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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

DARNELL COLIN RUSSELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000298

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

TRIAL TRANSCRIPT.....1

APPLICATION FOR POST-CONVICTION RELIEF 135

RETURN 142

AMENDED APPLICATION FOR POST-CONVICTION RELIEF 147

POST-CONVICTION RELIEF HEARING TRANSCRIPT 149

COURT’S EXHIBIT #1 182

ORDER OF DISMISSAL 187

CLERK OF COURT RECORDS 195

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

COURT’S EXHIBIT #2 (Audio Tape)

INDEX

Brad Smith Tooker Robinson	27	38	40	
Wanda Robinson Tooker Robinson	41			
Carmilithia Staton Tooker Robinson	48	69	75	
Travis Riggs Tooker Robinson	76	84		
Travis Riggs Tooker	93			
<< - ->>				
				PAGE
Jury Voir Dire				5
Opening Statements Tooker Robinson				21 25
Closing Statements Tooker Robinson				100 110
Charge				114
Certificate of Reporter				134

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Exhibits

3

STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
S-1	Stipulation	5	37
S-2	CI audio	5	51
S-3	Drugs	5	38
S-4	Aerial view of crime scene	5	33

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

C-1	Stipulation	5	
C-2	CD submitted to jury during deliberations	132	
C-3	Note from jury - Wants to listen to CD	133	
C-4	Defendant's Requests to Charge	133	

JURY VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
144	Reid, Richard B	W	M				x
152	Rogers, Melissa R	W	F				x
114	Morris, Lisa R	W	F		x		
117	Mullins, Jessica C	W	F				x
18	Bozarth, Roger C	W	M			x	
5	Albercht, Michelle L	W	F			x	
195	Willis, Amanda A	H	F				x
108	Moody, Janet	W	F				x
123	Owens, Phillip A	W	M				x
151	Rogers, Kimberly E	W	F				x
104	McDowell, Samantha C	W	F			x	
55	Garrick, Richard N	W	M		x		
89	Holladay, Angela M	W	F				x
139	Pruitt, Tammy J	W	F			x	
74	Hindman, Polly A	W	F				x
90	Lathe, Aileen R	W	F				x
196	Willis, Nicklaus J	W	M				x
33	Compton, Ashley	W	F				x
143	Reece, Steven B	W	M		x		
46	Eckard, Tanya S	W	F				x

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

5

October 23, 2012

1

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 (WHEREUPON, State Exhibit Numbers 1, 2, 3, and 4 were
5 marked for identification.)

6 (WHEREUPON, Court Exhibit Number 1 was marked for
7 identification.)

8 THE COURT: Okay. We're going to select a jury
9 in the case The State versus Darnell Colin Russell. And
10 before I read the indictments I will repeat again that
11 these indictments don't constitute evidence of anything.
12 They're simply the allegations the State has made and the
13 way a citizen is given notice of what he's charged with.
14 And they certainly don't constitute any evidence of guilt.
15 And Mr. Russell is presumed innocent and he doesn't have to
16 prove his innocence or prove he's not guilty. The burden
17 of proof is entirely on the State and Mr. Russell is
18 presumed innocent.

19 Now, these indictments allege as follows: In case
20 number 2010-GS-39-0868, it alleges that Darnell Colin
21 Russell did in Pickens County on or about the 22nd day of
22 July, 2009, distribute a quantity of cocaine base, crack
23 cocaine, a controlled substance while being within a one-
24 half mile proximity of Pickens Elementary School. That's
25 the pertinent part of that allegation.

1 The pertinent part of the next indictment alleges that
2 Darnell Colin Russell did in Pickens County on or about the
3 22nd day of July, 2009, distribute, dispense, deliver or
4 aid, abet or conspire to distribute, dispense or deliver to
5 an undercover operative a quantity of cocaine base, crack
6 cocaine, a controlled substance, such distribution not
7 having been authorized by law. So those are the
8 allegations of the indictment.

9 And at this I need to know if anyone is related by
10 blood or marriage or kin to in any way, Mr. Darnell Colin
11 Russell. Mr. Russell, if you could stand up, sir? Thank
12 you.

13 Does anyone have any personal, social or business
14 relationship with Mr. Russell? If so, please stand?

15 (No response.)

16 THE COURT: All right. Thank you, sir, you may
17 sit down.

18 The following people may testify in this case, Travis
19 Riggs, Brad Smith, James Armstrong, Carmilithia Stathem, S-
20 T-A-T-H-E-M, and Wanda Robinson.

21 MR. TOOKER: Your Honor, that's a typo on my
22 part. It's Staton, S-T-A-T-O-N.

23 THE COURT: Okay. Staton. Is anyone related by
24 blood or marriage or kin to in any way any of these
25 potential witnesses? If so, please stand.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

7

1 (No response.)

2 THE COURT: Does anyone have any personal or
3 social, business relationship with any of these potential
4 witnesses?

5 (No response.)

6 THE COURT: All right. I'm going to ask the
7 lawyers to introduce themselves and the people at their
8 table who've not been previously introduced. Mr. Tooker.

9 MR. TOOKER: Thank you, Your Honor. My name is
10 Sam Tooker and I'm an Assistant Solicitor here in Pickens
11 County. Seated beside me Detective Riggs and Brad Smith,
12 two of the State's witnesses.

13 MR. ROBINSON: Good afternoon, my name is Scott
14 Robinson and I represent Mr. Russell.

15 THE COURT: Thank you. Is anyone related by
16 blood or marriage or kin to in any way Mr. Robinson or Mr.
17 Tooker or anyone they introduced? If so, please stand.

18 (No response.)

19 THE COURT: Does anyone have any personal,
20 social, or business relationship with Mr. Robinson or Mr.
21 Tooker? If so -- all right. Yes, sir.

22 THE JUROR: I went to undergraduate school with
23 Sam at Furman.

24 THE COURT: Would that affect your ability to be
25 fair and impartial in this case?

1 THE JUROR: No, sir.

2 THE COURT: Tell me your name.

3 THE JUROR: Patrick Mainieri.

4 THE COURT: You could decide the case according
5 to the evidence and the law?

6 THE JUROR: Yes, sir.

7 THE COURT: Thank you, sir. Has anyone ever been
8 employed by or had a member of their immediate family be
9 employed by the Solicitor's office or Mr. Robinson's
10 office? If so, please stand.

11 (No response.)

12 THE COURT: Is there anyone who has been a law
13 enforcement officer or worked for a prosecutor's office or
14 had a member of their immediate family be so employed? And
15 by immediate family, I mean spouse, child or parent. If
16 so, please stand?

17 THE JUROR: My father was a Pickens County
18 Sheriff's Deputy.

19 THE COURT: Okay. Thank you.

20 Is anyone aware of any reason why they could not give
21 both the State and Mr. Russell a fair and impartial trial
22 in this matter? Or is anyone aware of any bias or
23 prejudice they may have about any issue involving the case
24 or anyone involving the case. If so, please stand?

25 (No response.)

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

9

1 THE COURT: All right. Is there any further voir
2 dire requested from the State?

3 MR. TOOKER: Nothing from the State, Your Honor.

4 THE COURT: From the Defense?

5 MR. ROBINSON: No, sir, Your Honor.

6 THE COURT: Okay. We'll select a jury.

7 THE CLERK: When I call your name, please stand.

8 Juror number 144, Richard B. Reid. What says the
9 State?

10 MR. TOOKER: Please present this Mr. Reid.

11 THE CLERK: The Defense?

12 MR. ROBINSON: Please seat this juror.

13 THE CLERK: Please have a seat in the jury box.

14 Juror number 152, Melissa Rogers. What says the
15 State?

16 MR. TOOKER: Please present Ms. Rogers.

17 MR. ROBINSON: Please seat this juror.

18 THE CLERK: Please have a seat in the jury box.

19 Juror number 114, Lisa Morris. What says the State?

20 MR. TOOKER: Please excuse Ms. Morris.

21 THE CLERK: Juror number 117, Jessica Mullins.

22 What says the State?

23 MR. TOOKER: Please present Ms. Mullins.

24 THE CLERK: The Defense?

25 MR. ROBINSON: Please seat this juror.

1 THE CLERK: Please have a seat in the jury box.

2 Juror number 18, Roger Bozarth. What says the State?

3 MR. TOOKER: Please present Mr. Bozarth.

4 THE CLERK: The Defense?

5 MR. ROBINSON: Please excuse this juror.

6 THE CLERK: Please have a seat.

7 Juror number 5, Michelle Albercht. What says the

8 State?

9 MR. TOOKER: Please present Ms. Albercht.

10 THE CLERK: The Defense?

11 MR. ROBINSON: Please excuse this juror.

12 THE CLERK: Number 195, Amanda Willis. What says

13 the State?

14 MR. TOOKER: Please present Ms. Willis.

15 MR. ROBINSON: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box.

17 108, Janet Moody. What says the State?

18 MR. TOOKER: Please present Ms. Moody.

19 THE CLERK: The Defense?

20 MR. ROBINSON: Please seat this juror.

21 THE CLERK: Please come have a seat in the jury

22 box.

23 Number 123, Phillip Owens. What says the State?

24 MR. TOOKER: Please present Mr. Owens.

25 THE CLERK: The Defense?

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

11

1 MR. ROBINSON: Please seat this juror.

2 THE CLERK: Please come have a seat in the jury

3 box.

4 Number 151, Kimberly Rogers. What says the State?

5 MR. TOOKER: Please present Ms. Rogers.

6 MR. ROBINSON: Please seat this juror.

7 THE CLERK: Please have a seat in the jury box.

8 Number 104, Samantha McDowell. What says the State?

9 MR. TOOKER: Please present Ms. McDowell.

10 MR. ROBINSON: Please excuse this juror.

11 THE CLERK: Number 55, Richard Garrick. What

12 says the State?

13 MR. TOOKER: Please excuse Mr. Garrick.

14 THE CLERK: Number 89, Angela Holladay. What

15 says the State?

16 MR. TOOKER: Please present Ms. Holladay.

17 THE CLERK: The Defense?

18 MR. ROBINSON: Please seat this juror.

19 THE CLERK: Please come have a seat in the jury

20 box.

21 Number 139, Tammy Pruitt. What says the State?

22 MR. TOOKER: Please present Ms. Pruitt.

23 THE CLERK: The Defense?

24 MR. ROBINSON: Please excuse this juror.

25 THE CLERK: Number 74, Polly Hindman. What says

1 the State?

2 MR. TOOKER: Please present Ms. Hindman.

3 THE CLERK: The Defense?

4 MR. ROBINSON: Please seat this juror.

5 THE CLERK: Number 90, Aileen Lathe. What says

6 the State?

7 MR. TOOKER: Please present Ms. Lathe.

8 MR. ROBINSON: Please seat this juror.

9 THE CLERK: Please come have a seat in the jury
10 box.

11 Juror number 196, Nicklaus Willis. What says the

12 State?

13 MR. TOOKER: Please present Mr. Willis.

14 THE CLERK: The Defense?

15 MR. ROBINSON: Please seat this juror.

16 THE CLERK: Please have a seat in the jury box.

17 Number 33, Ashley Compton. What says the State?

18 MR. TOOKER: Please present Ms. Compton.

19 MR. ROBINSON: Please seat this juror.

20 THE CLERK: Please have a seat in the jury box.

21 This is for the alternate. Number 143, Steven Reece.

22 What says the State?

23 MR. TOOKER: Please excuse Mr. Reece.

24 THE CLERK: Number 46, Tanya Eckard. What says

25 the State?

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

13

1 MR. TOOKER: Please present Ms. Eckard.

2 THE CLERK: The Defense?

3 MR. ROBINSON: Please seat the juror.

4 THE CLERK: Please come have a seat in the jury
5 box.

6 THE COURT: Okay. Any matters or motions related
7 to the selection or the composition of the jury?

8 MR. TOOKER: Nothing from the State, Your Honor.

9 MR. ROBINSON: Nothing from the Defense, Your
10 Honor.

11 THE COURT: All right. I find they comply with
12 all statutory and Constitutional requirements. And ladies
13 and gentlemen, you've been selected to be the jury in the
14 case of The State versus Darnell Colin Russell. And we're
15 going to begin the case in just a few minutes. I would
16 just ask that you go back to the jury room with the bailiff
17 and we'll resume in just a moment. Thank you. Don't talk
18 about the case.

19 (WHEREUPON, the jury exited the open court at
20 approximately 2:46 p.m.)

21 THE COURT: Okay. And those of you who weren't
22 chosen, just call back tonight after six. And thank you
23 for your patience and understanding.

24 (WHEREUPON, the jury panel exited the open court at
25 approximately 2:47 p.m.)

1 THE COURT: Okay. Any matters before we begin
2 the trial?

3 MR. TOOKER: Nothing from the State, Your Honor.

4 MR. ROBINSON: May it please the Court, Your
5 Honor. My client has asked to go to the bathroom before we
6 start.

7 THE COURT: Okay. He can go. Go ahead. We'll
8 wait on him.

9 (WHEREUPON,, the Court stood at ease for a brief
10 recess.)

11 MR. ROBINSON: Defense is ready, Your Honor.

12 THE COURT: Okay. You can bring them on in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 2:51 p.m.)

15 THE COURT: All right. Ladies and gentlemen, good
16 afternoon. We're going to start the trial now, the State
17 versus Darnell Colin Russell. And before we get started, I
18 just want to give you some preliminary remarks. First of
19 all, I want to thank you again for being here and making the
20 right to a jury trial a reality for these parties this week.
21 The right to a jury trial, along with the right to vote were
22 considered by John Adams to be the heart and lungs of a
23 democracy. I know you're here in part because you recognize
24 and understand that and how vital it is to our system of
25 justice. You probably understand that you were given the

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

15

1 letter to come up here and join us this week because you're
2 either registered to vote or you have a driver's license or
3 you have an identification card issued by the Department of
4 Transportation. You may be wondering now why you were
5 selected to be on this particular jury. And the reason is
6 is because both side, both the State and Mr. Russell,
7 believe you could be fair and impartial and you can decide
8 this case according to the evidence and the law without any
9 kind of preconceived ideas or notions. So that's why you
10 were chosen to sit on this particular case.

11 The lawyers have already introduced themselves to you
12 and I've introduced myself to you. Again, I'm Gary Hill,
13 one of the Circuit Judges here in Greenville/Pickens County.
14 And I am going to tell you a little bit about the other
15 people in the courtroom and what their jobs are and their
16 roles are, and then I'm going to tell you what your job is
17 and your role is in this process. The first person I'm
18 going to introduce is Ms. Danette Hanks. She's the court
19 report. Circuit Court is a court of record and she takes
20 down every word that is said. And to her left is Tricia
21 Garrett, who's one of the assistant clerks of court to Mr.
22 Welborn here. And she assists with jury selection as you
23 saw and helping things run efficiently and smoothly. Up on
24 the bench with me is Parker Baxley, who is my law clerk.
25 And she grew up in Seneca and just graduated from USC School

1 of Law. She helps me with research and other issues that
2 arise during trial. The bailiffs in this case are here for
3 your assistance. This is Mr. Evans. Back here at the main
4 door is Mr. Teal and Mr. Schumacher is right over here in
5 back. And that's their job. So everybody I introduced to
6 you and certainly, I've done this and the lawyer's have done
7 it, we've all taken an oath to do our job. You're going to
8 take an oath to do your job as a juror. And listen to the
9 oath very closely because it tells you succinctly what your
10 responsibilities are and then I'll expand on that a bit
11 after you take the oath. So Ms. Garrett, yes, ma'am.

12 THE CLERK: Please stand and raise your right.
13 And after the oath is administered, please say, I will.

14 You shall well and truly try the issue joined in this
15 case of the State versus Darnell Russell, and a true verdict
16 render, according to law and evidence, so help you God?

17 THE JURORS: I will.

18 (WHEREUPON, the jury was duly sworn.)

19 THE COURT: Thank you. Now, before I tell you
20 what your job is, I want to tell you what my job is because
21 we have similarities in one respect and that is that we're
22 both judges in this case. I'm the judge of the law and you
23 are the judge of the facts and that's the way our
24 Constitution is set up and how these cases are to be tried
25 and determined.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

17

1 So as the judge of the law, what is my job? I have two
2 main responsibilities. First is to rule on the
3 admissibility of evidence. I don't know much about this
4 case, but I anticipate there may be objections to evidence.
5 And if there is an objection to the evidence then I decide
6 under the law whether the evidence is something you can
7 considered. Usually, I can do it right on the spot.
8 Sometimes we have to take a break so we can discuss it more
9 efficiently, but if I sustain the objection, that simply
10 means that the evidence is improper and you can't consider
11 it. If I overrule the objection, that means the evidence is
12 something you can consider. So that's my first job as the
13 judge the law. The second job I have as the judge of the
14 law is that I will tell you what the law is that applies to
15 the facts of this case. And I'll do at the end of the
16 trial. So those are my two main responsibilities.

17 You are a judge, as well. And you are a judge of the
18 facts. I can't have any comment on the facts or opinion
19 about the facts that I can share with you. Because under
20 our constitution and system of justice, the jury is the sole
21 and exclusive judge of what the facts are. Now, how do you
22 determine what the facts are? You do that by considering
23 and weighing the evidence you've heard during this trial.

24 Evidence consists of two sources. The one you're
25 probably most familiar with is sworn witness testimony. And

1 I anticipate we will have witnesses who come in who are
2 sworn to tell the truth and they will tell you things they
3 know about this case and information they have that is
4 relevant to it. So that's the first source of evidence,
5 witness testimony. The second source of evidence is by way
6 of an exhibit. And we may have exhibits in this case. An
7 exhibit is simply a map or a photograph, some physical,
8 tangible object. And you'll know it's an exhibit. You'll
9 know it's evidence you can use to consider in determining
10 what the facts are because it will be back in the jury room
11 with you at the end of the trial and have a sticker on it
12 that says exhibit number so and so. So those are the only
13 two things you can use to determine what the facts are,
14 sworn witness testimony and exhibits. Nothing else is
15 evidence. What the lawyers say is not evidence because
16 they're not witnesses. They're trying to help you
17 understand the evidence. So it's important that you pay
18 keen attention to what they say, but what they say is not in
19 itself evidence. So bear that in mind as we go through the
20 trial.

21 Now, as the judge of the facts, you will have to, by
22 necessity, weigh the credibility of the evidence. And that
23 simply means you'll have to determine for each witness who
24 testifies and each exhibit that's introduced whether it is
25 believable, whether their testimony is believable or the

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Jury Voir Dire

19

1 exhibit is credible. In the case of a witness who
2 testifies, I can give you some guidelines to use as to
3 whether you should believe or not believe their testimony.
4 You can use these guidelines however you wish, but they may
5 or may not apply. But you may consider the witness's
6 demeanor on the stand, whether their testimony stacks up
7 with or conflicts with other evidence in the case or is
8 inconsistent with it. You may consider whether the witness
9 has some bias or prejudice about someone or some issue in
10 the case. And you may consider whether they have something
11 to gain by their testimony or something to lose by their
12 testimony. So you can also consider and take into account
13 whatever you use in your day-to-day life to determine
14 whether someone is telling you the truth. Your common sense
15 did not suddenly evaporate when you walked into the Pickens
16 County Courthouse. So I know you will not discharge your
17 job of determining what the facts are and determining the
18 credibility of the evidence lightly. You will do it with
19 sound reason and common sense.

20 Now, how many of you have sat on a criminal case before
21 as a juror? Would you raise your hand? Okay. So there are
22 four people who have. And some of you may know from your
23 own experience if you haven't otherwise been involved in a
24 criminal case how it unfolds and what the structure of a
25 criminal trial is. But let me go over that with you and

1 again remind you that the mere fact that Mr. Russell has
2 been indicted does not constitute evidence. The indictment
3 is not an exhibit, it's not a witness, so it's not even
4 something you could use to even assume or presume that
5 someone is even suspicious of committing a crime. The
6 indictment is simply the ticket and the way the case starts
7 and the way the prosecution is allowed to enter the
8 courtroom and begin its case against a citizen. A person
9 charged is always presumed innocent. And that presumption
10 of innocence stays with them throughout the trial. The
11 burden of proof is entirely on the State and the only way
12 Mr. Russell may be convicted is if all twelve of you agree
13 the State has proven each and every element of the crime
14 beyond a reasonable doubt.

15 Now, at this stage, in just a minute we're going to
16 have the opening statements of the prosecution, followed by
17 the opening statement of the defense, who may or may not
18 wish to give an opening statement. Remember, they have no
19 burden of proof to produce any evidence or explanation
20 whatsoever. After you've heard that, we'll have the
21 prosecution's case in chief, which the defense can confront.
22 Then the defense has the opportunity to present evidence if
23 they want to, which the State can confront. Then we'll have
24 the closing arguments of the lawyers and then I'll have the
25 instruction on the law to give you to apply to the facts of

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Opening Statement by Mr. Tooker

21

1 the case, then the case will be in your hands for a
2 decision, for a verdict. That's how the case is going to
3 unfold. I don't know how long the case is going to last.
4 It may last into tomorrow, but regardless of how long or
5 short the case is, remember this is an important day for
6 both the State and Mr. Russell. And they're entitled to
7 your fair and impartial consideration. And these attorneys
8 will do a job to zealously represent their clients, because
9 they are advocates. But you and I, ladies and gentlemen,
10 are not advocates. Our job is to be fair and impartial.
11 Your job is to determine the facts of the case and determine
12 whether the State has met its burden of proof. So it's
13 important that you not discuss the case with anyone and keep
14 an open mind until we get to all -- to the stage where you
15 can start deliberating collectively about the case, because
16 only then will you have the tools you need to do your job.

17 So with that, we'll have the opening statement of the
18 prosecution. Thank you for your attention to me.

19 Yes, sir, Mr. Tooker.

20 MR. TOOKER: Thank you, Your Honor, may it please
21 the Court. Mr Robinson.

22 **OPENING STATEMENT**

23 **BY MR. TOOKER:**

24 Ladies and gentlemen of the jury, I introduced myself a
25 little bit earlier, but again my name is Sam Tooker and I'm

1 an Assistant Solicitor here in Pickens County. Seated with
2 me at the council table is Travis Riggs and Brad Smith,
3 folks who work for the Pickens Police Department. And you
4 guys are here, and I think the Judge read the indictments
5 that I'll summarize.

6 On the 22nd of July of 2009 the Defendant is accused of
7 selling crack cocaine in Pickens City, in Pickens County,
8 within a half-mile of a school. And that's two separate
9 charges, that's selling it and then selling it within a half
10 a mile of a school. And those are the charges that the
11 State has made, that we intend to show you today.

12 Now, there's something real important about criminal
13 court, and the Judge touched on this when he mentioned John
14 Adams. I'll mention Winston Churchill. Winston Churchill
15 once said that the greatest service a citizen can perform
16 for their country, absent military service in a time of war,
17 is jury duty. And I know folks moan and groan. You're
18 sitting in here and it's, you know, three o'clock now on a
19 Tuesday. You didn't anticipate getting called back and
20 you're here. But I want to say, and I'm sure I speak for
21 the Defense as well, that it means a great deal to us and to
22 the system and to this courthouse. You guys are the
23 individual cogs in the great clockwork mechanism of justice.
24 And without y'all it breaks down. We can't have trials. We
25 can't have civil cases. We cannot dispute or resolve

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Opening Statement by Mr. Tooker

23

1 problems. And so y'all are very important.

2 Now, what you're going to hear about today is what we
3 call a CI case. A CI is a confidential informant. And CIs
4 are used to purchase drugs in cases where law enforcement
5 couldn't otherwise go in there and purchase drugs. So
6 you'll hear the testimony of the State's CI, confidential
7 informant, and that person, she will take the stand. She'll
8 explain to y'all how it is that she knows the Defendant,
9 Dodie Russell. How long she's known him, her familiarity
10 with him. And then about how on the 22nd of July 2009 when
11 she got searched by the Pickens Police Department, wired up
12 with a hidden transmitter, and then sent to purchase drugs
13 from Mr. Russell. And that's what she's going to testify
14 to. She will also, through her testimony, introduce a CD, a
15 compact disk with that audio recording so y'all can hear
16 what's on the tape. You'll hear the sounds of a drug
17 purchase. It's something kind of novel, I mean, I figure
18 most of y'all -- well, I'll say most all of y'all aren't
19 going in and purchasing, you know, crack cocaine in a crack
20 den. And so it's something that I never heard until I
21 started working this job. And another interesting or
22 another important thing and another reason I think this case
23 won't take too long, is the Defense has graciously
24 stipulated the fact that the drugs are drugs. The drugs are
25 drugs in this case. So really the only thing y'all have to

1 determine is whether or not this sale occurred within a half
2 a mile of a school and whether or not the Defendant sold the
3 drugs to a confidential information. And that'll be it.

4 I anticipate the State calling four witnesses. And at
5 the end of that time, the Defense will have their
6 opportunity to put up a case, like the Judge told you. And
7 then y'all will hear our final arguments and then you'll
8 have to come up with a decision. And that decision should
9 be the truth, right? That is ultimately what verdict means,
10 is to say the truth. And it's our hope that you will be
11 able to truthfully say, after you hear the facts and see the
12 evidence, that the Defendant is guilty of selling crack
13 within a half mile of a school.

14 I'm going to leave you with, again, we have the burden
15 of proof in this case, every case. Every case ever tried in
16 criminal court in our nation's history, the State has borne
17 the burden of proof. That burden is beyond a reasonable
18 doubt and that goes all the way back to 1783 and our
19 Constitutional Convention. So that's always been the
20 burden. But I want you to remember, too, that every time
21 someone has been convicted of a crime in this country, the
22 burden has been on the State. It's been beyond a reasonable
23 doubt. It's not insurmountable. In fact, it is often
24 surmounted and I want you to remember that at the close of
25 this case. Thank you.

1 THE COURT: Thank you, Mr. Tooker. Mr. Robinson.

2 MR. ROBINSON: May it please the Court. Mr.

3 Tooker.

4 **OPENING STATEMENT**

5 **BY MR. ROBINSON:**

6 Good afternoon. My name is Scott Robinson. I practice
7 in Pickens and Greenville Counties. And it is my pleasure
8 today to represent Darnell Russell, who is sitting there.

9 This case is a simple case. It is a simple case. It's
10 a simple case of -- based really on one person that is a
11 informant, a CI, if you will. The Judge talked to you a
12 moment ago about the concept of beyond a reasonable doubt.
13 And what the State has to establish in this case and the
14 mechanism, when you view the evidence in this case, through
15 testimony and also through physical evidence if it exists,
16 is whether the State has proven to you beyond a reasonable
17 doubt whether they have established each and every element
18 of their case.

19 But there are two elements you need to consider in
20 viewing all the evidence, and the Judge touched this in his
21 opening remarks. And that is reliability, as far as whether
22 or not that victim -- or this person, the CI, can be trusted
23 or not. Is that person reliable? You'll have an
24 opportunity to meet the CI in a second. But this case lives
25 and dies on the testimony of the CI in this case.

1 Mr. Russell is innocent of these charges. The State
2 has to prove to you beyond a reasonable doubt that he isn't.
3 And they can't do so. They rely on a confidential
4 informant. Reliability, truth, common sense. When you come
5 in here, you don't lose your common sense at the door.
6 That's the beauty of the jury system that we have. All of
7 you collectively have your experiences with family, friends
8 and so forth and you have common sense. And you can see
9 when something's good, bad, the truth or a lie. Who has
10 something to gain, who has something not to gain. I ask you
11 to look at that. This case is all about reliability, truth,
12 believability. And I ask you to look at everything in this
13 case using your collective common sense with this notion
14 that the State must establish beyond a reasonable doubt
15 every element of the offense. And he is, as the Judge
16 stated to you, Mr. Russell is presumed innocent in this
17 case.

18 Many of you may have served on civil juries,
19 administrative hearing juries, where the standard is
20 preponderance of evidence. And some of you, I believe four
21 of you, may have raised your hand and said you'd served on
22 criminal juries before. And there are different standards.
23 Preponderance of evidence is maybe a little bit more.
24 Beyond a reasonable doubt is a lot more, a lot more to it.
25 But you were chosen for a reason, as the Judge said, because

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

27

1 y'all have your own experiences, all twelve, thirteen of you
2 have your own experiences. And if you use your common sense
3 and you apply the law, which I'm sure you will, and you look
4 at the witness in this case, and their reliability, the
5 verdict is going to speak the truth, I am sure. And that is
6 that Darnell Russell is innocent. Thank you.

7 THE COURT: Thank you, Mr Robinson. Mr. Tooker,
8 you may call your first witness.

9 MR. TOOKER: Yes, sir, Your Honor. The State
10 calls Brad Smith.

11 THE CLERK: Place your left hand on the bible and
12 raise your right hand, please.

13 Do you solemnly swear or affirm that the testimony
14 you're about to give is the truth, the whole truth and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Have a seat and state your name for
18 the record, please.

19 THE WITNESS: My name is Brad Smith.

20 BRAD SMITH,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. TOOKER:

24 Q. All right. Mr. Smith, where do you work, sir?

25 A. Currently, I'm employed at Acumen IT. I'm an IT

1 engineer in Greenville.

2 Q. How long have you been doing that?

3 A. I've been doing this for three months now.

4 Q. Three months.

5 A. Yes, sir.

6 Q. Where did you work before that?

7 A. Pickens Police Department.

8 Q. And how long did you work with the Pickens Police

9 Department?

10 A. I was there with the police department for six years.

11 I started in January of '06.

12 Q. Okay. And what was your role at the Pickens Police

13 Department?

14 A. For the first five years, I was a school resource

15 officer at Pickens Middle School. Also, myself, along with

16 Detective Riggs, we worked in the narcotics operations.

17 Q. Okay. And were you working in narcotics operations in

18 July 2009?

19 A. Yes, sir, I was.

20 Q. Okay. And on the 22nd of July 2009, did y'all do a

21 controlled buy?

22 A. Yes, sir, we sure did.

23 Q. Okay. Who was the CI on that case?

24 A. The CI was Carmilithia Staton.

25 Q. Okay. And would you just go over, I guess, for the

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

29

1 jury how it is -- what your protocol is in conducting a CI
2 buy?

3 A. Sure. Okay. Usually, what we do, we go through a --
4 they have to fill out certain information. We have to do
5 some -- make sure they are who they say they are. We get
6 their information. And then, they of course, at that point,
7 we set them up to become a confidential informant. What we
8 do at that point is we take them -- when they're ready to
9 make the purchase, the first thing we do is we always -- we
10 search the confidential informant on their person and their
11 vehicle, depending on whether we use their vehicle or not.

12 At that point, after we have completed the search, it's
13 documented in paperwork. Next, we take a -- we have a
14 wireless transmitter along -- we have actually two different
15 recordings. One that I can listen to as a surveillance tech
16 and also one that stays recorded with her on her person.

17 And they are taped on her, they are concealed. At that
18 point, what we do is we instruct the -- on video, we
19 instruct the CI, number one, who we're going to attempt to
20 make a purchase from. We also state also what we're wanting
21 to buy, the particular type of narcotic, whether it be crack
22 cocaine, cocaine, whatever, depending. And we also give the
23 CI money that has been documented before we give it to her.

24 We have copies of all the serials for that. So that's kind
25 of the setup before we go into the buy.

1 Q. All right. Now, you said video, do you mean audio?

2 A. I apologize. Audio, not video. I'm sorry.

3 Q. That's okay. And why is it that you are listening to
4 the transmission when the CI goes to make the purchase?

5 A. There's a couple of reasons. Number one is for safety
6 for the CI, to make sure that he or she will not be harmed
7 and we could be close. Another reason is more for
8 justification to make sure that, number one, when she's
9 talking with someone, we can identify who she's talking
10 with. Number two, also we know where she's at at all times
11 by keeping visual contact. There are certain times -- we
12 also like to -- just to make sure in general that we're
13 going to be safe and she's going to be safe during this
14 process.

15 Q. Okay. And you're listening as she's talking?

16 A. That's correct.

17 Q. And then it's also recording?

18 A. That is correct, yes, sir.

19 Q. Now, you said you search their person. What's the
20 reason for searching their person and their vehicle if the
21 vehicle is involved, before one of these buys?

22 A. Right. One reason we -- the main reason we search the
23 person, number one, is to make sure that they don't have any
24 kind of narcotics on them or any weapons or anything that's
25 going to jeopardize themselves or to hurt themselves or hurt

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

31

1 someone else. We want to make sure that there are no, like
2 I said, no illegal substances at all on their person, also
3 in their vehicle. So in case we do have to use their
4 vehicle, we want to make sure that it's clean of any kind of
5 narcotic or weapon, or anything that could hurt herself or
6 someone else.

7 Q. Okay. So if you have -- if you don't search the person
8 and they go and they say they bought drugs, they could have
9 just had the drugs on them the whole time?

10 A. Absolutely. They could have staged it on themselves
11 and basically lied about it. So that's why we definitely
12 make sure that they are clean of any kind of narcotics or
13 drugs.

14 Q. So they don't have drugs on them when they leave your
15 custody?

16 A. That is correct. They do not.

17 Q. And then they come back to you with drugs?

18 A. They do come back to with us. That is correct.

19 Q. Okay. All right. Now, in this case did you perform
20 the initial search of the CI?

21 A. Yes, sir, I did.

22 Q. Okay. And did you find any drugs on her person?

23 A. No, sir, I did not at all.

24 Q. Okay. And then what was your role in this particular
25 buy, what did you do?

1 A. In this particular buy, I was set up as surveillance.
2 I was -- basically, I would monitor her through audio and,
3 also, through visual. I would see, I would watch her at
4 certain -- a good bit of the aspect during the buy, just for
5 her safety. Also was responsible for logging the
6 conversation that she had between others, where she's at,
7 where we're at, what -- basically all the details of the
8 actual buy itself as to how much money I gave her, what time
9 this occurred, what time did the buy actually occur? What
10 time -- so we kept a pretty detailed log also. That was my
11 job as the surveillance tech.

12 Q. Okay. And I'm going to show you what's been marked as
13 State's 4.

14 A. Sure.

15 Q. What is this an image of?

16 A. This is an overview look from where I was sitting
17 compared to where our CI made the buy on that day.

18 Q. All right. So that's an aerial of the City of Pickens?

19 A. That's an aerial photo. That is correct, yes, sir.
20 Sure is.

21 Q. Okay. Now, I've provided you with a black marker
22 there. Would you circle on State's 4 the residence where
23 the buy occurred?

24 A. Sure. It's going to [REDACTED]

25 Q. Okay.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

33

1 A. Is the residence.

2 Q. Now, with that same marker, would you draw on that map
3 a rectangle to represent your car and where you were when
4 the buy occurred?

5 A. Sure.

6 Q. Okay.

7 MR. TOOKER: At this point, Your Honor, the State
8 wants to introduce State's 4 and publish to the jury.

9 MR. ROBINSON: No objection, Your Honor.

10 THE COURT: It's in evidence.

11 (WHEREUPON, State Exhibit Number 4 was admitted into
12 evidence and published to the jury.)

13 Q. Okay. So you were at 105 -- excuse me. The buy
14 occurred at 105?

15 A. That's correct.

16 Q. And that rectangle represents your vehicle?

17 A. That is correct.

18 Q. Okay. And what is it that you were doing in your
19 vehicle in addition to listening to the audio while the buy
20 occurred?

21 A. From where we were sitting, my job was to monitor also,
22 to watch her movement from where she was dropped off all the
23 way down the street, down the road to where the house was
24 and to where she walked into the front yard of the
25 residence. That was my main job, along with that. So, yes,

1 sir.

2 Q. Okay. Did you observe her walk down the street?

3 A. Yes, sir, I did.

4 Q. Okay. As she walked down the street did anything
5 happen?

6 A. No, sir.

7 Q. Okay. She didn't purchase drugs from anybody as she
8 walked down the street?

9 A. No, sir.

10 Q. She didn't pick the drugs up off the ground?

11 A. No, sir.

12 Q. Okay. When she got to 105, what happened?

13 A. At that point -- let me look. She had a conversation.
14 When she walked on, she met a group of individuals and
15 started speaking, saying names.

16 Q. Was that in the yard of 105?

17 A. That was the yard of 105. Yes.

18 Q. Okay. Did she ever go inside 105?

19 A. Inside 105? I did not see her go inside 105, no, sir.

20 When she walked around the corner of the trailer right
21 there, I lost her from about -- from where she walked in to
22 where the door was is about a ten foot area that I could not
23 see from where I was sitting.

24 Q. Okay. So if she went into the trailer, you would not
25 have been able to see that?

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

35

1 A. No, sir, that's correct.

2 Q. Okay. All right. And you didn't actually see the
3 exchange of drugs and money?

4 A. I did not see the hand-to-hand, no, sir, I did not.

5 Q. But you monitored her going to and coming from?

6 A. Yes, that's correct. Monitored her going from and
7 heard the audio of the actual transaction. But I could not
8 see it.

9 Q. Okay. And how long would you say she was out of your
10 vision? How long could you not see her?

11 A. Out of my vision? I would say, according to my log,
12 she was out of my vision for -- looks like four minutes.
13 She was out of my, out of my vision for four minutes.

14 Q. Okay. So you don't see her for about four minutes and
15 then you see her again?

16 A. That's correct.

17 Q. When you see her again, what is she doing?

18 A. She's walking back towards where I'm sitting and
19 walking back to meet up with our other narcotics agent at
20 that point.

21 Q. Okay. And who was that other narcotics agent?

22 A. That was Detective Riggs.

23 Q. Okay. And where was Detective Riggs stationed, do you
24 remember?

25 A. Detective Riggs was at CVS. That's where he was

1 stationed at.

2 Q. Okay.. And once the CI met up with Detective Riggs,
3 what was y'all's plan? What was the arrangement?

4 A. Our location -- our plan was to go back to the church
5 to -- what we would do at that point is to -- she would keep
6 the narcotics. Of course, she entered the vehicle with
7 Detective Riggs. It was, she would hold onto it to
8 transition it to me. As soon as we arrived back at the
9 church, my job was to take sole custody of the narcotics
10 that were purchased and then I would create a log and seal
11 them and prepare them to send them off to testing.

12 Q. Okay. So Detective Riggs never had anything to do with
13 the narcotics?

14 A. No, he never touched the narcotics. That was my job.
15 That was my main job too.

16 Q. So she held on to them the whole time until she gave
17 them to you?

18 A. That is correct. That is correct.

19 Q. Now, I'm going to show you what's been marked as
20 State's 1 and State's 3.

21 MR. TOOKER: At this point, Your Honor, the State
22 wants to introduce State's 1 and State's 3 into evidence.

23 Q. Let me grab those back from you for a second?

24 A. Sure thing.

25 Q. All right. So I'm going to show you what's been marked

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Direct Examination by Mr. Tooker

37

1 as State's 1 first.

2 MR. TOOKER: And at this point, Your Honor, the
3 State wants to move State's 1 into evidence and publish to
4 the jury.

5 THE COURT: Okay.

6 MR. ROBINSON: Without objection, Your Honor.

7 (WHEREUPON, State Exhibit Number 1 was admitted into
8 evidence.)

9 Q. Now, that's a stipulation; is that correct?

10 A. That is correct.

11 Q. Okay. Now, would you please just read the text of that
12 stipulation to the jury?

13 A. Sure. The below parties stipulate to the following:
14 That the substance tested in the above captioned incidents
15 was revealed to be point one zero grams of crack cocaine, a
16 Schedule II controlled substance, and should be admitted
17 into evidence as such. And then it says, I consent, Scott
18 D. Robinson and then Sam Tooker.

19 Q. Okay. And now I'm going to show you what's been marked
20 as State's 3. Is that the packet of drugs that you got in
21 this case?

22 A. Yes, sir.

23 Q. Okay.

24 MR. TOOKER: The State wants to move State's 3
25 into evidence, Your Honor.

1 MR. ROBINSON: No objection, Your Honor.

2 THE COURT: It's in evidence.

3 (WHEREUPON, State Exhibit Number 3 was admitted into
4 evidence.)

5 Q. All right. Now, this is what you get back after you
6 send it to Greenville County for analysis; is that correct?

7 A. That is correct, yes, sir.

8 Q. So the crack is crack?

9 A. It is.

10 Q. You got the crack off of Carmilithia in this case?

11 A. Correct.

12 Q. Okay. Did you have any other involvement in this case?

13 A. Basically, my job -- the only other job that I had as
14 far as doing this, I actually took the narcotics to
15 Greenville and released them to Greenville County. And I
16 have a chain of custody. That was my job as an evidence
17 custodian for the department to do that.

18 Q. Sure. All right.

19 MR. TOOKER: No further questions at this time.

20 THE COURT: Cross-Examination.

21 MR. ROBINSON: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q. Officer, it would be fair to say that you never saw Mr.

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Brad Smith - Cross Examination by Mr. Robinson

39

- 1 Russell that day; did you?
- 2 A. No, sir, I don't recall seeing Mr. Russell that day.
- 3 Q. Now, did you have an opportunity to check to see who
- 4 owned the property at 105, that place that they all went to,
- 5 that your CI went to?
- 6 A. Yes, sir. Well, just from past dealings, yes, sir, I'm
- 7 familiar with who stayed, who lived at that residence.
- 8 Q. Who owned it?
- 9 A. Who owned it?
- 10 Q. Yes.
- 11 A. No, sir. I don't know who owned the residence, the
- 12 trailer. No, sir, I don't.
- 13 Q. And do you know how many people -- excuse me. You
- 14 would agree there were many people in that trailer that day;
- 15 weren't there?
- 16 A. According to the logs I would say there was probably,
- 17 from the names I heard, there was about three or four
- 18 people.
- 19 Q. Three or four people?
- 20 A. Yes, sir.
- 21 Q. And you didn't go in the trailer; right?
- 22 A. Not on that day, no, sir.
- 23 Q. And as far as the money that was used with this CI,
- 24 this person, you never recovered any of that money from Mr.
- 25 Russell; did you?

1 A. No, sir, we did not.

2 Q. And I think you said a moment ago that Officer Riggs
3 didn't play a part in the surveillance; correct?

4 A. No, he played a part in surveillance. He didn't take a
5 part -- he didn't actually get -- hold the drugs is what I
6 said.

7 Q. Okay.

8 A. Yes, sir.

9 Q. All right. Thank you.

10 A. Uh-huh (affirmative).

11 MR. TOOKER: Briefly, Your Honor.

12 THE COURT: Redirect.

13 **REDIRECT EXAMINATION**

14 **BY MR. TOOKER:**

15 Q. He mentioned the money in this case. When was an
16 arrest made?

17 A. An arrest? I'll have to look at the arrest, the arrest
18 warrant, it was made months later. Let me tell you the
19 exact date. According to the warrant, let's see, the arrest
20 was made on 10/23 of '09, so three and -- almost three
21 months to the day.

22 Q. Okay. And it was forty dollars?

23 A. It was forty dollars, yes, sir.

24 Q. Okay. All right.

25 MR. TOOKER: No further questions.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Wanda Robinson - Direct Examination by Mr. Tooker

41

1 MR. ROBINSON: No recross, Your Honor.

2 THE COURT: Thank you, sir. You may step down.

3 THE WITNESS: Yes, sir, thank you.

4 THE COURT: You may call your next witness.

5 MR. TOOKER: Thank you, sir. The State calls

6 Wanda Robinson.

7 THE CLERK: Place your left hand on the bible and
8 raise your right hand, please.

9 Do you solemnly swear or affirm that the testimony
10 you're about to give is the truth, the whole truth and
11 nothing but the truth, so help you God?

12 THE WITNESS: Yes, ma'am.

13 THE CLERK: Have a seat and state your name for
14 the record, please.

15 THE WITNESS: My name is Wanda Robinson.

16 WANDA ROBINSON,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. TOOKER:

20 Q. All right. Ms. Robinson, you know the Defendant Dodie
21 Russell; is that true?

22 A. Yes, sir.

23 MR. ROBINSON: Your Honor, I'm going to object to
24 Mr. Tooker saying a name Dodie. It's Darnell Russell, not
25 Dodie.

1 Q. Okay. What is Darnell Russell's nickname?

2 A. Dodie.

3 Q. Okay. Thank you. And you know Carmilithia Staton?

4 A. Yes.

5 Q. You do? How long have you known Carmilithia?

6 A. Well, a couple of years.

7 Q. Now, you've called her quite a bit recently; haven't
8 you?

9 A. She's called me.

10 MR. ROBINSON: Your Honor, leading.

11 THE COURT: Sustained.

12 Q. Have you talked to her on the phone?

13 A. Yes.

14 Q. Okay.

15 THE COURT: All right. Let me -- ladies and
16 gentlemen, if you would, just go to the jury room and don't
17 talk about the case. Continue to keep an open mind.

18 (WHEREUPON, the jury exited the open court at
19 approximately 3:27 p.m.)

20 THE BAILIFF: The door's closed.

21 THE COURT: Is this the witness we were going to
22 have the proffer concerning?

23 MR. TOOKER: This is the witness the State
24 believes convinced the CI to see the Defendant, with an
25 intent to talk the CI out of testifying.

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Wanda Robinson - Direct Examination by Mr. Tooker

43

1 THE COURT: Okay. Well, now that the jury's out
2 we can do the proffer.

3 MR. TOOKER: Okay. Your Honor.

4 Q. Now, you talked to Carmilithia on the phone?

5 A. Yes.

6 Q. Okay. And you talked to Dodie recently too; haven't
7 you?

8 MR. ROBINSON: Your Honor, objection. Leading.

9 THE COURT: Well, that's a leading question, Mr.
10 Tooker?

11 MR. TOOKER: Okay.

12 Q. Have you talked to the defendant at all recently?

13 A. Oh, not in the last week probably, a couple -- oh,
14 well, might a couple of days ago I did.

15 Q. A couple of days ago?

16 A. Yeah.

17 Q. Okay. When you got my subpoena for this case, how did
18 you feel?

19 A. I was surprised?

20 Q. Surprised?

21 A. Yeah.

22 Q. Were you upset at all?

23 A. Why should I be? I mean, I couldn't understand why I
24 was being subpoenaed by the Solicitor. Yeah.

25 Q. Okay. Did you call Carmilithia up last week after you

1 got that subpoena?

2 A. And I told her that I got subpoenaed. She said she did
3 too.

4 Q. Okay. And had you talked to her about going over to
5 Mr. Russell's house the week before that?

6 A. No, sir. She called me last Thursday, wanting to come
7 to me and talk to me.

8 Q. Okay. And then what happened?

9 A. She come to my house and she told me, she said, she had
10 done something and she felt bad about it. And she told me
11 that she had went over to the one-way, and so-called
12 purchasing dope and went and -- she wrote a false statement
13 saying that she had got it from Dodie, but she didn't get
14 from Dodie and she didn't want to see him go to jail and she
15 didn't know what to do. She didn't know whether she should
16 testify or not. I said, well, then don't testify. That's
17 what I told her. I have not tried to pay her, as you said
18 this morning, no.

19 Q. No, no, no, no. I was asking you if you got
20 Carmilithia to go see Dodie last week?

21 A. No, no, no.

22 Q. You did not?

23 A. No. Why would I do that?

24 Q. Okay. All right. So you did talk to her after you got
25 your subpoena?

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Wanda Robinson - Direct Examination by Mr. Tooker

45

1 A. Just told her I got subpoenaed. Called her and told
2 her I got subpoenaed.

3 Q. You called her and you were upset?

4 A. (No verbal response).

5 Q. And so you deny, you deny calling Carmilithia on behalf
6 of Dodie?

7 A. I didn't call Carmilithia on behalf of Dodie.

8 Q. You did not?

9 A. I did not, no.

10 Q. Never?

11 A. Never.

12 Q. Not once?

13 A. Not once.

14 Q. Okay. When did you find ---

15 A. I tell you, she called me.

16 Q. When did you find out she was the CI on this case?

17 A. Oh, I found that out about a couple of months ago.

18 Q. A couple of months ago?

19 A. Uh-huh (affirmative).

20 Q. Who did you find that out from?

21 A. I don't know. They was talking about it on the one-
22 way.

23 Q. The one-way?

24 A. Yeah.

25 Q. Where's the one-way?

1 A. The [REDACTED]

2 Q. [REDACTED] okay. All right.

3 MR. TOOKER: I have no further questions.

4 MR. ROBINSON: Your Honor, I have no questions.

5 I'm not really seeing the relevance of this in this case?

6 MR. TOOKER: Yeah, that's fine. I was essentially
7 having to -- yeah. That's fine. I think Ms. Robinson's
8 correct.

9 THE COURT: So ---

10 MR. TOOKER: So she's excused.

11 THE COURT: You're not going to call her, okay.

12 All right, ma'am. You can step down.

13 THE WITNESS: So, can I go home?

14 THE COURT: I don't know.

15 MR. TOOKER: Yeah, that's fine.

16 THE COURT: Did you have a subpoena?

17 MR. TOOKER: She was under my subpoena. Yeah,
18 you're excused.

19 THE COURT: Okay. He's releasing you from the
20 subpoena.

21 THE WITNESS: Thank you very much.

22 MR. ROBINSON: Your Honor, I think -- I've never
23 spoken to this witness before, but I'm going to ask her to
24 stick around so I could speak to her. That's interesting
25 testimony. That's the first time I've heard that. Would

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Wanda Robinson - Direct Examination by Mr. Tooker

47

1 that be okay?

2 THE WITNESS: Not a problem.

3 MR. ROBINSON: Why don't you -- you can go
4 outside.

5 MR. TOOKER: Yeah.

6 MR. ROBINSON: Okay. Thank you. Thank you,
7 Judge.

8 THE COURT: Okay. Ready for the jury?

9 MR. TOOKER: Yes, sir.

10 THE COURT: All right. You can bring them back
11 in.

12 (WHEREUPON, the jury entered the open court at
13 approximately 3:32 p.m.)

14 THE COURT: Okay. You may call your next witness,
15 Mr. Tooker.

16 MR. TOOKER: Thank you, Your Honor. The State
17 calls Carmilithia Staton.

18 THE CLERK: Place your left hand on the bible and
19 raise your right hand, please.

20 Do you solemnly swear or affirm that the testimony
21 you're about to give is the truth, the whole truth and
22 nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Have a seat and state your name for
25 the record, please. And if you could, spell your first name

1 for the court reporter.

2 THE WITNESS: Carmilithia Staton. C-A-R-M-I-L-I-T-
3 H-I-A.

4 CARMILITHIA STATON,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. TOOKER:

8 Q. All right. Ms. Staton, where are you from originally?

9 A. Florida.

10 Q. Florida? And how long have you lived in Florida?

11 A. All my life, except for the past six years I've been
12 here.

13 Q. The past six years you've been here?

14 A. Uh-huh (affirmative).

15 Q. Now, you're not real excited about testifying today,
16 are you?

17 A. Nope.

18 Q. Why not?

19 A. I hate it.

20 Q. Why do you hate it?

21 A. Because I don't want ---

22 Q. Are you scared?

23 A. No. I'm not scared. I just don't want to see Dodie do
24 a lot of time.

25 Q. Okay.

- 1 A. I hate what I did. I mean, I did it. It's done. It's
2 over with. But I don't want to see him do a lot of time. I
3 mean, what I did is wrong. What I've done is wrong.
- 4 Q. Well, why don't we talk about it first. You have a
5 pretty long history of shoplifting; don't you?
- 6 A. Yeah.
- 7 Q. Yeah. Like nine shopliftings?
- 8 A. Yeah.
- 9 Q. Or something like that. And why were you doing this
10 thing that you feel so bad about?
- 11 A. What do you mean?
- 12 Q. Why were you working as a confidential informant?
- 13 A. Because I got caught. I think it was my third time or
14 something and I was scared and I wasn't -- I mean, it was
15 all sort of new to me, being in trouble. I shoplifted to
16 support my drug habit. I smoke crack.
- 17 Q. All right. How long have you been smoking crack?
- 18 A. About ten years, off-and-on.
- 19 Q. Is that a hard thing to break?
- 20 A. Yeah.
- 21 Q. Did you go to rehab recently?
- 22 A. Yeah. I went there in July.
- 23 Q. July. How long were you in rehab?
- 24 A. For twenty-seven days.
- 25 Q. Twenty-seven days. After you got out of rehab, how

1 long did you stay clean?

2 A. I stayed clean about, I would say, about two and a half
3 months and then I relapsed. I did it.

4 Q. All right. We'll go into that in a little bit. Now,
5 with regards to this particular CI buy, the first thing I'm
6 going to show you is what's been marked as State's Number 2.
7 Do you recognize this C.D.?

8 A. Yeah.

9 Q. Okay. How do you recognize it?

10 A. Because we listened to it the other day.

11 Q. You and I did?

12 A. Yes, sir.

13 Q. All right. Is it a fair and accurate representation of
14 what went down?

15 A. Yeah.

16 Q. Okay. All right.

17 MR. TOOKER: At this point, Your Honor, the State
18 wants to introduce State's 2 into evidence.

19 MR. ROBINSON: Objection, Your Honor, foundation.

20 MR. TOOKER: Your Honor, she's testified it's a
21 fair and accurate representation, that she has listened to
22 it.

23 Q. Did you listen to this in its entirety?

24 A. Yes, sir.

25 Q. From start to finish?

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Carmilithia Staton - Direct Examination by Mr. Tooker

51

1 A. Yes, sir.

2 Q. Okay.

3 THE COURT: All right. Overruled.

4 (WHEREUPON, State Exhibit Number 2 was admitted into
5 evidence and published for the jury.)

6 Q. I'm going to pause it real quick, Carmilithia. We
7 heard a man's voice on that tape. Who is that man?

8 A. Travis Riggs.

9 Q. Travis Riggs? Is that Detective Riggs here at the
10 table?

11 A. Yes.

12 (WHEREUPON, recording was resumed and paused again.)

13 Q. I'm going to pause it again here. What are you doing
14 at that point?

15 A. I'm getting out the car, when I walk to -- I'm fixing
16 to walk down to [REDACTED]

17 (WHEREUPON, recording was resumed and paused again.)

18 Q. Okay. And I'm going to pause it again, Carmilithia.
19 You're going to [REDACTED] Who lived there?

20 A. Nate.

21 Q. Nate. Okay. Where did the Defendant live?

22 A. He lived across town, the other side of town. I don't
23 know the address.

24 Q. Would you see him at Nate's?

25 A. Yeah.

1 Q. How many times would you say you would see him at
2 Nate's?

3 A. Daily.

4 Q. Okay. So that was a place that he was known to hang
5 out?

6 MR. ROBINSON: Objection, Your Honor. Foundation,
7 relevance?

8 THE COURT: Overruled.

9 Q. You can answer the question.

10 A. What's the question?

11 Q. The question was, was he known to hang out there?

12 A. Yes.

13 Q. Okay.

14 (WHEREUPON, recording was resumed and paused again.)

15 Q. Carmilithia, when you say, hey, y'all, that ain't
16 looking good. Dodie on the front porch ain't saying nothing
17 to me. What did you mean?

18 A. When I said it ain't looking good, because I don't
19 think I'm going to get anything.

20 Q. Okay. And why were you concerned that Dodie was
21 sitting on the front porch and not saying anything to you?

22 A. To be quite honest, I can't recall what we're talking
23 ---

24 Q. Okay.

25 A. I mean, I just can't recall at that moment.

- 1 Q. But those are your words?
- 2 A. Yes, that's me.
- 3 (WHEREUPON, the recording was resumed and played to the
- 4 end.)
- 5 Q. Okay. So we just heard what transpired on that day;
- 6 didn't we?
- 7 A. Yes, sir.
- 8 Q. Okay. In your words, what happened after Detective
- 9 Riggs dropped you off?
- 10 A. After he dropped me off at the Fred's?
- 11 Q. Yeah. Where did you go?
- 12 A. I went to [REDACTED] Morris Road.
- 13 Q. Okay. Did you walk?
- 14 A. Yes.
- 15 Q. Okay. And once you got there, who was there?
- 16 A. Nate, just different people.
- 17 Q. Okay. And where did you buy the crack?
- 18 A. I went inside the trailer and spoke to Dodie and bought
- 19 it from Dodie.
- 20 Q. Okay. And why did you go inside the trailer?
- 21 A. Because that's where he was.
- 22 Q. Okay. When the sale itself occurred was anybody else
- 23 in the trailer?
- 24 A. I can't remember.
- 25 Q. You can't remember?

1 A. I can't remember if Nate was outside or inside.

2 Q. Okay. And on that video, we heard somebody get kind of
3 fresh with you and you ---

4 A. Oh, that was Nate, yeah.

5 Q. That was Nate?

6 A. Yeah. Yeah, that was Nate. So he was inside, you're
7 right.

8 Q. And that was as you were walking outside?

9 A. Right. Yeah. He was always with them big ole hands,
10 yeah.

11 Q. Okay. Now, Carmilithia, how many times do you suppose
12 we've talked?

13 A. Pardon?

14 Q. How many times do you suppose we've met and talked?

15 A. You and I? Twice, maybe three times.

16 Q. Okay. And would you describe your attitude as
17 different right now than it was when you and I met?

18 A. Yeah. When we first met, I just --- I don't know.

19 MR. ROBINSON: Your Honor, I'm going to object,
20 relevancy.

21 THE COURT: Sustained.

22 Q. And do you know Wanda Robinson?

23 A. Yes.

24 Q. How do you know her?

25 A. I've known her for years. I just met her out there on

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Carmilithia Staton - Direct Examination by Mr. Tooker

55

1 the street, I guess, out there using, partying, whatever.

2 Q. Okay. And does Wanda Robinson have your phone number?

3 A. Yes, she does.

4 Q. She does? Has she ever called you?

5 A. Yes, sir.

6 Q. Has she called you in reference to this case?

7 A. Yes, sir.

8 Q. And what -- was Mr. Russell involved in that?

9 MR. ROBINSON: I'm going to object, Your Honor,
10 relevance and ---

11 MR. TOOKER: Your Honor, it's entirely relevant as
12 much as it goes to the Defendant's guilty conscience.

13 MR. ROBINSON: Your Honor, I would have a matter
14 outside the presence of the jury.

15 THE COURT: All right. Okay. Ladies and
16 gentlemen, just take a short break. Don't talk about the
17 case, continue to keep an open mind.

18 (WHEREUPON, the jury exited the open court at
19 approximately 3:27 p.m.)

20 THE BAILIFF: The door's closed.

21 MR. ROBINSON: May it please the Court, Your
22 Honor, I thought we already -- we had a proffer outside the
23 presence of this jury and then you asked about it. And I
24 think he excused -- wasn't going to use this witness. Now
25 he's coming back and he's already excused that witness and

1 he's going back into stuff that you've already ruled on.

2 THE COURT: You talking about Ms. Robinson? I
3 thought he withdrew the witness.

4 MR. TOOKER: I withdrew Ms. Robinson, that's true,
5 Your Honor. And that's because I believed that she was not
6 being honest with me. I was informed by Ms. Staton
7 immediately after it happened that she'd been contacted
8 repeatedly by Ms. Robinson in an attempt to get her to
9 refuse to cooperate with the prosecution. Eventually, and
10 this is based on ---

11 THE COURT: Well, why don't you go ahead and ask
12 her the questions so we have something to actually rule
13 upon.

14 MR. TOOKER: Okay.

15 Q. Carmilithia, could you guesstimate, how many times did
16 you get called by Ms. Robinson?

17 A. Over the past month or two, probably about seven times.

18 Q. Okay. And what was the purpose of those calls?

19 A. Some of them, a lot of them, was talking about this
20 case, wanting me, you know, please don't testify. You know,
21 just not to cooperate with y'all.

22 Q. Okay. How did she know that you were the CI on this
23 case?

24 A. Everybody knew.

25 Q. Okay.

1 A. I mean, word got out.

2 Q. And last week you came into my office and we had a
3 meeting?

4 A. Yeah.

5 Q. All right. The night before that had you seen the
6 Defendant?

7 A. Yes.

8 Q. Where did you see him?

9 A. At his house.

10 Q. Why did you go to his house?

11 A. Because I felt bad. I hated, I hated all of this. I
12 didn't want him to serve a lot of time. And -- because I
13 seen somebody else go away a long time and I just -- I felt
14 bad about it. I felt terrible about it.

15 Q. And what did the Defendant tell you to do?

16 A. Just to say that -- just to not cooperate, pretty much.

17 Q. Do you remember what his words were?

18 A. He just ---

19 Q. Carmilithia.

20 A. He said that I could plead the fifth or something like
21 that. It was -- I can't remember if he said that or if
22 Wanda said that. Wanda said that a lot. She said I could
23 plead the fifth.

24 Q. Okay. Was Wanda at Dodie's house then?

25 A. Yes.

1 Q. Okay. So when you went over and saw Dodie, Wanda was
2 there?

3 A. Yeah. She took me over there.

4 Q. Okay. She drove you to his house?

5 A. She didn't drive, somebody else did.

6 Q. She was in the car?

7 A. Yes.

8 Q. And had you been sober up until that point?

9 A. Up until right before I got high. No, I got high the
10 night before.

11 Q. So right until you're getting ready for this case,
12 you'd been sober?

13 A. I messed up one time.

14 Q. Okay. And did you smoke crack with the Defendant?

15 A. No.

16 Q. No?

17 A. The Defendant doesn't smoke crack.

18 Q. Well, then at his house?

19 A. Yeah, I smoked a piece.

20 Q. Smoked a piece?

21 A. But he wasn't in the room or nothing.

22 Q. Oh, okay. All right. Did he give it to you?

23 A. Yes, he put it in my hand.

24 Q. Put it in your hand. Okay.

25 MR. TOOKER: That would be the extent of that line

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Carmilithia Staton - Direct Examination by Mr. Tooker

59

1 of questioning, Your Honor.

2 MR. ROBINSON: Your Honor, I'm going back to my
3 relevancy thing. And, too, I think he's interjecting
4 character into this whole -- into this picture. And I'm not
5 sure it would really fall under -- if he's going under some
6 sort of exception to hearsay. I'm not exactly sure where
7 he's going on this matter, but I think -- I think the Court
8 can observe this witness, but the prejudice to my client in
9 this case is overwhelming in this matter.

10 MR. TOOKER: Your Honor, the State's of the
11 opinion with regards to relevance, that the relevance of all
12 of this is that the Defendant and Ms. Robinson are
13 attempting to intimidate or encourage Ms. Staton to not tell
14 the truth, to lie about what happened. And the State's of
15 the opinion that that is indicative of a guilty conscience.

16 The State's also of the opinion that the series of
17 events, the progression from calling, then to Ms. Robinson
18 getting Ms. Staton and going over to Mr. Russell's house,
19 and Mr. Russell encouraging her not to testify, again, is
20 important in this case inasmuch as it goes to show that they
21 were aware of who the CI was, despite the fact that that
22 information should have been confidential. They were aware
23 of her identity. And because they had that awareness, they
24 were attempting to intimidate her or encourage her not to
25 tell the truth in this case. And the only reason they would

1 do that is because they recognize the Defendant's guilty and
2 he is acting, I guess, as a result of his knowledge of his
3 own guilt.

4 MR. ROBINSON: Your Honor, in response to that, I
5 think she testified on the record that she went over there
6 herself, he did not invite her over there. And when he
7 asked her about as far her being a CI, she testified that
8 everyone knew she was a CI. And she's not sure who said
9 what. She said Wanda said stuff, but there's nothing
10 indicating that Wanda had anything to do with him. And I, I
11 think under the Rules, I think this is, one, not relevant.
12 And, two, I believe it's -- even if it was relevant, I
13 believe the prejudicial value far outweighs any sort of
14 relevance to this case.

15 THE COURT: What specific part are you talking
16 about of her testimony that was just proffered?

17 MR. ROBINSON: As far as relevancy, Your Honor?

18 THE COURT: Yes.

19 MR. ROBINSON: It's not -- what Mr. Tooker seems
20 to be saying his opinion is, is that it shows a guilty mind,
21 is what he seems to be saying. That -- I'll go in a
22 different direction. I'll withdraw the relevance. I think
23 that it's extremely prejudicial in this case to him, to Mr.
24 Russell, to have this testimony brought forward by this
25 individual. That she says that she went over there recently

1 to his house, not invited, just went over there. Lots of
2 people knew she was a CI. I think it's going to interject
3 character into this case. I think it's highly prejudicial
4 to my client.

5 MR. TOOKER: Your Honor, I mean, any probative
6 evidence the State introduces at trial is, of course, by
7 nature going to be prejudicial to the Defendant. The
8 question is whether or not the probative value is
9 substantially outweighed by the prejudicial effect. The
10 State's of the opinion it's extremely probative in this case
11 for the jury to know that the CI is being actively
12 encouraged not to testify against the Defendant at trial.
13 And that the Defendant is facilitating her crack addiction.
14 And I think that both of those things are indicative of his
15 intent to somehow get her on his side so that she will not
16 testify, so she will not testify as to the events of the
17 22nd as they transpired per all the communication she's had
18 with the solicitor's office. And that she will give some
19 sort of amended version of events so as to prevent him from
20 potentially being convicted.

21 THE COURT: Well, he's not indicted for possessing
22 crack or distributing crack on the dates that she went by
23 house; is he?

24 MR. TOOKER: That's true. That's true.

25 THE COURT: What basis would you have to bring

1 that up before the jury?

2 MR. TOOKER: Well, that that is an attempt at some
3 sort of coercion, that he's trying to -- for favoritism.
4 Get her to change her testimony based on his known existence
5 of her chemical dependencies and give her crack to hopefully
6 encourage her not to testify. And I think too -- and I'll
7 go ahead ---

8 THE COURT: No, you go ahead.

9 MR. TOOKER: These two things I think are two
10 separate issues. So that there is a crack issue and then
11 there is the issue of his encouraging her not to testify.
12 And those are two separate issues that I think should be
13 weighed separately inasmuch as -- I mean, they can be asked
14 about separately. So, if we're doing, you know, the
15 balancing test, I think the balancing test needs to be
16 performed individually on each piece of testimony. His
17 providing her with drugs and also he is encouraging her not
18 to testify.

19 MR. ROBINSON: May I respond, Your Honor?

20 THE COURT: Yes, sir.

21 MR. ROBINSON: Your Honor, she's acknowledged on
22 direct examination that she was an addict, that she went to
23 rehab, that she relapsed. That she, I think a few days
24 beforehand, whenever this was, she had a crack rock or she
25 got drunk or something that impaired her. I didn't hear her

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Carmilithia Staton - Direct Examination by Mr. Tooker

63

1 testify that she had this medical addiction or whatever it
2 was, to crack cocaine, and everyone knew this and that she
3 was -- this would make her a certain way. I'm not sure
4 exactly where he's going with that part of it.

5 THE COURT: All right. Well, I think the evidence
6 about conversations she had with the Defendant after the
7 undercover operation would be admissible under *State versus*
8 *Edwards* as alleged witness intimidation. As to her smoking
9 crack at the Defendant's house at that time, I think that
10 would be so irretrievably prejudicial; that it could not
11 possibly be outweighed by any probative value. And so that
12 would not be something that you could go into, Mr. Tooker.

13 MR. TOOKER: Okay.

14 THE COURT: But it does bring up something I heard
15 earlier in the trial on the tape. There were statements
16 made about -- that could be construed as this witness, Ms.
17 Staton, commenting on previous purchases from this
18 Defendant. What is the State's position on that?

19 MR. TOOKER: The State's position is, I guess,
20 sort of two-fold. First, and we can go into this with both
21 Ms. Staton's testimony and Mr. Riggs. You purchase drugs
22 from people you know. You don't purchase drugs from
23 strangers. You purchase drugs from people you've purchased
24 drugs from before. And that is how these things transpired.
25 And part of the deal, at any one of these CI buys, we don't

1 get to send alter boys in there to purchase drugs. We send
2 people who have drug histories and prior criminal offenses.
3 And we send them in there with the knowledge that they have
4 done this kind of thing with these people before. And so I
5 think that's probative for the jury to understand is the
6 basis of these transactions. And, also, if Your Honor does
7 deem it -- does conclude that that is potentially improper,
8 I think it can be cured with an instruction to the jury.
9 And if they do request to listen to the tape again, we can
10 certainly redact it out.

11 MR. ROBINSON: Your Honor, I think the proper
12 remedy -- I believe that a mistrial is probably the way to
13 go, the curative way to go about doing that. Because that
14 tape was played for a long period of time. I would like to
15 request a mistrial at this time because I think it kind of
16 interjects into this trial several other offenses that
17 aren't in front of this jury. So I think it's very
18 prejudicial to the Defendant.

19 MR. TOOKER: I find that interesting somewhat,
20 Your Honor, inasmuch as Mr. Robinson and I did listen to
21 this tape in its entirety a week ago at his office. And he
22 made no mention of that to me. And he made no mention of
23 that in pre-trial motions. And he actually did not object
24 to that information as the tape was being played. So the
25 State's of the opinion that any error should be cured by an

1 instruction as opposed to a mistrial. In this case, you
2 know, had Mr. Robinson said, you know, this is an issue; I
3 think we need to clarify it or rectify it somehow, we would
4 have had a hearing and if Your Honor concluded that that
5 information needed to be excluded, the State would have
6 excluded it.

7 THE COURT: Well, he didn't -- you didn't indict
8 him for a conspiracy; did you?

9 MR. TOOKER: Not on this, not on this one.

10 THE COURT: And tell me how you think that would
11 be proper evidence then?

12 MR. TOOKER: Well, again, it's foundation for the
13 jury's understanding of how it is that this confidential
14 informant knows the Defendant and how it is that she can go
15 to a trailer and in fifteen minutes purchase forty dollars
16 worth of crack. That's what the relevance is in the State's
17 opinion. And so, yes, that's our position.

18 THE COURT: All right. Well, I'll have to think
19 about that.

20 MR. TOOKER: And I think, also, relevant, Your
21 Honor, and I apologize for leaving this out. You know,
22 another issue and she hasn't yet done this, as she's still
23 on the stand. Put him identity in this case and she needs
24 to testify that, you know, that's the guy that I purchased
25 the drugs from. And there needs to be a foundation for that

1 identity, for that knowledge of who the Defendant is.

2 THE COURT: That's the guy who committed this
3 crime and he's committed crimes in the past.

4 MR. TOOKER: Well, no, that's the guy that sold me
5 the crack and I know him and I've known him for some time.

6 THE COURT: Because I've previously bought drugs
7 from him that are not indicted in this particular case.
8 Isn't that pretty fundamental evidentiary issue?

9 MR. TOOKER: Well, again, had the State thought it
10 was an issue and had the Defense raised the issue, the State
11 would be more than glad to accommodate them.

12 MR. ROBINSON: Your Honor, I can say I met with
13 Sam on this and he was going to bring four cases at one
14 point. And as of this morning or yesterday, he decided only
15 to bring because there was -- he looked at some research
16 that was not a common scheme or plan. When we looked at
17 this last week, he was under the impression he was going to
18 do all four charges or whatever they were. That's why I
19 didn't object to it, because I thought he would have redact
20 them, redacted because he did have the tape.

21 MR. TOOKER: That was never mentioned to me. You
22 know, had it been mentioned, again, this would have been
23 something we could have raised at pre-trial.

24 THE COURT: Well, the record will speak for
25 itself. There was no objection made. All right. I'll have

1 to ponder the mistrial motion. Let's bring the jury back
2 out and you can finish the testimony of Ms. Staton
3 consistent with my rulings.

4 (WHEREUPON, the jury entered the open court at
5 approximately 4:29 p.m.)

6 THE COURT: Yes, sir, Mr. Tooker, you may continue
7 your examination.

8 MR. TOOKER: Thank you, Your Honor.

9 Q. Now, Ms. Staton, this transpired in 2009?

10 A. Yes, sir.

11 Q. When was the last time you saw the Defendant?

12 A. The 22nd, the other day.

13 Q. The other day?

14 A. The other day, yes.

15 Q. And where did you see him?

16 A. At his home.

17 Q. And what did he ask you to do?

18 A. He didn't actually ask me to do anything. He said I
19 could plead the Fifth, or just -- I told him I was upset and
20 I was sorry that what I did.

21 MR. ROBINSON: Your Honor, objection. Non-
22 responsive.

23 THE COURT: Overruled.

24 Q. Okay. And he told you you could plead the Fifth.

25 A. (Affirmative nod).

1 Q. And what does that mean?

2 A. I have no idea really. I don't understand the Fifth,
3 whatever that is.

4 Q. Did it have to do with your testimony today?

5 A. Pardon?

6 Q. Did it have to do with your testimony today here in
7 Court?

8 A. Yes.

9 Q. Okay. That he didn't want you to testify?

10 A. (Negative nod).

11 MR. TOOKER: Let the record reflect the -- Ms.
12 Staton was shaking her head no.

13 Q. Now, what's the Defendant's nickname?

14 A. Pardon?

15 Q. What's the Defendant's nickname?

16 A. Dodie.

17 Q. Dodie. And that's what you call him in that tape we
18 listened to?

19 A. Yes.

20 Q. Okay. And how long have you known Dodie?

21 A. About four and a half years.

22 Q. Okay. And is he the person you purchased the crack
23 from on that recording?

24 A. Yes.

25 Q. What was that again?

*State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Carmilithia Staton - Cross Examination by Mr. Robinson*

69

1 A. Yes.

2 Q. Yes. And would you identify the Defendant, please?

3 A. He's over there.

4 MR. TOOKER: All right. Let the record reflect

5 Ms. Staton has identified Mr. Russell.

6 Q. All right. Now, you said earlier that you didn't want
7 to testify?

8 A. Yes, I said that.

9 Q. Okay. And you said that was because you feel bad?

10 A. Yeah.

11 Q. Do you still feel bad?

12 A. Yes.

13 Q. Did you tell the truth?

14 A. Yes.

15 Q. Okay.

16 MR. TOOKER: No further questions.

17 THE COURT: All right. Cross-examination.

18 MR. ROBINSON: May it please the Court.

19 **CROSS-EXAMINATION**

20 **BY MR. ROBINSON:**

21 Q. Ma'am, I want to go back to the last group of questions

22 Mr. Tooker had for you. You would agree with me that

23 Darnell Russell, you call him Dodie, ---

24 A. Yes.

25 Q. --- never asked you to plead the Fifth; did he?

1 A. He never asked me to.

2 Q. And as far as -- you had an opportunity to listen to
3 the tape; didn't you?

4 A. Yes.

5 Q. You listened to the tape a few moments ago; is that
6 right? Do you have pretty good hearing?

7 A. Yes.

8 Q. Have you ever had problems with your hearing as far as
9 not hearing?

10 A. No.

11 Q. No. Now, in that tape, and I want to make sure you
12 remember -- you know this, you said in that tape that Dodie
13 didn't trust you; didn't you? That's what you said in that
14 tape; didn't you?

15 A. Yes.

16 Q. And you said he was not cooperating; correct, in that
17 tape, which we just heard; correct?

18 A. At that moment, yes.

19 Q. Okay. Now, and you said on this tape or CD that Dodie
20 was outside and everyone else was inside; correct?

21 A. I don't remember saying that.

22 Q. You don't? So if the tape said -- and you said you had
23 good hearing -- said that he was outside, you don't know if
24 that's true or not; correct? Is that what you're saying to
25 this jury?

1 A. No.

2 Q. So what are you saying?

3 A. I'm saying that I don't remember at the moment what the
4 tape said.

5 Q. You don't remember right now; correct?

6 A. Right at the moment, right.

7 Q. Now, you also said and agreed with me, that this is
8 what you said on the tape, because you listened to this
9 tape?

10 A. Uh-huh (affirmative).

11 Q. You said, Dodie doesn't give me anything. You remember
12 saying that on that tape?

13 A. No.

14 Q. So ---

15 A. I might have said -- I can't remember every precise
16 word that is said on this CD, or tape, as you say.

17 Q. Okay. So you don't know if you, on that CD that was
18 recorded, you don't know -- you can't recall if you said
19 that or not; is that correct?

20 A. Said Dodie really doesn't give good amounts or give
21 good whatever, something like that.

22 Q. Okay. Okay. Okay. And I'm trying to -- I want to go
23 through the names that you say on that tape. You said in
24 there, I believe, that Nate lived there; is that right?

25 A. Yes.

1 Q. And you've got, you had a -- there was a Tim there?

2 Tim was there. Is that right? Tim you said? Jeff, right?

3 Jeff was there; right?

4 A. I don't remember. I don't remember.

5 Q. Tommy Joe?

6 A. Tommy Joe. I remember Tommy Joe, yeah. I remember

7 seeing Tommy Joe. I don't remember Tim and Jeff. I'm

8 having a hard time placing those people.

9 Q. So when you said Tim and Jeff on the tape, you don't
10 remember if you said it or not; correct? Is that what
11 you're saying?

12 A. I don't remember hearing that. Maybe my hearing's not
13 as good as yours.

14 Q. I'm sorry?

15 A. I said my hearing might not be as good as yours.

16 Q. Okay. Now, Mr. Tooker in the beginning talked a little
17 bit about your past that you have.

18 A. Uh-huh (affirmative).

19 Q. Now, you admit that you are a -- that you have a
20 record; don't you?

21 A. Yes, I do.

22 Q. You actually, at this time, when this tape was made on
23 this date, you were working for the Pickens Police
24 Department; weren't you?

25 A. Uh-huh (affirmative). Yes.

1 Q. You were actually trying to work off charges that you
2 had outstanding at that time; weren't you?

3 A. Not necessarily. I was just working with them.

4 Q. Working with them and you got no benefit from that; is
5 that your testimony?

6 A. Pretty much.

7 Q. So you didn't get any money from them?

8 A. If they did give me money -- I think the one time they
9 gave me forty dollars to help with my mom's gas in her car.
10 And that was the only thing they ever gave me.

11 Q. Okay. So it's your testimony under oath that you were
12 not cooperating with the police at that time? You were not
13 working off charges at that time; is that what your
14 testimony is?

15 A. I think it helped me less -- I didn't work off charges.
16 I actually did get charged.

17 Q. And you at this moment have charges over your head too;
18 don't you?

19 A. I do.

20 Q. And you have charges, I believe, for shoplifting?

21 A. Shoplifting.

22 Q. Is that right?

23 A. I do.

24 Q. Now, you actually -- you have got a record for
25 shoplifting that goes back a number of years; don't you?

1 A. I do.

2 Q. You've actually been convicted of shoplifting ---

3 MR. TOOKER: Your Honor, I object. She's
4 acknowledged the fact that she has a prior conviction. I
5 think Mr. Robinson is just trying to rub it in a little bit
6 now.

7 MR. ROBINSON: Cross-examination.

8 THE COURT: Overruled.

9 Q. You're asking this jury to believe a nine-time
10 convicted shoplifter in this case. Is that what you're
11 asking this jury to believe?

12 A. I'm not asking the jury to do anything. I'm just
13 testifying and telling the truth, as you ask me questions
14 and as he asked me questions.

15 Q. But you don't recall a lot of things on this tape that
16 you said on that tape; do you?

17 A. I think maybe you're turning it around a little bit, as
18 I say it, making it sound a little different.

19 Q. If this tape says one thing, would you agree with me
20 that the tape is what was said, not what you recall? Would
21 you agree with that?

22 A. Do what?

23 Q. If that tape, going back, if that tapes says that Dodie
24 doesn't give me anything and Dodie's not cooperative with
25 me, you would agree with that; wouldn't you?

1 A. Yeah. I know he didn't trust me at that moment, at
2 that time. I felt that way.

3 Q. But even though he didn't trust you, and he didn't give
4 you anything, and he didn't want to cooperate, you're still
5 telling this jury that you sold him -- or he bought from you
6 or sold you drugs. Is that what you're saying?

7 A. Uh-huh (affirmative).

8 MR. ROBINSON: That's all the questions I have,
9 thank you.

10 THE COURT: Redirect?

11 MR. TOOKER: Briefly.

12 **REDIRECT EXAMINATION**

13 **BY MR. TOOKER:**

14 Q. Those shopliftings that Pickens had hanging over your
15 head, did you end up pleading to them?

16 A. Yeah. I pleaded guilty.

17 Q. Do you plead guilty every time you're charged with
18 something?

19 A. I do.

20 Q. Okay. Do you ever go to trial on anything?

21 A. No.

22 Q. You've always pled guilty?

23 A. I just plead, yeah.

24 Q. Okay. You plead guilty when you're guilty?

25 A. I do.

1 Q. Okay. So you've got two charges that you pled guilty
2 to and then they gave you forty dollars?

3 A. They gave forty dollars to help out with the gas.

4 Q. The gas?

5 A. Yes, the transportation.

6 Q. Okay.

7 MR. TOOKER: No further questions.

8 MR. ROBINSON: No recross.

9 THE COURT: All right. Thank you, ma'am. You may
10 step down, Ms. Staton.

11 All right. You may call your next witness.

12 MR. TOOKER: Thank you, Your Honor. And Ms.

13 Staton, may Ms. Staton be excused? Thank you.

14 The State calls Travis Riggs.

15 THE CLERK: Do you solemnly swear or affirm that
16 the testimony you're about to give is the truth, the whole
17 truth and nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Have a seat and state your name for
20 the record, please.

21 THE WITNESS: Travis Riggs.

22 TRAVIS RIGGS,

23 BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. TOOKER:

1 Q. All right. I've been calling you Detective Riggs. Is
2 that your title now?

3 A. No, I'm Assistant chief.

4 Q. Okay. Is that's just a bad habit of mine? With
5 regards to this incident, I guess first things first, what
6 was the location the incident transpired at?

7 A. [REDACTED] Pickens, South Carolina.

8 Q. That's in Pickens City?

9 A. Yes, it is.

10 Q. And is that in Pickens County?

11 A. Yes, it is.

12 Q. Okay. Now, on the date of the incident what was your
13 involvement? We've already heard from Officer Smith, but
14 what was your involvement on that day?

15 A. I drove the undercover car and actually picked up the
16 CI, Ms. Staton, and drove her to a drop-off location. While
17 she was making the purchase, I would ride around the
18 neighborhood, keep an eye, best I could, on the situation
19 and other people, and then come back and pick her up.

20 Q. All right. I'm going to hand you what's been marked as
21 State's 4. On that document with that black marker in front
22 of you, would you write a "D" for the drop point?

23 A. (Witness complied).

24 Q. Okay. And with that same marker, would you write a "P"
25 for where you picked her up?

1 A. I can't. It's not on here.

2 Q. Okay.

3 A. It's close, but it's not on here.

4 Q. Where was it?

5 A. At CVS Pharmacy in the parking lot.

6 Q. Okay. Do an arrow pointing upwards to where that CVS
7 would be?

8 A. That would be ...

9 Q. Okay. So what kind of car were you driving when you
10 dropped her off?

11 A. I don't recall the exact year. It was like a '94
12 Mitsubishi Eclipse or something of that nature.

13 Q. Was it a police car?

14 A. Oh, no.

15 Q. Well, why weren't you using a police car?

16 A. Because we wanted to not be seen.

17 Q. Okay. And is that something, I guess, that you need to
18 do when you're doing undercover work?

19 A. Yes. We do not want to jeopardize the safety of our
20 confidential informant by letting them know that the police
21 were involved in anything with that person.

22 Q. Okay. And Officer Smith testified that he searched her
23 person before she went and made the buy?

24 A. Yes.

25 Q. Did you ever search her person?

1 A. Yes, at the end of the buy when we got back to our
2 drop-off location.

3 Q. And what's the reason for doing that?

4 A. To make sure that there is nothing else that the
5 suspect may not keep some of the drugs or anything else
6 transpired that we didn't know about.

7 Q. Okay. And Mr. Robinson mentioned the forty dollars in
8 marked bills that were given to the CI. Did you find that
9 money on her when you searched her person afterwards?

10 A. No, she had no money.

11 Q. All right. And the crack she had, she gave to Officer
12 Smith?

13 A. That's correct.

14 Q. Okay. And you watched her leave your car; is that
15 correct?

16 A. That is correct.

17 Q. All right. And where did you watch her go?

18 A. She proceeded across the parking lot of Fred's, down to
19 the road, sidewalk area, and turned right. She continued
20 toward the stop sign. I lost sight of her for a little
21 while because our surveillance guys had her. And then I
22 proceeded to drive around the block quite a few times during
23 this whole transaction.

24 Q. Okay. And you observed her until you couldn't see her
25 any longer. Where is it that you planned to meet her?

1 A. We had planned to meet back at the Fred's parking lot.

2 Q. And what changed that plan?

3 A. As I was circling the blocks, I noticed a lot of
4 associates of Mr. Russell's and other people of that
5 neighborhood that I did not want them to spot us. So I
6 don't recall if it was myself or the surveillance team, we
7 had them call Ms. Staton from a phone we had gave her, to
8 tell her to continue on to CVS and we'd pick up there,
9 changed the location.

10 Q. Okay. And we heard that phone call while she was
11 walking on the tape; right?

12 A. Correct.

13 Q. We heard that call, I think, right after she'd just
14 talked to somebody?

15 A. Yeah. I believe so.

16 Q. Okay. I mean, if it's on the tape?

17 A. It's there.

18 Q. Okay. And you picked her up at the CVS. Now, her
19 vehicle, she didn't actually take her vehicle to the scene;
20 is that correct?

21 A. Oh, no, no.

22 Q. Okay. But y'all searched it anyway; didn't you?

23 A. That is just a general thing. I mean, if she didn't
24 have a vehicle, we didn't search a vehicle on this ---

25 Q. Okay. Right. So you search a vehicle if they actually

1 take their vehicle to the scene?

2 A. Correct.

3 Q. If they don't have a vehicle, you don't have a vehicle
4 search?.

5 A. Correct.

6 Q. So all you have to search is their person?

7 A. Correct.

8 Q. Now, Officer Smith testified to this a little bit.

9 But, you know, as the Assistant Chief in Pickens, what
10 really is standard fare for a CI buy? What's the policy and
11 why are those policies in place?

12 A. I'm not quite sure -- what are you asking?

13 Q. Okay. So, I mean, you've got a series of events in a
14 CI buy; is that correct?

15 A. Yes.

16 Q. Okay. And why is it that you do these cases in the way
17 that you do, with the certain procedures in place that you
18 have?

19 A. Well, we try to do them all as close to the exact same
20 procedurally as possible so you don't mess up. I mean, if
21 you keeping doing something the same way, hopefully, you're
22 going to get it exactly right. You don't want any errors.
23 We have certain precautions that need to be made like, you
24 know, you don't want to have a CI get drugs from someone
25 else. So that's why you monitor them the whole way.

1 There's a certain -- you follow all of the procedures for
2 different reasons, but it's mainly to make a good, clean
3 buy.

4 Q. Okay. Now, what would you classify as a good, clean
5 buy?

6 A. You give the CI money, observe and listen to the CI
7 find the dealer, make the purchase, come back with the
8 drugs, and then make the arrest at a later time.

9 Q. Okay. Why do you make the arrest at a later time?

10 A. To protect the identity of our confidential informant.
11 We try to keep them from knowing until the court time to
12 protect them.

13 Q. Why is it you want to protect the confidentiality of
14 the confidential informant?

15 A. Because we don't want them to be harassed or threatened
16 or anything.

17 Q. Okay. And is that something that can happen in these
18 cases?

19 A. Very well can.

20 Q. All right. Now, you said the purpose of monitoring
21 them is to make sure of what exactly? As they walk to the
22 place where they're going to make the buy?

23 A. To make sure that -- numerous things. We want to make
24 sure if they have contact with anybody you can kind of tell
25 what's going on. Who they are having contact with, what's

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Direct Examination by Mr. Tooker

83

1 being said, if there's any whispering or anything. You just
2 want to make sure it's a good, clean buy.

3 Q. Now, on that tape Carmilithia used a lot of people's
4 names. Was that per y'all's instructions?

5 A. Yeah. We stated if she talked to anyone try to, you
6 know, say out their name so we could kind of keep a log of
7 who all's hanging around the area.

8 Q. Okay. And what's the reasoning for that?

9 A. We just like to keep a log of who's hanging out around
10 where drugs are being dealt.

11 Q. Okay. And is it helpful to hear who all's around?

12 A. Yes.

13 Q. And you said you observe them coming and going. What
14 exactly does that ensure does not happen?

15 A. That they get drugs from somewhere else or ditch the
16 money or, you know, pinch off some of the drugs. Someone
17 don't mess with them, rob them.

18 Q. Okay. Now, with regards to Carmilithia, what exactly
19 was it that she was working for with y'all?

20 A. She did have two charges. Little misdemeanor municipal
21 court charges, which she did plead guilty to. Where she'd
22 got time served on those. And at one point of her working
23 with us, we did give about forty bucks in gas money.

24 Q. Okay. And then she testified to that fact? And then
25 that was accurate?

1 A. Yes.

2 MR. ROBINSON: Your Honor, I'm going to object to
3 him saying what the other witness said in this case.

4 THE COURT: Sustained.

5 Q. So we had two charges and forty dollars. Did she do a
6 lot of work for the Pickens Police Department?

7 A. I would say so.

8 Q. Okay. Was she a very helpful informant?

9 A. Very.

10 Q. And she did all of that work for two charges, forty
11 dollars?

12 A. That's all we gave her, I think. I think she did for
13 more reasons than that.

14 MR. TOOKER: No further questions.

15 THE COURT: Cross-Examination?

16 MR. ROBINSON: May it please the Court.

17 **CROSS-EXAMINATION**

18 **BY MR. ROBINSON:**

19 Q. Officer Riggs, you never saw the transaction; did you?

20 A. No, I did not.

21 Q. And, in fact, you never saw Mr. Russell; did you? You
22 never saw Mr. Russell doing this transaction; did you?

23 A. I did see Mr. Russell. Not do the transaction.

24 Q. Correct.

25 MR. ROBINSON: That's all the questions I have.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Cross Examination by Mr. Robinson

85

1 Thank you.

2 THE COURT: Thank you, sir.

3 MR. TOOKER: At this point, Your Honor, the State
4 rests.

5 THE COURT: All right. Ladies and gentlemen, the
6 State has completed their presentation of evidence and it's
7 almost five o'clock. So we're going to go ahead and break
8 for the day. Don't talk about the case. Don't do any kind
9 of outside research. It would not be in keeping with your
10 oath to consider anything that is not evidence in the case.
11 And as you recall, I told you evidence is only the witness
12 testimony and exhibits that have been admitted into
13 evidence. So continue to keep an open mind and have a good
14 evening and we'll see you back in the morning. We're going
15 to start at nine fifteen in the morning. Just be back at
16 nine fifteen. Thank you.

17 (WHEREUPON, the jury exited the open court at
18 approximately 4:50 p.m.)

19 THE COURT: Okay.

20 MR. TOOKER: Nine fifteen?

21 THE COURT: Nine fifteen in the morning. Thank
22 you.

23 MR. ROBINSON: Thank you, Judge.

24 (WHEREUPON, the court stood at recess for the day.)

25 October 24, 2012

1 MR. TOOKER: As I briefly mentioned to you
2 upstairs in Chambers with Mr. Robinson, the State is aware
3 that they rested yesterday. And upon resting realized that
4 we had not asked Mr. Riggs specifically about proximity and
5 distance from the buy to the school, Pickens Elementary
6 School. So I did a little research last night. And I'm
7 going to pass up four cases. These are the four cases that
8 I spoke to you about in chambers. The first being *State v.*
9 *Green*, and in that case the state closed its case without
10 sufficient evidence, similar to this case, about proximity.
11 During directed verdict motion, the state and the court, I
12 guess, recognized that the state had failed to introduce
13 sufficient evidence and the court permitted the state,
14 despite having already closed its case, to reopen its case
15 and recall one of its witnesses for the purposes of
16 testifying as to proximity of the sale location to the
17 school. And I think that is directly on point. That is a
18 Court of Appeals decision. It's cited as 567 S.E.2d 505
19 from the South Carolina of Appeals in 2002.

20 The second case I've got is *State V. Wrenn*, and that's
21 a case where the state failed to introduce the drugs in
22 issue in a drugs case into evidence before closing. The
23 state closed, realized its mistake, asked the court to
24 reopen its case so as to introduce those drugs into evidence
25 and the court permitted that. And that is a -- the citation

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Cross Examination by Mr. Robinson

87

1 on that case is 470 S.E.2d 111, and that was a Court of
2 Appeals decision from South Carolina in 1996.

3 Now, those two cases relied heavily on two older cases.
4 One is *State v. Humphries* and that's 276 S.C. 42, 274 S.E.2d
5 918. And that's a South Carolina Supreme Court decision
6 from 1981. And in that case the court recognized again that
7 it is in the sound discretion of the trial judge to allow
8 the state to reopen its case to prove an essential element
9 of the offense charged. Here, of course, the state's
10 intending to prove an essential element of one of the
11 offenses charged. And finally, there's *State v. Harrison*.

12 And in regard to *Humphries*, that was a case of larceny where
13 the state failed to introduce evidence as to the value of
14 the property in issue. And so the court permitted the state
15 to reopen and recall witnesses to testify as to valuation.

16 Finally, and this is the oldest and most cited case on
17 this issue in the State of South Carolina, *State v.*
18 *Harrison*. That's 113 S.E.2d 783. It's a Supreme Court case
19 from South Carolina in 1960. And in that case the court
20 concluded that it was okay to let the state reopen its case
21 actually after the Defendant's directed verdict motion. In
22 that case what they had was essentially -- and the court
23 debates this somewhat in its opinion but decides not to rule
24 on it, there's question as to the necessity of clarifying a
25 particular person's marriage status. And the court and the

1 prosecution talked about it and said, okay, it is an
2 essential element. The Supreme Court said, well, we're not
3 sure it is, but let's pretend it is. And because the court
4 and the prosecution agreed that it was an essential element,
5 the prosecution was permitted to recall a witness to clarify
6 that issue for the jury to satisfy that element.

7 Now, the State's aware that the State rested yesterday.
8 However, an essential element of the second indictment in
9 this case is that the sale occurred within a half a mile of
10 a school, so the State intends to call Detective Riggs to
11 testify as to the location of Pickens Elementary School in
12 relation to the location of the sale in this case. And it
13 won't take but a couple of minutes. I anticipate it being
14 two to three questions at the most. The state would, again,
15 recall Detective Riggs.

16 THE COURT: Mr. Robinson.

17 MR. ROBINSON: May it please the Court. Your
18 Honor, I do object to this. However, I will point out that
19 everyone misses things sometimes and we all make mistakes or
20 errors and so forth. But if he's going to just put up Mr.
21 -- Officer Riggs for the purpose of just explaining that
22 this occurred in the proximity of this and so forth, that's
23 the only thing I would think he would be allowed to put up.
24 But it's in the Court's discretion at this point.

25 THE COURT: Okay. I grant the State's motion to

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Cross Examination by Mr. Robinson

89

1 reopen the case. I don't find there's any unfair prejudice
2 that would ensue if that occurred. And in the interest of
3 justice, I think the State should be allowed to,
4 particularly since no evidence by the Defense has been
5 presented at this point. And the State did close at the end
6 of a long day.

7 As to the motion for mistrial that was made yesterday,
8 I respectfully deny that. I find the evidence at issue that
9 the jury heard was later elicited from defense counsel on
10 cross-examination of the confidential informant. So I find
11 that there's no need for a mistrial under those
12 circumstances, particularly when the evidence was not
13 objected to initially. I will be glad to consider giving
14 the jury a curative instruction about that evidence. But
15 I'm not sure the Defense wants that or the Prosecution
16 agrees to that, but I'll be glad to hear your arguments on
17 that.

18 MR. TOOKER: Again, the State is of the opinion
19 that that evidence goes to show the CI's knowledge of who
20 the Defendant is, who the person selling the drugs is. And,
21 also, provides the jury important background information
22 into how it is that these buys transpire. You don't sell to
23 someone you've never met before. You don't purchase drugs
24 from somebody that you don't know. This is something that
25 people develop, I mean, effectively a relationship like

1 anything else.

2 THE COURT: I think the issue, though, Mr. Tooker
3 is whether in a prosecution for distribution of drugs on a
4 certain date when there's not a conspiracy alleged and the
5 date is a discrete date, place and time, and under those
6 circumstances, is the confidential informant's statements
7 concerning previous drug buys from the same Defendant proper
8 under any circumstances? Do you have some case that says
9 just because of the nature of drug transactions the State
10 can parade in witnesses to show numerous other transactions
11 that are not indicted?

12 MR. TOOKER: No, sir.

13 THE COURT: Well, isn't that what you're arguing?

14 MR. TOOKER: Well, I mean, effectively, what I'm
15 arguing is the 404 b) exception. You know, I'm going to
16 identify. So I mean, what ---

17 THE COURT: What's the difference between that and
18 the example I gave about bringing in other transactions?

19 MR. TOOKER: I mean, I can see that it certainly
20 murky. And the State's of the opinion that, again, for the
21 purposes of showing the CI has familiarity with Mr. Russell,
22 that they get that background information that's provided on
23 the tape. Now, the State didn't call witnesses to testify
24 as to prior arranged buys or other purchases or knowledge of
25 the Defendant being someone who distributes crack cocaine in

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Cross Examination by Mr. Robinson

91

1 the area. The State introduced a tape or a CD that was
2 recorded from the CI's communications with people in
3 circumstances surrounding that particular buy. And like
4 anything else, when you're talking to someone, a lot of
5 those things that are inherent in your relationship, come up
6 over the courses of your discussion. And so her familiarity
7 with him goes to show that she can properly identify him and
8 she can properly identify him based on, I think, what the
9 jury was able to hear on the tape recording. And that's the
10 State's position now.

11 Now, if Your Honor disagrees, I think a curative
12 instruction can remedy any error. And Mr. Robinson and I
13 can certainly, if the jury requests to hear the tape again,
14 redact that information. The State's of the opinion that
15 it's important for ID.

16 MR. ROBINSON: Your Honor?

17 THE COURT: Yes, sir, Mr. Robinson.

18 MR. ROBINSON: Your Honor, I agree with the Court,
19 but I believe that a curative instruction is not something I
20 desire in this case. I would ask that there be a redaction
21 in this case so it just talks about just that one day at
22 that time. And that the Prosecutor -- second, that the
23 prosecutor not be permitted to talk about other transactions
24 in his closing statements in this matter.

25 MR. TOOKER: And if that's your ruling, sir, I

1 will certainly not broach the topic in closing.

2 THE COURT: All right. Well, based on that, I'm
3 not going to give the curative instruction. For strategic
4 reasons, you're asking me not to give a curative
5 instruction; is that right, Mr. Robinson?

6 MR. ROBINSON: That is correct, Your Honor.

7 THE COURT: Okay. All right. Well, I understand
8 the State's theory about this evidence. I respectfully
9 disagree with it.

10 MR. TOOKER: Thank you, Your Honor.

11 THE COURT: Okay. You can bring the jury on in.
12 Thank you.

13 (WHEREUPON, the jury entered the open court at
14 approximately 9:58 A.M.)

15 THE COURT: All right. Good morning, ladies and
16 gentlemen. We had to clear up a couple of matters before we
17 could get started this morning. And at this time, the State
18 is going to be granted the opportunity to call any
19 additional witnesses it wishes to. So, yes, sir, Mr.
20 Tooker.

21 MR. TOOKER: Thank you, Your Honor. May it please
22 the Court. The State calls Travis Riggs.

23 THE COURT: All right, sir, you're still under
24 oath.

25 THE WITNESS: Yes, sir.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Recalled - Direct Examination by Mr. Tooker

93

1 TRAVIS RIGGS,

2 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. TOOKER:

5 Q. Where did this sale transpire?

6 A. 105 Morris Lane.

7 Q. Is that within a half mile of Pickens Elementary
8 School?

9 A. Yes, it is.

10 Q. How do you know that?

11 A. Because I clocked it with my vehicle and it was point
12 four miles.

13 Q. And when did you do that?

14 A. Yesterday before trial.

15 Q. At whose request?

16 A. Yours.

17 Q. Okay. And would it be less in terms of the way the
18 crow flies?

19 A. Oh, definitely.

20 Q. Okay.

21 MR. TOOKER: No further questions.

22 MR. ROBINSON: No questions, Your Honor.

23 THE COURT: All right. Thank you, sir. All
24 right.

25 MR. TOOKER: At this point, Your Honor, the State

1 would rest.

2 THE COURT: Okay. And ladies and gentlemen, I
3 apologize for having to shuffle you in and out real quickly.
4 But I do have to take up one matter at this stage so I'm
5 just going to ask you to go back to the jury room. We're
6 going to start back up in just a moment. Thank you. Don't
7 talk about the case.

8 All right. Any motions at this time?

9 MR. ROBINSON: May it please the Court. At this
10 time we would make a motion for a directed verdict, Your
11 Honor, in this case.

12 As to the first count of distribution, part of the law,
13 as far as elements of distribution, we don't believe that
14 they have shown that Mr. Russell normally possessed these
15 drugs or that he actually or constructively transferred or
16 attempted to transfer these drugs from another person. It
17 goes obviously to the existence of any evidence in this
18 case. I think it's only created a mere suspicion in this
19 case that this happened. She testified on her tape that
20 they've introduced that she saw Mr. Russell on the porch.
21 And she also testified that he was not -- he did not want to
22 deal with her. She thought that -- she said that, testified
23 or said on the tape that he didn't trust her, did not want
24 to deal with her. We believe that's just the only evidence
25 the State has produced, the only evidence that creates a

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Recalled - Direct Examination by Mr. Tooker

95

1 suspicion in this case, a suspicion or something like that
2 in this matter. So we believe that we are entitled at this
3 time to a directed verdict and acquittal as to the first
4 count of distribution.

5 As to the second count, which is proximity, it would go
6 in line with if the Court found that they had not produced
7 any evidence of distribution, it would be dismissed. But
8 that's our stance, Your Honor.

9 THE COURT: Thank you. I respectfully deny the
10 motion. I find that in the light most favorable to the
11 State the testimony and the evidence raise more than a
12 suspicion of guilt and pursuant to Rule 19 there would be
13 sufficient evidence for the jury to convict the Defendant if
14 the evidence was believed. And, of course, I can't weigh
15 the evidence. I can only gauge whether there's sufficient
16 evidence in the record and I find there is.

17 Does your client intend to testify, sir?

18 MR. ROBINSON: He does not, Your Honor. We met
19 last night about that. And I talked this morning again to
20 him. He does not want to testify.

21 THE COURT: Do you intend to call witnesses?

22 MR. ROBINSON: I do not, Your Honor.

23 THE COURT: All right. Mr. Russell, I'm going to
24 ask you some questions, sir. If you could just raise your
25 right hand. Do you swear or affirm the testimony you're

1 about to give will be the truth, the whole truth, and
2 nothing but the truth?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I'm going to go over with you your
5 right to testify or not to testify. And if I say something
6 you don't understand or if I'm just not making sense or you
7 want me to repeat something, will you let me know?

8 MR. RUSSELL: Yes, sir.

9 THE COURT: All right. You have the right to
10 testify in this case and tell your side of the story and
11 present any evidence that's relevant in the case and
12 material. And you have the absolute right to do that and
13 take the stand. If you do do that, however, you would be
14 subject to being cross-examined by the Solicitor, who could
15 ask you about anything relevant and material to the case and
16 anything that might bare on your credibility. And I don't
17 know if the State would seek to impeach you with any -- does
18 he have any prior record? I don't know.

19 MR. TOOKER: Your Honor, the only thing I think
20 that would be impeachable in this case would be a prior drug
21 conviction from 2005. But, of course, the prejudicial
22 effect of that, you know, is too much to actually talk
23 about. The State would just seek to impeach him with the
24 fact that he was convicted of a felony carrying fifteen
25 years.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Recalled - Direct Examination by Mr. Tooker

97

1 THE COURT: All right. So if you did take the
2 stand, Mr. Russell, the jury may hear that you were
3 convicted of a felony in 2005. Of course, if you didn't
4 take the stand, the jury would have no way of knowing that.

5 You also have the right to remain silent and not take
6 the stand. And I know your lawyer has been over this with
7 you. But I just need to make sure you understand it. And I
8 will tell the jury if you didn't testify, that you don't
9 have to. And the Constitution guarantees you the right to
10 remain silent and they could not hold it against you or take
11 it into account in any way in determining whether you were
12 guilty or not guilty, the fact that you did not testify. So
13 whether you testify or not is a personal choice. It's your
14 right. Nobody else's. And you make the decision after
15 consulting with your lawyer and considering the strategy of
16 testifying or not testifying.

17 So have you understood all of my statements, sir?

18 MR. RUSSELL: Yes, sir.

19 THE COURT: Do you have any questions about your
20 right to testify or not to testify?

21 MR. RUSSELL: No.

22 THE COURT: Have you had enough time to talk to
23 Mr. Robinson about your choice?

24 MR. RUSSELL: Yes, sir.

25 THE COURT: And your decision is not to testify?

1 MR. RUSSELL: Yes, sir.

2 THE COURT: Okay. All right. Thank you very
3 much.

4 MR. RUSSELL: Thank you.

5 THE COURT: Now, let's talk a little bit about the
6 charges. I received some charges from the Defense for
7 requests to charge, mere presence, which I will charge some
8 form of that theory. Actual or constructive possession, I
9 have a charge on that. And reasonable doubt, I will charge
10 that. I'll make these part of the record. Are there any
11 other requests to charge?

12 MR. TOOKER: Nothing from the State, sir.

13 MR. ROBINSON: Yes, Your Honor. We would ask that
14 the Court charge a lesser included charge of a possession in
15 this case.

16 THE COURT: Possession?

17 MR. ROBINSON: Yes, sir.

18 MR. TOOKER: Your Honor, the State doesn't believe
19 there's any evidence in the record that indicates a lesser
20 included applies. I think the real question in this case is
21 whether Mr. Russell gave the CI the drugs or if it was
22 another party or if she, herself, somehow maybe had stored
23 them somewhere and came away with them. But I don't think
24 there's a question that there was an exchange of drugs. So
25 I don't think possession applies in this case.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Travis Riggs - Recalled - Direct Examination by Mr. Tooker

99

1 THE COURT: How could the jury find possession?

2 MR. ROBINSON: Your Honor, I normally ask for the
3 lesser included charge in a case of this matter. And I
4 believe a drug case, obviously. But you're right it is the
5 issue of whether or not this transaction took place. So I
6 agree with him but I have to ask that in this kind of case,
7 in a drug case.

8 THE COURT: Well, how could the jury find
9 possession?

10 MR. ROBINSON: I withdraw that request, Your
11 Honor.

12 THE COURT: Okay.

13 MR. ROBINSON: But I would request, Your Honor,
14 that the Court gives, as far as credibility goes, a charge
15 on credibility of the witnesses.

16 THE COURT: Sure. Yeah. Yeah. All right.
17 Anything further?

18 MR. TOOKER: Nothing from the State, sir.

19 THE COURT: Okay. You can bring the jury in.
20 Thank you. I'll give you the opportunity to rest in front
21 of the jury.

22 MR. ROBINSON: Yes, sir.

23 (WHEREUPON, the jury entered the open court at
24 approximately 10:09 A.M.)

25 THE COURT: Okay. Ladies and gentlemen, we've

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

100

1 reached the stage in the trial where the Defense has the
2 opportunity but not the obligation to present any evidence
3 if it wishes to. So, Mr. Robinson.

4 MR. ROBINSON: May it please the Court. Your
5 Honor, at this time, we rest.

6 THE COURT: All right. So ladies and gentlemen,
7 you've heard all the evidence you're going to hear and it's
8 now time for the closing arguments and I will instruct you
9 on the law after you hear the lawyers' closing arguments and
10 then the case will be in your hands for a decision and for a
11 verdict. So Mr. Tooker.

12 MR. TOOKER: Thank you, Your Honor. May it please
13 the Court. Mr. Robinson.

14 **CLOSING STATEMENT**

15 **BY MR. TOOKER:**

16 Ladies and gentlemen of the jury, I generally prosecute
17 domestic violence crimes in Pickens County. And those are
18 crimes where we have victims. A lot of times the way we
19 think about drug crimes is that they are victimless crimes.
20 Nobody gets hurts, that it's essentially an activity that
21 only affects the people involved and there's not any sort of
22 collateral damage. But in a case like this, I actually
23 think the opposite is very much true. I think cases like
24 this are very much victim crimes. And it's not one of
25 these, you know, platitudes or anything like victims, the

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

101

1 community and stuff. I very much believe that Carmilithia
2 Staton is a victim. She's a victim of addiction and the
3 predatory sale of crack cocaine and becoming an addict to
4 something that truly alters your ability to function. And I
5 think that she's a victim of people who take advantage of
6 her specific weaknesses. And I think that selling crack is
7 definitely a victim crime.

8 Now, we have a couple of elements that we have to show
9 you. The first thing is that the drugs are, in fact, drugs.
10 And, again, we have the stipulation that all parties admit
11 to, the drugs are drugs. You have the drugs, you've got the
12 analysis sheet from the County of Greenville where they're
13 analyzed so that there's no question that the drugs are, in
14 fact, drugs.

15 The question in this case is did the sale occur. So we
16 know something happened at 105, right? Something happened
17 at 105. And 105 is within a half a mile of a school, per
18 Mr. Riggs' testimony. So the issue is, who sold the drugs?
19 Did the Defendant sell the drugs? You have to determine
20 that really based on credibility. And the Judge will talk
21 to you about credibility. And credibility is really the
22 lynchpin of any kind of case, no matter what kind of case it
23 is. If it's a burglary case, you have to determine
24 credibility based on the -- or determine guilt based on the
25 credibility of the victim who says, I didn't give that

1 person permission to enter my house, take my things. If
2 it's a domestic violence case, you have to determine guilt
3 based on the credibility of a victim who says, yeah, that
4 person attacked me. That person put his hands on me, hit
5 me. If it's a DUI, you have to determine credibility based
6 on -- or determine guilt based on the credibility of the
7 officers who testify. So any case that we have here in
8 criminal court is, of course, based on credibility.

9 Now, there are a couple of ways to determine
10 credibility. And that's really what I want to talk to you
11 about. Because, really, what you're supposed to do here
12 today is figure out who's telling the truth. And the
13 State's of the opinion that Ms. Staton is telling the truth.
14 The first thing, I think this is very important ---

15 MR. ROBINSON: Your Honor, I would object to
16 interjecting personal opinions in his closing statement.

17 THE COURT: All right. Sustained.

18 **CLOSING STATEMENT CONTINUED**

19 **BY MR. TOOKER:**

20 Ms. Staton took the stand and before all of you
21 testified to something that she clearly did not want to
22 testify to. I mean, I think y'all saw the exact same thing
23 I saw. She was crying and upset. I mean, I heard her say,
24 I don't want Dodie to go to jail, you know. I mean, she
25 feels badly, and I think that is apparent. I think that

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

103

1 what we saw was someone who was both scared and upset and
2 ashamed and fearful. And despite all those things, despite
3 the fact that -- and y'all heard the tapes, same as I did.
4 That person on the tape is not the same personality that
5 testified before y'all. The person on the tape is relaxed
6 and kind of jovial and happy. The person who testified was,
7 again, upset and scared and ashamed, frightened. And I
8 believe that if you take those two things together ---

9 MR. ROBINSON: Your Honor, again, objection.
10 Personal opinion in this case again ---

11 MR. TOOKER: I mean, this is just common parlance.

12 THE COURT: Okay. Well, avoid your personal
13 opinion.

14 MR. TOOKER: Sure.

15 CLOSING STATEMENT CONTINUED

16 BY MR. TOOKER:

17 You take those two things together, you listen to how
18 she sounds on the tape, you listen to how she appeared on
19 the stand, how upset she was, but despite that fact, despite
20 how upset she was, despite the fact that she clearly did not
21 want to testify against the Defendant, she did. She
22 testified against him. She told the truth. She told y'all
23 she was telling the truth. And that information I think
24 goes to her credibility.

25 Now, the second aspect of credibility is whether or not

1 we can verify the things she says. So we have a chain of
2 events here. A chain of events that start really when she
3 gets searched by officers before she goes to purchase the
4 crack cocaine. And it terminates after she's purchased it,
5 met back with the officers and turns over the drugs. So
6 first we have that she is searched and she says that she was
7 searched by Brad Smith. And Brad Smith says he searched
8 her. So that's verified by an external source, right? Then
9 we've got that she gets a ride from Travis Riggs and he
10 takes her to the drop-off location. And that, of course, is
11 verified by an outside source. We also have the tape, a
12 third source that verifies that information. Now, after
13 being dropped off you heard the testimony from Brad Smith
14 who said, I watched her. I watched her walk down the
15 street. And you have this map that indicates where exactly
16 the sale transpired, where Brad Smith was, where she was
17 dropped off and where she was eventually picked up. So
18 she's dropped off, walks down the street past Brad Smith,
19 and he has eyes on her the whole time. He has eyes on her
20 and he tells you, yes, she encounters some people in the
21 street. You can hear that on the tape. But he also says,
22 she didn't give any drugs or take any drugs from those
23 people, right? He has eyes on her until she goes all the
24 way to the trailer. He said she shows up at the trailer and
25 turns the corner, goes inside. Of course, he can't put eyes

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

105

1 on her at that point. But from being searched, being
2 driven, dropped off, walking down the street, seeing the
3 people that you hear on the CI tape, and getting in the
4 trailer, all that is evidenced by both the testimony of
5 Travis Riggs, Brad Smith, the tape and the CI herself. So
6 that goes to credibility. She says that this particular
7 chain of events occurred and those chain of events are
8 backed up by facts.

9 Now, you've got a split second there, I think Brad
10 Smith said four minutes, so she's out of sight. She goes
11 into the trailer to purchase the drugs. She goes into the
12 trailer to purchase the drugs and she says it transpired the
13 same way it sounds like it transpired on the CI tape. She
14 says, yeah, Dodie, I need a forty. I need a forty. And oh,
15 okay. Thanks, Dodie. Thanks. And gets out of there. And
16 that's how she says it went down. That's how it went down
17 on the tape. Mr. Robinson asked her, if something went down
18 on the tape and it's different than your recollection, is
19 that how it transpired? Yes. So if it happened that way on
20 the tape, that's how it happened. That's why we make these
21 recordings because then three years down the road, you don't
22 have to rely on somebody's information solely. You would
23 have some sort of objective evidence that you can listen to
24 and apprise.

25 After she leaves the trailer, again, we hear the

1 testimony of Brad Smith, he sees get out and start walking
2 down the street. So she walks down the street and she sees
3 some people, you hear them talking. She gets a phone call.
4 She gets a phone call from law enforcement talking about we
5 need to go to a different location. They go to a different
6 location, meet up with her, take her back because she turns
7 the drugs over to Brad Smith and Travis Riggs searches her.
8 All that information again is verified by both the CI,
9 Travis Riggs, Brad Smith and the CI tape. So she's told you
10 a story about this long (indicating). And ninety percent of
11 is events by outside sources. So if she's telling you the
12 truth about all of that and she's telling you the truth
13 through her emotions, through her clearly shaken and
14 unsteady state on the stand, that is a credible witness.
15 That is a witness whose story can be confirmed by outside
16 facts and who appears to be telling the truth, because
17 ultimately, and this is what you have to ask yourselves when
18 making any determination about credibility, is what do they
19 have to gain or lose by lying? You get up there and
20 testify. What benefit is it to her to lie? You know, she
21 said that she was doing some work and she got some charges
22 pled out, some shoplifting charges, two charges pled out.
23 And they gave her forty dollars in gas money. So that's
24 already happened. She already got the benefit. So what
25 does she have to gain now? Three years later when she's so

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

107

1 clearly scared, scared of the Defendant, upset about what's
2 transpired? What does she have to gain by lying at this
3 point in time?

4 Another thing that I think, again, is very important,
5 if you listen to the CI tape, during the CI tape, she
6 initially shows up and is like, Dodie ain't going to sell to
7 me. Dodie ain't going to sell to me. Then Dodie comes over
8 and you hear them talking. Now, you can't hear the voice of
9 the person she's talking to. It sounds kind of muffled. I
10 believe if you listen to the tape what you will hear is, how
11 you doing? I'm doing okay. Oh, I've been better.

12 Something along those lines, general pleasantries exchanged.
13 Or I need forty. Oh, that's good. And then she leaves.
14 But she keeps saying Dodie. Dodie, Dodie, Dodie, Dodie,
15 Dodie. Dodie to the person she is purchasing the drugs
16 from. Dodie, repeatedly, and again and again and again.
17 And not once does that person on the tape say, yo, yo, yo,
18 I'm not Dodie. No, no, no, no, no. My name is Steve. My
19 name is Rick. My name is Jeff. And Jeff is one of the
20 names we got that she approaches, right? When she rolls up
21 to that trailer you hear two guys. She says, hey, Nate.
22 Hey, Jeff. Not at one point when she's talking to the
23 person who sold her drugs did she say, hey, Nate. Hey,
24 Jeff. I need a forty, Jeff. I need a forty, Nate. Or did
25 she say, hey, Dodie, I need a forty. And said, you know I'm

State of South Carolina -vs- Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

108

1 not Dodie. I'm Nate. You know I'm not Dodie, I'm Jeff.

2 So what you have is an entire story that you're to
3 analyze. And you're analyzing it based on the testimony of
4 everybody who was involved and determine credibility based
5 on the testimony from that witness stand, from these people
6 who swore to tell the truth, sworn law enforcement officers,
7 and from the evidence presented to you.

8 Now, the chain of events that transpired is not in
9 dispute, that she goes to that trailer, purchases crack, and
10 leaves. It's not disputed, the crack is crack. If she was
11 telling the truth about all of that other stuff, why would
12 she lie about who sold her the drugs?

13 And again, we're talking about these cases as victim
14 cases. And we have a burden and that burden's to show that
15 on the 22nd day of July, 2009, Darnell Russell sold a
16 quantity of crack cocaine within a half a mile of Pickens
17 Elementary School. You heard Travis Riggs on that. And we
18 also have to show -- this is important -- on the 22nd day of
19 July, 2009, Darnell Russell dispensed, delivered or aided,
20 abetted, or conspired to dispense, distribute or deliver a
21 quantity of cocaine base, a controlled substance. So let's
22 say what I've just said the State's theory is didn't
23 transpire. Let's say it was something else. Let's say in
24 that trailer we've got three people. We've got Nate, we've
25 got Jeff and we've got Dodie. Say all three people are

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Tooker

109

1 inside the trailer. And maybe one of the other guys gives
2 the drugs. If one of those other guys gave the drugs and
3 the other two were aware, what are they doing? They're
4 aiding and abetting and conspiring to assist that person to
5 distribute illegal drugs.

6 MR. ROBINSON: Your Honor, objection. This is
7 outside the scope of this case.

8 MR. TOOKER: It's in the indictment.

9 THE COURT: All right. Overruled.

10 **CLOSING STATEMENT CONTINUED**

11 **BY MR. TOOKER:**

12 The language in the indictment says, distribute,
13 dispense, deliver or aid, abet, or conspire to distribute,
14 dispense or deliver. Now, if somebody else sold those drugs
15 in that trailer when he's in that trailer, he is guilty the
16 same as them. If Nate sold the drugs, Dodie's guilty. If
17 Jeff sold the drugs, Dodie's guilty. But in reality what we
18 saw in his case, we saw a CI who said, Dodie sold the drugs.
19 And we saw a CI that you can believe because she was so
20 upset. And because despite her fear and despite her feeling
21 and despite her regrets, she came here and told you she was
22 telling you the truth. And she told you the truth because
23 everything else she said we have verified. And that's why
24 we ask you to find Defendant, Darnell Russell, guilty.

25 THE COURT: Thank you, Mr. Tooker. Mr. Robinson.

1 MR. ROBINSON: May it please the Court.

2 CLOSING STATEMENT

3 BY MR. ROBINSON:

4 Maybe Mr. Tooker was on a different planet than we were
5 yesterday. This independent verification, I believe you
6 heard testimony yesterday that disputes anything that Mr.
7 Tooker just said. He said that her testimony can be
8 confirmed by outside people, officers. Well, Officer Riggs
9 and Officer Smith said they didn't witness any sort of
10 transaction or exchange. They also testified they never saw
11 Darnell do anything. Now, unless a split second is four
12 minutes of not seeing this person, the number of people in
13 the home that they have that didn't belong to Darnell and no
14 money was ever found on Darnell.

15 Now, this case comes down to credibility. That's what
16 it comes down to. These guys, Officer Riggs and Officer
17 Smith, never saw anything. They never saw any sort of
18 transaction. They have to base everything on that person
19 that was in the chair up there. I did a little research
20 last night. Now, the definition of credibility is the
21 quality or power of inspiring belief. Now, Abraham Lincoln
22 once said -- these quotes are pretty iconic. One said that
23 the truth is the best defense against a liar. And it comes
24 down to whether or not you all can believe what this
25 criminal, this nine-time, we think, the testimony goes,

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Robinson

111

1 nine-time convict, convicted of numerous charges, whether or
2 not you can believe her. And the Judge is going to give you
3 an instruction in a moment about credibility and what you
4 look for in determining whether or not someone is credible.
5 And it's laughable that Mr. Tooker, in his closing
6 statement, told you that this criminal had no motive in this
7 case. Because she has a hard time figuring out the truth
8 herself. Because it's interesting, if you listened
9 yesterday, you have this person sitting up there, this CI or
10 confidential informant sitting up there, and then you have
11 Officer Riggs sitting here. And she says that I'm not doing
12 any work, I wasn't doing any work. He says, she does a lot
13 of work, she was doing work at the time. She working
14 charges off. So it's laughable, I will submit to you, for
15 Mr. Tooker to tell you that she didn't have a motive to lie,
16 and to come here and to lie. Do y'all think that that was
17 emotion to the sense of fear or something? Didn't she kind
18 of -- she admitted that she was a drug addict. She admitted
19 that she had relapsed before. She admitted all of that.
20 She continued to commit crimes, continuously. The testimony
21 from Officer Riggs was that she does a lot of work. That's
22 the benefit, that's the motive in this case.

23 But the tape, which was in here yesterday, was very
24 interesting. You'll get an opportunity to listen to it.
25 And on cross-examination of this person she didn't confirm a

1 lot of the stuff on that tape. She had moments, if you
2 recall, when she said she wasn't sure, she couldn't recall
3 in this case. One thing -- a few things that she didn't
4 recall were very interesting on the tape. Because on the
5 tape she says, that Darnell, Mr. Russell, doesn't trust her.
6 She also says that she listened to the tape twice in two
7 days. She says that Darnell will not cooperate with her.
8 She also says, third, that he won't give her anything. And
9 finally, and this is the most interesting thing in that
10 tape, she says Darnell, Mr. Russell, was on the porch across
11 the street. The question that you may have is, okay, didn't
12 trust her, he was across the street, he wouldn't cooperate
13 with her, so how can this person there, who has a motive a
14 mile long, have a record bigger than my -- bigger than your
15 arm, how can she be trusted as far as what she's going to
16 say?

17 In the beginning of this case, I talked to y'all about
18 common sense. And you don't leave your common sense at the
19 door. And you don't leave -- you don't leave your past
20 beliefs and past experience that you have. You all can
21 recognize a liar. You can recognize someone who's a drug
22 addict. You can recognize someone who has a motive to lie.
23 And you can recognize someone who can't even remember what
24 she said on a darn tape that she listened to in the past two
25 days. And was that emotion or was that something more than

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Closing Statement by Mr. Robinson

113

1 emotion in this case? Was it something more? We have an
2 addict she's testified to. She's relapsed. She's been an
3 addict for ten years.

4 What we have here, ladies and gentlemen, is a case that
5 comes down to one thing, credibility. These officers didn't
6 see Mr. Russell do anything. They may have seen him in that
7 area, across the street, or whatever, but the Judge is going
8 to tell you in a second that mere presence, being around
9 people, is not enough. You've got to have more than that.
10 Just because someone is around people or is associated with
11 someone, that doesn't mean they're guilty of this. He's
12 also going to talk to you about actual and constructive
13 possession in this matter. But mainly, he's going to talk
14 to you about credibility and credibility of witnesses as far
15 as what you look at, motive, all these things.

16 And Mr. Tooker talked about victims in this case.
17 There are a lot of victims in society. But a person who is
18 unjustly accused of a crime that they didn't commit is the
19 biggest victim. That's the biggest victim. So I submit to
20 you that the officers didn't see anything, they didn't see
21 Darnell do anything, other than being there. That's it.
22 This is not a case of woulda, shoulda, maybe, possibly, some
23 sort of thing that may have happened or not happened. This
24 is beyond a reasonable doubt. The State has to convict --
25 has to establish their case beyond a reasonable doubt. And

1 it's based entirely on a confidential informant, with a
2 record a mile long, and motive in this matter. And you had
3 an opportunity to see her.

4 In the beginning of my closing statement, I read a
5 quote to you from Abraham Lincoln in this case. And the
6 truth is what defeats liars; that's what does it. Liars
7 can't stand the truth. In this case, I ask you for a
8 verdict that speaks the truth. And that is that Darnell
9 Russell is not guilty of these offenses. Thank you.

10 THE COURT: All right. Thank you, Mr. Robinson.

11 **CHARGE**

12 **BY THE COURT:**

13 Ladies and gentlemen of the jury, you've heard all the
14 evidence you're going to hear in this case. And it's now my
15 duty to instruct you on the law that applies to the facts of
16 this case and you are to apply that law to the facts as you
17 find them, regardless of whether you agree or disagree with
18 the law or what you think the law should be. But you should
19 apply the law as I give it to you and not be concerned with
20 any likes or dislikes or opinions or prejudices or undue
21 sympathy. And you recall you took an oath to do just that
22 when we began this case yesterday.

23 Now, ladies and gentlemen, the role of the jury is to
24 apply the law to the facts and it's your job to find the
25 facts from the evidence in this case. And I told you at the

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

115

1 outset that you must determine what the facts are from the
2 evidence and I told you that evidence consists of two
3 sources, sworn witness testimony and exhibits. And please
4 do not read into these instructions or into anything I may
5 have said or done as any indication as to what I think the
6 facts are or what your verdict should be, because our
7 Constitution gives you, the jury, the exclusive right to
8 determine what the facts are. And I'm not going to intrude
9 on your prerogative to find the facts, just as I know you
10 won't intrude on my prerogative to tell you what the law is
11 that you have to apply to those facts. So you decide what
12 the facts are by evaluating or weighing the evidence you've
13 heard during the course of this trial. There is no way for
14 you to weigh the evidence in a literal sense. It's simply a
15 mental process and you weigh evidence by using your good
16 common sense, your life experiences and your reason and
17 judgment.

18 Now, in this case the credibility, like in every case,
19 is something that you the jury must determine. Credibility
20 is within your prerogative to determine. And you must
21 decide what testimony to believe and what not to believe.
22 And what exhibits to believe and what not to believe. And
23 you may disbelieve all or part of a witness's testimony.
24 You may believe everything a witness says or nothing a
25 witness says. You can believe parts of their testimony and

1 disbelieve other parts. And you were given some guidelines
2 when we first started about how you could judge credibility.
3 And I'm not going to go back through those because I know
4 you heard me the first time. But I will remind you that the
5 right and duty you have to determine credibility should be
6 exercised reasonably and not arbitrarily.

7 Now, you also are instructed that there are two types
8 of evidence in a criminal case that are generally presented.
9 And what I'm talking about now, ladies and gentlemen, is
10 direct evidence and circumstantial evidence. Direct
11 evidence is the testimony of a person who claims to have
12 actual and direct knowledge of a fact, such as an
13 eyewitness. Direct evidence is evidence that if believed
14 immediately establishes a fact. Circumstantial evidence is
15 indirect evidence. It is proof of a chain of facts and
16 circumstances from which you could find another fact exists,
17 even though it has not been proven to you directly. The law
18 makes no distinction between the weight or value you may
19 give to direct or circumstantial evidence. There is not a
20 greater degree of certainty required of one over the other.

21 Now, some of you, I believe, have been taking notes in
22 this case and that is certainly allowed. I take notes. And
23 I just want to remind you that your notes are not to be
24 given more weight than someone's independent memory. People
25 who did not take notes certainly can recall the testimony

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

117

1 just as well, if not better than the people who do take
2 notes. But you certainly may take notes for your own
3 personal use.

4 Now, ladies and gentlemen, the mere fact that Mr.
5 Russell has been charged and indicted in this case is not
6 evidence. It doesn't even create a suspicion of guilt.
7 Under our system of justice guilt must be proven by the
8 State beyond a reasonable doubt as to each element of the
9 crime. In this case we have two crimes that have been
10 alleged. The first is distribution of crack cocaine and the
11 second is distribution of crack cocaine within one-half mile
12 of a school. And I'm going to go over with you the elements
13 of those charges in just a moment. But before I do that, I
14 want to remind you that Mr. Russell, like anyone charged
15 with a crime, is presumed innocent. And that presumption of
16 innocence is not some legal technicality. It is a
17 fundamental right that all citizens are guaranteed. And the
18 presumption of innocence remains with a Defendant throughout
19 a criminal trial and even into your deliberations. And it
20 can only be removed if, and only if, you, the jury,
21 unanimously find the State has proven each and every element
22 of the crime beyond a reasonable doubt. You will have to
23 weigh the evidence as to each charge separately and not let
24 your finding on one indictment affect your finding on
25 another. You must give individual and careful deliberation

1 as to each particular charge and weigh the evidence as to
2 each separately.

3 Now, I've talked about this term, proof beyond a
4 reasonable doubt, and I want to define that for you briefly.
5 What is a reasonable doubt? The law defines a reasonable
6 doubt as the kind of doubt that a reasonable, sincere,
7 honest and conscientious person would have if they were to
8 hesitate to act in a matter important in their own affairs.
9 Reasonable doubt is not the kind of doubt that is required
10 to overcome every possible doubt. And what I mean by that
11 is that there's nothing in this life we know with absolute
12 certainty and the law does not require proof on behalf of
13 the State that overcomes all certainty. Instead, the
14 standard is proof beyond a reasonable doubt. And if, after
15 your review of the evidence, you are firmly convinced of the
16 Defendant's guilt, it will be your duty to return a verdict
17 for the State. If, on the other hand, you weigh the
18 evidence and find that you are not firmly convinced of the
19 Defendant's guilt and you have a reasonable doubt as to his
20 guilt, you would be required and obligated to find for the
21 Defendant and find him not guilty.

22 Now, ladies and gentleman, a reasonable doubt may arise
23 from the evidence or from a lack of evidence. And a
24 Defendant is entitled to every reasonable doubt that may
25 arise in a case. And that means, if as to any issue of fact

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

119

1 that is essential to a finding of guilt or a conviction, you
2 have a reasonable doubt as to how that issue should be
3 resolved, it's your duty to resolve it in favor of Mr.
4 Russell.

5 Now, anyone charged with a crime in our country is
6 entitled to remain silent. The Constitution guarantees
7 someone that right. So the mere fact that someone does not
8 testify, does not constitute something you, the jury, can
9 take into account in determining whether they're guilty or
10 not guilty. It would be a violation of your oath for you to
11 consider, discuss or even mention the fact that the
12 Defendant in this case did not testify. Because the fact
13 that someone claims the right to remain silent cannot be
14 used against them in any way.

15 So with that, I'm going to turn now to the actual
16 charges in this case. And, again, they are distribution of
17 crack cocaine and distribution of crack cocaine within the
18 proximity of a school. I'm going to first talk to you about
19 the offense of distribution. In order to convict Mr.
20 Russell of this offense, the State must prove beyond a
21 reasonable doubt that he distributed, sold, purchased,
22 manufactured, or unlawfully -- well, let me back up. I've
23 got the wrong -- that's the -- in order to convict Mr.
24 Russell of distribution of crack cocaine, the State is
25 required to prove four elements beyond a reasonable doubt.

1 First, that Mr. Russell had actual control or the right to
2 exercise control over the crack cocaine. Second, that he
3 knowingly distributed or delivered it. Third, that the
4 substance was, in fact, crack cocaine. And fourth, that the
5 offense occurred in Pickens County. Knowingly means with
6 knowledge, consciously and not accidentally. Intentionally
7 means willfully, intending the result that actually occurs,
8 not accidentally or involuntarily. And intent may be shown
9 by acts of conduct of the Defendant and other circumstances
10 from which you may naturally and reasonably infer intent.
11 Distribute means to deliver or to actually, constructively
12 or attempt to transfer a drug. And deliver means to
13 actually, constructively or attempt to transfer a drug. A
14 transfer can involve an exchange for money, barter or a gift
15 and it does not have to be anything given in exchange for
16 the drugs for transfer to constitute distribution. The
17 second charge is distribution of controlled substance within
18 the proximity of a school. And in order to convict Mr.
19 Russell of this charge, the State must prove beyond a
20 reasonable doubt that he distributed, sold, purchased,
21 manufactured or unlawfully possessed, with intent to
22 distribute crack cocaine while in, on or within one-half
23 mile of the grounds of a public or elementary, middle or
24 secondary school, a public playground or park, a public,
25 vocational or trade school or technical education center or

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

121

1 a public or private college or university. The person must
2 have knowledge that he is in or on or within one-half mile
3 of the grounds of a public or private elementary, middle, or
4 secondary school for him to be convicted.

5 Now, ladies and gentlemen, the mere presence of a
6 Defendant where a crime occurs or the mere association by a
7 defendant with people who commit crimes, is insufficient to
8 convict the Defendant of committing a crime. If you find
9 from the evidence or the lack of evidence that the Defendant
10 was merely present at a scene where a crime occurred or
11 merely associated with persons who committed a crime and you
12 do not find beyond a reasonable doubt that the Defendant
13 committed a crime, then the Defendant would, of course, be
14 not guilty.

15 Now, that covers the substantive offenses. And, again,
16 it's your duty to determine the facts of the case from the
17 evidence and determine whether the state has met its burden
18 of proving guilt beyond a reasonable doubt.

19 I have prepared a verdict form for you and I want to go
20 over with you the form. And I'm going to hand it to you to
21 -- tell me your name.

22 THE JUROR: Jessica Mullins.

23 THE COURT: Okay. You're the forelady of the
24 jury. I have the authority to do that. And you have the
25 authority to sign the verdict form, only when the verdict is

1 unanimous. The verdict form is very straightforward. Just
2 simply asking you to determine whether the Defendant is
3 guilty or not guilty of the charge of distribution of crack
4 cocaine. If you find that he is not guilty of that charge,
5 that would end your deliberations and you would find him not
6 guilty of the second charge of distribution of crack cocaine
7 within the proximity of a school. But if you found him
8 guilty of the first charge, you then go to the second charge
9 and you can independently weigh the evidence and determine
10 whether there was sufficient evidence to find him guilty of
11 the offense of distributing crack cocaine within the
12 proximity of a school or park or whether he's not guilty of
13 that charge. So there's simply two choices as to each
14 offense. And don't attach significance as to which choice I
15 put first. The order doesn't mean anything. And the genius
16 of our jury system, ladies and gentlemen, is it allows
17 twelve people from different backgrounds and walks of life,
18 experiences and perspectives to come together and talk about
19 the evidence and ultimately reach a verdict. Your vote is
20 exactly that, it's your vote and no one else's. Don't be
21 afraid to change your opinion if differing opinions abound,
22 if the discussion persuades you that you should. But don't
23 surrender honestly and conscientiously held beliefs just to
24 simply get the case over with or to reach a unanimous
25 verdict. Because as I told you yesterday, this case is

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

123

1 important for both sides and this is their day in court. So
2 I know you'll give fair and impartial consideration. You
3 may remember, you're not an advocate for either the State or
4 the Defense. You were chosen because both sides believed
5 you could be fair and impartial and decide this case without
6 any preconceived ideas or prejudices. And you are judges,
7 judges of the facts. And your sole interest is to determine
8 the facts of the case and determine whether the State has
9 met its burden of proof.

10 Now, the record is closed. There's not going to be any
11 more exhibits, there are not going to be any more witnesses
12 so you'll have to rely on your memory and the exhibits that
13 you have in reaching your verdict. And I am going to ask
14 you now to go back to your jury room. Don't start talking
15 about the case until you receive the exhibits and then you
16 can start talking about the case.

17 Ma'am, if you'll just stay out here and I'll talk to
18 you in just a moment. Thank you for your attention.

19 (WHEREUPON, the jury exited the open court at
20 approximately 10:49 A.M.)

21 THE COURT: Okay. The law doesn't allow you to go
22 into the jury room at this point. So you're excused. Does
23 she need to come back today?

24 THE CLERK: We have the panel coming in at eleven.
25 Did you want her to be in that? We have plenty.

1 THE COURT: It's up to you, if you want to come
2 back at eleven for the next case, you're welcome to. If you
3 want me to, I'll excuse you from that since you sat on this
4 jury.

5 THE JUROR: I have a doctor's appointment this
6 afternoon, so I'll go.

7 THE COURT: All right. Thank you for your time.
8 Are there any objections to the charge? From the
9 State?

10 MR. TOOKER: Yes, sir, Your Honor. Mr. Russell
11 was charged back in 2009. In regards to the proximity
12 instruction, the law didn't change until 2010 adding the
13 knowledge requirement for proximity. So up until 2010 the
14 Omnibus Crime Reduction Act there was actually not an
15 element of knowledge required for the purposes of proving
16 guilt in regards to distribution within proximity of a
17 school.

18 THE COURT: Okay. So what are you asking me to
19 do?

20 MR. TOOKER: I guess to recharge them with regards
21 to proximity and exclude the element of knowledge.
22 Effectively, it was a statutory offense up until 2010. If
23 you sold within a half a mile of school, whether or not you
24 knew you were within half a mile of a school, you were
25 guilty.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

125

1 THE COURT: So the State's position is the law
2 changed to require knowledge, but this Defendant isn't
3 allowed the benefit of that change?

4 MR. TOOKER: Yes, sir.

5 THE COURT: All right. I decline to charge that.

6 MR. ROBINSON: Your Honor, I would make a -- I
7 have a motion for a mistrial based on -- and I'll tell you
8 why. I objected during Mr. Tooker's closing on him going
9 into conspiracy and talking about conspiring. I think his
10 line of thing was, you can look at Nate and the other folks
11 in there and if he conspired with them or had something to
12 do with them, they worked together, you can find him guilty.
13 I think that was -- that is not what the indictment says and
14 I think that that interjected this burden that they can
15 just, in their deliberations, say, well, he's associated
16 with these guys and they conspired together, then they can
17 find -- then I can find him guilty. I think that was a --
18 and I have the indictment right here actually that he's
19 using. It says nothing in here about a conspiracy to do
20 anything. I don't think it was even charged in this case.

21 MR. TOOKER: Dispense, deliver, aid and abet;
22 conspired to distribute, dispense or delivery.

23 MR. TOOKER: I read straight from the indictment.

24 MR. ROBINSON: I retract that, Your Honor.

25 THE COURT: Okay. I respectfully deny the motion.

1 Do you have any objections to any of the jury charges, Mr.
2 Robinson?

3 MR. ROBINSON: The credibility I have a little bit
4 of an objection to. Only because I wish it was a little
5 more flushed out. But that's the only objection I have. I
6 think the Court gave a real strong instruction in the
7 beginning on credibility and I was hoping I would get more
8 instruction in the end on credibility.

9 THE COURT: Well, what specifically would you like
10 the jury to be told about credibility?

11 MR. ROBINSON: I think in terms of motive, those
12 kind of matters that you talked about in the beginning, I
13 believe, on the first day of court.

14 THE COURT: Okay. Well, I decline to expand on
15 what I've already told them.

16 MR. ROBINSON: Yes, sir, Judge.

17 THE COURT: Thank you.

18 MR. TOOKER: Thank you, Your Honor.

19 THE COURT: Are the exhibits in order?

20 MR. TOOKER: Yes, sir, Your Honor.

21 MR. ROBINSON: And I would ask that -- I think the
22 Court may have discussed this before, Your Honor, but I
23 would ask that the CD be redacted so the other parts aren't
24 in there.

25 MR. TOOKER: Yeah. And Mr. Robinson and I can do

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

127

1 that, I guess, one of two ways. First, you know, he and I
2 can just go through and target which areas are
3 objectionable. And if they request to listen to the tape,
4 they can do it out here and we can mute it for that point in
5 time. Or we can go back into my office and I can create a
6 redacted copy that they can have with them.

7 THE COURT: Well, why don't we go ahead and give
8 them the exhibits, except for that, and y'all can go redact
9 it in your office.

10 MR. TOOKER: Okay.

11 MR. ROBINSON: Thank you, Judge.

12 THE COURT: I suspect that they may ask for it,
13 but you never know. Just tell them that if they want to
14 hear the CD to let us know.

15 MR. TOOKER: It'll be, if I had to guess, about
16 forty-five minutes. You've got to upload it and then piece
17 by piece go through and mute sections and then create a new
18 copy.

19 THE COURT: Okay.

20 (WHEREUPON, the verdict form and exhibits were
21 delivered to the jury at 10:55 A.M. and the court stood
22 at recess awaiting the verdict of the jury.)

23 THE BAILIFF: They're already asking about
24 listening to the CD.

25 THE COURT: Okay. Thank you.

1 (WHEREUPON, court stood at recess awaiting the verdict
2 of the jury.)

3 THE COURT: Okay. We need to have everybody
4 assembled from the Russell Trial.

5 All right. Anything before we bring the jury in?

6 MR. TOOKER: Nothing from the State, sir.

7 MR. ROBINSON: No, Your Honor.

8 THE COURT: Okay.

9 (WHEREUPON, the jury entered the open court at
10 approximately 12:49 P.M.)

11 THE COURT: Okay. Madam Forelady, has the jury
12 reached a unanimous verdict?

13 THE JUROR: Yes, we have.

14 THE COURT: Okay. If you'd just hand it to the
15 bailiff, we'll receive it and publish it. Thank you. All
16 right.

17 THE CLERK: In the case of the State of South
18 Carolina versus Darnell Colin Russell, as to the charge of
19 distribution of cocaine base, we, the jury, unanimously find
20 the Defendant, Darnell Colin Russell, guilty.

21 As to the charge of distribution of cocaine base within
22 one half mile of a school, we, the jury, find the Defendant,
23 Darnell Colin Russell, guilty.

24 If this was your verdict and is still your verdict
25 raise your right hand, please?

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

129

1 (WHEREUPON, all jurors' right hands were raised.)

2 THE CLERK: Thank you.

3 THE COURT: Okay. Any matters before the jury is
4 discharged?

5 MR. TOOKER: Nothing from the State, sir.

6 THE COURT: From the Defense?

7 MR. ROBINSON: No, sir, Your Honor.

8 THE COURT: All right. Ladies and gentlemen,
9 thank you for your service this week. There are not going
10 to be any more cases. The solicitor's office is not going
11 to call any more cases. And they run the docket, so they've
12 decided not to call anything further. So you don't have to
13 come back and you have a three-year exemption from the jury
14 service obligation here in Circuit Court. So thank you
15 again for your cooperation and patience. If you need
16 anything for your employer or otherwise, Ms. Garrett will be
17 glad to give you the appropriate paperwork. Thank you very
18 much.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:51 P.M.)

21 THE COURT: Okay. Any matters or motions at this
22 time?

23 MR. TOOKER: Nothing from the State, sir?

24 THE COURT: From the Defense?

25 MR. ROBINSON: No, sir.

1 THE COURT: All right. We'll proceed with the
2 sentencing. Yes, sir, Mr. Tooker?

3 MR. TOOKER: I think Your Honor understands the
4 facts in this case so I don't think it's necessary to rehash
5 them. With regards to prior record, the Defendant has a
6 record going back to 1994, public disorderly conduct, two
7 counts of lynching second degree, for which he was sentenced
8 to probation; hindering officers in 1999; assault and
9 battery, 2000; threatening a public official and resisting
10 arrest in 2001; and then a conviction in 2007 for what I
11 believe is an '05 offense of distribution/PWID crack cocaine
12 first degree. And then I believe in '08, assault. And that
13 is the extent of his prior record.

14 I believe Mr. Riggs would like to address the Court.
15 Is that true? No?

16 THE COURT: Hold on one second.

17 MR. TOOKER: I was mistaken about that. I
18 apologize.

19 THE COURT: Mistaken about what?

20 MR. TOOKER: I thought that Detective Riggs wanted
21 to address the Court, but he does not.

22 THE COURT: All right. Yes, sir, Mr. Robinson.

23 MR. ROBINSON: May it please the Court. Your
24 Honor, I would ask the Court to consider that he has not had
25 -- I believe Mr. Tooker would have to confirm this, but I

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

131

1. don't believe he's had a record, any more new charges since
2 this time, since this happened back in 2009.

3 MR. TOOKER: That is true, Your Honor, based on
4 the State's information.

5 MR. ROBINSON: He does work. He has a daughter, I
6 believe. Your Honor, he's trying to make something of his
7 life and do something. He wants to go to college, get his
8 education, so forth. Your Honor, we would ask the Court to
9 consider a suspended sentence in this matter on these
10 charges, and a minimum sentence obviously, of course. But
11 it was a hard-fought trial. I thought the Solicitor did an
12 excellent job. We would ask that the Court does suspend any
13 sentence. He did serve three months in jail before he got
14 out. Thank you.

15 THE COURT: Thank you, Mr. Robinson.

16 Mr. Russell, anything you would like to say, sir?

17 MR. RUSSELL: I just ask for the Court's mercy.
18 I'll do whatever I'm supposed to do to get my life back on
19 track.

20 MR. WELBORN: Your Honor, may I approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Welborn approached the bar.)

23 THE COURT: Okay. Mr. Russell. Regrettably, this
24 is not the first time you've been up here, sir. And you
25 said he served three months?

1 MR. ROBINSON: I believe three months, yes.

2 THE COURT: Three months?

3 MR. ROBINSON: Yes, sir.

4 THE COURT: All right. The sentence on the
5 proximity charge is eight years, credit for time served. On
6 the distribution second, it's five years, concurrent.
7 Complete the addiction treatment program.

8 All right. Good luck, sir.

9 MR. ROBINSON: Thank you, Judge.

10 THE COURT: Thank you, Mr. Robinson.

11 MR. TOOKER: Your Honor, I think, too, we should
12 go on the record and I guess introduce the redacted disk as
13 a Court's Exhibit.

14 THE COURT: All right. This is the disk that was
15 actually given to the jury during deliberations.

16 (WHEREUPON, Court Exhibit Number 2 was marked for
17 identification.)

18 THE COURT: All right. Anything further?

19 MR. TOOKER: I believe Mr. Robinson wants to just
20 take care of an additional set of charges for concurrent
21 time.

22 MR. ROBINSON: He's got some other charges.

23 THE COURT: All right. Y'all will have to do this
24 after lunch. Sorry.

25 MR. ROBINSON: Thank you, Judge.

State of South Carolina -vs-Darnell Colin Russell (2010-GS-39-00868 and 00869)
Charge

133

1 (WHEREUPON, Court Exhibit Numbers 3 and 4 were marked
2 for identification.)

3

4 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Circuit
9 Court for Pickens County, South Carolina, on the 23rd day of
10 October, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 May 10, 2013

16

17

18

19



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY

SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF Pickens

2013 JAN 22 D 3:21

2013-CP-39- Olde

Full name and prison number (if any) of Applicant

Darnell Colin Russell v. 352940

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Waleree Correctional Institution
Dom 2 R-38 P.O. Box 189 Rembert S.C. 29128
2. Name and location of Court which imposed sentence Pickens county
Common Pleas 13 Judicial Circuit Pickens Co.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Drugs / Distribute, sell, purchase, manuf. crack cocaine, or poss
near school # 2010GS3900868
 - (b) Drugs / manufacture, distribution, etc, ice, crack cocaine 2nd offense
2010GS3900869
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/24/12 = 8 yrs State Department of Corrections, 3 months time
served #288.40 in fines
 - (b) 10/24/12 = 5 yrs concurrent #288.40 in fines, complete ATU
3 months time served.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. NA

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. NA

iii. _____

(c) the date of each such result:

i. _____

ii. NA

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. NA

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) I was incarcerated with out ~~any~~ AR means of filing a Appeal(b) Ineffective counsel

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Due processIneffective assistance counsel

(a) error during trial

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Lawyer failed to impeach the witness (CI)

(b) failed to disclosed evidence by cant (Lawyer)

(c) failed to build Defence (Lawyer)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. NA

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. NA

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. NA

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

NA

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

NA

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

NA

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective counsel

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Scott D. Robinson
- ii. 101 Lavinia Ave Greenville SC. 29601
- iii. 864-271-6940

- (b) the proceedings at which each such attorney represented you:

- i. Trail
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate of Sentence

20. Are you now under sentence from any other court that you have not challenged?

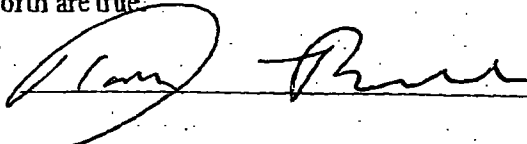
NO

STATE OF SOUTH CAROLINA

County of Sumter
Darnell Colin RussellCLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

VERIFICATION

I, Darnell Colin Russell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof ~~includes~~ ^{includes} every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 15th
day of January, 2013

Pamela D. Hatfield (L.S.)
Notary Public

My Commission Expires:

3/15/2021

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
**APPLICATION TO PROCEED WITHOUT PAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

Oarnell, Colin Rose 21

I, Oarnell, Colin Rose, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


 Applicant

SWORN or affirmed to and subscribed before me this

15th day of January, 2013.


 Notary Public

My Commission Expires: 3/15/2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-39-0066
COUNTY OF PICKENS	)	
	)	
Darnell Colin Russell,	)	
S.C.D.C. No. 352940,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 22, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the June 2010 term of General Sessions for possession with intent to distribute (PWID) cocaine base within proximity of a school (2010-GS-39-0868) and distribution of cocaine base (2010-GS-39-0869). Scott D. Robinson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 24, 2012, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of eight years for PWID cocaine base within proximity of a school and five years for distribution of cocaine base, second offense. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South

Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to impeach witness.
 - b. Failed to “declosed evidence by court.”
 - c. Failed to build a defense.
2. Due process.
3. Error during trial.

III.

The Respondent asserts the Applicant’s allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant’s attorney rendered effective assistance well within the standard of “reasonableness within professional norms” for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

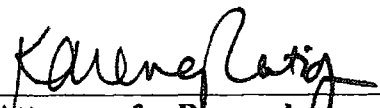
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

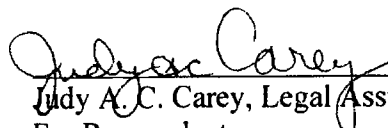
July 3, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2013-CP-39-0066
	)	
DARNELL COLIN RUSSELL, 352940	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Darnell Colin Russell, 352940
Wateree River Correctional Institution
Post Office Box 189
Rembert SC 29128

DATED this 3rd day of July, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
 COUNTY OF PICKENS
 DARNELL C RUSSELL

-VS

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
 REQUEST/motion
 to
 amend POST CONVICTION RELIEF
 APPLICATION 2013CP39 066

TO HAROLD PAT WELBORN Jr
 OFFICE OF CLERK OF COURT
 P O BOX 215
 PICKENS SC 29671

2013 JUL 22 A 8:38
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

RE. This Request/Motion is grounded on Evidence that will
 show the court that APPLICANT IS BEING DETAINED UNLAWFULL
 Y.

1 ISSUE. Defence counsel failed to object to DRUG ANALYSIS
 REPORT. The report is not in compliance with SCRPC RULE 6
 A2 A,B,C.

ISSUE. Chain of custody is Fatally Deficient And not in
 Compliance with SCRPC RULE 6/B

ISSUE. Defence counsel neglected to impeach CONFIDENTIAL
 INFORMANT With her prior statement. OR test it's
 Voluntaryness.

PROOF OF SERVICE

I hereby certify that a copy of the AFOREMENTIONED has been sent to the Relevant Partys

ALLEN WILSON
SC ATTORNEY GENERALS
OFFICE P O BOX 11549
Columbia SC 29211

HAROLD PAT WELBORN Jr
Clerk of COURT
PICKENS SC
P O BOX 215 29671

SWORN TO BEFORE ME
THIS 12 DAY

OF JULY 2013

MY COMMISSION EXPIRES 3/15/2021

[Signature]

2013 JUL 22 A 8 39

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

RESPECTFULLY SUBMITTED

BY
[Signature]

DARNELL C RUSSELL
WATEREE River CI
PO BOX 189
REMBERT SC 29128

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

DARNELL COLIN RUSSELL,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2013-CP-39-00066

DECEMBER 16, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

R. MILLS ARIAIL, JR.
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

1

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Darnell Colin Russell Ariail Ratigan	4	12		
Scott Robinson Ariail Ratigan	16	27		
				PAGE
Certificate of Reporter				33

EXHIBITS**PAGE**

Court Exhibit 1 marked	26
Court Exhibit 2 marked	26

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
PCR Hearing

3

1 **DECEMBER 16, 2013**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 MS. RATIGAN: Thank you, Your Honor, may it
5 please the court. The first case today is Darnell
6 Russell versus The State of South Carolina. The docket
7 number is 2013-CP-39-0066. Mr. Russell was indicted
8 for possession with intent to distribute cocaine base
9 within proximity of a school and distribution of
10 cocaine base. He was represented on these charged by
11 Mr. Robinson. The case was brought to trial back in
12 October of 2012 before Judge Hill. Mr. Russell was
13 found guilty. Judge Hill sentenced him to concurrent
14 terms of eight years for PWID cocaine base within
15 proximity and five years for distribution of cocaine
16 base second offense. He did not file an appeal. And
17 the state is ready to proceed.

18 THE COURT: All right. Mr. Ariail, you ready
19 to proceed?

20 MR. ARIAIL: Yes, Your Honor, I am, and I
21 call Mr. Russell to the stand.

22 THE CLERK: Place your left hand on the bible
23 and raise your right hand, please.

24 Do you solemnly swear or affirm the testimony
25 you're about to give in this case will be the truth,

1 the whole truth and nothing but the truth, so help you
2 God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: State your full name for the
5 record, please.

6 THE WITNESS: Darnell Colin Russell.

7 **DARNELL COLIN RUSSELL,**

8 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **DIRECT EXAMINATION**

10 **BY MR. ARIAIL:**

11 Q. Mr. Russell.

12 A. Yes, sir.

13 Q. How you doing today?

14 A. All right.

15 Q. Good. I just want to give a little background to
16 the judge with regards to your case. You were
17 represented by Mr. Robinson; correct?

18 A. Yes, sir.

19 Q. At trial. And the charges you were facing,
20 basically, a distribution charge and a half mile
21 charge, I guess, distribution within a half mile; is
22 that correct?

23 A. Yes, sir.

24 Q. And he represented you in regards to those
25 charges and you went to trial?

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Darnell Colin Russell - Direct Examination by Mr. Ariail

5

1 A. Yes, sir.

2 Q. Okay. And as part of this case, the issue -- I
3 guess there was a confidential informant involved;
4 correct?

5 A. Yes, sir.

6 Q. Okay. And her name was Ms. Staton; is that
7 right?

8 A. Ms. Staton.

9 Q. Okay. And as part of that she had made some
10 statements in regards to, I guess, being sold drug by
11 you; is that correct?

12 A. Correct.

13 Q. Okay. Now, as part of this, during your
14 representation, I guess, involving Mr. Robinson, did
15 you discuss or go over the evidence in your case?

16 A. I think maybe once we went over them.

17 Q. What was -- when you talked to him, what was the
18 information you discussed with him?

19 A. When we talked it was basically before the trial.
20 He was just telling me to plead guilty.

21 Q. Okay.

22 A. I was trying to tell him, you know, I'm not going
23 to plead guilty to crimes I didn't commit.

24 Q. Okay. Did you ever receive a plea offer or any
25 offer from the state?

1 A. I think he was saying they was offering me a
2 year.

3 Q. Okay. A year in regards ---

4 A. I never seen it in writing either.

5 Q. So you never got a plea offer, is what you're
6 saying?

7 A. No, sir.

8 Q. Okay. And the crux of the case, I guess, was
9 whether or not the confidential informant could
10 specifically identify you as the individual who sold
11 the drugs; correct?

12 A. Correct.

13 Q. Okay. And did you discuss with him any type of,
14 I guess, any questions in regards to whether or not she
15 was credible or could identify you?

16 A. Yes.

17 Q. What did you discuss with him?

18 A. I had asked Mr. Robinson was she working, you
19 know, off charges, if she was working under agreement?
20 And he said, you know, I don't know. Okay, yeah. I
21 mean, he wasn't very helpful at all. I think -- I
22 don't know why he was angry, but he was angry that I
23 would not plead guilty.

24 Q. Okay. You went to trial on this?

25 A. Went to trial.

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Darnell Colin Russell - Direct Examination by Mr. Ariail

7

- 1 Q. Okay. And as part of this -- I mean, there was
2 an individual that testified, I think her name ---
3 A. Wanda Robinson,
4 Q. Was it Wanda Robinson?
5 A. Yes, sir.
6 Q. Okay. You remember Wanda Robinson testifying;
7 correct?
8 A. Yes, sir, I do.
9 Q. And what did Ms. Robinson -- and I can refer the
10 judge in regards to the transcript, but do you remember
11 what she testified to?
12 A. She testified that the C.I., Carmelita Staton,
13 told her that she went to the One Way and got some
14 drugs and didn't know who she got them from, but she
15 blamed it on me.
16 Q. Okay. And I think me and you discuss it. It's
17 on page forty-four of your transcript; is that right?
18 A. Yes, sir.
19 Q. And this was a proffer that was done in court;
20 correct?
21 A. Correct.
22 Q. The jury was not in at this time?
23 A. The jury was not in.
24 Q. Okay. And she says basically she can't -- come
25 to my house and she told me, she said she had done

1 something and she felt bad about it. And she told me
2 that she had went over to the One Way and so-called
3 purchased some dope and went and she wrote a false
4 statement saying that she had got it from Dodie, but
5 she didn't get it from Dodie and she didn't want to see
6 him go to jail and she didn't know what to do. She
7 didn't know whether she should testify or not. I said,
8 well, then, don't testify. That's what I told her.
9 I've not tried to pay her as you said this morning.

10 No. Is that what you remember?

11 A. Yes, sir.

12 Q. And your name -- your nickname is Dodie; correct?

13 A. Yes, sir.

14 Q. Okay. Did you discuss that with Mr. Robinson?

15 A. Yes.

16 Q. And what did -- how did he tell you he was going
17 to use that or what was he going to do with that?

18 A. He didn't say anything. He just told me not to
19 even talk to her, as a matter of fact.

20 Q. Okay.

21 A. Then he told her, he said, I might call you back
22 to the stand later. Stick around.

23 Q. All right. Was she ever called to the stand?

24 A. No, sir.

25 Q. Now, in regards to this transaction or this I

1 guess, case involving the sale of the drugs, there was
2 an audio tape; correct?

3 A. Yes, sir.

4 Q. Did you ever listen to the audio tape with him?

5 A. No.

6 Q. Did you ever hear or -- I guess, did he ever tell
7 you what the audio tape said?

8 A. No, sir.

9 Q. Okay. Did you -- at the time you were going to
10 trial, did he give you specifics about what was on the
11 audio tape?

12 A. No, sir.

13 Q. Now, the only other evidence I guess that was
14 against you was the testimony of the C.I., who was Ms.
15 Staton; correct?

16 A. Correct.

17 Q. She testified; right?

18 A. She testified.

19 Q. Okay. Now, did he discuss with you her previous
20 statement that she had given?

21 A. No. He didn't say anything about that.

22 Q. Did y'all discuss whether it was inconsistent or
23 ---

24 A. No, sir.

25 Q. Okay. Did you ever get a copy of her statement?

1 A. I had a copy, but at the time I didn't know much
2 about the law.

3 Q. Now, going back now, and you've gone through this
4 and you lived through the trial. Was her statement
5 consistent with her testimony at trial?

6 A. No, sir, it wasn't. It was inconsistent. And it
7 also says that she declared that it was made without
8 promise of leniency, hope or reward. So if she was
9 working under a deal, then it would be involuntary.

10 Q. Okay.

11 A. Because she was offered hope and reward, I would
12 think.

13 Q. She testified -- I think there was testimony in
14 regards to her working with the police; correct?

15 A. Correct.

16 Q. And they said that she had not gotten any benefit
17 from it and had actually pled guilty to the charge; is
18 that right?

19 A. I didn't see it. I know Detective Riggs
20 testified that she was working off charges. And when
21 she was asked, she answered no.

22 Q. Okay.

23 A. So, somebody committed perjury.

24 Q. Now, during this there was a -- part of the audio
25 tape, was there -- there was a question as to, on the

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Darnell Colin Russell - Direct Examination by Mr. Ariail

11

1 audio tape, I think some mentioning of you doing

2 previous drug buys; is that correct?

3 A. I can't recall that.

4 Q. Do you remember any issues with the, with the
5 court about whether or not -- you know, any objections
6 to that audio tape?

7 A. No. He didn't make any objections.

8 Q. Did he make any requests for a mistrial or
9 anything of that nature?

10 A. No, sir. No, sir.

11 Q. Okay. I know we've discussed a lot of different
12 options -- a lot of different things in this case. I
13 think those were the main things you wanted to bring
14 forward. Is there anything else you want to tell the
15 court?

16 A. Yeah. You know, he didn't object to the drug
17 analysis report, to the chain of custody as fatally
18 deficient. You know, there's just so many things, I
19 think, personal opinion, you know, from what I've
20 research, this court is designed for due process, to
21 bring all of the evidence to the scales and be weighed
22 and a just decision made. And it's clearly that he
23 didn't bring those evidence to the scales.

24 Q. And actually in this case he stipulated to the
25 chain of custody; right?

1 A. Exactly.

2 Q. Did you ever discuss with him any -- why he ---

3 A. No, sir.

4 Q. --- stipulated or ---

5 A. He never said anything about any of that.

6 Q. So I mean, he didn't explain to you what chain of
7 custody is ---

8 A. No, sir.

9 Q. --- and how it works and all that?

10 A. No, sir.

11 Q. Okay.

12 A. I had to learn that on my own.

13 MR. ARIAIL: Your Honor, I have no further
14 questions.

15 THE COURT: Any cross-examination?

16 MS. RATIGAN: Thank you, Your Honor.

17 **CROSS EXAMINATION**

18 **BY MS. RATIGAN:**

19 Q. Just a few quick questions.

20 A. Yes, ma'am.

21 Q. Mr. Russell, you testified you met with Mr.
22 Robinson one time?

23 A. I can remember one time before trial and then
24 like the day of the trial.

25 Q. Okay. And when you met with him prior to the

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Darnell Colin Russell - Cross Examination by Ms. Ratigan

13

1 trial, is that when he was trying to convince you to
2 plead guilty?

3 A. Yes. That, and the day of the trial.

4 Q. Okay.

5 A. He became very angry, too.

6 Q. Okay. And did you go over any of the state's
7 evidence?

8 A. No. He didn't go over any. He just said that
9 the C.I. was going to testify against me.

10 Q. Okay. So you never saw any of the police's
11 incident report ---

12 A. I mean, I have, but I'm a layman, I don't know
13 the law. You know, that's what his job was for, to
14 represent me.

15 Q. Okay. I just need to know. You did have the
16 evidence, ---

17 A. Uh-huh (affirmative).

18 Q. --- y'all just never talked about it?

19 A. Yeah. I didn't go pro se, though. He
20 represented me.

21 Q. And you told Mr. Robinson your side of things,
22 that you didn't do this?

23 A. Yes, sir. I mean, yes, ma'am. I'm sorry.

24 Q. That's all right.

25 A. Nerves get the best of me.

1 Q. That's all right. And you told him you were
2 innocent?

3 A. Yes, ma'am.

4 Q. Okay. And did you want to plead guilty or did
5 you want to go ahead and have a trial?

6 A. I wanted to have the trial, but I thought I was
7 going to get adequate representation, too.

8 Q. And I believe it came out at trial that nobody --
9 no officers witnessed the actual drug transaction?

10 A. That's correct.

11 Q. Okay. And did Mr. Robinson ask the officers
12 about that? Do you recall?

13 A. I think he did.

14 Q. But you just believe that he should have had more
15 questions about the C.I. and Ms. Robinson (verbatim)?

16 A. Yes. The C.I. was -- he should have given the
17 C.I. the opportunity to either admit, explain or deny
18 the statement. She could have impeached herself in the
19 statement or impeached herself on the stand.

20 Q. And what was it about the chain of custody of the
21 drugs that you think was improper?

22 A. They was not an evidence technician who was
23 notified. When the officer turned the evidence into
24 Pickens County LEC, no one signed the substance in and
25 no one signed the substance out. The substance didn't

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Darnell Colin Russell - Cross Examination by Ms. Ratigan

15

1 arrive in substantially the same condition as it was
2 when it was supposedly received.

3 Q. And this is something you never talked about with
4 Mr. Robinson?

5 A. At the time, I didn't know anything about the
6 law.

7 MS. RATIGAN: That's all I have, Your Honor.

8 THE COURT: Any redirect?

9 MR. ARIAIL: No, Your Honor.

10 THE COURT: All right. Thank you, sir. You
11 can step down.

12 THE WITNESS: Thank you, Your Honor.

13 MR. ARIAIL: Your Honor, I call Mr. Robinson
14 to the stand.

15 THE COURT: All right. Come around and be
16 sworn, Mr. Robinson.

17 THE CLERK: Place your left hand on the bible
18 and raise your right hand.

19 Do you solemnly swear or affirm that the testimony
20 you're about to give in this case will be the truth,
21 the whole truth and nothing but the truth, so help you
22 God?

23 THE WITNESS: I do.

24 THE CLERK: State your full name for the
25 record, please.

1 THE WITNESS: Scott Robinson.

2 SCOTT ROBINSON,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. ARIAIL:

6 Q. Scott, how you doing today?

7 A. Very well, thank you.

8 Q. Good. Now, you heard Mr. Russell testify in
9 regards to this case, and I hope it brought back some
10 of your recollection in regards to it. In this case I
11 think there was an audio tape that was, I guess, put
12 into evidence; is that correct?

13 A. There was.

14 Q. Okay. And as part of that audio tape, do you
15 remember, I guess, reviewing it prior to trial?

16 A. I'm not sure if I did or not. I normally would.
17 There's two different scenarios. One would be the
18 solicitor didn't want to divulge the name of the
19 confidential informant before trial. Or I would have
20 gone over it with him. He lived at, I believe, in
21 Pickens, I believe, at the time. I think he was out of
22 jail at the time.

23 Q. Okay. I guess what I was asking, you reviewed
24 it; correct? Do you remember doing that?

25 A. I do.

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Direct Examination by Mr. Ariail

17

1 Q. As part of the audio tape, there's a, I guess, a
2 transaction that occurs on it; is that correct?

3 A. Yes.

4 Q. A transaction involving Ms. Staton?

5 A. Yes.

6 Q. I think she was a C.I. for the police; correct?

7 A. I believe so.

8 Q. Okay. There's a mentioning in regards to the
9 trial that there was some other, I guess, chatter on
10 there by Ms. Staton of previous drug transactions that
11 she had done with Mr. Russell; correct?

12 A. Right. Correct.

13 Q. Okay. And I guess the question is, in this, I
14 mean, he's been convicted of this. Why in that
15 circumstance did you not object at the time to allowing
16 those other previous, I mean, references to drug
17 transactions coming in?

18 A. I think what I should have done in that case,
19 really, after looking back at it, I probably should
20 have moved for a mistrial at that time to keep that
21 information out of it. I just didn't object at that
22 time. I think.

23 Q. Well, a mistrial -- I guess, my question is, ---

24 A. It should have been redacted.

25 Q. Yeah. Why did you not make a motion -- was there

1 any reason why you didn't make a motion to redact that
2 previous to the trial beginning?

3 A. No, sir.

4 Q. Okay.

5 A. I really had no -- I can't tell you the exact
6 reason for ---

7 Q. In the whole crux of your, I guess, defense, too,
8 was the credibility of this C.I.; right?

9 A. It was pretty bad. It was pretty bad.

10 Q. And I think Mr. Tooker -- I mean, I've read the
11 transcript, you know, in regard to his basis, I mean,
12 he says it numerous times throughout, is that you don't
13 buy drugs from individuals you don't know and you
14 normally don't buy drugs from individuals that aren't
15 drug traffickers or drug suppliers; correct?

16 A. If that's what he said.

17 Q. Okay. Well, in this case, my concern, and I
18 don't know if he has that theory, then if that type of
19 information comes in, that's going to be detrimental to
20 Mr. Russell; correct, about him doing previous drug
21 transactions?

22 A. It could be, but you really didn't -- on that
23 tape you really didn't know who the person was in this
24 house or place. There were a number of people in there
25 I think. And I think they didn't really -- the

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Direct Examination by Mr. Ariail

19

1 officers didn't see -- I don't believe they saw him. I
2 think the only person would be the confidential
3 informant and her credibility is very bad.

4 Q. Right. At some point in time, too, during one of
5 the -- I think of Ms. Staton, you cross-examined her;
6 correct?

7 A. It's on page sixty-nine.

8 Q. Yeah. There's a page, let's see ---

9 A. Sixty-nine.

10 Q. Sixty-nine is when you begin, okay. And during
11 the cross-examination, I think on page seventy-one, you
12 have a question of, okay, so you don't know if you, on
13 that C.D., you don't know, you can't recall if you said
14 that or not; is that correct? And then she says, said
15 Dodie really doesn't give good amounts or give good
16 whatever, something like that. Is that her response?

17 A. It looks like that's on line seventeen to twenty-
18 one.

19 Q. Yeah, seventeen to twenty-one?

20 A. Right.

21 Q. My question in regards to that is -- and I think
22 Judge Hill references it later on -- when you moved for
23 a mistrial, he said that you had elicited information
24 that would have showed that he had conducted previous
25 drug transactions?

1 A. Yes. That's what alludes to.

2 Q. What was the basis -- I guess, in regards to your
3 cross-examination, why were you trying to elicit that
4 or get that type of information?

5 A. I don't think that information -- I probably
6 should have objected at that point ---

7 Q. Okay.

8 A. --- to keep that out, I believe.

9 Q. Did you -- I guess at some point in time there
10 was -- I guess later on did you speak with any of the
11 jurors to find out why they came back with a guilty
12 verdict on this?

13 A. I never talk to jurors. No.

14 Q. Okay. I mean, is there -- I mean, I'm looking at
15 it and I'm trying to determine the previous drug
16 transactions and all that. Judge Hill didn't grant a
17 mistrial based on that; correct?

18 A. Based on what?

19 Q. Based on those previous drug transactions being a
20 part of the audio tape? I think at one point on page
21 eighty-nine, line seven -- actually this is Judge Hill.
22 I think he states -- there was also another issue in
23 this case in regards to the state had failed to put in
24 the proximity of the drug transaction to the school;
25 correct?

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Direct Examination by Mr. Ariail

21

1 A. Right.

2 Q. Okay. And you made a motion -- I guess you
3 objected to that, to them reopening their case; right?

4 A. Yes, sir.

5 Q. And he overruled you on that?

6 A. Yes.

7 Q. Okay. And then as part of it he also says during
8 this, I think you had made a motion for a mistrial, he
9 said, on eighty-nine, line seven, as to the motion for
10 a mistrial that was made yesterday, I respectfully deny
11 that and find the evidence at issue that the jury heard
12 was later elicited from defense counsel on cross-
13 examination of the confidential informant. So I find
14 that there's no need for a mistrial under those
15 circumstances, particularly when the evidence was not
16 objected to initially. I'll be glad to consider giving
17 the jury a curative instruction about that evidence,
18 but I'm not sure the defense wants that or the
19 prosecution agrees to that, but I'll be glad to hear
20 your arguments on it. And you didn't go for a curative
21 instruction; right?

22 A. I haven't looked at the transcript to really tell
23 you that.

24 Q. And I don't believe you did, and I think you had
25 said that that might draw more attention to her; you

1 didn't go that direction. I guess what I'm trying to
2 figure out is the strategy that you had in regards to
3 bringing up -- or what your strategy was on this, why
4 information like that would come out about the previous
5 drug transactions. Do you remember?

6 A. The way I approached this case was, you know, his
7 record -- if you look at his record, he didn't really,
8 I don't believe, have any drug charges. Mostly
9 shoplifting, things of that nature. I met with him at
10 different times and we went over the plea. He actually
11 had called me on 10/18 about the plea, about being a
12 closed plea, and could the judge get specific as to how
13 much probation. Obviously I couldn't tell him that.
14 But I don't believe, I don't believe he did this. I
15 never believed that he did this. And I think that the
16 confidential informant was weak. I think the officers
17 didn't see this transaction. I think they went after
18 him just because he was this guy that they had seen a
19 lot. That's about all it was. On the tape you hear a
20 bunch of different people, I think. You don't hear his
21 voice, I don't believe. And I don't -- I didn't think
22 he did this.

23 Q. And understanding -- I guess my question is, do
24 you believe it could have prejudiced him if there were
25 discussions on this audio tape that would have said

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Direct Examination by Mr. Ariail

23

1 that he had been involved in previous drug
2 transactions?

3 A. You're asking me to go back a number of months.

4 Q. Right.

5 A. I don't know strategically what I was thinking
6 that particular day. I don't. Based on the
7 confidential informant who was weak as far as her not
8 -- having a record, having to work off these charges,
9 things of that nature, I'm not exactly sure why I did
10 that. I have no idea.

11 MR. ARIAIL: Your Honor, I don't know the
12 best way to do this. I know there's an audio tape that
13 Scott has, if I could make that a copy of the record or
14 the easiest way to be able to make sure that's part of
15 the record.

16 THE COURT: That'll be fine. I can listen to
17 it if you can make a copy. I mean, is there a copy?

18 MR. ARIAIL: I don't have a copy, but I can
19 certainly make a copy and send it to you. The only one
20 I have, I got his file this morning, and I have it in
21 the file that is there.

22 THE COURT: Why don't we make it a record
23 here and then ... Danette, you have to keep it,
24 though; right? We can't give it back. If we make that
25 a court exhibit, it'll stay with the court; right?

1 MS. RATIGAN: Your Honor, we can hold the
2 record open for a couple of days afterwards to let Mr.
3 Ariail make a copy and then we can submit the copy. I
4 have no problem with that.

5 MR. ARIAIL: Yeah, I can take it and just
6 make a new CD and then send it back.

7 THE COURT: All right. And then you can
8 submit it in. All right.

9 MR. ARIAIL: Yes, Your Honor.

10 Q. Scott, in regards to the witness, Wanda Robinson,
11 she came in, and I'm not sure what Mr. Tooker -- I
12 think he envisioned that she was going to say that Mr.
13 Russell had tried to get her to change her testimony;
14 is that correct?

15 A. She tried -- we proffered her away from the jury
16 so we didn't have a problem. But I don't think she was
17 going to testify to what I thought she was going to
18 testify to.

19 Q. Okay. My question in regards to her was, she
20 specifically says if there's a question as to whether
21 or not Ms. Staton had made up her testimony; correct?
22 Do you remember that?

23 A. I don't recall that specifically, but ---

24 Q. Do you remember, it was part of the transcript.
25 I guess she proffered early on and then he just read it

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Direct Examination by Mr. Ariail

25

1 in the record.

2 A. Okay.

3 Q. Do you remember why you didn't call her as a
4 witness or put in your case in chief as to whether or
5 not that draws into her credibility or ---

6 A. There's only two reasons. One, I would lose the
7 last argument if I put any evidence in. And two,
8 strategically, I didn't know what she as going to say
9 if she got on the stand and she could have said stuff
10 that was not helpful to Mr. Russell in this case.

11 Q. Okay. You heard him discuss chain of custody
12 issues. You stipulated the drugs coming in; correct?

13 A. Yes.

14 Q. Was there anything that you remember or recall as
15 to chain of custody issues and ---

16 A. I did not. I didn't believe it was proper.

17 Q. And this was, I think, .1 grams. It was ---

18 A. Yeah.

19 Q. But you didn't see any reason why you should have
20 them ---

21 A. I didn't see that. I didn't see us even being
22 able to win an argument about that. No.

23 Q. Now, one last thing. There was a statement, I
24 think, done by Ms. Staton that she gave to police. I
25 think it was on July 22nd, 2009.

1 A. Okay.

2 Q. And she provided this to Detective Riggs. Did
3 you -- I guess, first of all, did you review this
4 statement or have it as part of your records?

5 A. He would have received a copy of all my Rule 5
6 materials, so he would have had a copy of that.

7 Q. Okay. Now, as part of this, the information
8 provided in that statement is different from what she
9 testified to. Have you seen ...

10 MR. ARIAIL: And I might mark this as an
11 exhibit, Your Honor.

12 THE COURT: That would be Exhibit 1 and we'll
13 have the audio tape as 2 when it's submitted.

14 (WHEREUPON, Court Exhibit Numbers 1 and 2 were
15 marked for identification.)

16 Q. Was there any reason that you did not, I guess,
17 cross-examine her on this statement or any
18 inconsistency she had in that?

19 A. I didn't think it was -- strategically I didn't
20 really think it was important. I didn't want -- I
21 wanted to -- I just thought possibly if I started going
22 down that trail the prosecution could potentially use
23 part of that statement, as well. I was concerned about
24 that.

25 Q. Okay.

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Cross Examination by Ms. Ratigan

27

1 MR. ARIAIL: Thank you, Your Honor. I have
2 no further questions.

3 THE COURT: You may cross-examine, Ms.
4 Ratigan.

5 MS. RATIGAN: Thank you, Your Honor.

6 **CROSS EXAMINATION**

7 **BY MS. RATIGAN:**

8 Q. Mr. Robinson, were you retained in this case?

9 A. I was appointed.

10 Q. And did you file the usual Brady Rule 5 motions?

11 A. I did.

12 Q. Did you receive those materials from the state?

13 A. I did.

14 Q. And I believe you testified on direct that you
15 gave a copy of those materials to Mr. Russell?

16 A. Yes.

17 Q. Did you review that evidence with him?

18 A. I believe so.

19 Q. Was he in jail or had he bonded out? Do you
20 recall?

21 A. He was -- I think he had bonded out. I think.
22 Yeah, he must have because he was -- our records show
23 he was at [REDACTED] in Pickens.

24 Q. And so you do recall having face-to-face meetings
25 with him?

1 A. And phone conversations, as well.

2 Q. And the state at some point had made a plea
3 offer?

4 A. I don't have an independent recollection of that.

5 I know that in the October 18, 2012, message that was
6 taken from him, he must have -- they must have given
7 him something because he asked about it being a closed
8 plea and could the judge change their mind on the plea.
9 So it must have been a plea that was given to him and
10 -- but he wanted -- he had questions about the judge
11 changing his mind, and could the prosecutor give
12 specific as to how much probation and so forth. So he
13 did call me on 10/18/2012 and ask about the conditions
14 of his plea.

15 Q. Now, even though you have no independent
16 recollection of a plea offer, in the course of your
17 practice if the state made a plea offer, is that
18 something you would discuss with your client?

19 A. Yes.

20 Q. Mr. Russell testified today he was always adamant
21 that he wanted a trial. Does that sound accurate based
22 on your conversations with him?

23 A. I think he was pretty -- I think he always
24 relayed that he did not do this. The biggest mistake
25 that he made, I think, was being around these people,

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Cross Examination by Ms. Ratigan

29

1 the wrong place at the wrong time, being in this place
2 with other people that were doing drug transactions and
3 so forth. That's the biggest thing. He was also just
4 a very nice guy, very friendly to people, and people
5 just take advantage of that, I believe.

6 Q. And you would have and did listen to the audio
7 tape yourself?

8 A. Yes.

9 Q. You just can't recall whether or not Mr. Russell
10 listened to it; is that correct?

11 A. I don't recall. As I said, there are two
12 situations. One if there was a C.I. and -- because we
13 weren't really sure exactly which way we were going to
14 go until trial, because I think that right up until the
15 time of trial he was thinking about a plea. It was a
16 good plea. I don't know -- I would have normally done
17 that, but I can't tell you a date and time when I
18 listened to it with him.

19 Q. Even if he was not given the opportunity to
20 directly listen to it, would you have told him
21 basically what was on it after you listened to it?

22 A. Yes.

23 Q. About the C.I., was it one of those circumstances
24 where the state did not provide you information until
25 it was on the trial docket, or did you know prior to

1 then who was the C.I. was? Do you recall?

2 A. I'm not sure. If he was going to go to plead,
3 they would not normally give you the identity of the
4 C.I. If it goes to trial, they would normally at that
5 point -- I think they would give you the identity.

6 Q. Once you found out the information -- or pardon
7 me -- the identity of the C.I., did you look into that
8 person?

9 A. She had a -- I think she had a record. She was
10 also working off charges for the police. I think that
11 she testified in here that she -- I think Mr. Tooker
12 elicited from her on direct examination about a
13 shoplifting, that she had been caught shoplifting, she
14 was trying to -- they also elicited she was a crack
15 addict and it looks like she was trying to work off her
16 time.

17 Q. So you knew going into the trial that she had a
18 record?

19 A. Did I know going in?

20 Q. Yeah.

21 A. I have no recollection. But if I did, I did --
22 I'm not exactly sure.

23 Q. So what was your trial strategy?

24 A. He didn't do it. That was the trial strategy.
25 He just didn't do it.

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Cross Examination by Ms. Ratigan

31

1 Q. Did you -- strike that. As part of your strategy
2 was it to argue that no one actually saw the
3 transaction occur?

4 A. Correct. And the fact -- we argued -- I think we
5 had a charge for mere presence and also credibility,
6 because the witness that they had was not credible, and
7 no officers actually witnessed this transaction.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Any redirect?

10 MR. ARIAIL: No, Your Honor.

11 THE COURT: Thank you, Mr. Robinson. You can
12 step down.

13 MR. ROBINSON: Thank you, Judge.

14 THE COURT: You may call your next witness,
15 Mr. Ariail.

16 MR. ARIAIL: Nothing further, Your Honor. We
17 rest.

18 THE COURT: Anything from the state?

19 MS. RATIGAN: No, Your Honor. We would rest.

20 THE COURT: All right. Well, I've got a
21 transcript to read over and I'll listen to the audio
22 tape when it's submitted. So I'll issue an order as
23 soon as possible and let both of you know.

24 MS. RATIGAN: Thank you, Your Honor.

25 MR. ARIAIL: Thank you, Your Honor.

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Scott Robinson - Cross Examination by Ms. Ratigan

32

1

2

END OF REQUESTED TRANSCRIPT OF RECORD

Darnell Colin Russell -vs- State of South Carolina (2013-CP-39-00066)
Certificate of Reporter

33

1

CERTIFICATE OF REPORTER

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I, the undersigned Danette P. Hanks, Official
Court Reporter for the Thirteenth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript
of record of all the proceedings had and evidence
introduced in the trial/hearing of the captioned case,
relative to appeal, in the Court of Common Pleas for
Pickens County, South Carolina, on the 16th day of
December, 2013.

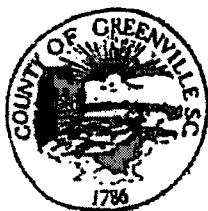
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material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

May 1, 2014

A handwritten signature in cursive script that reads "Susan Danette Hanks". The signature is written in dark ink and is positioned above the printed name of the reporter.

Circuit Court Reporter



County of Greenville

"...At Your Service"

7/22/09/
DEPARTMENT OF PUBLIC SAFETY

Page 1 of 1

DRUG ANALYSIS REPORT

Department: Pickens Police Department
Officer: Riggs, T.
Smith, B.
Subject: Russell, Darnell
Agency Number: 2009-03421

Case Number: 11-2009-000252
Report Number: 1
Incident Date: 07/22/2009
Received From: Property & Evidence
Received Date: 08/24/2009

This is an official report of the Greenville County Department of Public Safety Crime Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no examinations of evidence submitted in this case have been or will be conducted by any other laboratory or agency.

*James M. Dorriety, Assistant County Administrator
Department of Public Safety*

EXAMINATIONS CONDUCTED

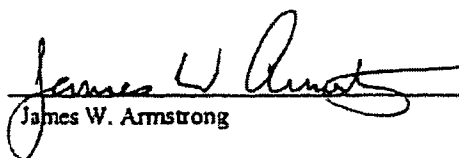
☒ CHEMICAL TEST	☐ MICROSCOPIC	☒ INFRARED SPECTROSCOPY
☐ ULTRAVIOLET SPECTROSCOPY	☐ GAS CHROMATOGRAPHY	☐ MASS SPECTROSCOPY

ITEMS OF EVIDENCE:

Item 1: Rock substance

Results: Cocaine base found, 0.10 grams C-II

I am a Criminalist employed by Greenville County to perform chemical and physical examinations on evidence submitted by law enforcement agencies in criminal cases, and to testify in courts of record in the state of South Carolina on such examinations.


James W. Armstrong

08/27/2009

PROPERTY / EVIDENCE CUSTODY REPORT**CASE NUMBER:** 2009-03421Time / Date Obtained: 7-22-09 1730:30**Pickens Police Department**

PO Box 217 / 304 Johnson Street

Pickens, SC 29671

Phone: (864) 878-6366

Fax: (864) 878-8234

Web: www.pickenspd.org

ORI: SC0390500

Name of Person(s) from whom Received or Location:

"SHOPPER"

Reason Obtained:

Laboratory Exam Requested:

☒ Evidence☐ Found☐ Safekeeping☐ Recovered☐ Yes☐ No

Item No:	Quantity	Description of Articles (include model, serial number, etc.)
<u>1</u>	<u>2</u>	<u>OFF WHITE ROCK LIKE SUBSTANCE BELIEVED TO BE</u> <u>CRACK COCAINE</u>

CHAIN OF CUSTODY

Item #	Date	Released By	Received By	Purpose of Change
<u>1</u>	<u>7-22-09</u>	Signature: _____ Printed Name: _____	Signature: <u>[Signature]</u> Printed Name: <u>BRAD SMITH</u>	<u>PICKENS P&C</u>
		Signature: _____ Printed Name: _____	Signature: _____ Printed Name: _____	
		Signature: _____ Printed Name: _____	Signature: _____ Printed Name: _____	
		Signature: _____ Printed Name: _____	Signature: _____ Printed Name: _____	
		Signature: _____ Printed Name: _____	Signature: _____ Printed Name: _____	

INVESTIGATIVE NOTES

7/22/09

Case Number: 2009-03421

Date: 07/23/2009

Officer Code: TR1

tes: THE CI WAS WIRED UP FOR AUDIO AND WENT TO [REDACTED] LN. AT NATE HOLLOWAY'S TRAILER. THE CI THEN WALKED TO THE DRIVEWAY AND LOOKED ACROSS THE STREET AT DODIE RUSSELL. DODIE GOT UP AND WALKED OVER AND TOLD THE CI TO COME ON. THEY WENT IN THE TRAILER AND HE PULLED OUT A BLUE PLASTIC CONTAINING AROUND 6 ROCK LIKE SUBSTANCE. HE THEN PULLED TWO ROCKS OUT AND GAVE THEM TO THE CI AND THE CI GAVE HIM 40 DOLLARS CASH. THEY LEFT AND THE CI MET BACK WITH THE POLICE.

VOLUNTARY STATEMENT

DATE 7/22/09 PLACE Rec Center TIME STARTED 5:50 p.m.I, the undersigned, [REDACTED] am [REDACTED] years of age, my date and place ofbirth being the [REDACTED]I now live [REDACTED]Before answering any questions or making any statements, Det Riggs

a person who identified himself as a Pickens Police
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is hereinafter made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority, before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise of hope or reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

Police came wired me up went to [REDACTED]
 Dody Russell came over we went inside the trailer. I asked him for a \$40⁰⁰ crack rock. He then pulled crack out of his left pocket of his tan pants. He then opened the a piece of blue plastic pulled 2 pieces of crack and handed it to me. It looked like there could of been some piece left in there the plastic. I gave him \$40⁰⁰ and we walked out. He walked across the street and I left.

444-411

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 6:00 p.m. on the 22 day of July 2009

WITNESS: [Signature]WITNESS: [Signature]

IDAVIT FOR CRIMINAL WARRANT

44-53-0445(B)(2)

0108

DISTRIBUTION CRACK COCAINE PROX. SCHOOL
 DRUGS / DISTRIBUTE, SELL, PURCHASE, MANUF. CRACK
 Offense

/IS RIGGS

nt's Name

OX 217 CITY HALL

:SS

ENS, SC 29671

State Zip Code

3366

phone Number

TRAVIS RIGGS

Officer/Agency

2009-03421

Incident Report #

07/22/2009 05:30:00 PM

Date/Time of Offense

SC 29671

Location

COMPLAINT:

DEFENDANT DID COMMIT THE OFFENSE IN THAT: (1) THE DEFENDANT DID SELL A CONFIDENTIAL INFORMANT
 S THAN 10 GRAMS OF CRACK COCAINE DURING A CONTROLLED BUY. (2) THE PURCHASE WAS RECORDED BY
 NO EQUIPMENT. (3) THE DEFENDANT WAS IDENTIFIED BY THE CONFIDENTIAL INFORMANT. (4) THE OFFENSE
 CURED WITHIN A HALF-MILE OF AN ELEMENTARY SCHOOL AND/OR PUBLIC PLAYGROUND OR PARK. (5) THE
 FENSE OCCURRED INSIDE THE CITY LIMITS OF PICKENS. (6) AUDIO RECORDING, STATEMENT, AND INCIDENT
 PORT CASE # 2009-03421 ON FILE AT PICKENS PD.

SUBJECT INFORMATION:

ARNELL COLIN RUSSELL

me of Subject

M

Sex

B

Race

DOB

dress

SSN

DL

CKENS, SC 29671

ty, State Zip Code

lephone

Judge's Signature / Date

WITNESSES:

Address

Telephone

Address

Telephone

HIS INFORMATION I HAVE GIVEN ABOVE, UNDER OATH, IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
 O HELP ME.

Signature

Date

10/06/2009

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

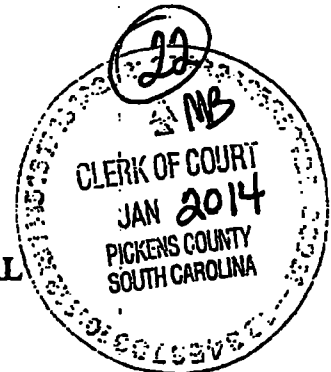
Darnell Colin Russell,
S.C.D.C. No. 352940,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-0066**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 22, 2013. The Respondent made its return on July 3, 2013. An evidentiary hearing into the matter was convened on December 16, 2013 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Scott D. Robinson, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibits 1-2.¹

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at

¹ At the conclusion of the PCR hearing, this Court held the record open to allow a copy of the audiotape to be made and admitted as Exhibit 2. PCR counsel subsequently hand-delivered a CD of that recording to this Court.

1
[Signature]

the June 2010 term of the Pickens County Grand Jury for possession with intent to distribute (PWID) cocaine base within proximity of a school (2010-GS-39-0868) and distribution of cocaine base (2010-GS-39-0869). He was represented by Scott D. Robinson, Esquire.

After the State called the case to trial, the Applicant was found guilty. On October 24, 2012, the Honorable D. Garrison Hill sentenced the Applicant to concurrent terms of eight years for PWID cocaine base within proximity of a school and five years for distribution of cocaine base, second offense. The Applicant did not appeal.

ALLEGATIONS

In his PCR application,² the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to impeach witness.
 - b. Failed to "disclose evidence by court."
 - c. Failed to build a defense.
2. Due process.
3. Error during trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by

² While the Applicant also submitted a pro se document captioned "Request/motion to amend post conviction relief application" and with a postmark date of July 18, 2013, this Court will not consider this document, as it was submitted after PCR counsel was appointed. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

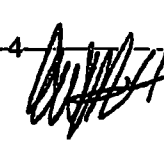
The Applicant stated he had two meetings with trial counsel before the trial. The Applicant stated trial counsel said the State made a one-year offer but that he never saw anything in writing. The Applicant stated that he told trial counsel he was innocent and wanted a trial. The Applicant stated the issue at trial was whether the confidential informant identified him. The Applicant stated Wanda Robinson said the confidential informant did not know who sold her the drugs (and simply blamed him) but that Robinson did not testify. The Applicant stated he never heard the audiotape. The Applicant stated trial counsel should have objected to both the admission of the audiotape and the chain of custody of the drugs. The Applicant stated trial



counsel should have questioned the confidential informant about her prior statement and whether the informant was working off charges by helping the police.

Trial counsel testified he was appointed in this case and filed discovery motions. Trial counsel testified he received the discovery materials, reviewed them with the Applicant, and provided him with a copy. Trial counsel testified he had both meetings and phone calls with the Applicant. Trial counsel testified he had no independent recollection of whether a plea offer was made in this case, but that he would have reviewed any plea offers with the Applicant. Trial counsel testified the Applicant always maintained his innocence. Trial counsel testified he read the confidential informant's statement and listened to the audiotape. Trial counsel testified he was unsure if the Applicant listened to the audiotape, but that he would have told the Applicant what he heard on the tape. Trial counsel testified that his trial strategy was to argue the Applicant was innocent and that no one saw the transaction. Trial counsel testified the confidential informant was working off some charges with the police. Trial counsel testified that he cross-examined the confidential informant and that he should have objected when she made a comment that the Applicant gave "good amounts." Trial counsel testified Robinson's testimony was proffered as to the issue of whether the confidential informant had lied about the Applicant's involvement. Trial counsel testified, however, that he made a strategic decision not to call Robinson as a witness both because he would lose the final closing argument and he did not know what she would testify about. Trial counsel testified the audiotape contained "chatter" about prior drug buys between the Applicant and the confidential informant and that he should have objected at the time to keep it out. Trial counsel testified there was no basis to object to the chain of custody.

This Court finds the Applicant's testimony is not credible, while also finding trial



counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him and prepare the case for trial. Trial counsel testified he had several meetings with the Applicant and that they reviewed the discovery materials. Trial counsel testified the Applicant proclaimed his innocence and wanted to take the case to trial. This Court finds the Applicant has failed to articulate what more trial counsel should have done to prepare the case for trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). This Court also finds the Applicant failed to meet his burden of proving trial counsel somehow misadvised him about a plea offer from the State. The Applicant has failed to either present evidence that a plea offer existed or that counsel misadvised him about the offer such that he would have pled guilty instead of going to trial – though the parties agree that the Applicant always wanted a jury trial. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (holding that, in a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving he should have better handled the issue of the confidential informant. Trial counsel testified that he had a copy of the confidential informant's statement. Trial counsel cross-examined the confidential informant about having worked with the police and that she was charged in this matter. (Trial transcript, p.73). Trial counsel also attempted to have the confidential informant admit that some of the details of her testimony were incorrect. This Court finds trial counsel did a fine job of cross-



examining the confidential informant.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have called Robinson as a witness. Trial counsel testified he chose not to call this witness because he had no idea what she would say on the stand and that it meant he would lose the final closing argument. This Court finds this was valid trial strategy. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the admission of the audiotape into evidence. Trial counsel testified he should have made such an objection and could not recall why he did not do so. A thorough review of the transcript reveals trial counsel did object to the admission of the audiotape. (Trial transcript, p.50, p.52). After the objection was overruled and the audiotape was played for the jury, trial counsel moved for a mistrial, which was denied. (Trial transcript, p.64). In denying the motion, the trial judge offered a curative instruction, which trial counsel declined because such an instruction would call the jury's attention to the prior bad acts. (Trial transcript, p.91). The trial transcript also reveals that trial counsel and the State redacted the audiotape and the jury received the redacted version during their deliberations. (Trial transcript, pp.126-27). A thorough review of the audiotape and the transcript reveals the alleged prejudicial statements referring to the Applicant's prior bad acts likely had minimal effect on the outcome of the trial. While the statements at issue may have referred to prior bad acts, any prejudicial effect was minimized due to the highly ambiguous nature of the references. As such, the Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.



This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the chain of custody. This Court notes the Applicant has failed to articulate either a defect in the chain of custody or any resulting prejudice. As such, this claim must be dismissed. See, e.g., Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's

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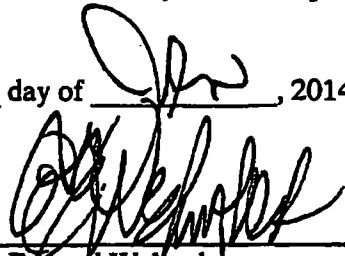

representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

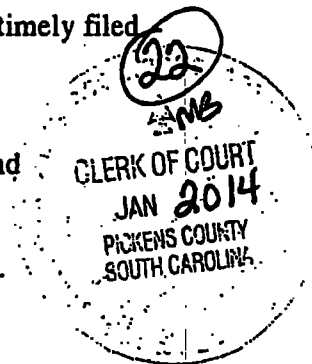
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 21 day of Jan, 2014.



G. Edward Wellmaker
Presiding Judge
Thirteenth Judicial Circuit

Pickens South Carolina.

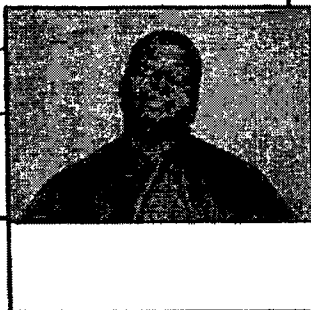


ARREST WARRANT

I-336060

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
PICKENS

 THE STATE
against


DARNELL COLIN RUSSELL

 Address: [REDACTED]
PICKENS SC 29671

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 6-1 Weight: 240

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: SC0390500

Prosecuting Agency: CITY OF PICKENS

Prosecuting Officer: TRAVIS RIGGS

Offense: PWID CRACK COCAINE NEAR SCHOOL

Offense Code: 0108

Code/Ordinance Sec. 44-53-0445 (B) (2)

 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 DARNELL COLIN RUSSELL
on 10-26-09

Lt. M. Wynn

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
PICKENS MUNICIPAL COURT

 STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
PICKENS

AFFIDAVIT

 Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

 Personally appeared before me the affiant TRAVIS RIGGS who
being duly sworn deposes and says that defendant DARNELL COLIN RUSSELL
did within this county and state on 07/22/2009 violate the criminal laws of th
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of PICKENS
in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0445 (B) (2) / PWID CRACK COCAINE NEAR SCHOOL

 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:

 THE DEFENDANT DID COMMIT THE OFFENSE IN THAT: (1) THE DEFENDANT DID SELL A CONFIDENTIAL INFORMANT LESS
THAN 10 GRAMS OF CRACK COCAINE DURING A CONTROLLED BUY. (2) THE PURCHASE WAS RECORDED BY AUDIO
EQUIPMENT. (3) THE DEFENDANT WAS IDENTIFIED BY THE CONFIDENTIAL INFORMANT. (4) THE OFFENSE OCCURRED
WITHIN A HALF-MILE OF AN ELEMENTARY SCHOOL AND/OR PUBLIC PLAYGROUND OR PARK. (5) THE OFFENSE OCCURRED
INSIDE THE CITY LIMITS OF PICKENS. (6) AUDIO RECORDING, STATEMENT, AND INCIDENT REPORT CASE #2009-03421 ON
FILE AT PICKENS POLICE DEPARTMENT.

Signature of Affiant

 STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
PICKENS

 Affiant's Address PO BOX 217
PICKENS SC 29671
Affiant's Telephone (864) 878-6421

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/22/2009 defendant DARNELL COLIN RUSSELL

 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of PICKENS) as set forth below:

DESCRIPTION OF OFFENSE: DRUGS / DISTRIBUTE, SELL, PURCHASE, MANUF. CRACK COCAINE, OR PWID, NEAR SCHOOL

 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 the 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 10/06/2009)

 Melanie A. Davis (L.S.)
MELANIE DAVIS

Judge Code: CJ/MRD

 Judge's Address PICKENS CITY HALL, P. O. BOX 217
PICKENS SC 29671

Judge's Telephone 864-878-6421

 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2009-03421

ORIGINAL

NOV 11 2009

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES

Travis Riggs

Pickens Police Department

10/26/2009

ARREST WARRANT NUMBER

1336060

TRUE BILL ACTION OF GRAND JURY
Date JUN 15 2010

Mary A. Smith
Foreperson of Grand Jury

VERDICT

Guilty

Jessica Mullins
Foreperson of Petit Jury

10/24/12
Date:

DOCKET NO. 2010-GS-39-PT

0868

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

DARNELL COLIN RUSSELL

Indictment for

0108

DISTRIBUTION OF COCAINE BASE WITHIN 1/2
MILE OF A SCHOOL

VIOLATION § 44-53-0445(B)(2)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE WITHIN 1/2 MILE OF A
SCHOOL

At a Court of General Sessions, convened on

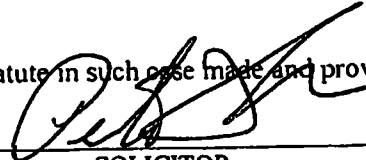
JUN 15 2010

the Grand Jurors of Pickens

County present upon their oath:

That DARNELL COLIN RUSSELL did in Pickens County, on or about the 22nd day of July, 2009, distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, while being within one-half (1/2) mile proximity of PICKENS ELEMENTARY SCHOOL. This is in violation of §44-53-445 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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
 STATE VS.
Darnell Colin Russell

AKA:

Race: BLACK Sex: M Age: 35DOB: [REDACTED] SSN: [REDACTED]

Address:

City, State, Zip: PICKENS, SC 29671-9025DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Distribute, sell, purchase, manuf. crack cocaine, or pwid, near school

in violation of § 44-53-0445(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0108

☒ 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:

Tooker, Sam

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 8 days/months/years ☐ 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. 2 months. CH

☐ 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 PTUP

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	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>8.40</u>
TOTAL	\$	\$ <u>298.40</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3900868A/W#: 1336060Date of Offense: 7/22/2009S.C. Code § : 44-53-0445(B)(2)CDR Code #: 0108

SENTENCE SHEET

10-15☒ CONVICTED OF or ☐ PLEADS

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

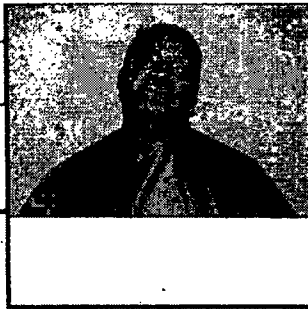
Sentence Date:

Ann / in7/24/13

ARREST WARRANT

I-336059

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
PICKENSTHE STATE
against

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
PICKENS

Personally appeared before me the affiant TRAVIS RIGGS who
being duly sworn deposes and says that defendant DARNELL COLIN RUSSELL
did within this county and state on 07/22/2009 violate the criminal laws of th
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of PICKENS)
in the following particulars:

DESCRIPTION OF OFFENSE: 44-53-0375(B) (2) / DISTRIBUTION OF CRACK COCAINE 2ND OFFENSE

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:

THE DEFENDANT DID COMMIT THE OFFENSE IN THAT: (1) THE DEFENDANT DID SELL A CONFIDENTIAL INFORMANT LESS
THAN 10 GRAMS OF CRACK COCAINE DURING A CONTROLLED BUY. (2) THE PURCHASE WAS RECORDED BY AUDIO
EQUIPMENT. (3) THE DEFENDANT WAS IDENTIFIED BY THE CONFIDENTIAL INFORMANT. (4) THE OFFENSE OCCURRED
WITHIN A HALF-MILE OF AN ELEMENTARY SCHOOL AND/OR PUBLIC PLAYGROUND OR PARK. (5) THE DEFENDANT HAS A
PRIOR CHARGE MAKING THIS THE SECOND OFFENSE. (6) THE OFFENSE OCCURRED INSIDE THE CITY LIMITS OF
PICKENS. (7) AUDIO RECORDING, STATEMENT, AND INCIDENT REPORT CASE #2009-03421 ON FILE AT PICKENS POLICE
DEPARTMENT.

DARNELL COLIN RUSSELL

Address: [REDACTED]
PICKENS SC 29671Phone: [REDACTED] SSN: [REDACTED]Sex: M Race: B Height: 6-1 Weight: 240DL State: SC [REDACTED]Agency ORI#: SC0390500Prosecuting Agency: CITY OF PICKENSProsecuting Officer: TRAVIS RIGGSOffense: DISTRIBUTION OF CRACK COCAINE 2ND
OFFENSE Offense Code: 3133Code/Ordinance Sec. 44-53-0375(B) (2)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

Pickens The accused
is to be arrested and brought before me to be
dealt with according to law.

Charles [Signature] (L.S.)
Signature of Judge

Date: 10/23/09

RETURN

A copy of this arrest warrant was delivered to
defendant DARNELL COLIN RUSSELL
on 10-26-09

Lt. M. Ward
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
PICKENS MUNICIPAL COURT

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1990
SCA 518

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
PICKENS

Affiant's Address PO BOX 217
PICKENS SC 29671
Affiant's Telephone (864) 878-6421

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/22/2009 defendant DARNELL COLIN RUSSELL

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of PICKENS) as set forth below:DESCRIPTION OF OFFENSE: DRUGS / MANUFACTURE, DISTRIBUTION, ETC., ICE, CRANK, CRACK
COCAINE - 2ND OFFENSE

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 the 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 10/06/2009)

Melanie H. Davis (L.S.)
MELANIE DAVIS

Judge Code: CJ/MRDJudge's Address PICKENS CITY HALL, P. O. BOX 217PICKENS SC 29671Judge's Telephone 864-878-6421Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 2009-03421

ORIGINAL

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____	_____
_____	_____
_____	_____

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

_____	_____
_____	_____

WITNESSES

Travis Riggs

Pickens Police Department

10/26/2009

ARREST WARRANT NUMBER

1336059

TRUE BILL ACTION OF GRAND JURY

Date JUN 15 2010

May W. Smith
Foreperson of Grand Jury

VERDICT

Guilty

Jessica Mull 10/24/12
Foreperson of Petit Jury Date:

DOCKET NO. 2010-GS-39-

PT

0869

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUN 15 2010 TERM 2010

THE STATE

vs.

DARNELL COLIN RUSSELL

Indictment for

3133

DISTRIBUTION OF COCAINE BASE (CRACK
COCAINE)

VIOLATION § 44-53-0375(B)(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

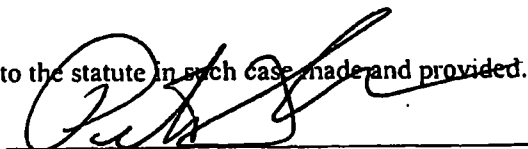
JUN 15 2010

County present upon their oath:

That DARNELL COLIN RUSSELL did in Pickens County, on or about the 22nd day of July, 2009, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized by law.

This is 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

Darnell Colin Russell

AKA:

Race: BLACK Sex: M Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: PICKENS, SC 29671-9025

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 2nd offense

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3133

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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:

Tooker, Sam

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 5 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. 3 months

☐ 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

PTUP

Total: \$ plus 20% fee: \$

 days/hours Public Service Employment

Payment Terms:

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: complete A TU

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$	
	\$	
\$100	\$	100.00
\$100	\$	
\$12	\$	
\$25	\$	
\$500	\$	
\$25	\$	25.00
\$150	\$	150.00
\$50	\$	
\$40/ea	\$	
\$5	\$	5.00
	\$	280
	\$	288.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS3900869

A/W#: 1336059

Date of Offense: 7/22/2009

S.C. Code § : 44-53-0375

CDR Code #: 3133

SENTENCE SHEET

5-25 } 25,000

☒ CONVICTED OF or ☐ PLEADS

Harold P. Welborn, Jr.
Danek

Am / in
2/10/24/12