are out there, they are out there
8 yelling trying to get -- you know, I guess they are
9 trying to sell drugs and yelling trying to get customers.
10 That's what -- the only interpretation I can get on that.
11 Why else would they be a target?

12 THE COURT: Ms. Linder?

13 MS. LINDER: Judge, I would just say that, you
14 know, them boys always hollering at me, it does not say
15 Mr. Moore, it does not specifically say one single person
16 out there. It says there's a group of people out there.
17 Hollering at could mean a variety of things.

18 I understand what Mr. King is saying what he
19 believes the implications are and I think perhaps in
20 certain circles those are the implications but I would
21 hold that it is not necessarily a comment on character.
22 Most specifically it's not a comment on the defendant's
23 character. It's merely a target location.

24 He is describing the house behind the gas station,
25 and that's also to just let the rest of the operation

27

1 know where the perimeter officers need to be circling for
2 safety for everyone involved in the operation.

3 THE COURT: All right. Continue.

4 And, Mr. King, if you'll just alert me which
5 statements that you want me to focus on.

6 MR. KING: Yes, Your Honor.

7 (WHEREUPON, the video resumed play.)

8 MR. KING: And this is the next conversation I
9 would object to.

10 THE COURT: Have they been in the car the entire
11 time?

12 MS. LINDER: Yes, Judge, just driving.

13 MR. KING: I'm sorry. There's a radio in the
14 background and I think it says there's another guy in
15 front of the house, then the informant thinks that he's
16 talking to him but the officer is talking to somebody
17 else on the radio. Sorry. I just wanted to explain what
18 was going on there.

19 And this whole conversation is the same thing that
20 -- they are radioing in about people being out, the same
21 guys who were out there, and that's going to continue
22 for, I think the next minute or so.

23 THE COURT: And this is what -- you are objecting
24 to this?

25 MR. KING: Yes. Yes, Your Honor.

28

1 THE COURT: All right. Starting from now?

2 MR. KING: I believe from here, Your Honor.

3 (WHEREUPON, the video resumed play.)

4 MR. KING: They are now going to talk for just
5 about 30 or 40 more seconds, Your Honor, and then
6 continue talking about the same thing, and I'm objecting
7 to this next conversation, too.

8 And that's going to be it for a few minutes. He
9 walks to the target location.

10 THE COURT: All right.

11 MR. KING: Do you want to let it play or skip
12 ahead?

13 THE COURT: Well, can you mute it until it gets to
14 the points?

15 (WHEREUPON, the video was muted.)

16 THE COURT: Thank you.

17 MR. KING: Your Honor, we're just going to jump to
18 what is the alleged transaction. He walks along, he says
19 a few things but nothing that I'm objecting to on the
20 walk to the location.

21 So I believe this is the alleged buy and this is
22 where the narration is going to come in that I was saying
23 was the prior inconsistent statement.

24 (WHEREUPON, the the video resumed play, with
25 volume.)

1 THE COURT: Is that your client that has the blue
2 cast on?

3 MR. KING: My client is alleged to be the one in
4 the tank top, the white tank top.

5 THE COURT: Does he have a blue cast?

6 MR. KING: According to State.

7 THE COURT: I'm just trying to --

8 MR. KING: That's who they are saying my client is.

9 THE COURT: Is it your position that the person
10 that is selling the drugs had the cast on?

11 MS. LINDER: Yes, Judge.

12 THE COURT: Is that correct?

13 MS. LINDER: Yes, Judge.

14 THE COURT: And your issue is that the CI is
15 narrating and says, It's the guy with the blue cast on?

16 MR. KING: Right, Your Honor. He's narrating in
17 the video. He's giving these statements. Narrating in
18 the video about things that are going on off camera, and
19 he can do that on the stand. He can take the stand and
20 explain what's going on but I'm arguing that it would be
21 a prior consistent statement bolstering that and what
22 he's narrating there on the video.

23 THE COURT: Okay. Do I need to watch any more of
24 this? Have I seen and heard?

25 MR. KING: It continues. At some point later just

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1 a minute or two he says to, who's allegedly my client
2 with the blue cast on, that I pass you all the time
3 sometimes but I'm down there.

4 What he's saying is I pass you all the time but I
5 go to these guys down the street. So he's saying, again,
6 I'm passing you and I know you are selling drugs but I'm
7 going to these guys down the street, is what it -- I just
8 don't see any other interpretation of that.

9 So he says that actually to the person that the
10 State's alleging is my client, then after it's over he
11 then comments more, you know, narrates about what just
12 happened and says, I'm on my way back. The one with the
13 blue cast is the one I got it from, with the white tank
14 top and the black short pants. He went across the street
15 to the white house to get it and then when he finally --

16 THE COURT: So he's narrating all of this to the
17 officers through the microphone?

18 MR. KING: That's correct, Your Honor. And then
19 when he finally returns back to the car at the end of the
20 video he says, I got it from the dude with the blue cast
21 on. He says it one more time at the very end of the
22 video.

23 THE COURT: How is this not a prior consistent
24 statement?

25 MS. LINDER: Judge, I would say that this is

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1 exactly in line with Rule 803(1) the exception to hearsay
2 with present sense impression. He is saying what's about
3 to happen, he is saying it as it's happening. He's
4 describing what is happening.

5 You know, as far as Mr. King saying he's narrating
6 something that's off screen, I mean, quite frankly the
7 pin cam is in one location and it doesn't have peripheral
8 vision. It's not on his head. It doesn't turn where his
9 head turns, and so I think it exactly fits the bill and
10 definition of a present sense impression.

11 He is saying in live time of what is happening. He
12 is relaying it to law enforcement, and that's telling
13 them not only what's happening but it's also reassuring
14 them in their monitoring of the live feed that everything
15 is okay, that his safety is not in question, and so on
16 and so forth.

17 THE COURT: Mr. King?

18 MR. KING: Your Honor, I still think that it's --
19 he's saying he's getting ready to go across the street
20 and go get it. I don't know if that's describing
21 something that's actually happening. That's describing
22 what he thinks is going to happen in the future.

23 And then he says in that same paragraph -- that's
24 the problem, is that they are going to be mixed together.
25 That same paragraph he says, That's the same guy that's

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1 in the yard all the time that's yelling at me. And then
2 he describes -- he tells them where he's going. I
3 understand some of that could be present sense
4 impression --

5 THE COURT: But this is the whole buy, correct,
6 from the time they wired him up until the time he gets
7 unwired, correct?

8 MR. KING: I believe that's correct, Your Honor, as
9 far as I know. That's all the video I was provided.

10 MS. LINDER: I think that you can separate most of
11 what Jason is saying as far as comments on character in
12 the beginning versus the CI's actual present sense
13 impression of what's happening. I think there are times
14 to separate that out.

15 THE COURT: What this video is is the time he gets
16 in the car, he's wired up, until he returns back to the
17 car and unwired?

18 MS. LINDER: Yes.

19 THE COURT: I just want to be clear because when
20 you're talking separate paragraphs it just kind of in my
21 mind thought maybe we were two separate times. So this
22 is all one chunk?

23 MR. KING: Right. Right. What I mean is that I
24 have two different motions regarding the two different
25 reasons.

33

1 THE COURT: Two different paragraphs on your
2 motion. I'm sorry. Thank you.

3 MR. KING: Right. I'm sorry. And they are kind of
4 -- you know, this one paragraph when he starts that
5 narration, Everybody is getting ready to go across the
6 street at about 9 minutes and 45 seconds, part of that
7 I'm objecting to as a prior consistent statement, but the
8 next sentence is the improper comment of the character;
9 That's the same guy that's in the yard all the time
10 yelling at me.

11 So, I mean, the two issues are in the same -- you
12 know, same narration that the informant is giving. So
13 it's tough to separate them out from the other, so that's
14 why I'm asking that it be muted during that part and let
15 the informant explain what's going on from the stand.

16 I don't believe that -- and even if what's being
17 said, that he's getting ready to go across the street to
18 go get it, even if that's present sense impression there
19 I don't think the later statements are. The later
20 statements, you know, when it's already over he's saying
21 what happened in the past. I don't think that's a
22 present sense impression.

23 THE COURT: Ms. Linder, what about just having the
24 CI testify from the stand as to what's going on?

25 MS. LINDER: Judge, I think that can cause some

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1 issue because this is what happened over three years ago.
2 As you will hear from when the CI takes the stand and as
3 you will see, if Your Honor so wishes to see the CI file,
4 this CI has been working with law enforcement for over 10
5 years. He has hundreds of buys.

6 I cannot -- he also, due to his age and advanced
7 glaucoma at this point, three years later, does not have
8 the best vision. He watched this and initialed the video
9 a year ago in a dark room with the laptop. I cannot say
10 that based on his ability to view this with no sound his
11 memory is going to be -- to be able to recount this as
12 accurate as his present sense impression did over three
13 years ago.

14 I'm happy with Mr. King, he has the ability to
15 cross the CI on what is said in this video. He can ask
16 the CI all the questions he wants to on the stand about
17 the present sense impression but I do not think it's a
18 prior consistent statement.

19 I do not intend to ask the CI to take us through
20 step by step what happened. I intend to lay the
21 foundation, get it admitted, and with the Court's
22 permission publish the video in its entirety or in the
23 amount that the Court allows, and then that is the
24 extent of my intention to us the confidential informant
25 in this trial.

1 THE COURT: All right. Mr. King, anything else?

2 Anything else I need to know?

3 MR. KING: Just like to mention that in addition to
4 the prior consistent statement when -- I guess when the
5 statement alleged the transaction is actually going down
6 he's saying, I pass you all the time sometimes, which
7 again ties back into the previous statements of the guy,
8 says he's always out there. He says, I pass you all the
9 time sometimes but I'm -- but I'm -- but I've called my
10 boy down the street down there.

11 So I think that's again implying he's always out
12 there selling drugs, and that's unfairly prejudicial and
13 a prior bad act, 404(b), and improper comment on the
14 character. I think it's so -- it's going to be
15 complicated to take parts of it out that I would ask just
16 to mute it and have the informant narrate it.

17 THE COURT: Mr. King, I guess -- and maybe I'm
18 unsure as to exactly what it is that I'm going to need
19 you to provide me other than I'm just going to try to
20 make this simple. I don't know of any reference that can
21 be inferred, I've never heard it connected with drug use
22 or drug selling as they are always hollering at you.

23 MR. KING: I think when you look at all the
24 statements together they all build on each other. When
25 he says in the beginning, The guys are always out there,

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1 and what makes it clear is when he says I pass you all
2 the time sometimes but I'm going down to the people down
3 the street.

4 What he's saying is, I pass you sometimes, but it's
5 not said but implied I've been buying from these guys
6 down here, not you. The more the statements build on
7 each other it starts to become -- becomes clear what he's
8 talking about.

9 So just saying -- right. If you just take the
10 statement, They are always out there hollering at you,
11 you know, you might not know what that means, but within
12 the context of the whole video and all the statements
13 added together it clearly means that he's out there
14 selling drugs all the time.

15 THE COURT: But, Mr. King, I'm concerned because I
16 like to work in my yard and when my neighbors walk by I
17 holler at them, and so is that to assume that I'm -- I
18 mean, that's where I'm getting at.

19 MR. KING: And the police would never target you in
20 your yard to try to buy drugs from you. It's -- that's
21 -- what other reason would there be for them to be the
22 target of this investigation? Not just because they are
23 out there. Right. If they are just out there saying,
24 Hey, how are you doing, just yelling and being friendly,
25 that wouldn't give the police a reason to make them

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1 investigate. It's the context of the whole video becomes
2 clear what that means.

3 Just taking that statement isolated, right,
4 hollering doesn't necessarily mean that but it becomes
5 clear that's what that means when you watch the whole
6 video and hear all the statements, and when you think
7 about why would the police -- why would the police send
8 the informant to go -- why are they even guarding him to
9 go send the informant to him? Because they are standing
10 out there selling drugs, is what they are saying.

11 It's just not as innocent as they are out there
12 hollering greetings or, you know, there would be no
13 reason to try to buy drugs from someone who is just being
14 friendly. That doesn't raise any suspicion at all.

15 THE COURT: All right. Mr. Linder, anything
16 further?

17 MS. LINDER: Your Honor, I believe I've stated
18 everything about the State's position. Thank you, Judge.

19 THE COURT: All right. Mr. King, you would agree
20 I've viewed the majority of the video and have listened
21 to and seen parts that you are objecting to?

22 MR. KING: Yes, Your Honor. I believe so.

23 THE COURT: Ms. Linder, do you agree that I've seen
24 the majority of the video and got the flavor of what's
25 going on?

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1 MS. LINDER: I do agree, Judge.

2 THE COURT: All right. What is your explanation of
3 the hollering?

4 MS. LINDER: Judge, I think it can be taken in a
5 variety of ways, kind of as you said. Who knows if you
6 are out in your yard. I holler at my neighbors when they
7 go by, have a baby, they walk by with a stroller. I
8 holler at those people, some people holler at me.

9 He says I see -- as Mr. King, and I'm going to
10 paraphrase this, something like I see you out here all
11 the time sometimes. I usually go down the street.

12 I mean, does the momma live down the street, does a
13 friend live down the street? He says he passes by. I
14 don't necessarily think that that means I pass you by to
15 go buy drugs elsewhere.

16 I will say that there's a different vernacular for
17 -- and lingo for people who are on the street, and I may
18 not necessarily know all of that and I think it could
19 mean different things to different people. But I
20 definitely do not think that that has an implication of
21 drug sales and I definitely do not think that has an
22 implication of Mr. King's defendant is the drug dealer.

23 When you listen to it, as Your Honor has, they talk
24 about location. They actually describe multiple
25 different people who are out there. I would submit that

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1 that is in doing good police work. It's in trying to
2 identify a location, trying to identify the people who
3 are around there so the officers who are doing perimeter
4 are aware of who's out there, are aware of where the CI
5 is walking, are aware if the CI's safety is in danger.
6 That's the importance of that live feed. That's the
7 importance of all these recordings.

8 And, Judge, I do think that the comments on the
9 character, as Mr. King describes it, versus the prior
10 consistent statements, I would argue that would be
11 present sense impression. I do think those two items are
12 two separate issues for Your Honor to rule upon.

13 THE COURT: All right.

14 MR. KING: And, Your Honor, I left one thing out.

15 THE COURT: Please.

16 MR. KING: This falls back, there's Rule 403 that
17 whenever it's probative of that it's outweighed by the
18 danger of unfair prejudice. You know, there's a danger
19 it could be misinterpreted.

20 You know, I interpret it that way after I watched
21 the video. That's the only interpretation I can come to
22 after watching the video in its entirety and listening to
23 everything they are saying. I didn't come to any other
24 conclusion of what they are out there doing hollering.

25 So I think that, you know, even if we can interpret

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1 it more than one way there's a danger of unfair prejudice
2 and I would cite to rule 403, in addition to what I
3 argued before.

4 THE COURT: All right. I have observed the video
5 and then both of you know that prior to taking the bench
6 I did prosecute drug offenses, and based upon my review
7 of the video there is nothing that causes me any concern
8 that that's the automatic implication that I go to.

9 I have never heard that expression in any other
10 drug case that I either prosecuted or have presided over
11 during the last few years on the bench. And based upon
12 that I do not, in doing -- and I'm glad you brought up
13 403. I do not find that there's any undue prejudice.
14 That was not my assumptions even knowing that that's what
15 you were challenging. And so I deny your motion that
16 it's improper character evidence because I do not think
17 that it's a comment on anyone's character, let alone your
18 client.

19 I do find that based upon my observation of the
20 video and the arguments presented and reading the rules
21 that it is clearly a present sense impression, and as
22 Ms. Linder intends to use the video that it most
23 definitely will be a present sense impression if she is
24 not going to question and go step by step on the video
25 but just play the video as a recorded recollection of

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1 what happened. I deny your motion to redact the
2 statements and note your exception for the record. Thank
3 you.

4 MR. KING: Thank you, Your Honor.

5 THE COURT: All right. So with that there's
6 nothing further, Mr. King?

7 MR. KING: One issue, Your Honor.

8 THE COURT: Yes.

9 MR. KING: I requested the confidential informant's
10 file. It's something, you know, we always ask for. I
11 don't know what records they keep on the informant but I
12 just didn't know if there's anything in there that might
13 be discoverable that I might use for cross-examination.

14 The State, I know, is concerned about the informant
15 and, you know, other buys that he's done. I mean, I'm
16 not trying to find out other names of other people that
17 he's bought from. I'm just looking for things like
18 anything in the file that, you know, reflect on his
19 dishonesty or credibility, the records of, you know, how
20 many buys he's made, how much money he's made, things
21 that I think that I could use in cross-examination.

22 The State, I believe, has an issue with that. I
23 understand that's the confidential informant, so I don't
24 know how to handle that, but I would request -- I'd have
25 to request the file for anything that I can use.

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1 everything I can to have him here, if the deputies don't
2 get him already, or the bondsman. I'm going to talk to
3 the bail bondsman, too, after I leave.

4 THE COURT: Regardless of what happens, whether or
5 not your client is here, just please be prepared to call
6 the case. All right?

7 MS. LINDER: Yes, Your Honor.

8 THE COURT: And you're only going forward on one
9 indictment?

10 MS. LINDER: That is correct, Judge, just the
11 distribution.

12 THE COURT: It's his first offense?

13 MS. LINDER: It is the third.

14 THE COURT: So the penalty is?

15 MS. LINDER: The penalty will be 15 to 30 through
16 the old law. So it will be 15 to 30 not suspendable, and
17 that of course would be the entire sentencing if he's
18 found guilty.

19 THE COURT: Is that your understanding, we're just
20 going forward on one?

21 MR. KING: That's correct, Your Honor. Just one
22 count of distribution.

23 THE COURT: So if it's just -- how many witnesses
24 then will you have?

25 MS. LINDER: Your Honor, I intend to have three law

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1 the day.)

2 Thursday, October 18, 2012

3 THE COURT: Mr. King, any announcements?

4 MR. KING: His mother has left now. His mother was
5 over there. I was trying to impress on her how important
6 this was. She's not around there now. I still have no
7 Mr. Moore, Your Honor.

8 THE COURT: All right.

9 MS. LINDER: Judge, I obviously would say that
10 this is a quintessential TIA. With regard to the
11 questions that he didn't receive notice I would say he
12 did receive notice. He was here on Monday outside of
13 this exact courtroom. He has willfully not shown up.
14 His bondsman has been looking for him last night and told
15 Mr. King of this.

16 The CP put out a wanted flyer for him and put it
17 throughout the whole agency last night, people were out
18 looking for him. His mom came so she obviously knew
19 something was going on. Mr. King talked to Mr. Moore
20 yesterday. This is willfully not showing up, and I
21 respectfully request a TIA.

22 THE COURT: Mr. King, I will note your objection
23 that you do not wish to go forward but we are going to go
24 forward. I don't see that this situation is going to
25 change. It's been on the trial docket, was informed, was

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1 here Monday. He knew he was second up.

2 As a matter of fact, had the jury not been released
3 we would have already had a jury picked. That was my
4 intent, to pick it before we broke for lunch on Monday.
5 So he knew that he was second up and close that we were
6 going to have time to pick a jury this week for this
7 case. So we will proceed in his absence.

8 MR. KING: Yes, Your Honor.

9 THE COURT: Thank you. And I'm assuming that if he
10 should get picked up at any time that he will be brought
11 over?

12 MS. LINDER: Yes, Judge. And Mr. Stoney actually
13 talked with Captain McKinney and he's aware to keep
14 checking the jail status, and also the city officers will
15 be notified if he is picked up at any time that he will
16 be transported over.

17 THE COURT: All right. Strikes are five and five;
18 is that correct, Ms. Linder?

19 MS. LINDER: Yes, Judge.

20 THE COURT: Do you agree, Mr. King?

21 MR. KING: Yes, Judge.

22 THE COURT: We're going to bring up a panel of 50
23 and just pick from that. Any objection?

24 MS. LINDER: No objection, Your Honor. If we may
25 quickly approach and premark our three exhibits?

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1 THE COURT: You may.

2 (WHEREUPON, State's Exhibit Numbers 1 through 3
3 were marked for identification only.)

4 THE COURT: Mr. Stoney, is this primarily your
5 case? You'll be doing the openings?

6 MS. LINDER: Judge, I'll be doing openings,
7 closing. I will do three of the four witnesses.

8 THE COURT: Okay. How many more than four
9 witnesses do you have, Ms. Linder?

10 MS. LINDER: Since Mr. King is stipulating to the
11 chain and lab analysis we're getting rid of three. So
12 we're going to have three law enforcement officers and
13 the CI. Two of those law enforcement officers should be
14 pretty quick.

15 THE COURT: Okay. Thank you.

16 Ms. Linder, could you please tell me how to
17 pronounce Dena --

18 MS. LINDER: It's Dena Piecuch, but she is not
19 going to be called, so we can strike her.

20 THE COURT: But we're going to mention her name,
21 correct?

22 MS. LINDER: Dena Piecuch.

23 THE COURT: Piecuch?

24 MS. LINDER: Piecuch. And, Your Honor, I don't
25 remember if I indicated to your law clerk or not, the

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1 CI's name, if I didn't type on there before, it's Joseph
2 Ancrum.

3 THE COURT: We have it.

4 MS. LINDER: Okay. Thank you, Judge.

5 THE COURT: All right. Do you have any additional
6 witnesses? I have Mr. Pepper and Ms. Lawrence.

7 MR. KING: That's all.

8 THE COURT: Mr. King?

9 MR. KING: Yes.

10 THE COURT: Do you agree that your client had
11 sufficient notice? I didn't ask you to respond. Do you
12 agree that he was here on Monday and that he knew that he
13 was second on the trial list?

14 MR. KING: Yes, Your Honor. I don't think that he
15 believed it was actually going to happen because of the
16 history of the case and the fact it's been on the docket
17 many times.

18 THE COURT: But there was no indication that the
19 case was not going to be called?

20 MR. KING: Right. I did not indicate that to him.
21 I told him we were either going Monday or Wednesday.

22 THE COURT: All right. Thank you.

23 MS. LINDER: Your Honor, as previously mentioned by
24 Mr. King and myself, we are stipulating that the chain of
25 custody, that things were handled properly and also that

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1 attention. Do not let your thoughts wander so at the end
2 of testimony, after closing arguments and I have
3 instructed you on the law applicable to this case you
4 will be in a position to determine what the true facts
5 are, apply the law to those facts and render a true and
6 just verdict.

7 Please give your attention.

8 Ms. Linder?

9 MS. LINDER: Thank you, Your Honor. May it please
10 the Court?

11 THE COURT: Yes, ma'am.

12 MS. LINDER: Good morning, ladies and gentlemen.
13 We're here today about something pretty simple. Drugs
14 are illegal. It is illegal to possess drugs, it is
15 illegal to distribute drugs. Cocaine base, is typically
16 known as crack or cocaine base crack, is a drug. It is
17 illegal to distribute cocaine base. That's why we are
18 here today. Back on July the 19th of 2009 James Lamont
19 Moore, the defendant in this case, did just that. He
20 distributed cocaine base.

21 You are going to hear from some police officers on
22 the stand and you'll also hear from what's known as
23 confidential informant or a CI. I submit that you will
24 hear from them on the stand that back on that day on July
25 16th, 2009, they decided they were going to conduct an

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1 operation. They decided they were going to conduct a CI
2 buy. And what they do is -- it's a fairly complicated
3 yet simple idea. They get together, they search the
4 confidential informant, they wire him up with a recording
5 device.

6 Law enforcement kind of sets out around an area to
7 patrol, to make sure it's safe, to make sure that they
8 have control over what's happening that day, and then the
9 confidential informant goes out. All the law enforcement
10 officers are listening. They have a live audio feed.
11 They are listening to everything that happens. There's
12 also on the device a recording. So you can see it, and I
13 submit you'll see it later on.

14 The confidential informant goes out. It's all
15 controlled by the City Narcotics Unit, City of
16 Charleston. He goes out, he makes contact with the
17 defendant in this case. He makes contact with James
18 Lamont Moore. He asks him for some drugs, and James
19 Lamont Moore does that.

20 James Lamont Moore, the defendant in this case,
21 distributes cocaine base and in return gets money for it.
22 He gets paid for it. The confidential informant goes
23 back to law enforcement. The drugs are then tested and
24 indeed they are drugs, they are cocaine base.

25 That is this case. It is that simple. Drugs are

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1 illegal. It's illegal to distribute drugs, and cocaine
2 base crack is a drug. And I submit to you that by the
3 end of this trial I ask that you return a verdict of
4 guilty that James Lamont Moore did distribute cocaine
5 base crack back on July 19 of 2009 -- or rather July 16
6 of 2009 here in Charleston County. Thank you.

7 THE COURT: Mr. King?

8 MR. KING: This case ought to be simple but it's
9 not. You know, the police are in control of this
10 investigation. A typical investigation, let's say a
11 robbery, maybe you read about these in the paper or on
12 the street, you know, the police have to look for
13 witnesses, maybe there's some surveillance video from a
14 nearby store that happens to capture something, maybe it
15 does, maybe it doesn't, and the police have to gather all
16 this evidence that might be out there.

17 Well, in this case the police are in complete
18 control of everything. This is an operation that they
19 set up. You know, with all the technology that we have
20 today you would think they would get a better video than
21 what they are going to show.

22 So this should be simple if there is a drug
23 distribution and it's recorded on a video camera. It
24 ought to be open and shut. Well, it's far from that
25 because you're going to see this video, and there are two

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1 people in the video. You're not going to see any money
2 in the video, you're not going to see any cocaine base or
3 anything that you might think would be drugs in the
4 video. You're not going to see anybody exchanging
5 anything with their hands.

6 You know, the camera is going to be pointing off in
7 the sky at the point that they say that there's a drug
8 distribution. And if they are in control of this then
9 there ought to be better evidence.

10 If the police go through all this trouble with the
11 technology that we have to wire this informant up, and
12 this informant who I'm going to talk about next, you're
13 going hear from the guy, Joseph Ancrum, and you're going
14 to have to take his word because you're not going to be
15 able to watch this video and make a good decision on what
16 this video shows.

17 So then they are going to have an informant take
18 the stand to try to fill in the holes in that video and
19 explain it to you. And this guy is not some guy that you
20 can trust. He's been convicted of a crime of dishonesty
21 in past. He's been doing it for years, should be a pro
22 at it, but you're going to hear evidence about how many
23 times he's done this and he makes a descent amount of
24 money from doing it.

25 This isn't an informant who's been arrested for

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1 something and trying to get out of charges, sometimes
2 that happens. This is a paid informant. This is him
3 making a living. He gets significant income from this.
4 And it's important for him to, you know, produce cases
5 and generate this income because he gets paid for every
6 one that he does.

7 And probably the most important thing about
8 Mr. Ancrum is that he signed an affidavit not too long
9 ago swearing that he took that witness stand a few years
10 ago and lied in a case very similar to this. So he's got
11 some real problems. So they are going to show you video
12 that doesn't really show what it's supposed to show, then
13 they are going to put an informant up there that has no
14 credibility.

15 So they are asking you something very serious.
16 This isn't simple at all. This is very serious. This is
17 asking the -- the State's asking you to convict someone
18 of a very serious crime, and to do that, you know, we
19 have a burden of proof in criminal cases. And you
20 probably heard it before, proof beyond a reasonable
21 doubt. But I want you to think about what that means.
22 You hear it a lot but sometimes you hear things so much
23 you don't really think about what the words are.

24 In a criminal case the State is required to prove
25 everything. The defense doesn't have to prove anything.

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1 They have to prove someone guilty beyond a reasonable
2 doubt, and they have to build the case. They build a
3 case with evidence. And they have to convince you, the
4 jurors, that there's no reasonable doubt in this case.
5 And when the police are in control of everything that
6 ought to be easy, and it's not.

7 And I'm asking you to pay close attention, to watch
8 the video, watch that informant when he takes the stand
9 and, you know, you are going see that there's something
10 not right with this.

11 They didn't arrest anyone that day. There wasn't
12 an arrest until -- you know, an arrest warrant until
13 later. You know, if they could have went and arrested
14 someone that day, and if he's out there selling drugs,
15 then they have marked money, he would have marked money
16 in pocket, they would know exactly who he is and arrest
17 him right there.

18 They don't arrest anybody that day. So now three
19 years later they are asking you to convict him of this
20 crime. And I just want you to see what kind of evidence
21 they have when they are asking you to do this. Thank
22 you.

23 THE COURT: Call your first witness.

24 MS. LINDER: Thank you, Your Honor. The State
25 calls Jake Grill.

CHARLES J. GRILL - DIRECT BY MS. LINDER 105

1 CHARLES JACOB GRILL, after having been duly
2 sworn, testified as follows:

3 THE CLERK: Speak into the mic, and state your full
4 name and spell your last name for the record.

5 THE WITNESS: Yes, sir. My name is Detective
6 Charles Jacob Grill, G-r-i-l-l.

7 DIRECT EXAMINATION

8 BY MS. LINDER:

9 Q. Hi, Detective Grill. How are you doing today?

10 A. Great.

11 Q. What's your occupation or profession?

12 A. I am a police officer with the City of Charleston.

13 I am currently assigned to the DEA, Drug Enforcement

14 Administration Task Force. I'm a detective.

15 Q. And what are your duties with CPD and also DEA?

16 A. I'm currently assigned to the special investigation

17 -- special investigation unit, which is narcotics and

18 vice. They handle those and other issues in the

19 department, but the easiest way for me to explain it is

20 basically I'm on loan to the DEA, and the DEA is the

21 federal agency. It's the Drug Enforcement

22 Administration, and they basically investigate large

23 scale drug operations in South Carolina, the Charleston

24 area and throughout the nation.

25 Q. And how long have you been in law enforcement?

CHARLES J. GRILL - DIRECT BY MS. LINDER 106

1 A. Over seven years.

2 Q. And can you please tell the jury about your
3 education, your training and experience.

4 A. Yes, ma'am. I graduated from the Citadel in 2005.
5 I got hired on with the police department June of 2005,
6 and from there I went to the academy. I graduated from
7 the academy and I was assigned to the team one patrol
8 division which is -- team one is just an area of patrol
9 that is in the City of Charleston, which is the upper
10 peninsula area of Charleston.

11 And I did that for two years then I was assigned to
12 the -- what was then called the Narcotics Unit and Vice
13 Unit. I was assigned to them. I was there with them for
14 two years. On paper I'm still with them but now I'm on
15 loan to the DEA. I've been there for over two years.
16 Actually, over three years now.

17 But, you know, throughout that time frame I've
18 taken many, many classes, extra hours of training,
19 specialized training anywhere from -- I've been to a
20 couple DEA schools. One of those schools was the basic
21 investigator school, drug investigator, and then another
22 specialized which is task force officer training, which
23 is my title with the DEA.

24 I've attended money laundering classes put on by
25 the Department of Justice. I have taken undercover

CHARLES J. GRILL - DIRECT BY MS. LINDER 107

1 narcotics techniques. That was put on by the Criminal
2 Justice Academy, which is the Academy. I've taken
3 classes at the Academy while going through the Academy on
4 drugs, and just taken a lot of classes.

5 Q. Detective Grill, did you have the occasion to be
6 working back on July 16, 2009?

7 A. Yes, ma'am, I did.

8 Q. And did you have the occasion to become involved in
9 investigation of this case, the State vs. James Lamont
10 Moore, back on that date?

11 A. Yes, ma'am, I was.

12 Q. And what exactly were you doing back on that date?
13 Was this your case or what were you doing back on that
14 date?

15 A. No, ma'am. I was assisting Detective Shealy. I
16 was riding with him and helping him out throughout this
17 case, and I was actually -- I mean, I guess the
18 navigator. I was in the passenger seat, so-to-say, and
19 literally.

20 Q. You were in the passenger seat with Agent Shealy.
21 What were you all conducting that day?

22 A. We were conducting -- we were doing a buy walk
23 operation, what we call a buy walk, and that's where we
24 use an informant or undercover officer, whatever we want
25 to use, or whatever we can use. We use the -- the term

CHARLES J. GRILL - DIRECT BY MS. LINDER 108

1 buy walk is basically what we use to say you are buying
2 drugs and then walking away. You are not making an
3 arrest immediate -- if you make an immediate arrest what
4 we call that operation is a buy bust operation, but on
5 this particular day what we were doing is we were just
6 doing a buy walk, simply buying drugs and walking away.

7 Q. And can you describe to the jury what exactly a
8 controlled buy is.

9 A. Yes, ma'am. A controlled buy is basically when we
10 -- it's an operation, it's the terms that we use when we
11 are conducting an operation using an informant. And, you
12 know, we use the word controlled buy and the reason we
13 use those terms are because we try to control as much --
14 as many variables as we can.

15 We give the CI or give confidential informant, we
16 give him or her instructions. We search the informant
17 before and after a buy. We provide the informant with
18 our money. You know, we check the informant for weapons.
19 We try to get in the area before buy.

20 I mean, we try to take every -- we try to account
21 for every variable. Of course, we can't but we never
22 know what could happen out there, but we try to control
23 every aspect of it. You know, and that's why we call it
24 a controlled buy.

25 Q. And with a controlled buy do you typically target a

CHARLES J. GRILL - DIRECT BY MS. LINDER 109

1 location or do you target a person? How is that done?

2 A. Well, I mean, you can target both. It really
3 depends on your informant, your informant's capabilities
4 and your end objective, your main goal where you are
5 trying to target, but you can target both. You can
6 target individuals if your informant knows an individual
7 and going to send them to that individual, or if you are
8 targeting a residence.

9 I mean, if you know a drug house or a house that's
10 being utilized to distribute drugs you're going to target
11 that house so you have to -- you know, then you can use
12 your informant to go to that house or if you know -- you
13 know if there's an open air drug market where they are
14 doing hand-to-hand drug transactions in plain view you're
15 going to target that area, and there's going to be more
16 than one person out there selling so you're going to
17 target that whole area.

18 Q. Detective Grill, you have mentioned the term buy
19 walk to the jury. Can you explain to the jury kind of
20 the pros and cons of doing a buy walk versus a buy bust?

21 A. Yes, ma'am. It basically boils down to what are
22 you -- what are we trying to accomplish. If we are
23 trying to have an immediate impact, obviously, a buy bust
24 because you are making an arrest as soon as that
25 transaction is made and as soon as it is safe to make

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1 that arrest. I mean, that's kind of just a determination
2 that we have to make either right there on the street or
3 we have to plan for it.

4 Now, with that comes, you know, the pro and the
5 con. You know, the main reason we don't like to use that
6 is to keep our informant's identity unknown because
7 basically if I arrest a guy that I just sold -- you know,
8 that just sold drugs to an informant he's going to know
9 who he or she just bought from, so to say, and he's going
10 to -- we got some other issues with that that could
11 happen down the line.

12 And, you know, with buy walk operation typically
13 what we like to do is, you know, do the buy, allow some
14 time to pass that way it's more -- it's less likely that,
15 you know, the suspect or offender was going to know who
16 he or she sold drugs to. So it just allows a lot of time
17 to pass and keeps our informant -- or identity
18 confidential.

19 And another reason is -- why I do buy walks is just
20 for safety issues. I mean, you know, you can't do a buy
21 bust operation in the middle of a crowded street or a
22 crowded shopping center, or whatever.

23 I mean, there's all kind of variables that can
24 happen there where, you know, the public is put in some
25 bad situations and we don't like to do that. That's why

CHARLES J. GRILL - DIRECT BY MS. LINDER 111

1 sometimes it is more -- it's safer for us and the public
2 for us to do a buy walk operation basically where you
3 just let it walk, exactly what it says.

4 Q. And you've been saying CI and confidential
5 informant a lot. Can you explain to the jury the
6 different types of CIs there are?

7 A. Yes, ma'am. Typically we encounter a couple
8 different types of informants. Probably the most
9 available or the most that we encounter is an informant
10 that's working off charges. Basically, they were
11 arrested for something and they say, Boom, I want to
12 flip. I want to -- this is what I know. This is the
13 information that I know. This is the guy or girl that I
14 can go and buy drugs from. You know, and that person is
15 basically what we say is working off charges.

16 There's another type of informant then that is
17 called a paid informant. Simply what it says, an
18 informant that is getting paid to go out and do
19 undercover buys or provide information that helps us.

20 And then there's also what we call a good citizen
21 informant. Basically, they are not working off charges,
22 they are not receiving money. They just basically do it
23 because they want to do it. They are trying to make an
24 impact in their community. And then you have -- that's
25 about it so...

CHARLES J. GRILL - DIRECT BY MS. LINDER 112

1 Q. And can you tell the jury what type of CI was used
2 in this case out of your different classifications?

3 A. Yes, ma'am. This was a paid informant.

4 Q. And can you tell the jury about the CI in this
5 case?

6 A. Yes, ma'am. The CI, he was used many, many other
7 times, and he has been a paid informant for a long, long
8 time.

9 Q. Okay. We're going to get back to the date in
10 question with this incident. Back on July the 16th of
11 2009 when and how did you first start being involved in
12 this investigation?

13 A. I mean, I guess it first started, you know,
14 Detective Shealy, he was the case agent and I was just
15 assisting him. We went and picked up the informant and
16 brought the informant to a predetermined location
17 basically where we can -- an area that's secluded,
18 there's not a lot of people around,

19 We searched the informant, equipped the informant
20 with audio and video recording device and an audio
21 transmitting device so we can monitor what's going on out
22 there on the street while he's doing the transaction.

23 And then we basically held a briefing of the
24 operation there. We met with other detectives, other
25 officers that were helping out in uniform presence,

CHARLES J. GRILL - DIRECT BY MS. LINDER 113

1 trying to give them -- you know, they don't need to know
2 every detail but they just need to be there available in
3 case, in case we need them. From there we carry the
4 informant to the drop off location.

5 Q. I apologize for interrupting, Detective Grill.
6 Let's talk about this briefing that you do on the front
7 end. What exactly do you do to prepare the CI? What was
8 done to prepare the CI for this buy back on July 16th?

9 A. Basically, the informant was searched. You know,
10 you got to search them before, you got to search his
11 body, his pockets, I mean, everything to ensure that he
12 or she does not have drugs on them before the buy. And
13 then from there --

14 Q. Do you give the confidential informant any words of
15 wisdom or --

16 A. Yes, ma'am. We instruct the informant on the
17 limitations of what they can and cannot do and what we
18 want them to do, you know, stuff like that.

19 Q. And you also said that other officers who are
20 involved with the operation are present at that briefing?

21 A. Yes, ma'am.

22 Q. What specifically are the other officers told to do
23 or what responsibilities do they have in one of these
24 operations?

25 A. A typical operation is basically you have a case

CHARLES J. GRILL - DIRECT BY MS. LINDER 114

1 agent, you have a supervisor that's on the street with
2 us, and then you have other detectives and other uniform
3 officers that can be present.

4 Basically, those detectives are -- you know, we are
5 in undercover capacity. You know, our hair is a little
6 longer, we grow beards, and we do that to blend into the
7 community and that way people can't walk down the street
8 and say, That's a police officer right there.

9 The reason why we do that is typically on these
10 buys after we do the briefing we send our surveillance
11 units there -- surveillance detectives out and kind of
12 put them in the area just so they can keep an eye what's
13 going on. Then from there, you know, during the briefing
14 detectives are selected for that and they go ahead and
15 head on out immediately after the briefing, just try to
16 get in the area and blend in and just kind of be ready
17 and keep us updated of what's going on.

18 Q. Okay. So after the briefing and people left and
19 went to go to the perimeter, like you said, what did you
20 and Detective Shealy do with the CI?

21 A. Well, once they were established in the area -- and
22 I probably didn't make this clear enough, but another
23 thing at the briefing is certain duties and
24 responsibilities are assigned to the detectives, and
25 basically those duties are, you know, to monitor that

CHARLES J. GRILL - DIRECT BY MS. LINDER 115

1 . audio transmitter, which is what we are listening to in
2 . our vehicles while the informant is out there on the
3 . street, and if anything happens or whatever during that
4 that we see that may put the informant, or the public, or
5 the suspect in jeopardy, you know, we got to take action
6 right there and then. So that's why we do it. That's
7 why we equip the informant with an audio transmitting
8 device and so -- I'm sorry. Can you repeat your
9 question? I'm sorry.

10 Q. I was asking what you and Detective Shealy did with
11 the CI after the briefing.

12 A. So basically after the briefing and after all the
13 surveillance units were in there, they were established,
14 myself and Detective Shealy drove the informant to the
15 target area -- or near the target area and dropped the
16 informant off behind Burris liquor, which is -- I don't
17 remember the exact address but it was the parking lot
18 behind Burris Liquor.

19 Q. All right. So once you got up there to the Burris
20 Liquor location and you let out the CI what did you do?

21 A. Burris Liquor is located on Reid Street, which is a
22 one way between Meeting and King. So once the informant
23 was out and was walking towards our target area we drove
24 down Reid Street, and then behind the Morris Sokol
25 furniture store there's a little cut-through, you can cut

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1 over to Wolfe Street.

2 So we drove down Wolfe -- or we cut over to Wolfe
3 Street and we just parked on Wolfe Street. That way in
4 the event that anything happened or the informant gave a
5 danger signal, or one of our surveillance units saw
6 something going on we can just shoot right down there and
7 rescue or take action, whatever we needed to do, but we
8 just stayed right there the remainder of the buy.

9 Then after the -- once the informant went out, made
10 contact, you know, did his purchase and was on his way
11 back and, you know, the whole time the informant is out
12 we're there listening to what's going on so we can hear,
13 we can keep up to date with what's happening. So once it
14 sounded like he was leaving the area we drove down Wolfe
15 Street, made a right on Meeting and came back up Reid and
16 just picked the informant up at the same location we
17 dropped him off, and then that's about it.

18 Q. Immediately upon picking up the confidential
19 informant in this case what happened? What did the CI
20 do?

21 A. Well, the first thing I think happened was
22 Detective Shealy took control of the narcotics, the crack
23 or cocaine base, and from there we drove back to the
24 station location which is where we, you know, had the
25 briefing and searched the informant.

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1 Once we got back there we -- Detective Shealy
2 searched the informant again and didn't find any drugs on
3 him and then we -- the informant provided a written
4 statement of basically the events of the transaction
5 between the CI and the suspect. And also when he got in
6 the car he was also giving us a description of the
7 subject that sold him the drugs.

8 Then once we go back to the station location and
9 took care of our, you know, collecting evidence and the
10 statement Detective Shealy called Officer Burke who was
11 on his way in from work or on his way into work and kind
12 of -- he just relayed the description and had Detective
13 Burke ride through that area, and Detective Burke
14 identified the suspect.

15 Q. Did you ever identify an individual?

16 A. From during the buy?

17 Q. Yes.

18 A. Yes, ma'am. When we were out there on the way to
19 drop the informant off and on the way to pick the
20 informant up after the buy we identified a guy that was
21 -- our surveillance units, and saw some individuals
22 hanging out in the area of the gas station right there at
23 Meeting. I believe it's 420 Meeting. It's the Exxon gas
24 station right there. It's basically at the end of Wolfe
25 Street, right before Wolfe turns into Amherst.

CHARLES J. GRILL - DIRECT BY MS. LINDER 118

1 And one of those individuals was wearing a blue
2 arm cast on his left arm, about up to probably his mid
3 bicep area all the way down the whole arm, basically.
4 And we saw that individual and a couple other guys
5 hanging out there when we were dropping him off, the
6 informant, and that's who the informant met with. And
7 when we went to pick up the informant he was still
8 standing there when we basically made that right back
9 onto Meeting to go pick him up.

10 And from there Detective Burke -- or, I mean,
11 Officer Burke gave us his name and information and we
12 pulled the driver's license photograph from DMV from his
13 name. You know, he gave us the defendant's name, James
14 Lamont Moore, Jr., and we compared it to the video
15 footage of the buy, the actual buy, and you could tell
16 it's them.

17 MS. LINDER: Beg the Court's indulgence.

18 THE COURT: Take your time.

19 (PAUSE.)

20 MS. LINDER: I have no more questions at this time,
21 Detective Grill. Please answer any questions that
22 Mr. King has.

23 THE COURT: Mr. King?

24 MR. KING: Thank you.

25 CROSS-EXAMINATION

CHARLES J. GRILL - CROSS BY MR. KING

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- 1 BY MR. KING:
- 2 Q. Detective Grill?
- 3 A. Yes, sir.
- 4 Q. You testified you've had lot of training?
- 5 A. Yes, sir.
- 6 Q. And in this area?
- 7 A. Yes, sir.
- 8 Q. Taken classes, right?
- 9 A. Yes, sir.
- 10 Q. You've conducted controlled buys before this?
- 11 A. Before?
- 12 Q. Before the incident --
- 13 A. Yes, sir.
- 14 Q. -- we're talking about?
- 15 A. Yeah, absolutely. Yes, sir.
- 16 Q. So how many times you think you've done -- have
- 17 been involved in a controlled buy operation?
- 18 A. Wow. Before this? Before 2009?
- 19 Q. Yeah. Right. Right. From the time of the event?
- 20 A. Oh, from the incident. Oh, man. I'd say at least
- 21 a couple hundred.
- 22 Q. Okay. You've done it a lot?
- 23 A. Yes, sir.
- 24 Q. You know what you are doing?
- 25 A. Yes, sir.

CHARLES J. GRILL - CROSS BY MR. KING

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1 Q. Your office gets funding, I guess, to buy -- maybe
2 federal funding to buy equipment and stuff to use; is
3 that right?

4 A. No, sir, not really. I mean, I don't know about
5 the federal funding. I mean, basically our money that we
6 use comes from assets that we seize and from their
7 proceedings, you know, drug money that we seize and then
8 basically we use to fight drugs. So that money from what
9 I'm aware that's our training and equipment purchase.
10 Now, our budget, city budget, I have no clue about this.

11 Q. I'm talking about the equipment, I guess. You use
12 that and you buy these cameras?

13 A. Yes, sir.

14 Q. What kind of cameras are they? Describe those.

15 A. For this one?

16 Q. Yeah.

17 A. It was what we call the Hawk. It's just a name
18 brand of the camera company. That's the model of it. So
19 that's just what we refer to it as.

20 Q. And you put it on his --

21 A. On his person.

22 Q. You know where at on him it's placed or in this
23 situation where it was placed on him?

24 A. It was basically -- it was basically about right
25 here (indicated). It's just a button that looks like --

CHARLES J. GRILL - CROSS BY MR. KING 121

1 I mean, it's a camera that looks like a button. So it's
2 a button cam and you just put it on.

3 Q. And so it's right in this area here. So it would
4 -- you know, and right there where people's hands are as
5 well, right? It's right in this area and would film out.
6 I imagine you're trying to capture a person's face on
7 video?

8 A. I mean, that's the ultimate goal. We would love
9 to.

10 Q. And you also want to capture, you know, money on
11 the video?

12 A. I mean, basically what we're trying to capture is
13 the transaction.

14 Q. Right.

15 A. I guess you could say. But, I mean, we got to get
16 what we can get out there. We're not shooting a major
17 motion picture. I mean, we're just out there.

18 Q. Right. But you had a lot of training, right?

19 A. Uh-huh.

20 Q. So you've done this enough times, and ideally you
21 would like to capture a whole transaction on videotape,
22 right?

23 A. Yeah, absolutely.

24 Q. And you don't always use informants you said?

25 A. No, sir.

CHARLES J. GRILL - CROSS BY MR. KING 122

1 Q. Sometimes you use an undercover police officer?

2 A. Yes, sir.

3 Q. So in this case you could have used somebody other
4 than Mr. Ancrum. You could have used an undercover
5 police officer to make a buy, right?

6 A. We could have, I imagine.

7 Q. And you do a lot of preparation for this. You said
8 you wire up the informant, search him and everything?

9 A. Yes, sir.

10 Q. You give him \$20, in this case?

11 A. Yeah, whatever we gave him. I don't know the
12 exact. I mean, I could look.

13 Q. You always make a photocopy of that money, though,
14 and keep a record so you know what the serial number is
15 on the money?

16 A. Well, we try to. We try to at least either write
17 it down or, you know, make a photocopy.

18 Q. And you are familiar with Mr. Ancrum, the informant
19 used in this case?

20 A. Yes, sir, I am.

21 Q. You've worked with him a good bit?

22 A. Yes, sir, we have.

23 Q. And you said that he had been doing this a long
24 time?

25 A. He's been doing this for a long time, yes, sir.

CHARLES J. GRILL - CROSS BY MR. KING 123

- 1 Q. And you said many, many times he's done -- you
2 know, been involved in these operations?
- 3 A. Yes, sir.
- 4 Q. So he knows what he's doing as well, right?
- 5 A. Yes, sir.
- 6 Q. Are you familiar with his file at all?
- 7 A. Yes, sir.
- 8 Q. Because would you agree, like, just for 2009 he's
9 done maybe over a hundred buys, between one and two
10 hundred buys? Does that sound accurate to you?
- 11 A. Yeah. Yeah. Yes, sir, it does. I mean...
- 12 Q. And he's making money for each one of those?
- 13 A. Yes, sir.
- 14 Q. Would you say he's making anywhere from 20 to a
15 hundred dollars, or \$150 sometimes, maybe an average
16 about \$60? Would you agree with that?
- 17 A. That's about right. Yes, sir.
- 18 Q. Using over a hundred buys, let's just say \$60. I
19 mean, that's \$6,000. Making a rough guess it could even
20 be much higher than that, right?
- 21 A. Possibly, yes, sir.
- 22 Q. And he's done this a lot of times, you said, so he
23 knows what he's supposed to do, correct?
- 24 A. Yes, sir.
- 25 Q. And he knows that he's supposed to try to capture

CHARLES J. GRILL - CROSS BY MR. KING 124

1 the transaction on video, if he can?

2 A. Yes, sir.

3 Q. And your role in this is you were with Shealy the
4 whole time?

5 A. Detective Shealy.

6 Q. Detective Shealy.

7 A. Yes, sir.

8 Q. You all were together the whole time?

9 A. Yes, sir.

10 Q. And you all were in the vehicle?

11 A. Yes, sir, his vehicle. Yes, sir.

12 Q. And you all were just listening in on the audio
13 coming from the informant?

14 A. Yes, sir. We don't -- we don't have the video
15 capability. We can't watch like a live feed. I mean,
16 we're just listening to audio.

17 Q. Just make sure if anything bad were to happen or go
18 down you all can move right in?

19 A. Yes, sir.

20 Q. But you're not watching what's actually going on
21 out on the street. You're just listening in?

22 A. We try to, you know, get our physical eyesight but
23 we're not, like, watching what the camera is showing. I
24 mean, we are doing surveillance during the buy. I mean,
25 we have our units that are in the area that were right

CHARLES J. GRILL - CROSS BY MR. KING

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1 around the corner but, I mean, so in a way we are
2 watching it but -- does that answer your question?

3 Q. Yes. That's fine.

4 MR. KING: That's all the questions I have.

5 THE COURT: Redirect?

6 MS. LINDER: No redirect, Your Honor.

7 THE COURT: Is this witness excused?

8 MS. LINDER: I would ask that he be excused but if
9 he elects to do so to remain in the courtroom.

10 THE COURT: Any objection to him remaining in the
11 courtroom?

12 MR. KING: No, Your Honor.

13 THE COURT: All right. You may step down. Please
14 stay with us. Thank you.

15 THE WITNESS: Yes, ma'am. Thank you.

16 THE COURT: Call your next witness.

17 MS. LINDER: The State calls Joseph Ancrum.

18 Judge, may my investigator assist?

19 THE COURT: Yes.

20 JOSEPH ANCRUM, after having been duly sworn,
21 testified as follows:

22 THE CLERK: And speak into the microphone and say
23 your full name and spell your last name.

24 THE WITNESS: Joseph Ancrum, A-n-c-r-u-m.

25 THE CLERK: Thank you.

JOSEPH ANCRUM - DIRECT BY MS. LINDER 126

1 THE COURT: Thank you. Ms. Linder?

2 MS. LINDER. Thank you, Your Honor. May it please
3 the Court.

4 DIRECT EXAMINATION

5 BY MS. LINDER:

6 Q. Joseph, how are you doing today?

7 A. All right. All right.

8 Q. Joseph, can you please tell the jury generally
9 where you are from.

10 A. All over.

11 Q. Have you been in the Charleston area for a length
12 of time?

13 A. Yeah, about 16 years.

14 Q. And, Mr. Ancrum -- do you want me to call you
15 Mr. Ancrum or Joseph?

16 A. Either. You ain't got to address me Mr., just
17 Joseph.

18 Q. All right, Joseph. Have you cooperated with law
19 enforcement before?

20 A. Yes.

21 Q. And how long would you say you cooperated with law
22 enforcement? How many years can you say you cooperated
23 with law enforcement?

24 A. About over 20 years or longer.

25 Q. And just locally here in the greater Charleston

JOSEPH ANCRUM - DIRECT BY MS. LINDER

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1 area what agencies, what law enforcement agencies have
2 you worked with before cooperating with them?

3 A. The County, North Charleston, and the City.

4 Q. Okay. Joseph, do you have any pending criminal
5 charges?

6 A. No.

7 Q. Joseph, were you convicted of a receiving stolen
8 goods charge back in 2002?

9 A. Yes.

10 Q. When you work with law enforcement for your number
11 of years do you get paid?

12 A. Yes.

13 Q. And when you work with law enforcement what does
14 that mean? What do you do when you work with law
15 enforcement?

16 A. Send me to buy drugs.

17 Q. And do you receive anything for doing this work?

18 A. Yes, money.

19 Q. Were you working with the City of Charleston Police
20 Department back on July 16th of 2009?

21 A. Yes.

22 Q. What was your contact person back with the City of
23 Charleston?

24 A. Detective Shealy and Gill -- Grill.

25 Q. All right. Your contact person with the City, you

JOSEPH ANCRUM - DIRECT BY MS. LINDER 128

- 1 say Gilmore and Shealy; do you talk to one more than the
2 other now?
- 3 A. No, not Gilmore.
- 4 Q. Grill?
- 5 A. Grill.
- 6 Q. I apologize. I misheard you.
- 7 A. Yeah.
- 8 Q. What did you do back on July 16th of 2009?
- 9 A. Buy drugs.
- 10 Q. What type of drugs did you buy?
- 11 A. Crack cocaine.
- 12 Q. How much did you pay for it?
- 13 A. \$20.
- 14 Q. Where did this happen?
- 15 A. On Wolfe Street.
- 16 Q. And where is Wolfe Street? Is that in North
17 Charleston, is that downtown? Where is that?
- 18 A. Downtown.
- 19 Q. Okay. We're going to get into a few more specifics
20 about that day, about the beginning of that day. Can you
21 tell me how you first got up with Detective Shealy that
22 day?
- 23 A. They come and picked me up from my location.
- 24 Q. Okay. After they picked you up did they just say
25 go on out there, or what did they do with you?

JOSEPH ANCRUM - DIRECT BY MS. LINDER

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1 A. No. They picked me up and they searched me, take
2 my shirt and shoes and everything, they search me inside
3 and outside. Then I jump in the car they say we going to
4 the location where they always go at.

5 Q. Okay. Did they -- they searched you. Did they
6 attach anything to you? Did they wire you up?

7 A. When they picked me up the first time they searched
8 me and everything, then when we get to the location they
9 search me again and wire me.

10 Q. Okay. And did they give you any sort of
11 instructions as far as what you can and cannot do?

12 A. Don't jump in nobody car, don't go in the house.

13 Q. Did they give you any money in order to make this
14 drug buy?

15 A. Yes.

16 Q. You mentioned being searched. When they searched
17 you do they check your pockets?

18 A. Uh-huh, shoes and all.

19 Q. Did they find anything on you?

20 A. No, ma'am.

21 Q. You mentioned that the second time you were
22 searched before starting that you -- you said you were
23 wired; is that correct?

24 A. No, before I get wired. I get searched two times,
25 yeah.

JOSEPH ANCRUM - DIRECT BY MS. LINDER 130

- 1 Q. Then you were wired?
- 2 A. Then I'm wired.
- 3 Q. Are you aware that a video and audio recording was
- 4 made of this drug buy?
- 5 A. Yes, ma'am.
- 6 Q. And have you watched the video?
- 7 A. Yeah, that when my eyes been good then.
- 8 Q. Did you watch this video back in my office back
- 9 with me about a year ago?
- 10 A. Yes, ma'am.
- 11 MS. LINDER: Your Honor, may I approach the court
- 12 reporter for an exhibit?
- 13 THE COURT: You may.
- 14 MS. LINDER: May I approach the witness, Judge?
- 15 THE COURT: You may.
- 16 BY MS. LINDER:
- 17 Q. Joseph, I'm going to come up and approach you now.
- 18 Do you recognize anything on this disk?
- 19 A. Yes, ma'am, Rick B.
- 20 Q. And what is Rick B?
- 21 A. My informant name.
- 22 Q. And who wrote Rick B on this disk?
- 23 A. Me.
- 24 Q. And when did you do that?
- 25 A. In your office.

JOSEPH ANCRUM - DIRECT BY MS. LINDER

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1 Q. Did you do that before or after watching this
2 video?

3 A. Before -- I mean, afterwards.

4 Q. And did you do that -- when you watched this video
5 was it a fair and accurate representation of what
6 happened that day?

7 A. Yes, ma'am.

8 MS. LINDER: Your Honor, I would ask at this time
9 that the State's Exhibit 3 be admitted into evidence?

10 THE COURT: Any objection?

11 MR. KING: I just renew my objections made at
12 pretrial, Your Honor.

13 THE COURT: State's 3 into evidence over your
14 objection. You may publish.

15 MS. LINDER: Thank you, Your Honor.

16 (WHEREUPON, State's Exhibit Number 3, a Video, was
17 admitted into evidence.)

18 BY MS. LINDER:

19 Q. Joseph, you can just sit tight for a while. We are
20 actually going to play this for the jury. So you can
21 just sit there on the stand for a while.

22 (WHEREUPON State's Exhibit Number 3 was played for
23 the jury.)

24 BY MS. LINDER:

25 Q. Joseph, can you describe the person you bought the

JOSEPH ANCRUM - DIRECT BY MS. LINDER 132

1 drugs from back on July 19th -- or 16th, rather, of 2009?

2 A. Yeah. He about five-eight, five-nine, keep a low
3 cut hair, and a little darker than me.

4 Q. All right. And what was he doing or wearing that
5 day?

6 A. He had a blue cast on his right arm, about a
7 three-quarter, come up to about right here (indicated).
8 I call them a three-quarter.

9 Q. Okay. And what clothing wise was he wearing?

10 A. A white T-shirt, black short pants.

11 Q. Was he wearing a T-shirt? Did it have sleeves on
12 it?

13 A. No, a tank top.

14 Q. After you did this drug buy where did you walk to?

15 A. Walked like -- okay, like, I leave Wolfe Street
16 then walk across the street where the bar's at and walk
17 right behind past the store, and walk right behind the
18 store where Shealy and Grill at.

19 Q. Okay. And what did you do with the drugs that you
20 bought?

21 A. I give them to -- I think it been -- I think it
22 been Grill, I think. I think Shealy been driving. I
23 can't remember. I think Shealy was driving.

24 Q. All right. And then what happened with your wire,
25 with the stuff that you were wired up with?

JOSEPH ANCRUM - CROSS BY MR. KING

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1 A. They pat me inside the car and everything and they
2 take -- I think we take -- no, we take the wire off to my
3 location.

4 Q. What happened at the location?

5 A. We get to the location, they pat me down, you know,
6 my pockets inside out, my shoes, socks, everything. You
7 know, and they didn't find nothing but the drugs I buy
8 from everybody to give to them.

9 Q. All right. And do you remember if you gave a
10 statement that day about what happened?

11 A. Yeah.

12 Q. Okay. Is everything that you told us today true?

13 A. Yes, ma'am, the Lord Heaven's truth.

14 MS. LINDER: All right. Beg the Court's
15 indulgence?

16 THE COURT: Yes, ma'am.

17 BY MS. LINDER:

18 Q. All right, Joseph. That's all I have for you right
19 now. The defense attorney is going to ask you a couple
20 questions. Please answer any questions he has.

21 A. Okay.

22 THE COURT: Mr. King?

23 CROSS-EXAMINATION

24 BY MR. KING:

25 Q. Mr. Ancrum?

JOSEPH ANCRUM - CROSS BY MR. KING

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- 1 A. Yes.
- 2 Q. You said you go -- you also go by Rick D?
- 3 A. Yes. Yes, sir.
- 4 Q. That's the name you use as an informant?
- 5 A. Yeah, that's name I use.
- 6 Q. You also go by another name, Jep Brown?
- 7 A. Yeah.
- 8 Q. Now, you're doing this informant work, you do it,
- 9 you get paid for it, right?
- 10 A. Yes, sir.
- 11 Q. You get -- what other income you get? You have
- 12 disability coming in?
- 13 A. Yeah.
- 14 Q. You have glaucoma; is that right?
- 15 A. Yeah.
- 16 Q. And that affects your eyesight?
- 17 A. Uh-huh.
- 18 Q. How much money do you get from disability?
- 19 A. I ain't going to discuss that.
- 20 Q. You can't tell me how much money?
- 21 A. I got to tell him? For all of my check?
- 22 Q. Yes.
- 23 A. Almost 700.
- 24 Q. A month or a week?
- 25 A. A month.

JOSEPH ANCRUM - CROSS BY MR. KING

135

- 1 Q. Seven hundred a month?
- 2 A. Yeah.
- 3 Q. That's not a whole lot to live on, is it?
- 4 A. No, not when you have bills to pay.
- 5 Q. And you have a lot of bills to pay?
- 6 A. You know all depends, you know.
- 7 Q. You have child support, right?
- 8 A. No, I disabled.
- 9 Q. Back in 2007?
- 10 A. Oh, yeah, back then.
- 11 Q. Okay. So back then you had child support to pay?
- 12 A. Uh-huh. Yes, sir.
- 13 Q. What happens if you don't pay that child support?
- 14 MS. LINDER: Objection, Your Honor.
- 15 THE COURT: Mr. King, he said he doesn't have child
- 16 support anymore.
- 17 MR. KING: He said he did back at the time this
- 18 happened.
- 19 THE COURT: You asked 2007. This happened 2009.
- 20 MR. KING: I apologize, Your Honor.
- 21 MS. LINDER: Yes, Judge this was in 2009.
- 22 BY MR. KING:
- 23 Q. In 2009, the time this video was shown, you had
- 24 child support right back then, didn't you?
- 25 A. No, because I put it like this here. They locked

JOSEPH ANCRUM - CROSS BY MR. KING

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1 me up two times and when I go -- every time I go to the
2 court the judge tell me I don't supposed to be there
3 because I disabled.

4 Q. Okay. You didn't get locked up June 22nd, 2010 for
5 child support?

6 A. I disable. They lock me up but they ain't charge
7 me because I disabled.

8 Q. Okay. Okay. But back in at least as recent as
9 June 22nd, 2010 you had child support because you got
10 locked up for that, right?

11 A. They locked me up.

12 Q. And that's what happens. If you don't pay the
13 child support you can get locked up, right?

14 MS. LINDER: Objection, Your Honor.

15 THE COURT: If he knows he may answer.

16 A. Yeah, but -- yeah.

17 Q. Okay. So during the time this video was shown you
18 were having to pay child support, right?

19 A. No.

20 Q. No?

21 A. I ain't got to pay it.

22 Q. I don't understand.

23 MS. LINDER: Your Honor, may we approach?

24 THE COURT: You may.

25 A. I understand --

JOSEPH ANCRUM - CROSS BY MR. KING

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1 THE COURT: Hold on one second, Mr. Ancrum.

2 (WHEREUPON, the following sidebar was reported.)

3 MS. LINDER: I think he had said numerous times
4 he's been locked up for child support but because he's
5 disabled he doesn't have to pay. I think he said that
6 numerous times. I don't know what else he's trying to
7 get from him.

8 THE COURT: What is that, Mr. King?

9 MR. KING: I just didn't understand that they let
10 him go because he's disabled. I was just --

11 THE COURT: That's what he says. He said at least
12 twice that the judge let him go because he was wasn't
13 supposed to be locked up. He's disabled. I've never
14 heard that but...

15 MR. KING: Okay.

16 THE COURT: I mean, that's -- I don't know what
17 else he's going to tell you.

18 MR. KING: Okay. I'll move on.

19 THE COURT: All right. Thank you.

20 (WHEREUPON, the sidebar was concluded.)

21 THE COURT: Thank you, Mr. King.

22 MR. KING: You're welcome.

23 BY MR. KING:

24 Q. How long have you had glaucoma?

25 A. Great God. When I find out -- when I really find

JOSEPH ANCRUM - CROSS BY MR. KING 138

- 1 out it been about 10, 12 -- about 10, 12 years ago, but I
2 think it been a little longer than that because I used to
3 see darkness.
- 4 Q. Yeah. What are your symptoms from that?
- 5 A. Symptoms from now?
- 6 Q. From glaucoma.
- 7 A. I ain't got no vision right here (indicated). I
8 got tubes, holes and all in my eye.
- 9 Q. How was it back in 2009 when that video was filmed?
- 10 A. It been all right.
- 11 Q. You have to get treatment for your glaucoma?
- 12 A. I go see my doctor every three, four, six months.
- 13 Q. Does that include going all the way back to 2009.
- 14 A. Yeah.
- 15 Q. So you have to pay, you have doctor bills you have
16 to pay?
- 17 A. Uh-uh, Medicaid.
- 18 Q. Medications?
- 19 A. Yeah, they pay for my medicine.
- 20 Q. So you been doing this work as informant since
21 2003; is that about right, almost 10 years?
- 22 A. Maybe longer than that.
- 23 Q. Maybe longer than that?
- 24 A. Yeah.
- 25 Q. You make a decent amount of money from that, right?

JOSEPH ANCRUM - CROSS BY MR. KING

139

1 A. Yeah.

2 Q. Probably make more than you get from the
3 disability, wouldn't you say?

4 A. Yeah. I mean, when you add them up. You don't
5 give me all that at one time. When you add it up.

6 Q. Right.

7 A. You feel me?

8 Q. Right. Let's say I was able to see you -- you
9 agree in 2009, just in 2009 you did maybe over a hundred,
10 hundreds of these controlled buys? Does that sound
11 right, between a hundred and two hundred?

12 A. You about right.

13 Q. And you get paid anywhere from maybe \$20 on one?
14 What would you say your average is you get paid for this?

15 A. Sixty, 80.

16 Q. \$60. Okay. Sometimes more than that?

17 A. All depends.

18 Q. Sometimes less?

19 A. All depends.

20 Q. So if you made 60, just in one year you do a
21 hundred buys, that's \$6,000?

22 A. Oh, no, sheesh. I ain't get -- I ain't -- no. You
23 ain't going to make me lie. No.

24 Q. But you said you've done --

25 A. I ain't said I do no -- my bad now. I ain't going

JOSEPH ANCRUM - CROSS BY MR. KING 140

1 say I did no 100 in one year now because I been from here
2 to the county and all that now. You talking about for
3 the city?

4 Q. Yeah, I'm talking just for the city for 2009?

5 A. No, I ain't did all that in one year.

6 Q. Okay.

7 A. No.

8 Q. And you've worked not just for the city but for
9 other police departments?

10 A. Yes, sir.

11 Q. So you've made a decent amount of money over the
12 past 10 years or more, right? It's definitely more money
13 than you're getting from disability?

14 A. Yeah.

15 Q. That's your main source of income, right?

16 A. That's the only income I get, disability, SSI.

17 Q. And but you get more than that for doing these --
18 for working with the police, right?

19 A. I don't know. I ain't never added it up.

20 Q. Okay. You've done it a lot of times, right, so you
21 know what you're doing?

22 A. Yes, sir.

23 Q. You know the drill. You know what you are supposed
24 to do when you're working on one of these cases?

25 A. Yes, sir.

JOSEPH ANCRUM - CROSS BY MR. KING

141

1 Q. And in 2009, had you done it hundreds of time
2 before 2009?

3 A. I can't answer that question because I don't know.
4 I don't never keep a count.

5 Q. But you've done many, many of them? Many, is that
6 fair?

7 A. Quite a few.

8 Q. Okay. You were doing it until as recently as a few
9 months ago, too?

10 A. No, I done quit over a year.

11 Q. And you've been convicted of receiving stolen
12 goods?

13 A. Yeah. You done asked me that two times.

14 Q. I think Ms. Linder asked you.

15 A. Okay.

16 Q. And I want to ask you this. You've testified
17 before at trial, right?

18 A. That's a different case there now.

19 Q. Right.

20 A. Okay.

21 Q. You testified in a trial back around 2007. Do you
22 remember that?

23 A. Yeah.

24 Q. And you took the stand and you lied back then.

25 A. No, I ain't lie because you been the lawyer.

JOSEPH ANCRUM - CROSS BY MR. KING

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- 1 Q. That's right. Well, you signed an affidavit in
2 January 2012, right? And on this affidavit you swore
3 that it was the truth, the whole truth and nothing but
4 the truth, right?
- 5 A. Yeah.
- 6 Q. Just like you took the stand today.
- 7 A. Okay.
- 8 Q. And you put your hand on the Bible?
- 9 A. Yeah.
- 10 Q. And you swore to tell the truth?
- 11 A. Yes, sir. Yes, sir.
- 12 Q. And just like when you testified at that trial back
13 in 2007 --
- 14 A. Yes, sir.
- 15 Q. -- you swore to tell the truth?
- 16 A. Yes, sir.
- 17 Q. And in this affidavit that you wrote, signed before
18 a notary --
- 19 A. I didn't write that affidavit. I didn't write
20 that.
- 21 Q. You --
- 22 A. I signed it.
- 23 Q. You signed it?
- 24 A. But it ain't the truth though.
- 25 Q. You signed it saying this is the whole truth,

JOSEPH ANCRUM - CROSS BY MR. KING 143

1 nothing but the truth so help me God. Do you need to see
2 the affidavit?

3 A. Huh?

4 Q. Do you remember the affidavit saying that, that
5 it's the whole truth, nothing but the truth so help me
6 God?

7 A. If I signed that?

8 Q. Right.

9 A. No, I ain't signed nothing. I mean, I signed it
10 after he done write it out but I ain't know what he been
11 writing. Okay?

12 Q. In the affidavit you signed it said, I feel bad
13 that I lied on the stand about who sold me the drugs but
14 I didn't feel like I had a choice if I wanted to keep
15 getting money from the detectives to buy drugs --

16 A. Man, I ain't say that.

17 Q. You didn't say that?

18 A. I ain't say that.

19 Q. You agree that's in the affidavit that you signed?

20 A. I know I signed -- I know I signed a paper.

21 Q. And you said you're not being pressured by anyone
22 to say these things?

23 A. How you mean I ain't being pressured and the same
24 dude -- and the same dude, his friend been threatening me
25 up until he going to jail. That's the reason why I go

JOSEPH ANCRUM - CROSS BY MR. KING 144

1 into his office with his sister and the cousin.

2 Q. You went --

3 A. Because they were pressuring me.

4 Q. You went to a lawyer's office?

5 A. Yeah, they been pressuring me.

6 Q. And you signed an affidavit?

7 A. Okay. That's right.

8 Q. And that affidavit said --

9 A. Okay. I'll put this here. Whatever I say in the
10 court the first time, I did buy the dope from him, \$60
11 worth of dope. They got the video, \$60 worth of dope
12 from him. Baby Dean (phonetic) the one who called his
13 name and he come from by the fence and served me, and you
14 can see it in broad daylight, put in hand and everything.
15 Okay?

16 So when Mr. Peppers, or whatever his name is, he
17 write, he could see -- he could see that's a lie. He
18 know he did -- they know I did -- he know I buy the drug
19 from Onrae, I buy the drug from Onrae. Onrae ain't
20 crazy, he ain't stupid. Just like your guy who's
21 supposed to be to court now. See, you believe in him.
22 He ain't here right now because he lying.

23 Q. Well, you are the one who signed an affidavit
24 saying --

25 A. That's right.

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 145

1 Q. -- that you lied, right?

2 A. That's right because I been pressured.

3 MR. KING: That's all the questions I have.

4 THE COURT: Redirect?

5 MS. LINDER: Yes, Your Honor, just briefly.

6 REDIRECT EXAMINATION

7 BY MS. LINDER:

8 Q. Joseph, the defense attorney was asking you some
9 questions about your eyesight.

10 A. Uh-huh.

11 Q. I'm wearing glasses right now and I used to not
12 have to a couple years ago. How is your eyesight today?

13 A. I barely see.

14 Q. How was your eyesight back in 2009, on July 16th?

15 A. On a scale from one to a hundred I had about a 60,
16 about a 60 vision, and that been a good vision, too.

17 Q. And, Joseph, Mr. King was asking you questions
18 about an affidavit that you signed. An affidavit is
19 legal talk for a piece of paper.

20 A. Yes, ma'am.

21 Q. Where did you sign that piece of paper?

22 A. West Ashley.

23 Q. Do you drive?

24 A. No.

25 Q. How did you get to that law office?

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 146

- 1 A. Onrae sister and cousin, they come and get me.
- 2 Q. And who is Onrae?
- 3 A. Onrae the one who doing the life sentence right
- 4 now.
- 5 Q. And is Onrae the person that you testified against
- 6 at trial?
- 7 A. Yes, ma'am.
- 8 Q. And was Mr. King the defense attorney at that
- 9 trial?
- 10 A. Yes, ma'am.
- 11 Q. Was I the prosecutor at the trial?
- 12 A. Yes, ma'am.
- 13 Q. So you were driven by the defendant you testified
- 14 against relative to a law office?
- 15 A. Yes, ma'am.
- 16 Q. And that was in January of 2012, correct?
- 17 A. Yes, ma'am.
- 18 Q. You said -- correct me if I'm wrong. Did you sign
- 19 a piece of paper?
- 20 A. Yes, ma'am.
- 21 Q. Did you read that piece of paper?
- 22 A. I can't see the little small writing. I can't see
- 23 no writing.
- 24 Q. Why did you sign a piece of paper?
- 25 A. Okay. I put it like this here. Let me ask you

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 147

1 something right now. You want me to start from when I be
2 getting threats, and that's the reason why I go to the
3 office or what?

4 Q. I just want you to explain to the jury why you
5 would sign a piece of paper.

6 A. Is the jury over here?

7 Q. Yes.

8 A. The reason why I signed -- the reason why I signed
9 the paper because one Friday night -- one Friday evening
10 I been going to the store. So by me going into the store
11 the guy name Baby Dean been walking up at the same time I
12 was walking in, and so he come back and making a big
13 amean (verbatim) inside the store. Oh, I going to get
14 you. I going to get you because I been looking for you
15 for a long time. You put my boy in jail, in prison for
16 the rest of his life.

17 I say, No, I didn't put him in jail the rest of his
18 life. He put himself in jail for rest of his life.

19 But he said when he come in the store, I going to
20 get you. Said it with him and three other guys together.
21 So me and my two little girls, we stayed inside the store
22 until they live.

23 And so about two weeks later he been to the same
24 store with the threat again, he going get me and he don't
25 care who be at my home where he gets me at. And so after

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 148

1 that about either a month one of his little partners, one
2 of his drug dealer partners in North Charleston, I be
3 going to the other store, so he said, I want to talk to
4 you.

5 I said, Why do you want to talk to me?

6 He said, Baby Dean is going to get you.

7 I said, Kill me for what?

8 He said, Baby Dean going to put a new hit on you.

9 THE COURT: Mr. Ancrum, can you slow down, Just a
10 little bit. She can't type that fast.

11 A. Oh. He said, Baby Dean going to put a hit oh you.

12 He said, I going to call Baby Dean right now and tell

13 Baby Dean you at this store.

14 I said, You do what you got to do.

15 Okay. So about a couple weeks later I been home in
16 the room looking at TV, although I can barely see the TV.

17 So my son -- I think it was my son come. Said, Jep.

18 They said, Some girl want to see you at the door. So I

19 go on to the door and I said, who is you? I can't

20 remember what her name is but she tell me.

21 She said, I Onrae first cousin.

22 I said, You Onrae first cousin?

23 So I go out where she on the porch. She said, Jep,

24 we need you to come write a statement for Onrae.

25 I said, For what?

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 149

1 Cause every court -- whatever he said. Every court
2 or whatever he done been to they keep turning him down.
3 And so after that I think his lawyer had called me after
4 she been there. So she left. She said what I could
5 do -- she said, When I come back from Atlanta -- she live
6 in Atlanta. She said, When I come back from Atlanta I
7 coming to get you so you can go meet the lawyer.

8 I said, Meet with the lawyer? I said, Okay.

9 And so after that I say how she know where I live
10 at because she tell me, said they been looking for me.
11 So I put two and two together. I said, Well, if you all
12 been looking for me all this time somebody done tell Baby
13 Dean where I live at because they done tell me one time,
14 I hear him saying Baby Dean going to pay \$500 -- oh,
15 yeah, I am a liar. He did approach me the first time.
16 He tell me, said if I sign a statement he would give me
17 five cash under the door. I tell him no. I tell him

18 And so after that I -- she come pick me up and we
19 going to his lawyer office. So I go to the lawyer
20 office, me, him -- I mean, me, the lawyer and Onrae's
21 sister, and cousin, and Onrae, he in prison. He on his
22 cell phone in his room on the cell phone. They put him
23 on loud speaker, and they talking, you know.

24 So just like I say, the reason why I signed the
25 paper, I get so frustrated. I been trying to get this

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 150

1 thing over. I ain't trying to get killed for nobody.
2 You know, I ain't trying to get killed. I love my life
3 and I love my family, but right now every day when I walk
4 to go walk I look back behind me, look back every day,
5 you know. It ain't like yeah, yeah, yeah, I buy drugs
6 from them. Yeah, I buy drugs from him, but I lied.

7 Yeah, I did the wrong thing when I signed that
8 paper but he know he guilty, and his lawyer know he
9 guilty. Just like the guy who supposed to be on trial
10 here, he guilty --

11 Q. Joseph. Joseph.

12 A. That's all I got to say.

13 MR. KING: Your Honor, I object to that and ask for
14 a curative instruction.

15 THE COURT: Ladies and gentlemen, please strike the
16 last statement from your notes.

17 A. My bad.

18 THE COURT: Madam foreperson, please do not allow
19 that statement to be considered in any way in your
20 deliberations.

21 BY MS. LINDER:

22 Q. Joseph, in the trial that we're talking about right
23 now, not this one, but back in Onrae's trial, did you
24 tell the truth?

25 A. Yes, ma'am.

JOSEPH ANCRUM - REDIRECT BY MS. LINDER 151

1 Q. Are you telling the truth today?

2 A. I telling the truth today.

3 Q. Were you telling the truth on July 16th of 2009
4 when you were relaying to the police officers what was
5 happening?

6 A. Yes, ma'am.

7 Q. And who was it who sold you the drugs that day in
8 2009? Can you describe him?

9 A. Let me see. He catch me about right here
10 (indicated). Yeah, about right here (indicated). He got
11 a low cut here (indicated), and he a little stockier than
12 me back then. But right now if you had a lineup right
13 now and I get close to a mirror I could point him out. I
14 could point him out.

15 MS. LINDER: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 Q. Joseph, that's all I have for you.

18 A. Okay.

19 Q. Please answer any questions that the defense
20 attorney may have.

21 THE COURT: Mr. King?

22 MR. KING: I have no further questions.

23 THE COURT: You may step down.

24 MS. LINDER: Judge, I ask is that Joseph be excused
25 and able to leave.

MICHAEL BURKE - DIRECT BY MR. STONEY 152

1 THE COURT: Any objection, Mr. King?

2 MR. KING: No, Your Honor.

3 THE COURT: You are excused. You are free to leave
4 the courtroom. Thank you.

5 Do you have a short witness available?

6 MS. LINDER: Your Honor, the next witness will
7 probably be the longest witness we have. I would guess
8 that he will take about half an hour to an hour from the
9 State's perspective.

10 THE COURT: All right. Do you have a stipulation?

11 MS. LINDER: We do have a stipulation, Your Honor.
12 If you would like, I'm happy -- I do have one short
13 witness I can call a little out of order, if that would
14 make the Court happy.

15 THE COURT: Our lunch will be here in about 10
16 minutes so --

17 MS. LINDER: Yes --

18 THE COURT: -- keep utilizing the time.

19 MS. LINDER: The State calls Michael Burke.

20 MICHAEL BURKE, after having been duly sworn,
21 testified as follows:

22 THE CLERK: Please state your full name and spell
23 your last name for the record.

24 THE WITNESS: Michael Burke, B-u-r-k-e.

25 DIRECT EXAMINATION

MICHAEL BURKE - DIRECT BY MR. STONEY

153

1 BY MR. STONEY:

2 Q. Good morning. Detective Burke, what is your
3 occupation?

4 A. I'm employed with the City of Charleston Police
5 Department.

6 Q. And what are your duties with the City of
7 Charleston?

8 A. Currently, I'm assigned to the special
9 investigations unit. My primary task is investigating
10 narcotics violations.

11 Q. And how long have you been employed with the City?

12 A. Over five years.

13 Q. And can you please tell the jury about your
14 training, education and experience.

15 A. Yes, sir. I received a Bachelor's of Science in
16 Criminal Justice from the Fairmont State University.

17 Prior to becoming a police officer I was hired by the
18 department in 2007. From that time, I went to the police
19 academy, graduated from the police academy, went through
20 field training, assigned to patrol division.

21 After about a year I was reassigned to our power
22 shift, which is a proactive patrol unit assigned to
23 target high crime areas. During that time, numerous drug
24 arrests. About a year and a half after that I was
25 reassigned to our special investigating -- special

MICHAEL BURKE - DIRECT BY MR. STONEY 154

1 investigations unit where I'm currently assigned.

2 Q. And were you working on July 16th, 2009?

3 A. Yes, I was.

4 Q. And did you become involved in this case in the
5 investigation of this case, State vs. James Lamont Moore?

6 A. Yes, sir.

7 Q. And how were you first made aware of this case?

8 A. I received a phone call from Detective Shealy in
9 reference to a control buy that had just taken place. He
10 gave me a description of the offender in this case
11 wearing a white tank top and blue cast on his arm and he
12 asked me if I could go drive through the area where the
13 deal had taken place to attempt to identify this
14 individual.

15 Q. And is it typical for police officers familiar with
16 an area to receive calls like such as that?

17 A. Yes, sir.

18 Q. And what did Detective Shealy request to you?

19 A. He asked me if I could go to the area of Wolfe
20 Street. As I stated a second ago, the narcotics unit had
21 conducted a control purchase in the area. He was calling
22 me to go identify the offender.

23 Q. And you did do that?

24 A. Yes, sir. I went to the area.

25 Q. Did you look at an individual matching the

MICHAEL BURKE - DIRECT BY MR. STONEY

155

- 1 description?
- 2 A. Yes, sir, the defendant.
- 3 Q. Did you know who this person was?
- 4 A. Yes. I knew who he was.
- 5 Q. And who was that person?
- 6 A. James Lamont Moore.
- 7 Q. And how long have you known him?
- 8 A. For several years.
- 9 Q. Do you know his date of birth?
- 10 A. Yes, sir. It's April 9th, 1983.
- 11 Q. And how do you know that that's his --
- 12 A. We share the same birthday.
- 13 Q. Did you stop and speak with the defendant on July
- 14 16th --
- 15 A. No. I didn't stop and speak with him that day.
- 16 Q. Did he have anything on that helped you identify
- 17 him?
- 18 A. A blue cast.
- 19 Q. Did anyone else in the area have on a blue cast?
- 20 A. No, sir.
- 21 Q. And were you involved in the arrest of the
- 22 defendant when he was arrested?
- 23 A. Yes, sir.
- 24 Q. And was that arrest made in the same area?
- 25 A. Yes, sir. It was made about -- it was actually

MICHAEL BURKE - CROSS BY MR. KING 156

1 made across the street from where the controlled buy had
2 taken place.

3 Q. And where was that again?

4 A. The arrest or the --

5 Q. Purchase -- buy.

6 A. It was on Wolfe Street.

7 Q. And is that in Charleston County?

8 A. Yes, sir.

9 Q. Is there any question in your mind that the
10 defendant was in the area of matching the description at
11 the time of the controlled buy?

12 A. No question.

13 MS. LINDER: Beg the Court's indulgence.

14 THE COURT: Take your time.

15 (PAUSE.)

16 MR. STONEY: No further questions.

17 BY MR. STONEY:

18 Q. Please answer anything that the defense attorney
19 may ask you.

20 A. Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. KING:

23 Q. You weren't undercover? You were uniform?

24 A. That's correct, sir. I was still assigned to
25 patrol division.

MICHAEL BURKE - CROSS BY MR. KING

157

- 1 Q. Okay. And you just went by just to see who it was?
- 2 A. Yes, sir.
- 3 Q. You didn't make any sort of contact?
- 4 A. No, sir?
- 5 Q. You didn't stop the person with the cast on?
- 6 A. No, sir.
- 7 Q. You didn't search him?
- 8 A. I didn't exit my vehicle.
- 9 Q. So you weren't aware if he had the marked \$20 in
- 10 his pocket?
- 11 A. No, sir.
- 12 Q. Or if he had drugs on him or anything like that?
- 13 A. No, sir.
- 14 Q. And you didn't record anything that you saw, right?
- 15 You didn't video record?
- 16 A. No, sir.
- 17 Q. You didn't write a report about that either, did
- 18 you?
- 19 A. No, sir.
- 20 Q. One of big parts of being an officer is writing
- 21 reports; is that right?
- 22 A. Yes, sir.
- 23 Q. And generally when you're involved in something
- 24 you're going to write a report?
- 25 A. I would say that depends on the circumstances.

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1 Q. You did write a report in this case. It's the
2 report of when Mr. Moore was arrested.

3 A. That's correct.

4 Q. But you didn't write one about when you said you
5 drove by and made an identification?

6 A. That's correct.

7 MR. KING: That's all the questions I have.

8 THE COURT: Redirect?

9 MR. STONEY: No, Your Honor.

10 THE COURT: Is this witness excused?

11 MS. LINDER: I would ask that this witness please
12 be excused, Your Honor.

13 THE COURT: Any objection, Mr. King?

14 MR. KING: No, Your Honor.

15 THE COURT: You are excused but feel free to remain
16 with us. Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 MS. LINDER: Your Honor, I would ask at this time
19 we publish the stipulations to the jury.

20 THE COURT: All right.

21 Ladies and gentlemen of the jury, a stipulation is
22 simply an agreement between counsel, and in this case
23 what that is going to do -- and the State is going to
24 publish or read to you the stipulation. They've agreed
25 to the testimony of witnesses and so those witnesses

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1 don't have to come into court and testify.

2 MS. LINDER: The stipulation is in the State of
3 South Carolina vs. James Lamont Moore. The cocaine base
4 offered into evidence by the State in this trial is the
5 same cocaine base that was given to Investigator Jonathan
6 Shealy by the confidential informant, and the cocaine
7 base was handled properly by the Charleston Police
8 Department and the Forensic Services Division.

9 Item two, the cocaine base crack offered into
10 evidence by the State is, in fact, cocaine base as
11 provided in the drug analysis report from Charleston
12 Police Department Forensic Laboratory. The weight of the
13 cocaine base crack is .09 grams, as provided in the drug
14 analysis report from the Charleston Police Department
15 Forensic Laboratory.

16 THE COURT: Thank you. Was the stipulation
17 accurately read?

18 MR. KING: Yes, Your Honor.

19 THE COURT: And that is the stipulation that you
20 entered into with the State?

21 MR. KING: Yes, Your Honor.

22 THE COURT: All right. And just for the record,
23 that will be Court's 1.

24 Is that correct?

25 THE COURT REPORTER: Yes, ma'am.

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1 THE COURT: Thank you.

2 Ladies and gentlemen, regardless if your lunch is
3 here it's an appropriate time for us to take a break. If
4 the lunch is going to be here while we're taking our
5 break then we are going to go ahead and take
6 approximately 30 minutes for you all to eat your lunch.

7 I would prefer that you stay in the jury room so
8 that we can -- once after 30 minutes that we could resume
9 promptly. If any of you during your lunch would like to
10 go outside for a smoke break or any other fresh air break
11 if you'll just let the bailiffs know, and hopefully by
12 the time we break your lunch is going to be there and
13 then we'll take about a 30-minute break.

14 Regardless of what happens, do not begin your
15 deliberations, do not discuss this case amongst
16 yourselves. If we take our lunch break and you go
17 outside they will give you your phone back. You may not
18 do any independent investigations. You may not discuss
19 this case with anyone, and that does include your fellow
20 jurors. Please don't read, watch, listen to any news
21 accounts should there be any.

22 Depending upon the arrival of lunch, it may just be
23 a few minutes, and we'll go ahead and take our lunch
24 break.

25 Please rise for the jury.

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1 You may leave you notepads in your chairs if you
2 wish to do so. Thank you.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 1:05 p.m.)

5 THE COURT: Thank you. Be seated.

6 Ms. Linder, how many more witnesses do we have?

7 MS. LINDER: The State has one more witness.

8 THE COURT: And who will that be?

9 MS. LINDER: It will be Jonathan Shealy.

10 THE COURT: And your witnesses will be here at what
11 time?

12 MR. KING: I don't intend to call any witnesses at
13 this time.

14 THE COURT: All right.

15 MR. KING: There's a matter I would just like to
16 bring up real quick. Based on the last statement by
17 Mr. Ancrum on the stand I would make a motion for a
18 mistrial. I know I requested a curative instruction but
19 I don't believe that this is enough to cure any prejudice
20 caused to Mr. Moore and would ask you to grant a
21 mistrial.

22 MS. LINDER: Your Honor, I would submit that a
23 curative instruction as you already have given the jury
24 is sufficient. I'm happy if you want to give yet another
25 one to the jury and also include in the charge somehow to

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1 remind the jury that they are not to take statements that
2 the Court previously ordered them not to, to take into
3 account. I think that resolves the issue.

4 THE COURT: At this time, I deny your motion for a
5 mistrial. I will actually over our break review the
6 context and make sure that my curative instruction, that
7 I do feel that it was appropriate, been addressed, and if
8 there's any further instruction that needs to be placed
9 into my charge to the jury I will do that.

10 MR. KING: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MS. LINDER: Your Honor, I would ask at this time,
13 especially since everything was stipulated to, if we
14 could admit the drugs into evidence.

15 THE COURT: And that will be what number?

16 MS. LINDER: I believe that is State's Exhibit 1.
17 And I would also ask that State's Exhibit 2 be admitted
18 into evidence, which is this lab report for the drugs.

19 THE COURT: Any objection to either one of those?

20 MR. KING: No, Your Honor.

21 THE COURT: State's 1 and 2 into evidence without
22 objection.

23 (WHEREUPON, State's Exhibit Numbers 1 and 2 were
24 admitted into evidence.)

25 THE COURT: With that, since we just have one

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1 witness, let's go ahead -- is the lunch here?

2 All right, Counsel. Is 30 minutes going to be
3 sufficient for you to eat lunch?

4 MS. LINDER: Your Honor, if we could be back here
5 at 1:45 the State will be ready go with the last witness
6 and straight into closing.

7 THE COURT: All right.

8 MR. KING: That sounds good to me, Your Honor.

9 THE COURT: All right, 1:45. I will see you then.
10 So we just have one witness. How long do you anticipate,
11 you said he would be lengthy?

12 MS. LINDER: I anticipate him taking probably about
13 a half an hour.

14 THE COURT: Oh, okay. Thank you. All right.
15 We'll be at ease until 1:45. Thank you.

16 MS. LINDER: Thank you, Judge.

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Were you able to reach your client
19 during the break?

20 MR. KING: I haven't heard anything, Your Honor.
21 think at this point any damage of him not being here has
22 been done, and I haven't seen his mother either.

23 Your Honor, the solicitor says she intends to
24 qualify the next witness as an expert.

25 THE COURT: Okay.

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1 MR. KING: And I may have an objection to that. I
2 think she wants me to qualify as an expert in drug
3 transactions. I just don't know that that's an area
4 where an expert would need to be required or need to have
5 expert testimony.

6 I also think it could possibly be bolstering. It's
7 kind of like -- there's some recent cases coming out
8 where they are putting in child sex videos and they'll
9 have the people testifying along with those videos, and I
10 just say I don't think that's anything that an expert is
11 needed for and that would be improper bolstering of the
12 video with Mr. Ancrum's testimony.

13 THE COURT: Ms. Linder, do you have a case?

14 MS. LINDER: Judge, I was mainly relying on -- the
15 case that I would be moving, State V. Jamison, which is
16 from 2007. And in it it cites Nelson V. Taylor, which is
17 a 2001 Court of Appeals case, and it states that
18 qualification of a witness as an expert in the
19 admissibility of his or her testimony are matters left to
20 the sound discretion of the trial judge. And further in
21 here -- I'm happy to hand -- this is my own copy. I'm
22 happy to hand it up.

23 In this case, there was an officer who was
24 qualified as an expert and they testified -- it was a
25 trafficking case, and they testified to the street level

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1 value of the drugs because that was a piece of
2 information that was outside the common knowledge of a
3 juror, and in this case there will be sometimes when I
4 would ask Shealy questions where his expertise through
5 being not just law enforcement but with his expertise
6 with street level narcotics transactions would allow him
7 to give his expert opinion to help the jury understand
8 certain facets of street level narcotics.

9 If you'd like me to be more specific, I'm happy to.
10 If you would like the case, I'm happy to hand this up as
11 well.

12 THE COURT: Mr. King, do you wish to voir dire him
13 on his qualifications outside the presence of the jury?

14 MR. KING: No. It's not really his qualifications.

15 THE COURT: It's just whether or not he should be
16 qualified. Not that he is not an expert but whether or
17 not he should be qualified in front of the jury. Is that
18 your objection?

19 MR. KING: Right. I'm saying this isn't an area
20 that needs any expertise. To label him expert, I think,
21 kind of gives him -- that's kind of bolstering his
22 testimony, too.

23 THE COURT: All right. I'm sure you're going to
24 lay the qualifications?

25 MS. LINDER: Yes.

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1 THE COURT: So I'll make the determination as I
2 hear from you.

3 All right. Let's bring them in.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 1:52 p.m.)

6 THE COURT: Call your next witness.

7 MS. LINDER: The State calls Detective Jonathan
8 Shealy.

9 JONATHAN SHEALY, after having been duly
10 sworn, testified as follows:

11 THE CLERK: If you'll state your full name then
12 spell your last name for the record.

13 THE WITNESS: Yes, sir. Jonathan Shealy,
14 S-h-e-a-l-y.

15 DIRECT EXAMINATION

16 BY MS. LINDER:

17 Q. Good afternoon, Detective Shealy. What is your
18 occupation?

19 A. I'm a police officer with the City of Charleston
20 Police Department.

21 Q. And what are your duties with CPD?

22 A. Currently, I'm assigned to the special
23 investigations which investigates narcotics and vice
24 operations. Primarily, I'm a detective with the
25 narcotics side.

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1 Q. And how long have you been employed by CPD?

2 A. Just a little over six years now.

3 Q. And can you please tell the jury about your
4 education.

5 A. Yes, ma'am. I have a Bachelor of Science in
6 Criminal Justice from Charleston Southern University, as
7 well as a Master's Degree in Criminal Justice at
8 Charleston Southern University. I have attended the
9 South Carolina Criminal Justice Academy there, a 12-week
10 basic course for being a police officer.

11 Being in this unit I've been allowed to go to many
12 classes, one of which was an interview in an
13 interrogation class which has given me the opportunity to
14 better interview subject -- suspects, as well as
15 confidential informants.

16 I've also been to several surveillance courses
17 throughout my career which has given me a better sense of
18 being able to get out into the field, survey areas where
19 narcotic activity is taking place, learn the subjects'
20 habits, the new trends that's going on.

21 I've been to several gang classes, which is closely
22 affiliated with narcotic activity, again, learning the
23 new trends.

24 I've been to the criminal justice -- South Carolina
25 Criminal Justice undercover course which has given me the

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1 opportunity to actually go out and buy narcotics, to see
2 the trends of street level narcotics, the way they
3 operate, as well as reverse that role and actually be a
4 seller, and I know how that operation works well.

5 I attended a two-week basic narcotics investigators
6 school which was conducted by the Drug Enforcement
7 Administration, DEA, which kind of went over an overall
8 aspect of narcotic investigations, anywhere from
9 preplanning to actually testing, field testing drugs.

10 I've been to a tactical techniques and procedures
11 and use of confidential informants, basically teaching
12 you how to control them, pick them, make sure everything
13 goes accordingly.

14 I've been to tactical drug operations school, which
15 is more the tactical side of drug operations which
16 includes takedowns, surveillance, actual warrant service.
17 I was given the opportunity to become a basic instructor
18 for the City of Charleston two-week course, Criminal
19 Justice Academy, where I can actually write lesson plans,
20 and I did actually create a lesson plan on managing and
21 controlling informant, which can be used by the City of
22 Charleston. Not only by the City of Charleston but any
23 other law enforcement agency within South Carolina.

24 I have another surveillance course. I'm also a
25 member of our Charleston Police Department SWAT Team.

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1 I've been to several SWAT schools, which the SWAT team
2 handles a lot of our major narcotic search warrants.

3 Q. And can you give a rough estimate of the number of
4 drug related cases that you have been involved with?

5 A. I've been involved in well over a thousand, well
6 over a thousand narcotics related.

7 Q. And have you during the course of being in law
8 enforcement have you had other law enforcement officers
9 ever call on you to render your opinion as far as drug
10 related investigations?

11 A. Yes, ma'am. It's very typical for patrol units to
12 call upon one of the investigators that's in the
13 narcotics unit to ask opinions on certain things that
14 they encountered within the field.

15 MS. LINDER: Your Honor, at this time I would ask
16 that Detective Shealy be admitted as an expert in street
17 level narcotics transactions.

18 THE COURT: Mr. King?

19 MR. KING: Just renew my objection I made
20 previously, Your Honor.

21 THE COURT: Do you wish to voir dire on the record?

22 MR. KING: No, Your Honor.

23 THE COURT: No objection to his qualifications?

24 MR. KING: No, Your Honor.

25 THE COURT: And you wish to qualify him as an

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1 expert in street level narcotics transactions?

2 MS. LINDER: Yes, Your Honor.

3 THE COURT: All right. Counsel, approach.

4 (WHEREUPON, the following bench conference was
5 reported.)

6 THE COURT: The Jameson case relies on -- the case
7 that involves this, to be very narrowly tailored about
8 the monetary value. Why do you need him to --

9 MS. LINDER: What I wanted him to more or less be
10 able to explain is how, you know, it's common for both
11 people to be standing together at a street level
12 narcotics as opposed to just one person. And also when
13 the defendant goes across the street how it's very common
14 for the stash of drugs, so-to-speak, to not be physically
15 on the person so if law enforcement were to come up they
16 would not be charged with drugs. Like, that's just kind
17 of like the general --

18 MR. COOPER: That's not expert testimony. That's
19 just his experience that he can testify to. I don't
20 understand what his expert opinion would be in this.

21 MS. LINDER: To me his expert opinion would be able
22 to be based on all his training and experience to say
23 that it is typical for there to be more than one person,
24 it is typical for --

25 THE COURT: But you're not going to object to that

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1 testimony, you wouldn't object to that statement, would
2 you?

3 MR. KING: If that's all it is then I think I'm
4 okay with that if that's --

5 MS. LINDER: That's why I wanted him to explain
6 more of how street level drugs are done.

7 THE COURT: I don't know that he needs to be for
8 just an explanation. I think just based upon his
9 training and experience I think what you want him to be
10 an expert for would be in my opinion this guy was selling
11 drugs. You're not going to have him say that anyway.

12 MS. LINDER: Right. I'm going to have him -- I
13 intend to show a very short excerpt of the video, so
14 probably like a two-minute segment so he can --

15 THE COURT: Do it this way. I'm going to reserve
16 my ruling on it based upon his objection. If it becomes
17 where he needs to issue an opinion then approach the
18 bench and we'll deal with that.

19 MS. LINDER: Okay. Thank you.

20 (WHEREUPON, the bench conference was concluded.)

21 THE COURT: I'm going to reserve ruling on that
22 issue.

23 You may continue.

24 BY MS. LINDER:

25 Q. Detective Shealy, did you have the occasion to be

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1 working on July 16th of 2009?

2 A. Yes, ma'am, I did.

3 Q. Did you have the occasion to be become involved in
4 the investigation in this case, the State vs. James
5 Lamont Moore on that date?

6 A. Yes, ma'am, I was.

7 Q. And what was your role that day?

8 A. My role in this particular investigation is I was
9 the case agent involved in this operation, which
10 typically means I was pretty much not in charge. Our
11 supervisor is in charge, but I was in charge of setting
12 up this whole operation from getting a plan together,
13 getting the right personnel together, and that pretty
14 much, as said before, picking up the CI, bringing him to
15 a debriefing location, searching that CI.

16 When I'm talking about searching the CI, the case
17 agent typically does that. He typically handles all that
18 himself. I searched the CI, the inner clothing, the
19 outer clothing, the pockets, socks, shoes. Typically we
20 try to search that CI to the point -- besides strip
21 searching that subject and getting inappropriate. So we
22 do that before and after.

23 After that's done, me being the case agent, I wired
24 that confidential informant up with an audio device as
25 well as an audio and video device. As heard before, the

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1 audio device is so that we as investigators can hear
2 realtime what's going on. The video and audio device is
3 what you've seen earlier. The video has possible sound.

4 After that's done typically the discussion of
5 debriefing, what your goal is, the history of the case,
6 what you're trying to accomplish, whether it's a buy
7 walk, a buy bust is discussed.

8 You assign responsibilities to each detective there
9 as well as the officer, whether it be a takedown unit,
10 whether it be perimeter security, pre surveillance, who's
11 actually responsible for that CI if something does
12 happen, which is typically the case agent and his partner
13 at the time who's with him, which was Detective Grill.
14 We were responsible for the CI's safety. If something
15 did go bad we were to get him out.

16 We discussed if there is targets in that area of
17 criminal history. We discuss the actual geographic area
18 of layout, if there's any schools in that area, getting
19 out. If there's children in the area. We go over
20 contingency plans; if something does happen this is what
21 we're going to do.

22 And after that's done we typically send out the pre
23 surveillance detectives, the patrol unit, send them out,
24 get them set up. That's when the prerecorded U.S.
25 currency is turned over to the CI. And again, we kind of

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1 really debrief him, the CI there, what we want. You
2 know, we explain to them where we want them to go, how
3 much we are going to use, what drug we want to buy, what
4 area we're targeting. So that's typically what we do.

5 Q. And in this case where did the controlled buy occur
6 back on July 16, 2009?

7 A. This control buy actually occurred in front of 7
8 Wolfe Street which is located between Meeting and Nassau,
9 just east of the Exxon gas station on Meeting Street.

10 Q. And is that Charleston County?

11 A. Yes, ma'am.

12 Q. As the case agent did you make the decision of if
13 this was going to be a buy walk or a buy bust?

14 A. Yes, ma'am, I did.

15 Q. And what decision did you make in this case?

16 A. This was going to be a buy walk operation.

17 Q. And can you explain what that is and what your
18 reasoning was to make that determination?

19 A. Yes, ma'am. Typically, a buy walk is just how it
20 sounds. Again, we go in, CI buys drugs, walks away.
21 Just what it sounds like. We do this for several
22 reasons. First off, the safety of the community is
23 number one. We don't want to go right back in, arrest
24 somebody, cause a problem.

25 The identity of the CI is another reason. Safety

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1 of the CI, safety of the officers, and what basically our
2 common goal is at that time. If we have complaints of
3 constant narcotic activity we may want to get more than
4 one person. If we go in there and do a buy bust right
5 away it could jeopardize the CI's identity, we can't send
6 that CI in there anymore. So typically a buy walk, we'll
7 do several buys in that area over a short period of time
8 then we'll go in there and do what we call a round up.

9 Q. You mentioned the CI, the CI was used in this case.
10 Can you tell the jury a little bit about the CI in this
11 case and your experience with him.

12 A. The CI in this case was signed up by me in 2009,
13 early 2009. This particular CI had worked with the
14 Charleston Police Department prior to that and conducted
15 numerous operations prior to me even coming to this unit.

16 I signed up this CI to work for me but ultimately
17 for the unit again. With me, personally, the CI
18 conducted multiple, multiple buys over -- I would say at
19 least over a hundred buys, maybe more within my time in
20 working with that CI. The CI in every buy was always
21 reliable, always on time which is --

22 MR. KING: Objection, Your Honor. He's vouching
23 for the credibility of the informant.

24 THE COURT: All right. Rephrase.

25 Ladies and gentlemen, please strike the word

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1 reliable from your notes.

2 Rephrase that question for him. Thank you.

3 MS. LINDER: Your Honor, may we approach?

4 THE COURT: You may.

5 (WHEREUPON, the following bench conference was
6 reported.)

7 MS. LINDER: To me what he's saying is, as the
8 follow-up was, that he was there always on time whenever
9 he would call.

10 THE COURT: Just have him say -- because I -- was
11 your objection to reliable?

12 MR. KING: Right. This sounds like he's saying
13 he's trustworthy.

14 THE COURT: And so I think it's just --

15 MS. LINDER: Word choice.

16 THE COURT: -- the question. It's just word
17 choice. So just --

18 MS. LINDER: I can ask him when you called him was
19 he there when you --

20 THE COURT: That's the part of reliable, and I like
21 to give -- there's a distinction into being a
22 confidential and reliable that -- you know, that that's
23 the way, and I don't want him to -- I mean, just let him
24 choose his words. I don't mean to be too picky but...

25 MS. LINDER: Okay.

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1 THE COURT: Thank you.

2 (WHEREUPON, the bench conference was concluded.)

3 BY MS. LINDER:

4 Q. With the CI involved in this case, when you called
5 him did he answer?

6 A. Yes, ma'am.

7 Q. Did he ever call you?

8 A. Yes, ma'am.

9 Q. With the CI in this case, did he drive and meet you
10 or did you typically pick him up?

11 A. I picked him up.

12 Q. Was he there when he -- was he at your pickup spot?

13 A. Every time.

14 Q. If you told him to call you did he call you when
15 instructed?

16 A. Yes, ma'am.

17 Q. With this CI, do you find him -- with this CI that
18 you used in this case, why did you select him to be used
19 for this case?

20 A. Typically when we work in an area we contact CIs we
21 have. We have contacted this particular CI, asked him if
22 he could go into this area and purchase narcotics. He
23 said he could. And in the past all the operations that
24 we have conducted with the CI have been successful, so we
25 used this CI to target this area.

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1 Q. Can you tell me how you first met up with the CI on
2 this day and what your interaction with the CI was up
3 until the point when he did this buy?

4 A. Yes, ma'am. Myself and Detective Grill met the CI
5 closer to the CI's home. We picked the CI up. We do a
6 quick pat down, make sure no weapons or anything. We
7 come down to our predetermined location. At that point
8 is where the CI is again searched very, very well.

9 Once the search has taken place -- this is all done
10 by the case agent, myself. Once the search is conducted
11 that's when the wiring process starts. We wire that CI
12 up with audio and video monitoring.

13 Q. Did you find anything on the CI when you searched
14 him?

15 A. No, ma'am.

16 Q. Please continue in explaining the wiring.

17 A. So typically we wire the CI up again with an
18 audio-video recording device which is the video we're
19 going see, and audio device so that we can hear live feed
20 of what's going on during the entire operation, and it's
21 for safety purposes to give us an idea of where the CI is
22 going and what's happening, live time.

23 At this point, I pretty much instruct the CI on
24 what we want accomplished, what we want done, where to
25 go, what area to target. Tell the CI typically do not

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1 get into any vehicle because we're not controlling that
2 situation at that point. Whoever is driving that car is
3 in control then.

4 Typically, explain to the CI that if he does get
5 into a vehicle what's going to happen, we'll make a
6 traffic stop. We will make it look like the CI had a
7 warrant, get the CI out of that situation.

8 If we're not aware or sure about a residence we
9 typically tell the CI you can go up to a residence but do
10 not go inside. Once they are inside that residence we
11 still have control to a point but it's a little bit
12 harder for us to get inside a residence to rescue that CI
13 if something happens.

14 So once we kind of briefed the CI we'll have our
15 typical briefing, again, where we go over the mission,
16 what we want to accomplish, the history of the case.
17 Assignments are given out to detectives and the officer
18 that's with us. They go out to that area.

19 The prerecorded U.S. currency that is prerecorded,
20 again by me, is given to the CI and the CI is told what
21 we are going to try to buy, and that's up to the point
22 where we go to the drop-off location.

23 Q. And when you went to the drop off location what
24 happens when you get to the drop off location? What does
25 the CI do?

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1 A. When we get to the drop off location first off we
2 make sure the CI has the money. The CI gets out of that
3 vehicle. Before we get to the drop off location we go
4 over all the rules again. We instruct that CI to let us
5 know where you're going, what road you cross. That way
6 if something happens we know exactly where you are.
7 Typically we'll tell them if at all feasible
8 explain to us what's going on. Don't put yourself in any
9 kind of danger. Don't, you know, talk out loud if you
10 can't but if you can do so because typically when we wire
11 a CI up it's a small camera system so it doesn't have
12 peripheral vision. It can't go, you know, so many places
13 and it typically doesn't look right if a confidential
14 informant is, you know, constantly moving toward you.
15 The confidential informant has to play it off as
16 naturally as possible. So we typically say try to get at
17 least a good --- the guy in the video so we can at least
18 see the face. And in a real world situation I tell the
19 CI try to get everything. Try to get money, try to get
20 everything but that's not going to happen in our
21 situation. So we at least want the CI to try to get a
22 picture of the guy's face. And then the CI goes to the
23 location and pretty much does his thing.
24 Q. At this time I would ask that a short excerpt of
25 the video be played and, Detective Shealy, for you to

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1 answer some questions through your experience as far as
2 what is occurring.

3 A. Yes, ma'am.

4 Q. And I would ask that -- feel free. We're fast
5 forwarding a lot and feel free to speak over it. The
6 volume has been turned down fairly low.

7 A. Okay.

8 MS. LINDER: Your Honor, I ask permission for
9 Investigator Shealy to be able to stand up if need
10 be or --

11 THE COURT: Are you good there?

12 THE WITNESS: Yes, ma'am. I'll be fine.

13 THE COURT: Thank you. Just speak loudly.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you.

16 (WHEREUPON, States's Exhibit Number 3 was played
17 during the following examination.)

18 A. Right here we've already wired the CI up. We've
19 already given the prerecorded U.S. currency and we are to
20 the drop off spot. Right here the CI is already out of
21 the vehicle and walking towards the target loca -- well,
22 not target location but the location of 7 Wolf Street.

23 So it's going to be a little while before he gets
24 there but I'll kind of try to guide you where the CI is
25 at and also you probably can hear the CI telling us.

JONATHAN SHEALY - DIRECT BY MS. LINDER 182

1 He's by Earl's liquor store, which is on the corner of
2 Reid and Meeting right now.

3 Q. What is that weird kind of like a cow bell sound
4 going on?

5 A. With the equipment it all depends on where it's
6 located on the body. If it's a muffled sound it's just
7 something with our equipment that makes that sound,
8 sometimes it does, sometimes it doesn't. It could be the
9 clothing going up and down the microphone that's making
10 that muffled sound.

11 I think right here he said he's already crossed
12 Meeting Street. So he's on Meeting Street, he's going
13 north on Meeting Street towards Wolfe Street now.

14 Right here you can see what the CI calls the store.
15 It's the Exxon gas station on the corner of Wolf and
16 Meeting Street. He's cutting through that parking lot
17 now.

18 Q. And that's all here Downtown Charleston?

19 A. Yes, ma'am.

20 He's pretty much made his way across the parking
21 lot. He should be on the sidewalk on Wolfe Street
22 walking up Wolfe Street towards Nassau Street.

23 Okay. Here, this is where he approached the two
24 gentlemen here. One standing up, the defendant sitting
25 down on a ledge. One of them asked, What do you need?

JONATHAN SHEALY - DIRECT BY MS. LINDER 183

1 He said --

2 MR. KING: Your Honor, objection. Lack of personal
3 knowledge.

4 THE COURT: Overruled.

5 A. He asked for a 20, which is commonly referred to on
6 the street as 20 dollars worth of cocaine base. It's
7 just street terms. Sometimes they say 20 hard but he
8 just said 20. This guy knows what he means.

9 The defendant, it was showed earlier got up and
10 walked across. You could see the top of the cast and is
11 going across the street now to retrieve the cocaine base
12 which is very common in a street transaction. Narcotics
13 dealers don't tend to want to keep the narcotics on them.
14 They can get robbed, a police officer can get out with
15 them, find it in an arm's reach.

16 Again, he's describing the defendant is going
17 across the street to get it and you saw earlier there was
18 two guys. This is also typical in street narcotics
19 transactions, strength in numbers. There's a lookout,
20 call-out, things of that nature. So that's common as
21 well. It looks -- it doesn't look more obvious if you
22 have one or two, three people on a corner and just one
23 guy sitting on a corner, you know, by himself. So at
24 this point the defendant is across the street.

25 The CI is just waiting, just waiting on him to come

JONATHAN SHEALY - DIRECT BY MS. LINDER 184

1 back. You hear the CI say, Is it hot enough for you?

2 Now you clearly see the gentleman with the white
3 shirt go by. A couple seconds is going to pass. Now the
4 defendant is coming back. He's walking up to him now.
5 The drugs were -- the defendant handed the drugs. The CI
6 handed him \$20 in prerecorded U.S. currency.

7 He's giving a phone number now, his phone number so
8 that in future times the CI, which he said, I normally go
9 down the street, won't go down the street. Now he'll
10 come to him.

11 See, he's explaining now that I normally -- which
12 is just made up. I normally go down to the graveyard,
13 because he's got to make this stuff up, make it look
14 normal. I normally go down to the graveyard. Now I have
15 your number. Next time I come through I'll call you.

16 Q. And then after this the jury has seen this
17 previously. He returns to your vehicle. What happens
18 when the CI returns to your vehicle?

19 A. When the CI gets back into our undercover vehicle
20 immediately I recover the cocaine base from the CI, so it
21 stays in my custody. As heard before, the case agent
22 typically tries to do everything. That way it's real
23 simple. I searched him, I wired him, I recovered the
24 narcotics. So as soon as he got back in the undercover
25 vehicle I recovered that narcotic. I recovered the

JONATHAN SHEALY - DIRECT BY MS. LINDER 185

1 cocaine base from the CI.

2 Q. And what did you do with that cocaine base?

3 A. Once we get the cocaine base we do what we call a
4 field test on that substance. Typically, we view that
5 substance. We can determine -- we can't determine
6 exactly if it's cocaine base by just reviewing it so we
7 drop -- our lab makes us up a chemical substance. It's a
8 pink liquid. We take a small, small portion of that
9 cocaine base. We drop one drop of that substance onto
10 the cocaine base and it turned blue. If it turns blue it
11 field tests presumptive as cocaine base, which we then
12 send to the lab for the official testing.

13 Q. After the CI returned to your vehicle where did you
14 go with the vehicle and CI?

15 A. We went back to the previous debriefing location,
16 straight back to the previous debriefing location to meet
17 back up with the detectives and the officer.

18 Q. And what did you do to or with the CI once you are
19 back at that location?

20 A. Well, on the way back to the location, again, we
21 recovered the -- well, immediately recovered the
22 narcotics. I again got a description of the defendant.

23 Once back at that location -- once we got back to
24 that location I called Officer Burke, at the time, which
25 is a detective with us now. I called him to make sure he

JONATHAN SHEALY -- DIRECT BY MS. LINDER 186

1 was working because I know that Officer Burke was
2 familiar with that area, was familiar with the subjects
3 in that area.

4 He said he was working. I gave him a full
5 description; white tank top, blue cast, black shorts.
6 Just made a narcotics transaction in the area at 7 Wolfe
7 Street, can you go to that area, can you try to ID that
8 guy? I specifically told Officer Burke if you can ID
9 that guy without getting out with him do that because it
10 just brings up suspicion why are you getting out with me;
11 I just sold, that guy could have been a confidential
12 informant. So I gave Officer Burke a description.

13 I then searched that CI again, same thing to the
14 point of almost a strip search. I took off the equipment
15 and basically had a small debrief of what happened, what
16 went right, you know, what we could do better the next
17 time with the detectives involved in the operation.

18 Q. And you called now Detective Burke to go to that
19 area. Did he respond to you after you requested that?

20 A. Yes, ma'am. A short time after Detective Burke
21 called me back by phone and said that he identified the
22 subject --

23 MR. KING: Objection, hearsay.

24 THE COURT: Any exception?

25 MS. LINDER: Your Honor, I would state it's law

JONATHAN SHEALY - DIRECT BY MS. LINDER 187

1 enforcement sharing information about an ongoing
2 investigation.

3 THE COURT: Rephrase your question. Sustained.

4 BY MS. LINDER:

5 Q. Did Detective Burke make a positive identification?

6 MR. KING: Objection. Same objection.

7 THE COURT: He could answer if he has personal
8 knowledge.

9 A. Yes.

10 Q. During the video we heard a phone number toward the
11 end, and I believe you touched on it when we were playing
12 the excerpt. What if anything did you do with that phone
13 number?

14 A. I ran it through our local, our city data base as
15 well as SCIEX, which is a statewide database. It came
16 back nothing on it, which is typical. When dealing with
17 street level narcotics they have throw phones, burner
18 phones, or either just borrowing someone else's phone.
19 So nothing came back on the phone.

20 Q. Did you end up reviewing the video in this case?

21 A. Yes, ma'am.

22 Q. And are you able to identify anyone on this video?

23 A. Yes, ma'am. I identified James Lamont -- James
24 Lamont Moore, whose birthday is April the 9th, 1983, in
25 that video.

JONATHAN SHEALY - CROSS BY MR. KING

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1 Q. And who was he in that video?

2 A. He was the gentleman who was wearing the white tank
3 top, blue cast, black shorts who made a narcotics
4 transaction with the confidential informant.

5 MS. LINDER: Please beg the Court's indulgence.

6 THE COURT: Take your time.

7 (PAUSE;)

8 MS. LINDER: That's all the questions I have for
9 you at this time, Detective Shealy. If you can please
10 answer any questions that Mr. King has.

11 THE COURT: Mr. King?

12 CROSS-EXAMINATION

13 BY MR. KING:

14 Q. Detective Shealy?

15 A. Yes, sir.

16 Q. You testified you were the case agent in this case,
17 right?

18 A. Yes, sir.

19 Q. And you decided to use the informant over an
20 undercover cop?

21 A. Yes, sir.

22 Q. Although sometimes, many times an undercover cop is
23 used?

24 A. Sometimes an undercover cop is used, yes, sir.

25 Q. You gave the informant \$20, right?

JONATHAN SHEALY - CROSS BY MR. KING

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- 1 A. Yes, sir.
- 2 Q. And you photocopied that, right?
- 3 A. Yes, sir.
- 4 Q. So you would have a record of that?
- 5 A. Yes, sir.
- 6 Q. But you never recovered that \$20, right?
- 7 A. No, sir.
- 8 Q. And you never recovered it from James Moore?
- 9 A. No, sir.
- 10 Q. You were with Detective Grill this whole time; is
- 11 that correct?
- 12 A. Yes, sir.
- 13 Q. And y'all were dropping him off where he gets out
- 14 of the car and starts walking?
- 15 A. Yes, sir.
- 16 Q. And at that point you all maintain an audio,
- 17 listening to what's going on?
- 18 A. Yes, sir.
- 19 Q. And that's why he's telling you where he is?
- 20 A. Yes, sir.
- 21 Q. But you are not actually seeing this alleged
- 22 transaction taking place?
- 23 A. No, sir.
- 24 Q. So when you are describing what is going on in the
- 25 video it's not because you saw it happen. You are going

JONATHAN SHEALY - CROSS BY MR. KING

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1 by what the informant is telling you?

2 A. Yes, sir.

3 Q. Is that right? You are taking his explanation to
4 what happened there and then you're -- it sounded like
5 you were describing it to the jury like you were seeing
6 it yourself.

7 A. I did not see it in person. I was explaining it
8 from watching the video, yes, sir.

9 Q. Okay. Did you see in the video any drugs?

10 A. No, sir.

11 Q. Did you see any money?

12 A. No, sir.

13 Q. Did you see anything exchange hands?

14 A. No, sir.

15 Q. And when the informant comes back, all right, he
16 gives you a piece of cocaine base?

17 A. Yes, sir.

18 Q. And at that point you didn't go and make an arrest
19 of anyone?

20 A. No, sir.

21 Q. And actually, you didn't even draft the arrest
22 warrant until almost a month later; is that right?

23 A. Yes, sir, that's correct.

24 Q. Obviously this happened July 16th. The arrest
25 warrant was issued August 12th?

JONATHAN SHEALY - CROSS BY MR. KING

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1 A. That is correct. Yes, sir.

2 Q. And you've worked with Mr. Ancrum you said before?

3 A. Yes, sir.

4 Q. Did you work with him a lot in 2009?

5 A. Yes, sir.

6 Q. And he said that he's done over a hundred buys,
7 just in 2009?

8 A. I would feel comfortable saying close to a hundred
9 buys. I can't say over but he did a lot. That's when I
10 signed him up, early 2009.

11 Q. Right.

12 A. So it all depends on what month it was.

13 Q. Okay. And he's making around -- I think Mr. Ancrum
14 said about \$60 was average for each one?

15 A. Average \$60. It ranged from 20 to 60 on up. It
16 would all depend.

17 Q. But higher than 60 sometimes?

18 A. Sometimes.

19 Q. So a hundred buys, average of \$60 a buy, \$6,000,
20 right? And that's just in 2009?

21 A. Again, I can't put a number on a hundred buys. I
22 know it was a lot in 2009, but again, that's when we
23 signed him up was in 2009. So we'd have to go back and
24 figure out the date we signed him up. It could have been
25 -- you know, I can't honestly say it was a hundred buys.

JONATHAN SHEALY - CROSS BY MR. KING

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1 I'm not sure.

2 Q. But you don't think that number is too far off
3 though, do you?

4 A. It was a lot of buys.

5 Q. That's all the questions I have.

6 Oh, one more. I'm sorry. One more question. How
7 recently have you worked with Mr. Ancrum? When was the
8 last time you did work with him?

9 A. It's been almost a year, over a year.

10 MR. KING: That's all the questions I have.

11 THE COURT: Thank you.

12 Ms. Linder, do you have any redirect?

13 MS. LINDER: Nothing further for this witness, Your
14 Honor.

15 THE COURT: You may step down. Thank you.

16 Call your next witness.

17 MS. LINDER: Your Honor, at this point the State
18 rests.

19 THE COURT: All right. Reserving all motions and
20 matters, Mr. King, do you have any witnesses?

21 MR. KING: No, Your Honor. At this time I believe
22 the defense would rest.

23 THE COURT: Ladies and gentlemen, that signifies to
24 the Court that there is a matter of law that I must take
25 up outside of your presence. Do not begin your

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1 (PAUSE.)

2 THE COURT: All right. Ms. Linder, we ready?

3 MS. LINDER: The State is ready, Your Honor.

4 THE COURT: Mr. King?

5 MR. KING: The defense is ready.

6 THE COURT: All right.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 2:38 p.m.)

9 THE BAILIFF: All seated, Your Honor.

10 THE COURT: Thank you. Please be seated.

11 Ladies and gentlemen, we have now reached the stage
12 of the trial where you will hear closing arguments on
13 behalf of counsel. The State will present her closing
14 argument first and then Mr. King will present his closing
15 argument on behalf of Mr. Moore.

16 After that I will instruct you on the law
17 applicable to this case and then you will retire to
18 consider your verdict. Please give your strict
19 attention.

20 MS. LINDER: Thank you, Your Honor. Please the
21 Court.

22 As the Judge just told you, you will hear from her
23 about the law, and that's what you need to listen to when
24 it comes to what the law is in this case. I just want to
25 hit on a few items about the law first before we get

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1 started, how the laws are done in this case.

2 Mr. James Lamont Moore is charged with distribution
3 of cocaine base, and as Judge Harrington will describe to
4 you, distribution could mean a variety of things.
5 Distribution is delivering, it's dispensing, it's
6 physically delivering -- excuse me, physically
7 distributing, and also can be aiding and abetting. It
8 can be conspiring to distribute. All of those items are
9 part of what distribution of cocaine base is.

10 And again, I'm telling you to please -- I refer to
11 Judge Harrington for the ins and outs of all of that but
12 I just want to highlight those things for you and please
13 keep note of that.

14 In the beginning I told you a simple statement,
15 which is drugs are illegal. It's the same thing a couple
16 hours later. Drugs are illegal. It's illegal to possess
17 drugs and to distribute drugs. Cocaine base or crack
18 cocaine is a drug. I submit to you, ladies and gentlemen
19 of the jury, that in this case James Lamont Moore did in
20 fact distribute cocaine base.

21 There's been a lot that you've heard from the stand
22 and a lot that you've seen on the TV screen and I ask
23 that you go back and you review all of that. Think about
24 it, review all of it.

25 First you heard from Detective Grill. He explained

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1 to you the basics, the ins and outs of what a controlled
2 buy is, what a CI buy is, what a buy walk is, all of the
3 terminology that's used in law enforcement.

4 And he described to you all the technicalities of
5 it, that there's a lot of planning that goes into it.
6 They meet with the informant, they search that informant.
7 They look at the clothing, they take off the shoes. They
8 search him, and then they give the informant money.

9 They have multiple other police officers out in the
10 area in plain clothes, in undercover vehicles just moving
11 perimeter, patrolling the area to make sure that
12 everything is going as planned, to make sure that
13 everything is fine.

14 With CI buys there's been some talk about the
15 camera. You know, technology is what it is. That cow
16 bell noise that you heard, I refer to it as cow bell
17 noise, is kind of annoying. It's tough to hear through
18 it. Certain things are louder than others.

19 Not everyone has the kind of obnoxiously loud of a
20 voice that I do so it's tough to hear every word that
21 everybody says all the time, but you can listen to the
22 video when you watch it. And I also urge that you listen
23 to the people who testified on that chair up there today.

24 With the camera, it's placed on you. If I had a
25 lapel pin on, which I don't, it would be here. It

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1 doesn't follow where my head goes. It doesn't follow
2 where my hand goes.

3 I could be facing my co-counsel but doing this and
4 talking to you but all you would see would be my
5 co-counsel. It doesn't mean you are not here. It
6 doesn't mean I'm not addressing you, I'm not talking to
7 you. It merely means that there are limitations with
8 technology, even in 2012, or in 2009 when this happened.
9 There are limitations. Law enforcement, they do what
10 they can and they use the resources that are available
11 to them at that time.

12 You heard from Detective Grill a lot of things
13 about the general operation, why a CI is used as opposed
14 to an undercover officer, and he also talked about he was
15 there. He was in the car with Detective Shealy. He was
16 in the car with the CI, with Joseph. He also was there
17 when Detective Shealy did the search, searched
18 everything. So Detective Grill told you all of that
19 from the stand.

20 The next person you heard from was the CI. The CI,
21 confidential informant, Joseph. His friends call him
22 Jep. Sometimes I get away with calling him Jep. But
23 Joseph, as you heard from him on the stand, I submit to
24 you, was being Joseph. Joseph acknowledged when Mr. King
25 asked about child support. He acknowledged that, yeah,

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1 he had been locked up before but he's disabled so he's
2 not supposed to be able to be locked up for that.

3 He also, when asked by Mr. King, said, Yeah, I get
4 paid to do this..

5 I submit people have motives for doing a variety of
6 things and being paid when you are on a limited income is
7 definitely a motivation and I do not think, and I submit
8 to you, you should not punish Joseph for wanting to be
9 able to pay his bills.

10 He was up there and he told you -- I don't even
11 remember what he said but he made some "whew" when the
12 question was asked how many have you done. He's told
13 you. He's been working with law enforcement for over 10
14 years. He named North Charleston, the County and the
15 City. So at least three agencies he has worked with as
16 an informant. He said he's paid. He said that this is
17 -- you know, this is part of what he does. He wants to
18 do this, he wants to cooperate.

19 You heard from him on the stand that he reviewed
20 the video in my office, and a while ago, over a year ago
21 when he did that, when his vision was a little better. I
22 thankfully do not have glaucoma at this point. I do not
23 know what that feels like. I do not know what kind of
24 impairments that gives; however, you heard him say that
25 his vision in 2009 when this happened, he could see.

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1 I submit to if he could not see he could not
2 explain and be telling the officers over the live wire,
3 over the feed what was happening. If he couldn't see it
4 how could he be telling the officers?

5 I submit to you that his vision today is not at
6 issue. His vision at that time is what we can consider,
7 and unfortunately neither myself nor the detective can
8 transport us back in time so we know exactly at that
9 moment what his vision was.

10 You heard on the video the CI discussing a variety
11 of things. You heard on the video and then also with the
12 CI when he testified that there was a fellow in a blue
13 arm case. There was a fellow in a blue arm cast. I
14 think he called them short pants. It was July. I take
15 short pants to be shorts, and he said a tank top.

16 I submit, did you see on the video a guy with an
17 arm cast with a white tank top? The CI also told you
18 that he brought the drugs, he bought the cocaine base
19 from the guy in the tank top and black short pants and
20 the blue arm cast.

21 Mr. King when doing his cross-examination of the CI
22 brought up an affidavit; fancy legal term for a piece of
23 paper. That piece of paper Joseph told you, heck, yeah,
24 he signed it. He was getting threatened. I trust that
25 you will remember the different items that he told you

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1 while on the stand about his motivations at that point.

2 I submit to you he has not worked, as he testified
3 to, with the City for a good year. He's not getting paid
4 to be here. He is here.

5 You can watch the video, I can watch the video, law
6 enforcement can testify, Joseph testified. Who is the
7 guy in the blue arm cast? That's what it comes down to.
8 Who is the guy in the blue arm cast?

9 You heard not one, not two but three law
10 enforcement officers tell you who the guy in the blue arm
11 cast is. The guy in the blue arm case is James Lamont
12 Moore. He was in the blue arm cast. You had officers
13 review the video and say, yes, that's him.

14 You had an officer immediately after the buy go to
15 that area and say that's him. In fact, we share the same
16 birthday. I mean, I know everyone who has a birthday of
17 July 30th because that's my birthday, you know. So I
18 submit to you that officer in particular definitely has a
19 reason to remember who this person is.

20 That same officer, Detective Burke, also told you
21 that less than a month later after this he was part of
22 the group who ended up affecting the arrest on this
23 defendant, arrested in that area, literally across the
24 street at 8 Wolf versus 7 Wolf where this happened.

25 Investigator Shealy -- Detective Shealy, rather,

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1 also talked to you about the ID of the defendant in this
2 case. He also said he reviewed the video. So you have,
3 as I said previously, not one, not two but three law
4 enforcement officers telling you who it was with the
5 blue arm cast.

6 What did the guy with the blue arm cast do? Joseph
7 told you, sold the drugs. Sold me a 20 hard. Twenty
8 means \$20 worth. Hard is kind of street slang for crack.
9 Joseph told you who sold it to him. Joseph described who
10 it was who sold it to him. In realtime he relayed to the
11 officers who sold it to him.

12 I submit to you, go back and watch the video.
13 Think of all the things that Joseph said on the video
14 that I submit to you are true. I'm crossing Meeting
15 Street.

16 We saw him run and almost be hit by a car.

17 I'm passing the store. Then he says, Oh, no, it's
18 the gas station.

19 He calls it a store. Potato, potato, in my
20 opinion.

21 Then he says -- he tells you where he's crossing.
22 And then he explains the guy is going across the street
23 to get it. You heard Detective Shealy tell you why with
24 street level operations and drug transactions that's
25 common. If something is in my pocket I'm going to be

1 stuck with it if the cops pull up. If something is
2 across the street, heck, I'm good. You heard Detective
3 Shealy tell you all about that.

4 You also heard Joseph explain a lot of other
5 things. He said, The guys going across the street -- and
6 I'm paraphrasing here. You can listen to his actual
7 words back on that video. The guy is going across the
8 street. He's going to the one, two, I think he said the
9 third house, like he is explaining where it all is.

10 He is telling you so many, what I submit to you,
11 are true statements time and time, and time again the
12 whole way of the video. And then the defense wants you
13 to believe that although all those may be true statements
14 there is one untruth.

15 I submit to you, go back, think about Joseph. It's
16 up to you. You are the judges. You along with Judge
17 Harrington are the judges. You are the judges of fact.
18 Think about it. Do you believe him? That's up to you.
19 Do you believe him when he said he was threatened? Do
20 you believe him when he said he received disability? Do
21 you believe him when he said his vision is only so-so
22 now? Do you believe him when he said he was scared when
23 people were knocking on his door for testifying before?
24 Do you believe him when he said the guy with the blue arm
25 cast is the one who sold him the drugs?

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1 Ladies and gentlemen of the jury, I ask that you
2 take your time, that you think about this case, that you
3 think about all the people that you heard from on that
4 witness stand and that you think about the video in this
5 case. And I ask that after you think about that, and
6 after you review that, and after you analyze it, and
7 after you all come together and deliberate I ask that you
8 comb back with a verdict of guilty for distribution of
9 cocaine base on James Lamont Moore. Thank you.

10 THE COURT: Mr. King?

11 MR. KING: First I want to talk to you just a
12 minute, you've been read a stipulation. I want to
13 explain that to you real quick, what's that's about.
14 None of us want to waste your time. So to save a little
15 bit of time with some other officers getting up there
16 proving what we call chain of custody, we cut that all
17 out because that's not really an issue here.

18 I don't doubt that Joseph Ancrum put a piece of
19 crack in Detective Shealy's hands, then from there on I
20 don't think the police tampered with anything like that,
21 that that's the same crack that Joseph Ancrum gave
22 Detective Shealy.

23 So that's not what we're talking about. We
24 stipulated to that to save time of having witnesses get
25 up there, and a chemist get up there to testify that it

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1 really is cocaine. So cutting that out because it's
2 Joseph Ancrum that is the problem in this case.

3 I told you before when I first started talking in
4 opening statement about the police being in control of
5 all this, and you've heard them, that they were in
6 control of all aspects of this. They set this whole
7 thing up. They prepared for this.

8 This was not, you know, something that happens out
9 on the street that some surveillance cameras might
10 capture, some may or may not see. They are in control of
11 all this. So they control what evidence that they are
12 going to give and bring to you, and this is what they
13 brought. And it shouldn't be difficult. The video
14 should explain everything. You shouldn't have to rely on
15 the word of someone like Joseph Ancrum.

16 And as I told you and you saw in the video, you're
17 not going to see any money on the video. You're not
18 going to see any drugs or cocaine base on the video. You
19 are not going to see -- you know, I think you might see a
20 hand pass across the camera. You know, that could be a
21 hand, I guess. The camera is right there. There is
22 nothing shown on there.

23 But there's two people on the video. You've got
24 to believe Joseph Ancrum to believe what's going on in
25 that video, and it's not a person that you should

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1 believe. It's not a person of credibility enough to
2 make a determination like this. I submit he wasn't
3 being forthright up there. He wasn't being completely
4 honest up there.

5 You know, they could have used an undercover police
6 officer, an undercover police officer who didn't have any
7 criminal record who doesn't have as much of an interest
8 to get up there and lie. That's not what we are talking
9 about. This is just a man who is making a career out of
10 this. He's making a living out of this.

11 And he's determined. You heard him on the stand.
12 He's determined to get him convicted, and other people
13 that he sent to prison, you know, telling you that, oh,
14 they are guilty, too. That's his livelihood. This is
15 his income.

16 You know, I asked him, you know, how many times
17 he's done it. He didn't want to admit how much money he
18 got from disability. That's like \$700 a month. That's
19 not a whole lot of money. So, you know, he's really
20 supplementing his income with this business. He's been
21 doing this for, like, nine years.

22 And when I added it up, how much he made, you know,
23 Oh, no, not that much. He wants to downplay how much
24 money that he's made because he doesn't want you all to
25 know that, that he might have made \$6,000 or more just in

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1 2009, off doing things like this. Do you think he has
2 any interest in stopping that money from coming? This is
3 a big source of bread and butter for him.

4 He has three names. He's Eric B, he's Jap Brown,
5 and Joseph Ancrum. He's been convicted of receiving
6 stolen good, and you get a crime of dishonesty.

7 Do you believe him about the child support? I'm
8 asking questions up there, asking if he's paying child
9 support. He's like, Oh, no, no. They arrested me and
10 just let him go because he's disabled. Do you believe
11 that? You know, if he has child support that he owes and
12 he doesn't pay it they are going to look him up. He
13 needs this money and even without that, we all need
14 money. We want money. We got to live, you got to pay
15 your rent and buy nice things with money.

16 So no one is going to turn down any money. No
17 wonder he shows up every time they call him. Of course
18 he shows up, because that's easy money. Sixty dollars
19 for that? That's what he gets. And he's done it so
20 much. He's done it for 10 years or more. Not just with
21 the City of Charleston Police Department but with several
22 different agencies. He's a pro.

23 And I think it is important. He signed a sworn
24 affidavit, an affidavit is where you swear to tell the
25 truth, the whole truth and nothing but the truth, just

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1 like when you take the witness stand. And he signed an
2 affidavit that said that he lied on the witness stand
3 about another case just like this, that he lied on the
4 stand about who sold him the drugs and that he did it
5 because he didn't want to stop getting the money from the
6 police. He signed that statement.

7 He wants to act like he didn't know what was in
8 there, he couldn't read it. You know, you think he's
9 being honest about all that? He's done this so much that
10 he knows exactly what he's doing. He knows the whole
11 procedure. So he knows, you know, all he has to do is
12 come back to the police with a piece of crack cocaine and
13 he gets paid, and then point the finger at somebody.
14 Serve up somebody and he gets \$60, and move on to the
15 next one.

16 He should have been able to get something on video.
17 I know -- and maybe they can't control where the video
18 goes but the video is right here. You know, he can't get
19 money on the video? He can't get the piece of drugs on
20 the video? You know, if he's been doing it this long he
21 ought to be able to get something on video to show you
22 jurors so that you can really see what's going on.

23 I understand if he'd never done this before maybe
24 that's one thing, but this guy has done it a lot. A
25 hundred times just in 2009, and this goes back to 2003,

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1 2002, 10 years ago or more. You shouldn't have to take
2 Joseph Ancrum's word for anything, if this is supposed
3 to be a distribution on video. You shouldn't have to.
4 It should be easy.

5 The police, you know, they are experts with this,
6 too. They have done this a lot. So the police know
7 what they are doing. But still, this is all that they
8 can show you? You know, they claim he's out there
9 selling drugs. They don't go and arrest him though.
10 They don't even take out an arrest warrant until almost
11 a month later.

12 You know, if he's out there selling drugs arrest
13 him first. You know, that's public safety there. Saying
14 they don't arrest him for public service, well, if
15 someone is out there selling drugs they should arrest
16 them right then, and then know exactly who it is.

17 And they also have the marked 20-dollar bill in his
18 pocket that they could present to you, the jurors..
19 Here's the \$20 dollars. We found it in his pocket. We
20 arrested him right there. This serial number matches up
21 to the photocopy we took of the money, they could prove.
22 That's not being done today.

23 There were multiple police officers out there.
24 There's Detective Grill, Detective Shealy, and evidently
25 multiple officers on the perimeter looking all around.

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1 Not a single officer testified that they saw anything.
2 They didn't see Mr. Moore put the drugs in this
3 informant's hand. They didn't see anything.

4 I mean, why didn't they have another -- they could
5 have another camera in the background, do surveillance
6 somewhere in the background. They could film this from a
7 distance. There's cameras that can zoom in. There's
8 technology for this.

9 So, you know, there's a way that this could have
10 been done if he's out there selling drugs where it would
11 be easy to prove. It's done right out there in the open.
12 So if he's doing this they ought to be able to prove it
13 easily, but that's not what's going on here.

14 They've got a video that's not any good and an
15 informant trying to fill in the holes who you shouldn't
16 believe, and we're dealing with something very serious
17 here. You know, they are asking you to convict a man of
18 a serious crime and in a system where they are required
19 to prove beyond all reasonable doubt that he did it, and
20 they are in control of it.

21 So, like I said, this should be easy for you but
22 it's not easy because you can't see what's going on in
23 the video. And the man, Joseph Ancrum, who took that
24 stand is not an honest person.

25 So this is what jurors are for. This is why we

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1 pick jurors and we have this some because we don't just
2 convict people because they might have done something
3 suspicious or think they probably did it. This is proof
4 beyond any reasonable doubt. If there's any reasonable
5 doubt that Mr. Moore didn't do this it's your duty to
6 find him not guilty.

7 And hold them to that standard. You know, tell
8 them, you know, if you want to convict someone of a crime
9 like this and you're going to be in charge of it and you
10 are going to make a video, well, make it clear. Get it
11 clear on the video if that's what you want.

12 This case has been rotting and stinking for over
13 three years. It's Thursday. Where I live Thursday is
14 garbage day. So I'm asking you today to throw out the
15 trash. This is a stinking case for over three and a half
16 years and I'm asking you to put it to an end and throw
17 this case out and find him not guilty. Thank you.

18 THE COURT: I remind you that during this trial you
19 and I have had certain duties to perform. As the trial
20 judge it is my responsibility to preside over the trial
21 of this case and I have the additional duty to charge you
22 the law applicable to this case.

23 You are to consider only the competent evidence
24 before you. If there was any testimony that was ordered
25 stricken from the record you must disregard that

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1 testimony. You are to consider only the testimony that
2 has been presented from the witness stand, any exhibits
3 which have been made part of the record in this case, as
4 well as any stipulations of counsel.

5 As the presiding judge I am the sole judge of the
6 law in this case. It is your duty to accept the law and
7 apply the law as I state it to you now. If you have any
8 idea as to what the law is or what the law ought to be
9 and it does not agree with what I'm about to tell you,
10 you must abandon your own idea because you are sworn to
11 accept the law and apply the law exactly as I state it
12 to you now.

13 Ladies and gentlemen, in every case tried in this
14 Court before a jury the jury becomes the sole and
15 exclusive judges of the facts. A trial judge may not
16 make any comment regarding the facts in this case.

17 You are not to infer from anything that I have said
18 when ruling upon the admissibility of evidence, or
19 otherwise during the progress of the trial, or during
20 anything that I say while I'm instructing you on the law
21 that I have any opinion about the facts in this case.
22 The law does not allow me to have an opinion about the
23 facts in this case.

24 The indictment in this case charges the defendant
25 with distribution of cocaine base. I remind you, the

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1 fact that the defendant was arrested, charged and
2 indicted in this case is not evidence and cannot be
3 considered by you as evidence of guilt, nor does it
4 create any presumption or inference of guilt. An
5 indictment is simply the formal document which contains
6 the charge made against the defendant.

7 The defendant has pled not guilty to this
8 indictment. A person charged with committing a criminal
9 offense in South Carolina is never required to prove
10 himself innocent.

11 I charge you it is an important rule of law that
12 the defendant in a criminal trial, no matter what the
13 seriousness of the charge may be, will always be presumed
14 to be innocent of the crime for which the indictment was
15 issued unless guilt has been proven by evidence
16 satisfying you of that guilt beyond a reasonable doubt.

17 This presumption of innocence does not end when you
18 begin your deliberations. It accompanies the defendant
19 throughout the trial until you reach a verdict of guilt
20 based upon evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 This presumption of innocence is not a mere legal
23 theory. It is not just a legal phrase. It is a
24 substantial right to which every defendant is entitled
25 unless you, the jury, are satisfied from the evidence of

1 the defendant's guilt beyond a reasonable doubt.

2 The State has the burden of proving the defendant
3 guilty beyond a reasonable doubt. Some of you may have
4 served as jurors before in civil cases where you were
5 told that it was only necessary to prove that a fact is
6 more likely true than not true, such as by the greater
7 weight or preponderance of the evidence. In criminal
8 cases the State's proof must be more powerful than that.
9 It must be beyond a reasonable doubt.

10 Proof beyond a reasonable doubt is proof that
11 leaves you firmly convinced of the defendant's guilt.
12 There are very few things that we know in this world with
13 absolute certainty, and in criminal cases the law does
14 not require proof that overcomes every possible doubt.

15 If based upon your consideration of the evidence
16 you are firmly convinced that the defendant is guilty of
17 the crime charged you must find the defendant guilty. On
18 the other hand, if you think there is a real possibility
19 that the defendant is not guilty you must give the
20 defendant the benefit of the doubt and find him not
21 guilty.

22 There are two types of evidence generally presented
23 during a trial, direct evidence and circumstantial
24 evidence. Direct evidence is the testimony of a person
25 who claims to have actual knowledge of the facts such as

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1 an eyewitness. It is evidence which immediately
2 establishes the main fact to be proved.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a
5 fact. It is evidence which immediately establishes
6 collateral facts from which the main fact may be
7 inferred. Circumstantial evidence is based on inference
8 and not on personal knowledge or observation.

9 The law makes absolutely no distinction between the
10 weight or value to be given either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than that
13 of direct evidence.

14 You should weigh all of the evidence in this case,
15 and after weighing all of the evidence if you are not
16 convinced of the guilt of the defendant beyond a
17 reasonable doubt you must find the defendant not guilty.

18 Necessarily, you must determine the credibility of
19 the witnesses who have testified in this case.
20 Credibility simply means believability. It becomes your
21 duty as jurors to analyze the facts and determine which
22 evidence convinces you of its truth.

23 In determining the believability of the witnesses
24 who have testified in this case you may believe one
25 witness over several witnesses or several witnesses over

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1 one witness. You may believe a part of the testimony of
2 a witness and reject the remaining part of the testimony
3 of that same witness.

4 You may believe the testimony of a witness in its
5 entirety or reject the testimony of a witness in its
6 entirety. You may consider whether any witness has
7 exhibited to you any interest, bias, prejudice or other
8 motive in this case. And you may also consider the
9 appearance and manner of a witness while on the
10 witness stand.

11 A person who has a past criminal record is
12 competent to testify during a trial. A past record does
13 not affect the ability of that witness to testify. The
14 past record may only be considered by you, if at all, in
15 determining the witness's believability. Remember, you
16 are the sole judges of the facts in this case and of the
17 believability of any and all of the witnesses.

18 I instruct you and emphasize that the fact that the
19 defendant did not testify is not a factor to be
20 considered by you in any way in your deliberation and in
21 your consideration on the question of the guilt of the
22 defendant. It must not be considered by you in any
23 manner whatsoever.

24 A defendant has the constitutional right to remain
25 silent and the ascertain of this right must not be

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1 considered by you in your deliberations. I repeat, under
2 your oath you are to draw no conclusion whatsoever from
3 the fact that the defendant in this case did not testify.

4 Madam foreperson, the fact that the defendant did
5 not testify in this case should not even be considered by
6 you or discussed by anyone in the jury room.

7 The burden of proof, as I have stated to you, is on
8 the State to prove guilt beyond a reasonable doubt. The
9 defendant is not required to prove his innocence.

10 Likewise, under the law of this State a defendant
11 may be tried even if the defendant does not attend the
12 trial, but the fact that the defendant is not present may
13 not be considered against the defendant in any manner
14 whatsoever. The defendant's failure to appear may not be
15 construed as an admission of guilt.

16 In order to establish criminal liability criminal
17 intent is required. For example, the mental state
18 required to be proven by the State for a particular crime
19 might be purpose, intent, knowledge, recklessness or
20 criminal negligence.

21 Criminal intent must be proven by the State beyond
22 a reasonable doubt. Criminal intent is always a matter
23 that must be determined by the jury from the
24 circumstances surrounding the situation.

25 There is no way to prove intent to a mathematical

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1 certainty. Because there is no way to tell with exact
2 certainty what a person had in mind the law says that
3 criminal intent may be inferred from the circumstances
4 shown to have existed. This is how you make a
5 determination of whether or not the element requiring
6 intent was present.

7 It is not necessary to establish intent by direct
8 and positive evidence but intent may be established by
9 inference in the same way as any other fact by taking
10 into consideration the acts of the parties and all the
11 facts and circumstances of the case.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It is up to you to determine what the
14 defendant intended to do based upon the circumstances
15 shown to have existed. Criminal intent can arise from
16 action or a failure to act. It may arise from
17 negligence, recklessness or an indifference to duty or to
18 consequences that is considered by the law to be the
19 equivalent of criminal intent.

20 Mere presence at the scene is not sufficient to
21 prove someone guilty of a crime. A defendant's presence
22 where a crime is being committed or mere association with
23 a person who commits a crime does not make a defendant an
24 accomplice or an aid or an abettor of the person
25 committing the crime. The burden is on the State to

1 prove every element of the crime charged.

2 If you find after reviewing all of the evidence
3 that the State has proved that the defendant was only
4 present at the scene of the crime and they have not
5 proved beyond a reasonable doubt any other participation
6 of the crime then you must find the defendant not guilty.
7 The law is that proof of at the scene of the crime is not
8 sufficient to find someone guilty.

9 An issue in this case is the identification of the
10 defendant as the person who committed the crime charged.
11 The State has the burden of proving identity beyond a
12 reasonable doubt. You must be satisfied beyond a
13 reasonable doubt of the accuracy of the identification of
14 the defendant before you may convict the defendant.

15 Identification testimony is an expression of belief
16 or impression by a witness. You must determine the
17 accuracy of the identification of the defendant. You
18 must consider the believability of the identification
19 witness in the same way as any other witness.

20 You may consider whether the witness had an
21 adequate opportunity to observe the offender at the time
22 of the offense. This will be affected by things like how
23 far or close the witness was, how long or short a time
24 was available, the lighting conditions, and whether the
25 witness had a chance to see or hear the person in the

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1 past.

2 Once again, I instruct you the burden of proof on
3 the State extends to every element of the crime charged
4 and this specifically includes the burden of proving
5 beyond a reasonable doubt the identity of the defendant
6 as the person who committed the crime. If after
7 examining the testimony you have a reasonable doubt as to
8 the accuracy of the identification you must find the
9 defendant not guilty.

10 The defendant is charged with distribution of
11 cocaine base. The State must prove beyond a reasonable
12 doubt that the defendant distributed cocaine base.
13 Distribute means to deliver or to actually constructively
14 or attempt to transfer a drug other than by administering
15 or dispensing.

16 Deliver means to actually, constructively or
17 attempt to transfer a drug. A transfer can involve an
18 exchange for money, a barter or a gift. There does not
19 have to be anything given in exchange for the drugs for a
20 transfer to constitute distribution.

21 Ladies and gentlemen, I'll now go over the verdict
22 form with you. Again, there is no significance in the
23 way that I read the verdict form. It's simply one must
24 go first.

25 In the Court of General Sessions, Ninth Judicial

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1 Circuit, 2009-GS-10-8446, State of South Carolina vs.
2 James Lamont Moore, we, the jury, find the defendant not
3 guilty; or we, the jury, find the defendant guilty of
4 distribution of cocaine base.

5 It must be a unanimous decision of the jury.

6 Madam foreperson, once you have reached a unanimous
7 decision, meaning all 12 of you agree, you will sign and
8 date the verdict form. After that, please alert the
9 bailiff and we will receive you back into the courtroom.

10 Ladies and gentlemen, this will be the last time I
11 say this to you. Do not begin your deliberations, do not
12 discuss this case amongst yourselves. We're gathering
13 the evidence and the verdict form, and once all of those
14 things have been gathered the bailiffs will alert you
15 that you may begin your deliberations.

16 Ms. Giblin, this completes your service to this
17 case but I ask that you remain with us. They will put
18 you in a very small room all by yourself. So please do
19 not discuss this case or begin your deliberations in case
20 I need to plug you in at the last minute.

21 Please rise for the jury.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 3:15 p.m.)

24 THE COURT: Thank you. Be seated.

25 Ms. Linder, any objection, corrections to the

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1 charges read?

2 MS. LINDER: None from the State, Your Honor.

3 THE COURT: Mr. King?

4 MR. KING: None from the defense, Your Honor.

5 THE COURT: All right. Thank you. And no

6 objection to the verdict form, and State's 1, 2, and 3

7 are going back; is that correct?

8 MS. LINDER: Yes. I'm bringing up State's 3 at

9 this time, if I may approach.

10 THE COURT: You may.

11 (WHEREUPON, the jury was instructed to begin

12 deliberations at approximately 3:20 p.m., and court was

13 in recess while awaiting their verdict.)

14 THE COURT: Anything before we bring in the jury?

15 MS. LINDER: Nothing from the State, Your Honor.

16 THE COURT: Mr. King?

17 MR. KING: Not from the defense, Your Honor.

18 THE COURT: All right. Let's bring in the jury.

19 Thank you.

20 (WHEREUPON, the jury enters the courtroom at

21 approximately 3:45 p.m.)

22 THE BAILIFF: All present, Your Honor.

23 THE COURT: Thank you. Please be seated.

24 Madam foreperson, I understand that you have

25 reached a verdict. If you would please hand the verdict

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1 form to the bailiff.

2 Mr. King, on behalf of Mr. Moore if you'll please
3 rise.

4 THE CLERK: The verdict form in the matter of the
5 State of South Carolina vs. James Lamont Moore,
6 defendant, we, the jury, find the defendant guilty of
7 distribution of cocaine base. Signed by the foreperson
8 on October 18th, 2012, and is certificated that this
9 decision is a unanimous decision of the jury.

10 Ladies and gentlemen of the jury, if this was your
11 verdict, please raise your right hand. Thank you.

12 Please let the record reflect that all 12 jurors
13 raised their right hand.

14 THE COURT: Thank you. Anything further required
15 of the jury, Mr. King?

16 MR. KING: I'd request to poll the jury.

17 THE COURT: All right. If you'll please poll the
18 jury.

19 (WHEREUPON, the jury was polled, all answering in
20 the affirmative.)

21 THE CLERK: Your Honor, the jury had been polled
22 and the verdict stands.

23 THE COURT: Mr. King, anything further?

24 MR. KING: No, Your Honor.

25 THE COURT: Is the State prepared for sentencing?

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1 Do you have your sentencing sheet?

2 MR. KING: Mr. Stoney is going to run upstairs and
3 grab one. Thank you, Judge.

4 THE COURT: Mr. King, what I'm going to do is just
5 explain for the benefit of the jury so that they know
6 kind of a little more explanation. As you know that I
7 don't necessarily impose sentencing at this time but I
8 will fill out the sentencing sheet to be sealed at a
9 later time.

10 So at this time, I'm going to hear from Ms. Linder
11 as to possible punishment and your client's previous
12 convictions, should there be any, and then I will allow
13 you to argue on behalf of your client any mitigation.
14 Thank you.

15 MR. KING: Thank you.

16 THE COURT: And, of course, we are reserving all
17 motions and matters outside the presence of the jury.
18 Thank you.

19 MR. KING: Yes, ma'am.

20 THE COURT: Ms. Linder, first of all, I just want
21 to know what the possible punishment is. This is a third
22 offense; is that correct?

23 MS. LINDER: This is a third offense and the
24 possible punishment is 15 to 30 years, not suspendable.

25 THE COURT: And is there a classification as to

1 violent?

2 MS. LINDER: Your Honor, this is classified as
3 nonviolent; however, it is a serious offense so it is a
4 strike offense.

5 THE COURT: All right. And do you have the
6 defendant's prior criminal record? This is at least his
7 third drug offense. Do you have his prior record?

8 MS. LINDER: Yes, Your Honor. His prior record, in
9 2000 he has possession of stolen motor vehicle; in 2001
10 he has two counts of possession of crack; in 2003 he has
11 a resisting arrest, and a possession of a scheduled
12 substance; in 2005 he has a possession of crack; in 2006
13 he has possession of marijuana and possession of crack;
14 in 2008 he has a possession with intent to distribute
15 crack.

16 THE COURT: And what was the sentence that he
17 received on the 2008?

18 MS. LINDER: In 2008 he received a six-month active
19 sentence after he had been in jail awaiting a plea, and
20 he violated probation numerous times previous.

21 THE COURT: And the State's position as to
22 sentencing?

23 MS. LINDER: Your Honor, the State would trust in
24 the Court's discretion as far as the suitable sentence.
25 Mr. Moore, this is not a true third. Were this to be a

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1 true third I believe something in the minimum perhaps
2 would be applicable; however, this is not a third
3 offense. This, in fact, if my numbers are right, I
4 believe this is actually a sixth or seventh offense, and
5 I ask that you sentence accordingly.

6 THE COURT: All right. And just for the jury's
7 benefit, it's third or subsequent, correct?

8 MS. LINDER: Yes, Your Honor.

9 THE COURT: I just want to be clear. And,
10 Ms. Linder, you are dismissing an indictment; is that
11 correct?

12 MS. LINDER: Yes, Your Honor. The State will be
13 nolle prosing a proximity charge, and the State will also
14 be nolle prosing a separate arrest, two charges that
15 arose from that separate arrest, which is another
16 proximity charge, and possession with intent to
17 distribute crack cocaine. So the State will be nolle
18 prosing three charges as a result of this trial.

19 THE COURT: All right. Thank you.

20 Mr. King, I will be happy to hear from you.

21 MR. KING: Thank you, Your Honor. He does have
22 prior convictions. Most of those are possessions. So
23 it's -- I guess he hasn't been convicted three times of
24 distribution. I believe there may just be one that's
25 above a possession offense level.

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1 He's never had a lengthy sentence, Your Honor. I
2 think maybe a year is the lengthiest sentence, six months
3 on the most recent one. So I'd ask if you would consider
4 the minimum 15 years. You know, he's going from having
5 to serve maybe one year, you know, jumping all the way up
6 to 15 to 30.

7 Also, you know, in 2010 it's, you know, just a
8 matter I think not very long before the law changed our
9 legislature seemed fit to make this less serious. If he
10 were arrested for this today then he would be looking at
11 a minimum of 10 years.

12 So considering that, you know, I know he wasn't
13 present, Your Honor. I ask that you not hold that
14 against him. I believe that he was afraid. You know, I
15 don't think -- he had some trust problems with me and I
16 believe, you know, maybe hoped that it would go away but,
17 you know, it doesn't go away.

18 But I don't think that he is a violent person or
19 dangerous person. And Ms. Linder may -- I believe she
20 would agree that he's not, you know, going to be number
21 one out on the streets as far as drugs are concerned
22 either. I don't believe he is a big-time player or
23 anything in the drug business. I think at most he would
24 just be one of the low level street dealers. So we'd ask
25 you to consider sentencing him to the minimum sentence

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1 which is -- I believe is too harsh, 15 years, but I'd ask
2 you to sentence him to the minimum allowed.

3 MS. LINDER: And, Your Honor, I do have copies of
4 his certified convictions of his previous arrests if the
5 Court would like them to put as part of the record.

6 THE COURT: Yes.

7 MS. LINDER: If I may approach?

8 THE COURT: You may.

9 You agree, Mr. King, that this is at least his
10 third conviction?

11 MR. KING: Yes, Your Honor, I do.

12 THE COURT: Mr. Cooper, anything you wish to say on
13 behalf of Mr. Moore?

14 MR. COOPER: No, Your Honor. Thank you.

15 THE COURT: All right. Ladies and gentlemen, this
16 is -- since the defendant has been tried in his absence I
17 do not sentence him at this time. A warrant has been
18 issued for his arrest and when he is picked up -- I will
19 fill out to complete the sentencing sheet and that
20 sentence will be sealed, and once he is picked up then
21 whatever judge is presiding will open the envelope and
22 pronounce the sentence to Mr. Moore.

23 So you have completed your service to this case and
24 I wanted you to come see the completion because sometimes
25 most of my jury, they are ready leave, and so I knew this

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1 wasn't going to take entirely too long to impose the
2 sentence and it was kind of unusual that we have a trial
3 in absence so I thought just go ahead and let you stay
4 seated and see the completion so you would understand a
5 little bit more about the procedure.

6 Ladies and gentlemen, this also completes your
7 service for the week. You have earned your exemption and
8 so I hope to see you back in three years. If you would
9 please wait for me in your jury deliberation room. I'll
10 be there in just a few moments to personally thank you
11 for your service to Charleston County.

12 Please rise for the jury.

13 (WHEREUPON, THE jury was excused at approximately
14 3:53 p.m.)

15 THE COURT: Thank you. Be seated.

16 Mr. King, I will allow you the full 10 days for any
17 posttrial motions since your client is not here. I will
18 impose sentence and seal it pursuant, but I will allow
19 you the full 10 days to argue any posttrial motions.

20 MR. KING: Yes, ma'am.

21 THE COURT: Based upon that is there anything
22 further, Mr. King?

23 MR. KING: Yeah. I guess at this time I just renew
24 any previous motions and my previous motion for a
25 mistrial.

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1 THE COURT: All right. And, again, the Court -- I
2 haven't heard anything that would make me change my
3 ruling on any of my initial rulings but your argument is
4 preserved for the record.

5 Anything further, Ms. Linder?

6 MS. LINDER: Your Honor, no, nothing further from
7 the State.

8 THE COURT: I need the sentencing sheet.

9 MS. LINDER: Your Honor, this sentencing sheet has
10 the improper indictment and warrant number. I can strike
11 it right through and initial or go print a new one.

12 THE COURT: I have plenty of time. I'm going to
13 release the jury. I'll be right here. And so -- is that
14 correct what Mr. King has indicated, that the new statute
15 is 10, minimum of 10?

16 MS. LINDER: Yes. Distribution third now is 10 to
17 30.

18 THE COURT: And is it also a serious offense?

19 MS. LINDER: Yes, still a serious offense and still
20 classified as nonviolent.

21 THE COURT: The only thing that's changed is the
22 minimum mandatory?

23 MS. LINDER: Correct, Your Honor.

24 THE COURT: All right. Thank you.

25 I'm going to release the jury. Any objection,

232

1 Mr. King?

2 MR. KING: No, Your Honor.

3 THE COURT: And, Ms. Linder?

4 MS. LINDER: No objection, Your Honor.

5 THE COURT: And just to -- I know, Mr. King, it was
6 difficult for you to try this case without your client
7 here but on behalf of your client I do believe that you
8 have presented a very zealous defense.

9 And, Ms. Linder and Mr. Stoney, thank you again.
10 This trial ran very smoothly. Thanks to the officers for
11 being here and kind of working to get this done very,
12 very timely and efficient. So I appreciate everybody's
13 efforts to get that done. Thank you.

14 (WHEREUPON, the trial was concluded.)

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C E R T I F I C A T E

1

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 17th and 18th day
9 of October 2012.

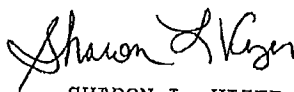
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

May 24, 2013

14



15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

17

18

19

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
Plaintiff,)
vs.)
JAMES L. MOORE, JR.,)
Defendant.)

Case No.: 2009-GS-10-8446

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON NOVEMBER 16, 2012

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

Page 2

A P P E A R A N C E S

For the Plaintiff:

STEPHANIE LINDER
RANDELL STONEY
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, Suite 400
Charleston, South Carolina 29401
(843) 958-1900

For the Defendant:

JASON T. KING
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(843) 958-1850

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of Carolina

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2009-GS-10-8446, State v James L. Moore, Jr.
Sentencing Hearing, November 16, 2012

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E X H I B I T S

DESCRIPTION	PAGE
(No exhibits were offered or marked.)	

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of Carolina

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2009-GS-10-8446, State v James L. Moore, Jr.
Sentencing Hearing, November 16, 2012

1 The above-styled cause came on for hearing on
2 the 14th day of September, 2012, at 1:23 p.m., before
3 Judge Roger Young, Judge at Large, presiding over the
4 Circuit Court for the County of Charleston, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 SENTENCING HEARING

9 THE COURT: Mr. King, are you ready to proceed
10 with sentencing?

11 MR. KING: Yes, your Honor. I'd ask that
12 my -- just to be safe, I'm not sure if they were able to
13 make it -- or the mother. I know she was upset when I
14 talked to her on the phone about the sentencing, so
15 -- but I'm ready to proceed as long as you are ready?

16 THE COURT: Ms. Linder, if you'll state your
17 name for the record, the party you're representing, and
18 the purpose of today's hearing.

19 MS. LINDER: Thank you, your Honor. May it
20 please the Court. My name is Stephanie Linder, and I'm
21 representing the Solicitor's Office. Randell Stoney is
22 here in the courtroom with me. The purpose today is
23 that we are here because there was a trial done the week
24 of October the 15th on James Lamont Moore, Jr. At the
25 conclusion of that trial, he was found guilty of the one

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Official Court Reporter for the State of Carolina

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2009-GS-10-8446, State v James L. Moore, Jr.
Sentencing Hearing, November 16, 2012

1 count that the State went forward on, and at that time,
2 your Honor sentenced under seal, and we're here today
3 for that sentence to be unsealed and sentence to be
4 imposed in this case.

5 THE COURT: All right.

6 MS. LINDER: And I believe at that time, your
7 Honor, I did hand up to the Court certified drug
8 convictions. I'm happy to read his record into today's
9 record if you would like, but the certified convictions
10 were handed up at the time of trial.

11 THE COURT: All right. Thank you.

12 Mr. King, I'll be happy to hear from you.

13 MR. KING: Thank you, your Honor. I guess I'd
14 go ahead and make the motion for a new trial again. I
15 had done that before at the end of the trial, but we --
16 we'd ask you to reconsider that and consider giving him
17 a new trial so he can be present for trial. Only thing
18 that did -- did have an affect on the verdict with him
19 not being present. If you would consider that, your
20 Honor.

21 THE COURT: Your Motion for New Trial is
22 denied. Mr. Moore was given sufficient notice to be
23 here for his trial. Is that correct, Mr. King?

24 MR. KING: Yes, your Honor.

25 THE COURT: And if I recall correctly, he was

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Official Court Reporter for the State of Carolina

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2009-GS-10-8446, State v James L. Moore, Jr.
Sentencing Hearing, November 16, 2012

1 present Monday for jury selection, knew that his case
2 was on the docket; isn't that correct?

3 MR. KING: Yes, your Honor.

4 THE COURT: All right.

5 Mr. Moore, please stand as I impose sentence.

6 Mr. Moore has been picked up on his bench

7 warrant; is that correct?

8 MR. KING: Yes, your Honor. Mr. Moore wanted
9 to speak regarding that same thing, your Honor, before
10 sentencing is imposed.

11 THE COURT: Well, Mr. King, I have already
12 imposed sentence, so, at the appropriate time, if you
13 wish to make the appropriate motion for me to reconsider
14 my sentence, but the procedural -- the proper procedural
15 way to handle this is for me to impose sentence, and
16 then for you to file any appropriate motions.

17 Mr. Moore, that's one of the benefits of you
18 being at trial, when you're here, before I impose
19 sentence, you would have had the opportunity to address
20 the Court. Because you chose not to be present for your
21 trial, I based the -- my sentence upon the testimony
22 that was presented, as well as your prior record.

23 It's the Order of the Court on Indictment
24 2009-GS-10-8446, that you be committed to the State
25 Department of Corrections for a term of 17 years' I'll

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Official Court Reporter for the State of Carolina

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2009-GS-10-8446, State v James L. Moore, Jr.
Sentencing Hearing, November 16, 2012

1 give you credit for the time that you have served.

2 Mr. Moore, you have the right to appeal this
3 sentence. You have ten days -- or you or your attorney
4 must do so within ten days. This is considered a
5 serious offense.

6 Mr. King, did you explain to your client what
7 this means?

8 MR. KING: I believe at some point during the
9 representation I did, your Honor.

10 THE COURT: All right. Anything further from
11 the Court here today, Mr. King?

12 MR. KING: No, your Honor.

13 THE COURT: All right.

14 MS. LINDER: Nothing from the State, your
15 Honor.

16 THE COURT: All right. Good luck to you,
17 Mr. Moore. Thank you.

18 (The hearing of this cause concluded
19 at 9:26 a.m., on November 16, 2012.)
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Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of Carolina

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO.: 2009-GS-10-08466

STATE OF SOUTH CAROLINA)
VS.)
JAMES L. MOORE,)
DEFENDANT.)

MOTION TO RECONSIDER

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Thursday, December 13, 2012, Commencing at 9:59 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

State v. James Moore
Motion to Reconsider
December 13, 2012

PROCEEDINGS

1
2 THE COURT: All right. We're on the record.
3 State of South Carolina v. James Moore. We're here on
4 a motion for reconsideration of sentence.

5 MS. LINDER, you're prepared to proceed?

6 MS. LINDER: Yes, Your Honor.

7 THE COURT: I'm assuming you take the position
8 the sentence was fair and appropriate?

9 MS. LINDER: Yes, Your Honor. The State's
10 position is that the sentence was fair and
11 appropriate. And, quite frankly, seventeen on a range
12 of fifteen to thirty is very much on the low end of
13 that. I'm happy, if Your Honor would like, to read
14 into the record his prior record if you would like.

15 THE COURT: All right. This was a third
16 offense; is that correct?

17 MS. LINDER: This was third offense under the
18 old law so it's a mandatory fifteen, minimum up to
19 thirty.

20 And also, Your Honor, I would just like to state
21 that Detective Shealy and the case agent were in
22 touch, was planning to come. They're actually doing
23 two search warrants as we speak, so he is unable. But
24 he also wanted me to pass along that law enforcement
25 opposes any sort of reduction in this case.

MIA FERRON, CVR-CM-M

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State v. James Moore
Motion to Reconsider
December 13, 2012

1 THE COURT: Thank you. Mr. King?

2 MR. KING: Thank you, Your Honor.

3 I had filed this motion because Mr. Moore wasn't
4 present for the trial so -- and he really didn't get a
5 chance to speak and his family missed the hearing,
6 sentencing, when he was arrested and never did really
7 get a chance to speak. So I really just wanted to
8 give an opportunity for them to speak because you
9 didn't really get a chance to find out much about
10 Mr. Moore at all except what you heard, you know, from
11 the State's case.

12 I had argued before sentencing that -- you know,
13 the mandatory minimum, my understanding, is fifteen.
14 I explained that to Mr. Moore. He got seventeen
15 years. We're asking you to consider the minimum of
16 fifteen.

17 And, you know, one of the arguments I had made
18 was that our legislature changed this law in 2010.
19 They -- you know, our legislature made it less
20 serious. So if he were to -- if he were arrested
21 probably just months later, he would only be looking
22 at a mandatory minimum of ten. So I think our
23 legislature --

24 THE COURT: And a maximum of?

25 MR. KING: And a maximum of thirty.

MIA PERRON, CVR-CM-M

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State v. James Moore
Motion to Reconsider
December 13, 2012

1 THE COURT: All right.

2 MR. KING: But I believe our legislature gave an
3 indication that maybe the penalties were too harsh,
4 too many years, and they reduced that down. So I
5 think that's something that should be considered, that
6 our legislature has determined that a minimum fifteen
7 is too harsh of a penalty.

8 And I know you gave him seventeen, Your Honor.
9 I know he has a prior record. But this was, you know,
10 .09 grams of cocaine base. It was a very small
11 amount. He wasn't, you know, arrested with a large
12 quantity of drugs. I don't believe that the State
13 would allege that he was any sort of major player in a
14 drug gang. So considering that, we would ask you to
15 consider a minimum of fifteen, and hear from him and
16 his family if they would like to speak. I believe
17 some of his family would like to speak.

18 THE COURT: When I imposed sentence, did I not
19 hear from Mr. Moore?

20 MR. KING: No, Your Honor. You said it would be
21 appropriate to file a motion to reconsider. That's
22 why I filed it.

23 THE COURT: All right. Mr. Moore, I'll be happy
24 to hear from you.

25 MR. MOORE: Your Honor, I throw myself at the
MIA PERRON, CVR-CM-M

State v. James Moore
Motion to Reconsider
December 13, 2012

1 mercy of the Court. I apologize to the Court for
2 missing my trial, but, Your Honor, as you can see, I
3 never missed a court date ever before. If I know I
4 was supposed to be at trial, I would have been here.
5 I didn't get no paperwork that -- saying that I'm
6 supposed to be here. I didn't get no paperwork at my
7 house or nothing, so I didn't know about the trial. I
8 would have been here, Your Honor. I never missed a
9 court date or -- never. I just --

10 THE COURT: Anything further, Mr. Moore?

11 MR. MOORE: Ma'am, I'm just asking you for
12 leniency, ma'am.

13 THE COURT: I will hear from one family member,
14 Mr. King.

15 MR. KING: This is Ms. Linda Moore, his mother,
16 Your Honor.

17 THE COURT: All right. Ms. Moore, I need you to
18 state your full name for the record. And please spell
19 your last name.

20 MS. MOORE: My name is Linda Moore. Spell my
21 last name?

22 THE COURT: Yes, ma'am. Just for the record.

23 MS. MOORE: M-O-O-R-E.

24 THE COURT: Thank you.

25 MS. MOORE: I'm the mother of James Moore.

State v. James Moore
Motion to Reconsider
December 13, 2012

1 That's my son. And my son is a good young man. And
2 my son is -- my son is -- after all of this my son has
3 been changing his life around. And before this
4 happened, he was -- applied to a job to go to work, do
5 construction work. He have five -- he have four kids.
6 He has a step-daughter right here. She's outside.
7 And that's his fiancé. He's planning to be married.
8 But he has changed his life, have turned around, and I
9 ask you today for your mercy.

10 THE COURT: Thank you for being here, Ms. Moore.
11 Mr. King, does the fiancé wish to address the Court?

12 MR. KING: Yes, ma'am, if you'll allow it.

13 THE COURT: All right. The same thing. I need
14 you to state your full name for the record and please
15 spell your last name.

16 MS. HOLMES: My name is Lathee [phonetic]
17 Holmes. H-O-L-M-E-S is my last name.

18 THE COURT: Thank you, Ms. Holmes.

19 MS. HOLMES: I want to speak on behalf of James.
20 James is a good guy. He had a previous record but
21 he's now turned his life around before this happened.

22 And, actually, he didn't even have a court paper
23 saying that he had to have been at trial that day.
24 When trial was going on, it was a officer at the
25 house. I was at work. And my stepmother was there

MIA PERRON, CVR-CM-M

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State v. James Moore
Motion to Reconsider
December 13, 2012

1 saying that James had to -- they had a warrant for his
2 arrest due to not showing up for court. But
3 otherwise, James is a good guy. Me and James was
4 getting married on August 17th until this happened.

5 THE COURT: Thank you, Ms. Holmes.

6 MS. HOLMES: Uh-huh.

7 THE COURT: Anything further, Mr. King?

8 MR. KING: No, Your Honor.

9 THE COURT: Mr. King, I recall -- and just so
10 the record is correct, we called this case maybe on a
11 Wednesday, that Mr. Moore had been present on Monday
12 and you indicated that it was likely that this would
13 be called for trial. Is that a correct recollection?

14 MR. KING: Yes, Your Honor.

15 THE COURT: All right. And I believe before we
16 began this trial, we even broke over the evening hour.
17 Is that -- did we break to allow him to show up?

18 MR. KING: We did pretrial motions on Wednesday
19 afternoon and we picked the jury on Thursday morning.

20 THE COURT: And did -- how many attempts did you
21 make for Mr. Moore to let him know that we were
22 selecting his jury?

23 MR. KING: I did try to call him and I reached
24 him on Wednesday afternoon and talked to him on the
25 phone.

State v. James Moore
Motion to Reconsider
December 13, 2012

1 THE COURT: And indicated that we were in the
2 process of a jury trial?

3 MR. KING: Yes, Your Honor.

4 THE COURT: Anything further, Mr. King?

5 MR. KING: No, Your Honor.

6 THE COURT: Mr. King -- and I may have said this
7 before, but for the benefit of Mr. Moore and for his
8 family members, you were a very zealous advocate on
9 behalf of Mr. Moore, even though he chose not to show
10 up for court. And I recall giving him every
11 opportunity, and breaking, so that you could have him
12 present. You did all the appropriate pretrial motions
13 and were a very zealous advocate on behalf -- and gave
14 him a very vigorous defense, even though Mr. Moore
15 chose not to show up.

16 I based my sentence not on the fact that he was
17 or was not here, although I did not hear from him.
18 Seventeen years was a very appropriate sentence,
19 considering his past record. And I did take into
20 account the legislature's reducing of the mandatory
21 minimum. Seventeen years, based upon the facts as
22 presented, the jury's verdict, and as well as
23 Mr. Moore's prior record, is more than appropriate. I
24 do not find that it was unnecessarily severe under
25 either the law that he was charged on or the current

MIA FERRON, CVR-CM-M

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State v. James Moore
Motion to Reconsider
December 13, 2012

1 law. But I did sentence him applicable to the law
2 that he was arrested and in place at the time. I
3 am -- I have reconsidered the -- I'm considering the
4 sentence, but I am not changing. The order of the
5 Court stands, the sentence of seventeen years.

6 Good luck to you, Mr. Moore.

7 MS. LINDER: Thank you, Your Honor.

8 THE COURT: Thank you. Anything further?

9 Mr. Moore, now that I have reconsidered the
10 sentence, you have ten days to file your appeal.
11 Because Mr. King has gone above and beyond by filing a
12 motion to reconsider, so that the appeal -- your
13 appeal rights are now ticking. Do you understand what
14 that means? You have ten days to file your motion for
15 appeal.

16 MR. MOORE: Yes, Your Honor.

17 THE COURT: Thank you.

18 You have gone over that with him, Mr. King?

19 MR. KING: Yes, Your Honor.

20 THE COURT: All right. Thank you. Anything
21 further, Ms. Linder?

22 MS. LINDER: Nothing further.

23 THE COURT: Thank you.

24 [HEARING CONCLUDES AT 10:07 A.M.]
25

K342660

K342661

CRIMINAL CHARGING DOCUMENT NO

BAIL PROCEEDING
FORM IISTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

JAMES MOORE
NAME OF DEFENDANT

Offense Charged DIST COCAINE BASE & DIST PROX SCHOOL

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both)

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required
- ☐ The release of the defendant on recognizance will result in an unreasonable danger to the community

This determination was based upon the following findings of fact

(Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of conviction, and any record of flight to avoid prosecution or failure to appear at other court proceedings)

THEREFORE, IT IS HEREBY ORDERED:

1 That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior

2 That the above named defendant be released from custody provided as follows

CASH IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☐ The defendant will provide good and sufficient surety approved by the court in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$20,000.00.

3 That the defendant shall appear at (check one)

- ☒ the term of COURT OF GENERAL SESSIONS beginning on Friday, October 09, 2009 at 2:00 o'clock P.M. in CHARLESTON COUNTY JUDICIAL CENTER, 100 BROAD STREET, CHARLESTON and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

- ☐ the session of _____ beginning on _____ at _____ o'clock, _____ in _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT

JM

4 That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order

SIGNATURE OF JUDGE Lombard

August 14, 2009
DATE

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued
 I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence
 It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued

ADDRESS _____
 CITY/STATE/ZIP _____ TELEPHONE _____
 SOCIAL SECURITY NUMBER _____ DRIVER'S LICENSE OR ID NUMBER _____
 SIGNATURE OF DEFENDANT JAMES MOORE
 August 14, 2009
 DATE
 No Attorney on Record
 ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

SPECIAL CONDITIONS OF RELEASE

a ☐ Placement in custody The defendant is placed in the custody of _____
 NAME OF PERSON OR ORGANIZATION

ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE _____
 who agrees (1) to supervise the defendant as set forth by the court (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b ☐ Restrictions on Travel Association or Residence The defendant will comply with each of the following conditions

c ☐ Part-time Release The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
 TIME AM/PM TIME AM/PM
 on _____ on condition that he return to the custody of _____
 DATE(S) NAME OF PERSON OR ORGANIZATION
 at _____ as designated
 LOCATION

d ☒ Other Conditions The defendant will comply with the following other conditions of release You are required to appear for your 2nd Court Appearance on Friday, December 04, 2009 at 2:00 A.M. at the Court of General Sessions located at 100 Broad Street, Charleston.

APPEARANCE RECOGNIZANCE WITH SURETY

On the _____ day of _____ personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of _____, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order

The surety being duly sworn says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein over all his debts and liabilities, and exclusive of property exempt from execution

NAME OF SURETY BONDSMAN _____ TELEPHONE _____
 ADDRESS OF SURETY BONDSMAN _____
 CITY/STATE/ZIP _____
 NAME OF INSURANCE COMPANY _____
 ADDRESS OF INSURANCE COMPANY _____
 CITY/STATE/ZIP _____
 SIGNATURE OF SURETY BONDSMAN _____
 SIGNATURE OF JUDGE Lombard
 August 14, 2009
 DATE

K342660, 661, K638776, 777
Criminal Charging Document No.

BAIL PROCEEDING
FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

IN THE ☒ COURT OF GENERAL SESSIONS
☒ MAGISTRATE COURT
☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

James L. Moore Jr.
NAME OF DEFENDANT

Offense Charged: _____

At a bail proceeding conducted by the undersigned Judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$40,000.00

3. That the defendant shall appear at (check one):

- ☐ the term of COURT OF GENERAL SESSIONS beginning on _____ at _____ o'clock, _____ M, at _____ and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____ M, at _____ If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT _____

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE _____

DATE _____

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS _____ SIGNATURE OF DEFENDANT _____
CITY/STATE/ZIP _____ TELEPHONE _____ DATE _____
SOCIAL SECURITY NUMBER _____ DRIVER'S LICENSE OR ID NUMBER _____ ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____
NAME OF PERSON OR ORGANIZATION

ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE _____
who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
on _____ on condition that he return to the custody of _____
DATE(S) _____ NAME OF PERSON OR ORGANIZATION

at _____ as designated.
LOCATION

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release: _____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 30th day of July, 2012, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$10,000.00, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

TBS Bail Bonding 843-207-3033 Timothy B. Burt
NAME OF SURETY BONDSMAN TELEPHONE SIGNATURE OF SURETY BONDSMAN
5131 Dorchester Rd suite 14
ADDRESS OF SURETY BONDSMAN
N Charleston SC 29418
CITY/STATE/ZIP
Rock
NAME OF INSURANCE COMPANY
1910 Orient Rd
ADDRESS OF INSURANCE COMPANY
Tampa FL 33619
CITY/STATE/ZIP

SIGNATURE OF JUDGE

DATE

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 7th 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 7th, 2014



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Chief Appellate Defender

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ATTORNEY FOR APPELLANT

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi L. Harrington, Circuit Court Judge

RECEIVED

JUL 07 2014

SC Court of Appeals

Case No. 2012-213734

The State of South Carolina,..... Respondent,

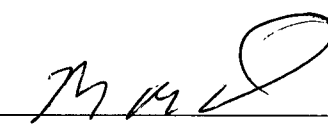
v.

James Lamont Moore, ... Appellant.

PROOF OF SERVICE

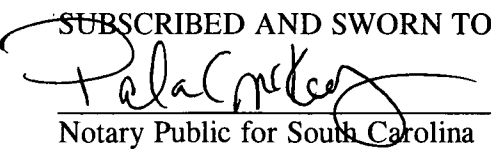
I certify that a true copy of the **Record on Appeal** in the above referenced case
has been served upon Christina J. Catoe, Esquire, at 1000 Assembly Street, Room
519, Columbia, SC 29201.

This 7th day of July, 2014

By: 

Robert M. Dudek

SUBSCRIBED AND SWORN TO before me this 7th day of July, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.