

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Brian M. Gibbons, Circuit Court Judge

RECEIVED

OCT 15 2014

S.C. Supreme Court

GEORGE T. MIDDLETON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000656

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 25 – 28, 2009	1
APPLICATION FOR POST-CONVICTION RELIEF	439
AMENDED FOR POST-CONVICTION RELIEF	448
AMENDMENT TO POST-CONVICTION RELIEF	458
RETURN	462
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 21, 2014.....	467
ORDER OF DISMISSAL	493
INDICTMENT	502

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

5 STATE OF SOUTH CAROLINA

6 -vs-

7 GEORGE T. MIDDLETON,

8 Defendant.

TRANSCRIPT OF RECORD

08-GS-32-2898

May 25-26, 2009

May 27-28, 2009

Lexington, South Carolina

15 B E F O R E:

16 HONORABLE R. KNOX MCMAHON, Judge; and a jury.

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

20 DAVID M. STUMBO, Asst. Solicitor

21 EMILY B. HOWARD, Asst. Solicitor

Attorneys for the State

22 WAYNE FLOYD, Esquire

23 Attorney for the Defendant

24
25 COPY

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

(Trial May 26, 2009)

Jury Impaneled	24
Jury Sworn	31
Opening Statement by Mr. Stumbo	39
Opening Statement by Mr. Floyd	43

(Trial May 28, 2009)

Jury impaneled.	193
Jury Sworn	215
Opening Statement by Mr. Stumbo	224
Opening Statement by Mr. Floyd	228
State Rests	374
Motions by Mr. Floyd	374
Directed Verdict by Mr. Floyd	379
Questioning of the Defendant	384
Defense Rests	394
Closing Argument by Ms. Howard	396
Closing Argument by Mr. Floyd	404
Jury Charge	410
Verdict	424
Post Trial Motions	426
Sentence of the Court	436
Certificate	438

INDEX OF WITNESSES

(Trial May 26, 2009)

WITNESSES:

PAGE

ERIC KIRKLAND

Direct By Ms. Howard 45

Cross By Mr. Floyd 85

Redirect By Ms. Howard 95

Recross By Mr. Floyd 98

CHRISTOPHER TODD STRANGE

Direct By Ms. Howard 100

Cross By Mr. Floyd 108

Redirect By Ms. Howard 112

FREDA MICHELLE BROACH.

Direct By Mr. Stumbo 114

(Trial May 28, 2009)

ERIC KIRKLAND

Direct By Ms. Howard 230

Cross By Mr. Floyd 253

Redirect By Ms. Howard 274

Recross By Mr. Floyd 275

TODD STRANGE

Direct By Ms. Howard 277

Cross By Mr. Floyd 283

Redirect By Ms. Howard 284

1	MARGARET ELIZABETH HARMON	
2	Direct By Ms. Howard	.285
3	Cross By Mr. Floyd	.291
4	CANDY KYZER	
5	Direct By Ms. Howard	.292
6	Cross By Mr. Floyd	.294
7	EMILY WILSON	
8	Direct By Mr. Stumbo	.299
9	Cross By Mr. Floyd	.309
10	Redirect By Mr. Stumbo	.312
11	FREDA MICHELLE BROACH	
12	Direct By Mr. Stumbo	.314
13	Cross By Mr. Floyd	.345
14	In Camera Examination By Mr. Floyd	.350
15	Cross By Mr. Floyd	.359
16	Redirect By Mr. Stumbo	.370
17	Recross By Mr. Floyd	.373

18 (Court Reporter's Note: Exhibits are listed twice
 19 because of two different trials. The first listing is
 20 for May 26, 2009, and the second is for May 28, 2009).

21 STATE'S EXHIBITS

22	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
23	1	Aerial photograph		65
24	1	Aerial photograph		239
25	2	Aerial photograph		65

STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
2	Aerial photograph		239
3	Photograph		64
3	Photograph		239
4	Photograph		64
4	Photograph		239
5	C.D.		138
5	C.D.		339
6	Drugs (crack cocaine)		335

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Prior convictions	437	

1 (The following proceedings are reported on May
2 26, 2009).

3 THE COURT: Solicitor, you may call your first
4 case for trial.

5 MS. HOWARD: The State calls 2008-GS-32-2898,
6 the State of South Carolina versus George Thomas
7 Middleton, indicted for distribution of crack cocaine,
8 Your Honor.

9 THE COURT: Thank you.

10 Ladies and gentlemen, of the jury panel, if
11 you would please give me your complete and undivided
12 attention. We are going to go through a process to
13 select a trial jury for the trial of the case that the
14 solicitor has just called for trial.

15 This will determine your qualifications and
16 eligibility to serve as jurors in this particular case.
17 I am going to read the indictment, publish the
18 indictment, and ask you a series of questions concerning
19 your qualifications to serve as jurors in this court.

20 I would remind you and ask you to please
21 consider yourselves still under oath and ask that your
22 questions -- excuse me -- your responses be complete and
23 accurate.

24 I am going to begin by reading the indictment
25 to you. The indictment is the formal charging document.

1 It is the formal document, the notice document, by which
2 an individual is placed on notice of the charges that
3 have been brought against him or her. The indictment
4 contains mere allegations. It is not evidence of any of
5 the allegations contained therein.

6 Indictment Number 2008-GS-32-2898 reads that
7 on July 15th of 2008, the Defendant, George Middleton,
8 did distribute a quantity of crack cocaine to an
9 undercover operative of law enforcement. This incident
10 took place at [REDACTED] Austin Court in the Pelion area of
11 Lexington County, South Carolina.

12 This transaction was monitored and recorded by
13 law enforcement and constitutes a violation under the
14 provisions of 44-53-110 and 44-53-375 (b) which are the
15 Code of Laws of South Carolina.

16 Again, the indictment is not evidence. It is
17 the formal charging document which places an individual
18 on notice of the charges he or she must answer to in
19 court.

20 The State is represented by Assistant
21 Solicitor Howard and Stumbo. If you would please stand
22 and introduce yourself to the jury panel, please,
23 Solicitors.

24 MS. HOWARD: Good morning, ladies and
25 gentlemen. My name is Emily Howard. I'm an assistant

1 solicitor here in Lexington County. This is David
2 Stumbo, also an assistant solicitor here. With us on
3 this case is Mr. Eric Kirkland with the Lexington County
4 Sheriff's Department.

5 THE COURT: Thank you. Thank you very much,
6 Solicitors. The Defendant is represented by Mr. Wayne
7 Floyd.

8 Mr. Floyd, if you would please stand and
9 introduce yourself to the jury panel and your client.

10 MR. FLOYD: Thank you, Your Honor. My name is
11 Wayne Floyd. I practice law on Highway 1 in West
12 Columbia. Next to me here is Mr. George Middleton who
13 is the Defendant in this case.

14 THE COURT: Thank you. Thank you very much,
15 Mr. Floyd. Is any member of the jury panel related by
16 blood or marriage or close personal friends of either
17 Assistant Solicitor Howard, Stumbo or any employee of
18 the Lexington County Solicitor's Office? If so, please
19 stand related.

20 (There is no response).

21 THE COURT: Is any member of the jury panel
22 related by blood or marriage or close personal friends
23 of Mr. Wayne Floyd, the defense attorney who represents
24 Mr. Middleton? If so, please stand.

25 (There is no response).

1 THE COURT: Is any member of the jury panel or
2 member of your immediate family or close personal friend
3 ever been represented by Assistant Solicitor Howard or
4 Stumbo or any member of the Lexington County Solicitor's
5 Office? If so please stand.

6 (There is no response).

7 THE COURT: Is any member of the jury panel or
8 a member of your immediate family or close personal
9 friend ever been represented by Mr. Wayne Floyd? If so,
10 please stand.

11 (Juror stands).

12 THE COURT: Yes, ma'am, your number and name,
13 please?

14 PROSPECTIVE JUROR: One-eighty-five.

15 THE COURT: Your name?

16 PROSPECTIVE JUROR: Sherry Wright.

17 THE COURT: Ms. Wright, you or a family member
18 or a friend?

19 PROSPECTIVE JUROR: An ex-husband was
20 represented.

21 THE COURT: I don't know how to characterize
22 that.

23 PROSPECTIVE JUROR: I don't either.

24 THE COURT: The fact that your ex-husband was
25 represented by Mr. Floyd -- is that correct?

1 PROSPECTIVE JUROR: That's correct.

2 THE COURT: Could you still be a fair and
3 impartial juror to both the State and the defense in
4 this case?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you, Ms. Wright. You may be
7 seated. Any others?

8 (There is no response).

9 THE COURT: Is any member of the jury panel
10 related by blood or marriage or close personal friends
11 of the Defendant in this case who has previously been
12 introduced to you, Mr. George Thomas Middleton? If so,
13 please stand.

14 (There is no response).

15 THE COURT: The indictment alleges an incident
16 which occurred on or about July 15, 2008, at [REDACTED] Austin
17 Court in the Pelion area of Lexington County. Does any
18 member of the jury panel have any knowledge about the
19 case? If so, please stand.

20 (There is no response).

21 THE COURT: Does any member of the jury panel
22 have any bias or prejudice towards the parties, that
23 being the State or the Defendant, or towards the subject
24 matter involved in the trial of this case? If so,
25 please stand.

1 (Juror stands).

2 THE COURT: Yes, sir, your number and name,
3 please?

4 PROSPECTIVE JUROR: Eighty-six, Ken Kennerly.

5 THE COURT: If you would step up to my court
6 reporter for me, please, sir.

7 (The following bench conference with the
8 Court, counsel, and the juror is reported).

9 THE COURT: This is number 86?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Mr. Kenneth R. Kennerly, tell me
12 your situation.

13 PROSPECTIVE JUROR: I'm a psychologist at the
14 V.A. Hospital, but my primary work is in addiction
15 treatment. Actually I am an addiction therapist with
16 the Veterans Department with alcohol and drug problems.
17 I don't know if that is a bias, but that's what I do
18 currently for a living.

19 THE COURT: Now, given that that is your
20 occupation, the question becomes whether or not you
21 would be a fair and impartial juror to both the State
22 and the defense.

23 PROSPECTIVE JUROR: I think I could.

24 THE COURT: When you say I think I could, I
25 hate to debate semantics with a psychologist. I may end

1 up on some type of medication.

2 PROSPECTIVE JUROR: My bias would be toward
3 people who are victims of drugs and substance abuse. I
4 believe it is a disease. I'm less partial towards
5 people who distribute, but I think I could be objective
6 about it.

7 THE COURT: The issue then becomes if you
8 could set aside your beliefs in that regard and make --
9 if you are selected as a member of the jury -- make your
10 decision based on the evidence and the testimony you
11 hear in the courtroom from the witnesses testifying
12 under oath in this trial.

13 PROSPECTIVE JUROR: Right.

14 THE COURT: In other words --

15 PROSPECTIVE JUROR: Yes, sir, I think I could
16 make that distinction. I could be impartial.

17 THE COURT: Thank you. You may go back and
18 have a seat. Do not say anything to your fellow jurors.

19 (The juror leaves the bench conference, and
20 the following is reported).

21 THE COURT: Do y'all have a position on him?

22 MR. STUMBO: Not for cause.

23 MR. FLOYD: Not for cause.

24 THE COURT: The other issue I had was did you
25 want me to say anything about Mr. Middleton's physical

1 condition?

2 MR. FLOYD: I talked to him about it. I
3 thought if it is something that would distract the jury
4 from what is going on, maybe it's best.

5 THE COURT: To say something?

6 MR. FLOYD: To say something. The way I
7 understand it, Judge, he has got something ongoing
8 inside that they can't figure out exactly what it is.
9 It creates muscle spasms every so often where he kind of
10 goes rigid, and they don't last sometimes seconds,
11 sometimes half a minute.

12 THE COURT: And that that is not going to be
13 part of their deliberations.

14 MR. FLOYD: I guess.

15 THE COURT: Is that right?

16 MR. FLOYD: Right. And that is a medical
17 condition that might necessitate that we take breaks or
18 might necessitate breaks if he has an episode. Does
19 that make sense? And that they wouldn't be taken aback
20 by that.

21 THE COURT: Thank you.

22 (The bench conference is concluded).

23 THE COURT: Has any member of the jury panel
24 heard or know anything about the case from any source
25 whatsoever? If so, please stand.

1 (There is no response).

2 THE COURT: I will call out a list of names of
3 potential witnesses in the trial of this case. I know
4 one of them is present and has already stood before you,
5 Mr. Kirkland.

6 I would advise the jury panel, however, that
7 the witnesses are not required to be present at this
8 stage of the proceedings. So you may hear names called
9 and no one may stand. If any of the witnesses are
10 present besides Mr. Kirkland when I call your name, I
11 would ask you to please stand.

12 The question, of course, is: Is any member of
13 the jury panel related by blood or marriage or close
14 personal friends with any of these potential witnesses?
15 And if so, please stand.

16 Again, Mr. Eric Kirkland with the Lexington
17 County Sheriff's Department who previously stood and was
18 introduced to you. Todd Strange, with the State Law
19 Enforcement Division; Beth Harmon; Candy Kyzer; Emily
20 Wilson, all with the Lexington County Sheriff's
21 Department; and Freda Broach.

22 Is any member of the jury panel related by
23 blood or marriage or close personal friends with any of
24 those individuals whose names I just called? If so,
25 please stand.

1 (There is no response).

2 THE COURT: Any additional requested voir dire
3 from the State?

4 MS. HOWARD: None from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. FLOYD: No, Your Honor.

7 THE COURT: Does any member of the jury panel
8 know any reason whatsoever why you feel like you would
9 not be a fair and impartial juror in the trial of this
10 case for both the State and the defense? If so, please
11 stand.

12 (There is no response).

13 THE COURT: Finally, ladies and gentlemen, I
14 would advise, after talking with the solicitors and
15 Mr. Floyd, it is my understanding that Mr. Middleton has
16 a medical condition that may intermittently cause
17 Mr. Middleton to have spasms where his body may get
18 rigid for a brief period of time, up to a period of
19 approximately 30 seconds.

20 Given that, perhaps depending on the severity
21 of that condition, we may have to take a break or,
22 however, we may press on. It really depends on whether
23 or not his attorney notifies the Court and requests
24 taking a break during that period of time.

25 I advise you of this for several reasons.

1 First off, so you would be aware of that, number one.
2 Number two, that that situation, should it arise, would
3 not be part of your consideration or deliberation if you
4 are selected as a juror in the trial of this case.
5 Number three, that you would not react inappropriately
6 not having any prior knowledge of that potential event.

7 As I say, I advise you of that, ladies and
8 gentlemen of the jury panel, after having consulted with
9 both the prosecuting attorneys and Mr. Floyd and after
10 Mr. Floyd had consulted with his client.

11 With that being said, I find that our panel is
12 qualified. The strikes are five and five; is that
13 correct?

14 MS. HOWARD: I believe so, Your Honor.

15 MR. FLOYD: Yes, sir.

16 THE COURT: We are going to go through a
17 process, ladies and gentlemen, where your names are
18 called randomly. If your name is called, please gather
19 up all your personal items and gear. If you would come
20 forward to the podium, which is in front of the bench
21 right in the center of that podium and turn around and
22 face out back to your peers.

23 The clerk will then ask the State to begin
24 with, What say the State? The State will respond with
25 either, Seat or accept the juror or strike the juror.

1 The clerk, if you are excused, will give you
2 instructions to return to your seat.

3 If you are selected by the State, that
4 question then goes to the defense of, What say the
5 defense, of whether to seat the juror or excuse the
6 juror. As you just heard me say, the State has five
7 strikes, peremptory strikes as they are known. The
8 defense has five peremptory strikes.

9 With that being said, Madame Clerk, if you
10 would give us a jury panel, please.

11 CLERK: Yes, sir, Your Honor.

12 Number 100, Oliver W. Lowman.

13 (The juror, a white male, comes forward).

14 CLERK: What say you for the State?

15 MS. HOWARD: Please present the juror.

16 CLERK: What say you for the defense?

17 MR. FLOYD: Seat Mr. Lowman, please.

18 CLERK: Have a seat in the jury box, please,
19 sir.

20 Number 82, Karen A. Johnston.

21 (The juror, a white female, comes forward).

22 CLERK: What say you for the State?

23 MS. HOWARD: Please present the juror.

24 CLERK: What say you for the defense?
25

1 MR. FLOYD: Present Ms. Johnston, please.
2 CLERK: Have a seat in the jury box, please,
3 ma'am.
4 Number 104, Emmett D. Maynor.
5 (The juror, a white male, comes forward).
6 CLERK: What say you for the State?
7 MS. HOWARD: Please present the juror.
8 CLERK: What say you for the defense?
9 MR. FLOYD: Excuse Mr. Maynor, please.
10 CLERK: Return to your seat, please, sir.
11 Number 10, Ann W. Bell.
12 (The juror, a white female, comes forward).
13 CLERK: What say you for the State?
14 MS. HOWARD: Please present the juror.
15 CLERK: What say you for the defense?
16 MR. FLOYD: Excuse Ms. Bell, please.
17 CLERK: Return to your seat, please, ma'am.
18 Number 59, Chad M. Geary.
19 (The juror, a white male, comes forward).
20 CLERK: What say you for the State?
21 MS. HOWARD: Please present the juror.
22 CLERK: What say you for the defense?
23 MR. FLOYD: Seat Mr. Geary, please.
24 CLERK: Have a seat in the jury box, please,
25 sir.

1 Number 23, Katie A. Butler.
2 (The juror, a white female, comes forward).
3 CLERK: What say you for the State?
4 MS. HOWARD: Please present the juror.
5 CLERK: What say you for the defense?
6 MR. FLOYD: Seat Ms. Butler, please.
7 CLERK: Have a seat in the jury box, please,
8 ma'am.
9 Number 121, Deniz A. Ozbek.
10 (The juror, a white male, comes forward).
11 CLERK: What say you for the State?
12 MS. HOWARD: Please present the juror.
13 CLERK: What say you for the defense?
14 MR. FLOYD: Seat Mr. Ozbek, please.
15 CLERK: Have a seat in the jury box, please,
16 sir.
17 Number 78, Harry E. Jacob.
18 (The juror, a white male, comes forward).
19 CLERK: What say you for the State?
20 MS. HOWARD: Please excuse the juror from the
21 trial of this case.
22 CLERK: Return to your seat please, sir.
23 Number 127, Joseph L. Poole.
24 (The juror, a white male, comes forward).
25 CLERK: What say you for the State?

1 MS. HOWARD: Please seat the juror.

2 CLERK: What say you for the defense?

3 MR. FLOYD: Seat Mr. Poole, please.

4 CLERK: Have a seat in the jury box, please,
5 sir.

6 Number 8, Elizabeth A. Barna.

7 (The juror, a white female, comes forward).

8 CLERK: What say you for the State?

9 MS. HOWARD: Please present the juror.

10 CLERK: What say you for the defense?

11 MR. FLOYD: Seat Ms. Barna, please.

12 CLERK: Have a seat in the jury box, please,

13 ma'am.

14 Number 39, Christina N. Dolan.

15 (The juror, a white female, comes forward).

16 CLERK: What say you for the State?

17 MS. HOWARD: Please seat the juror.

18 CLERK: What say you for the defense?

19 MR. FLOYD: Seat Ms. Dolan, please.

20 CLERK: Have a seat in the jury box, please,

21 ma'am.

22 Number 48, Lynne B. Fallaw.

23 (The juror, a white female, comes forward).

24 CLERK: What say you for the State?

25 MS. HOWARD: Please present the juror.

1 CLERK: What say you for the defense?

2 MR. FLOYD: Excuse Ms. Fallaw, please.

3 CLERK: Return to your seat, please, ma'am.

4 Number 119, Terrence E. Oldake, Jr.

5 (The juror, a white male, comes forward).

6 CLERK: What say you for the State?

7 MS. HOWARD: Please excuse the juror from the
8 trial of this case.

9 CLERK: Return to your seat, please, sir.

10 Number 150, Audrey L. Shivar.

11 (The juror, a white female, comes forward).

12 CLERK: What say you for the State?

13 MS. HOWARD: Please present the juror.

14 CLERK: What say you for the defense?

15 MR. FLOYD: Seat Ms. Shivar, please.

16 CLERK: Have a seat in the jury box, please,
17 ma'am.

18 Number 147, Lauren M. Scott.

19 (The juror, a white female, comes forward).

20 CLERK: What say you for the State?

21 MS. HOWARD: Please present the juror.

22 CLERK: What say you for the defense?

23 MR. FLOYD: Seat Ms. Scott, please.

24 CLERK: Have a seat in the jury box, please,
25 ma'am.

1 Number 113, Kimberly L. Minton.
2 (The juror, a white female, comes forward).
3 CLERK: What say you for the State?
4 MS. HOWARD: Please present the juror.
5 CLERK: What say you for the defense?
6 MR. FLOYD: Seat Ms. Minton, please.
7 CLERK: Have a seat in the jury box, please,
8 ma'am.
9 Number 112, Martha C. Mims.
10 (The juror, a white female, comes forward).
11 CLERK: What say you for the State?
12 MS. HOWARD: Please present the juror.
13 CLERK: What say you for the defense?
14 MR. FLOYD: Excuse Ms. Mims, please.
15 CLERK: Return to your seat, please, ma'am.
16 Number 158, Thomas J. Stafford.
17 (The juror, a white male, comes forward).
18 CLERK: What say you for the State?
19 MS. HOWARD: Please present the juror.
20 CLERK: What say you for the defense?
21 MR. FLOYD: Excuse Mr. Stafford, please.
22 CLERK: Return to your seat, please, sir.
23 Number 179, Govie L. Williams, II.
24 (The juror, a white male, comes forward).
25 CLERK: What say you for the State?

1 MS. HOWARD: Please excuse the juror from the
2 trial of this case.

3 CLERK: Return to your seat, please, sir.

4 Number 149, Nancy D. Shirey.

5 (The juror, a white female, comes forward).

6 CLERK: What say you for the State?

7 MS. HOWARD: Please present the juror.

8 CLERK: What say you for the defense?

9 MR. FLOYD: Seat Ms. Shirey, please.

10 CLERK: Have a seat in the jury box, please,
11 ma'am.

12 Alternates, Your Honor?

13 THE COURT: Yes, one alternate. The strikes
14 will be one and two.

15 CLERK: Number 185, Sherrie S. Wright.

16 (The juror, a white female, comes forward).

17 CLERK: What say you for the State?

18 MS. HOWARD: Please present the juror.

19 CLERK: What say you for the defense?

20 MR. FLOYD: Excuse Ms. Wright, please.

21 CLERK: Return to your seat, please, ma'am.

22 Number 154, Denise R. Smith.

23 (The juror, a white female, comes forward).

24 CLERK: What say you for the State?

25 MS. HOWARD: Please present the juror.

1 CLERK: What say you for the defense?

2 MR. FLOYD: Excuse Ms. Smith, please.

3 CLERK: Return to your seat, please, ma'am.

4 Number 174, Jane D. Westbrook.

5 (The juror, a white female, comes forward).

6 CLERK: What say you for the State?

7 MS. HOWARD: Please present the juror.

8 CLERK: What say you for the defense?

9 MR. FLOYD: Seat Ms. Westbrook, please.

10 (The jury is impaneled at 11:30 a.m.).

11 THE COURT: Any motions regarding the jury
12 selection process from the State?

13 MS. HOWARD: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. FLOYD: Yes, Your Honor, we would have a
16 motion.

17 THE COURT: All right. Ladies and gentlemen
18 of the jury panel, the law requires that I take this
19 motion up outside of your presence. I will ask you to
20 please step to your jury room.

21 Do not discuss the case during this brief
22 recess. You would not be authorized to discuss the case
23 until you have heard all the evidence, all the
24 testimony, the closing arguments by the attorneys, and
25 the charge on the law by the Court.

1 With that being said, if you would please go
2 with your bailiffs to your jury room.

3 (The jury retires to the jury room).

4 THE COURT: Those of you who have not been
5 selected for the trial of this jury, I am going to
6 advise you of two things. First, I must hear this
7 motion before I can do anything additional with your
8 status as jurors today.

9 That's number one. Number two, I must hear
10 this motion outside of your presence. So I am going to
11 ask you to please, if you are a juror, if you would
12 please leave the courtroom. I would ask you to please
13 be back in place at quarter till 12. In other words,
14 take a 15-minute recess. If you are a juror, you must
15 leave the courtroom while I hear this motion. Thank you
16 very much.

17 (The jury panel leaves the courtroom).

18 THE COURT: Mr. Bailiff, do not allow anyone
19 to come in the courtroom if you can identify them as
20 jurors. The best would be don't let anyone in the
21 courtroom during this motion.

22 Mr. Floyd.

23 MR. FLOYD: Thank you, your Honor. Your
24 Honor, let the record reflect that Mr. Middleton is a
25 black male. Your Honor, we went through 23 potential

1 jurors, and there was not one potential black juror. I
2 note in the panel there are only four black jurors out
3 of 71 jurors, which is around 5 percent, which is well
4 below the makeup or composition of the county itself.

5 It's our position that the composition of the
6 jury that we have and the jury panel that we had to
7 select from violates Mr. Middleton's constitutional
8 rights to equal protection, due process, and fundamental
9 fairness.

10 I'm not accusing anybody of doing anything
11 intentionally. It's just so happens that the panel that
12 we have and the selection process that was used, the
13 regular selection process, did not present any potential
14 black jurors for Mr. Middleton.

15 Your Honor, we would move that the panel be
16 struck and that the matter be continued until we have a
17 better composed panel.

18 THE COURT: Thank you, Mr. Floyd. Solicitor.

19 MS. HOWARD: Your Honor, Mr. Middleton is
20 entitled to a jury panel of his peers. I do note that
21 there are several black people on the panel. I believe
22 the process they were selected in was fair on both
23 sides.

24 Certainly no one was struck because of race,
25 and the panel adequately reflects the jurors who were

1 able to attend this week in Lexington County, Your Honor
2 regardless of race.

3 THE COURT: Anything further, Solicitor?

4 MS. HOWARD: Not from the State, Your Honor.

5 THE COURT: Anything further, Mr. Floyd?

6 MR. FLOYD: No, Your Honor.

7 THE COURT: There is no testimony or
8 additional evidence you would wish to present,
9 Mr. Floyd?

10 MR. FLOYD: No, Your Honor.

11 THE COURT: I would respectfully deny your
12 motion. Anything further?

13 MR. FLOYD: Not from the defense, Your Honor.

14 MS. HOWARD: Nothing from the State, Your
15 Honor.

16 THE COURT: We need to wait nine minutes for
17 our jury to return. I think I will step out. I will be
18 back in at 11:45. Thank you very much.

19 (Whereupon there is a recess).

20 THE COURT: It's my understanding that y'all
21 want to start the trial at 2:30?

22 MR. FLOYD: That's fine with us, Your Honor.

23 THE COURT: Is that correct?

24 MS. HOWARD: That would be good with us, Your
25 Honor.

1 THE COURT: Are there going to be any pretrial
2 matters?

3 MR. FLOYD: I don't know of any. I don't know
4 whether the State has some.

5 MS. HOWARD: We don't anticipate any problems.

6 THE COURT: The State has no pretrial motions
7 and the defense has no pretrial motion, correct?

8 MR. FLOYD: Correct, Your Honor, unless
9 something comes up. We are going to listen to a
10 recording, so unless something comes up in that.

11 THE COURT: All right. If you would bring us
12 our panel please, Mr. Corley.

13 (The jury returns to the courtroom).

14 THE COURT: Welcome back. Ladies and
15 gentlemen, momentarily I am going to release you from
16 your jury service for your luncheon recess given the
17 time. As with all cases, there are certain pretrial
18 matters that must be resolved before the opening
19 statements and the witnesses are called to testify.

20 Rather than hold you captive during that
21 period of time, I am going to release you for you to
22 take your luncheon recess. I would remind you during
23 your luncheon recess and during all breaks you are not
24 to discuss the case with anyone.

25 Obviously you know nothing about the case at

1 this point anyway, but you are not to discuss the case
2 with anyone. That includes your fellow jurors, your
3 lunch mates, your family, your friends or anyone else.

4 If anyone tries to talk with you about the
5 case, I would ask you to please advise me immediately.
6 Remember to keep an open mind about the case until you
7 have heard all the evidence, all the testimony, the
8 closing arguments by the attorneys, and the charge on
9 the law by the Court.

10 I will ask you to please be back in your jury
11 room at 2:30. If you would please be back promptly at
12 2:30. Upon your return when all members of the jury are
13 present, I would ask you to please select among your
14 number of the primary jury a foreperson that would be
15 the jury's spokesperson here in the courtroom.

16 That can be any one of the primary jurors. It
17 cannot be Ms. Westbrook. Although I'm sure
18 Ms. Westbrook would make a fine jury foreperson, right
19 now she is in the status of an alternate. It would have
20 to be one of the 12 primary jurors.

21 So if you would please select a jury
22 foreperson amongst yourselves once all of you have
23 returned to the jury room at 2:30. Once you have made
24 that selection, if you would write the name down, knock
25 on the jury room door, and give that name to the

1 bailiff. Then we would receive you into the courtroom
2 and begin the trial of the case at that time. Any
3 questions?

4 (There is no response).

5 THE COURT: With that being said, I hope y'all
6 have a pleasant lunch. Again, thank you very much for
7 your time and your patience this morning.. Please be
8 back promptly at 2:30. Thank you very much. You are
9 now excused.

10 (The jury is excused for lunch at 11:55 a.m.)

11 THE COURT: Anything further, Solicitor?

12 MS. HOWARD: No, Your Honor.

13 THE COURT: Mr. Floyd?

14 MR. FLOYD: No, Your Honor.

15 THE COURT: We will be in recess until 2:30.

16 Thank you very much.

17 (Whereupon there is a luncheon recess).

18 THE COURT: Anything from the State before we
19 bring in our jury?

20 MS. HOWARD: Nothing from the State, Your
21 Honor.

22 THE COURT: Defense?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Bring us our jury, please.

25 (The jury returns to the courtroom at

1 2:33 p.m.)

2 THE COURT: Madame Clerk.

3 CLERK: Please stand and raise your right
4 hand.

5 (The jury is duly sworn).

6 THE COURT: Was there any member of the jury
7 panel unable to take the oath? If so, please stand.

8 (There is no response).

9 THE COURT: Thank you. Ladies and gentlemen
10 of the jury, the case we are about to try is the case of
11 the State versus George Thomas Middleton. If you would
12 please give me your complete and undivided attention.
13 What I will now say is intended to serve as an
14 introduction to the trial of this case.

15 These remarks are not a charge on the law. I
16 will instruct you on the law that applies to this case
17 at the end of the trial before you retire to consider
18 your verdict. This is merely an explanation of the
19 procedure that we will follow in the trial so that you
20 may better understand what may be happening.

21 The Defendant is charged by an indictment
22 filed in this Court with the crime of distribution of
23 crack cocaine, the elements of which will be explained
24 to you later. This indictment is simply the charge by
25 which the case is brought into court, and it is not in

1. any sense evidence of any of the allegations it
2 contains.

3 The Defendant has pled not guilty to this
4 indictment. The State therefore has the burden of
5 proving each of the elements of the indictment beyond a
6 reasonable doubt, and it will be your duty, ladies and
7 gentlemen, to decide whether the State has met that
8 burden.

9 Your purpose as jurors is to find and
10 determine the facts. You are the sole judge of the
11 facts. If at any time I make any comment regarding the
12 facts, you must disregard it.

13 You are to determine the facts from the
14 testimony you hear and the other evidence introduced
15 into court. It is up to you to determine the inference
16 which you feel may properly be drawn from the evidence.

17 It is especially important that you perform
18 your duty of determining the facts diligently and
19 conscientiously because ordinarily there is no way to
20 correct an erroneous determination of the facts by a
21 jury.

22 On the other hand and with equal emphasis, the
23 same law that make you the judges of the facts makes me
24 the judge of the law. The law as given by the Court is
25 the only law you may consider. You must accept and

1 follow it even though you may disagree with it. I
2 cannot tell you what the facts are, and you cannot
3 disagree with me about what the law is or should be.

4 Your job is to take the law as I give it to
5 you and apply it to the facts as you find them from the
6 testimony of the witnesses and any other evidence that
7 is introduced. After doing that you will render your
8 verdict, a true and just verdict, under the solemn oath
9 that you just took as jurors.

10 It is important that you keep an open mind and
11 not decide any issue in the case until all of the
12 evidence has been presented, the parties have made their
13 closing arguments, and I have instructed you on the law
14 in this case.

15 It is your solemn responsibility to determine
16 the guilt or the innocence of the Defendant. Your
17 verdict must be based solely on the evidence as it is
18 presented to you in this trial and on the law as I
19 instruct you during and at the close of the trial.

20 In just a moment, the solicitor will make what
21 is known as an opening statement in which the solicitor
22 will explain to you the issues in this case or at least
23 what the solicitor thinks the issues are in the case.

24 Mr. Floyd, the attorney for the Defendant, may
25 also make an opening statement, although he is not

1 required to do so. What the attorneys tell you during
2 their opening statements is not evidence in the case.
3 It is only their contention as to what the issues are.

4 The evidence will be presented to you by the
5 testimony of sworn witnesses from this witness stand
6 and/or by any exhibits that may be introduced into
7 evidence.

8 From time to time during the trial, you may
9 hear one of the attorneys say something like, Your
10 Honor, I believe we have a question of law or a matter
11 of law to discuss with you or Your Honor, may we
12 approach the bench or sometime I myself might find it
13 necessary to excuse you from the courtroom for a short
14 while so that the attorneys and I can discuss a matter
15 of law.

16 The reason for this is because you are the
17 judges of the facts. Sometimes when I am discussing
18 matters of law with the attorneys, it may be necessary
19 for me to make some comment as to the facts in
20 connection with ruling whether or not a particular law
21 applies.

22 I am not supposed to tell you what I think the
23 facts are, so I will excuse you from the courtroom while
24 these discussions take place so that in no way will you
25 be influenced by anything that I might say or do in

1 connection with the facts.

2 In determining what the true facts are in this
3 case, you must decide whether or not the testimony of
4 the witnesses is believable. It will be my
5 responsibility to rule as a matter of law as to whether
6 certain testimony is admissible at all or not, but once
7 the testimony is admitted, whether or not you believe it
8 is solely for you to determine.

9 In deciding whether to believe a witness, you
10 have the right to consider the interest of any witness,
11 the bias of any witness, the prejudice of any witness,
12 the opportunity for the witness to have seen the matters
13 and things about which the witness may testify and the
14 way the witness acts on the witness stand.

15 You have a right to consider anything that is
16 in the record that will help you evaluate the testimony
17 of the witnesses: That means it will be your duty to
18 pay close attention to these witnesses, to observe the
19 witnesses, to listen to the witnesses, and to pay close
20 attention to the attorneys and to the Court.

21 Don't let your thoughts wander but give strict
22 attention to the testimony in the case so that at the
23 end of all the evidence, after the arguments of counsel
24 and the charge on the law by the Court, you will then be
25 in a position to determine what the true facts are and

1 to apply the law to those facts and thus render a true
2 and just verdict.

3 Madame Forelady, thank you for your service.
4 It will also be your duty to preside in the jury room
5 and be the juror's spokesperson here in court. It will
6 also be your duty to write the verdict, but I will give
7 you further instructions about that at the conclusion of
8 the case.

9 By way of housekeeping, ladies and gentlemen,
10 I tell jurors week to week that when I want to take a
11 break, we take a break. It's that simple. Well, this
12 isn't some type of judicial marathon. If at any time
13 any of you have sat out here too long and need a break,
14 please raise your hand.

15 If you sit too long, you will get to fidgeting
16 in your seats. Your mind will wander. You won't be
17 able to focus on the testimony and to determine what the
18 true facts are. Any time any of you need a break,
19 please raise your hand, and y'all will take your break
20 and we will take our break.

21 Also, there is a speaker system in this
22 courtroom; however, if you cannot hear a particular
23 witness, particularly those jurors further away from the
24 witness stand, just please raise your hand, cup your
25 ear, get my attention or the attention of one of our fine

1 bailiffs, and we will certainly have our witnesses speak
2 up.

3 I don't know what may or may not be introduced
4 into evidence. Many times there could be charts or
5 diagrams or documents. Sometimes they are handed to the
6 foreperson in the courtroom, and they are passed among
7 the jury while you are out here in your jury box.

8 You may look at those documents as long as you
9 wish, but once they are introduced into evidence in your
10 jury box, remember that won't be the only or last time
11 you will have an opportunity to look at them.

12 If I allow them into evidence, they are passed
13 among the jury while you are out here in the courtroom,
14 you will also have all those documents and exhibits with
15 you in the jury room at the time of your deliberations.

16 Again, you can look at them as long as you
17 wish out here in the courtroom, keeping in mind that
18 will not be the only opportunity you will have to look
19 at those documents.

20 The procedure, of course, we will follow is
21 after the opening statements by the attorneys, the State
22 will present its case in chief first. The State has the
23 burden of proving its case beyond a reasonable doubt.

24 Thereafter, the defense may present evidence
25 if it chooses to do so; however, the defense never has

1 to produce evidence. A person is presumed to be
2 innocent in South Carolina and never has to prove
3 himself or herself not guilty, never has the burden of
4 proof..

5 Madame Forelady, if at any time during the
6 break, jurors have any questions or concerns, if you
7 will write me out a note, knock on the door, give it to
8 one of the bailiffs. They will be posted right outside
9 your jury room.

10 In order to preserve everyone's rights, I will
11 give the parties an opportunity -- oh, one final thing.
12 I had a juror mention this to me. I do look at my
13 computer during the course of the trial. I don't want
14 y'all to think I am playing games or surfing the net or
15 web or tweeter, whatever those things are, blackberries,
16 Blueberry.

17 Something may pop in my mind about a
18 particular law. That is usually what I am doing is
19 looking that up. I had a juror tell me one time, You
20 stay on that computer so much. I don't know how you
21 listen to the trial. I do. I just don't want that to
22 be distracting to you.

23 With that being said, Solicitor, any
24 objections to anything I have told the jury from the
25 State?

1 MS. HOWARD: Nothing from the State, Your
2 Honor.

3 THE COURT: From the defense?

4 MR. FLOYD: Nothing, Your Honor.

5 THE COURT: With that we will now begin the
6 trial. Solicitor, you may address the jury.

7 MR. STUMBO: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, sir.

10 OPENING STATEMENT

11 MR. STUMBO: Crack cocaine, if you all are
12 anything like me, it doesn't conjure up the most
13 positive of images. When I think of addiction, I think
14 of broken families, and I think of destroyed lives.

15 Ladies and gentlemen, George Middleton, he may
16 not look like it, but he is a man who profits off of all
17 that destruction. When the train is about to leave the
18 station to head for rock bottom, there sits George
19 Middleton waiting to sell you a ticket.

20 You have already heard the judge tell you,
21 ladies and gentlemen, it's our job in this case to prove
22 Mr. Middleton is guilty beyond a reasonable doubt. It's
23 our burden of proof.

24 You have heard me say it once. You will hear
25 Mr. Floyd say it, I'm sure. You will hear the judge say

1. it again, it's our burden to prove to you beyond a
2 reasonable doubt.

3 What is beyond a reasonable doubt? Let's talk
4 about that for a moment. There is nothing magical about
5 that term, ladies and gentlemen. The judge is going to
6 tell you -- and I want you to listen for this phrase
7 when he is giving you the instructions at the end of the
8 case.

9 What the law says is proof beyond a reasonable
10 doubt is proof that leaves you firmly convinced. I want
11 you to remember that phrase, firmly convinced. It's not
12 beyond all doubt. It's not beyond a shred of a doubt,
13 it's beyond a reasonable doubt.

14 Ms. Howard and I have the burden of proof in
15 this case, and it's proof of the evidence we have
16 charged Mr. Middleton with, and that is that he
17 distributed crack cocaine on July 15, 2008.

18 We are going to put up a number of witnesses
19 in front of you to prove that beyond a reasonable doubt,
20 ladies and gentlemen. We are going to put up first and
21 foremost, Detective Eric Kirkland who is sitting here
22 before you.

23 Detective Kirkland has been with the narcotics
24 enforcement team here in Lexington County for a long
25 time. He knows what he is doing. You are going to hear

1 that when you hear him testify from the stand about how
2 they catch people selling crack cocaine. He is going to
3 tell you how on July 15 how he caught Mr. George
4 Middleton selling crack cocaine.

5 After you hear from Detective Kirkland, you
6 will hear from his former partner who is right behind
7 him here. That is Agent Strange, Todd Strange, who now
8 works for S.L.E.D. He was with the county and is now
9 with the State Law Enforcement Division. You are going
10 to get to hear him and the involvement he had in this
11 case as well.

12 After them you are going to get to hear from
13 the person who bought the crack cocaine from
14 Mr. Middleton, a lady named Freda. Miss Freda, I will
15 tell you, ladies and gentlemen, she is not a saint.
16 When you hear from her from this witness stand, you are
17 going to hear her story of her life.

18 You are going to get to hear how she has had
19 problems with drugs. The bottom line is you are going
20 to hear from the Detective Kirkland that those are the
21 people you have to use to catch people like George
22 Middleton. You are going to hear from Miss Freda, how
23 she went over to Austin Court on July 15 and bought
24 about \$60 worth of crack cocaine from George.

25 After you hear from Freda, you will hear from

1 the evidence custodians who we have here in Lexington
2 County who do a fine job of maintaining all of this
3 evidence. They are going to tell you about the crack
4 cocaine that they took in from Detective Kirkland that
5 is related to this case.

6 They kept it in their custody until it went to
7 the drug chemist, Ms. Emily Wilson, who is our drug
8 chemist here in Lexington County. She will tell you how
9 she took that substance out of that package, tested it,
10 and found that it was indeed crack cocaine.

11 Ladies and gentlemen, after you have heard all
12 the evidence in this case, Ms. Howard and I are
13 confident that not only will you find Mr. George
14 Middleton is guilty beyond a reasonable doubt, I am very
15 confident that after you hear the evidence, you are
16 going to believe George Middleton is guilty of selling
17 crack cocaine beyond any doubt.

18 I will leave it up to you. I believe in the
19 integrity of this system. I trust that each and every
20 one of you is going to listen closely to the evidence.
21 After Ms. Howard is able to bring all of it together for
22 you in closing arguments, you are going to be able to go
23 back in that jury room, deliberate together about the
24 evidence, and you are going to be able to come back out
25 here and speak a verdict that speaks the truth, and that

1 is that George Middleton is guilty of selling crack
2 cocaine. Thank you for your time and attention. I look
3 forward to being with you the next couple of days.

4 THE COURT: Thank you, Solicitor. Mr. Floyd.

5 OPENING STATEMENT

6 MR. FLOYD: Thank you, Your Honor. Madame
7 Forelady, and ladies and gentlemen of the jury, this man
8 is George Middleton. George is the Defendant in this
9 case. He is the man about who you are going to make one
10 of the most important decisions you ever made.

11 Because you are going to decide, whether based
12 on the evidence you hear in this room, whether or not
13 George Middleton is guilty and should be branded a
14 criminal as to what the State alleges occurred on July
15 15, 2008.

16 If you have never served on a criminal jury
17 before, you almost have to set aside human nature.
18 Because some of you may have the thought in your mind
19 that because George Middleton was arrested, which he
20 was, and carried to jail, which he was, and because he
21 now sits before you to be judged, which he does, you may
22 have a thought in your mind, why George must be guilty.

23 But if you got that kind of thought, you have
24 got to erase it. You have got to take it out of your
25 mind. Because when you look at George Middleton seated

1 over there next to me, you must say in your heart and in
2 your mind that George Middleton is innocent.

3 And George Middleton remains innocent unless
4 the State proves his guilt to each one of your
5 satisfactions beyond a reasonable doubt. The way the
6 system works is the State goes first. Because, you see,
7 they have this burden of proof they are talking about.

8 All we can ask is that you keep an open mind.
9 Look closely at what they present to you. They are
10 going to put a bunch of witnesses up there. It all
11 comes down to one witness, and that this lady they will
12 call in front of you.

13 That's the only piece of evidence they have
14 that has got George Middleton's name on it. We think if
15 you will listen carefully to what she has to say, you
16 will conclude that that is not the type of evidence that
17 proves to me anything beyond a reasonable doubt.

18 We thank you for your presence here. An
19 officer can charge you with a crime based upon somebody
20 telling him something. Based upon that somebody telling
21 something, you can be arrested and carried to jail and
22 forced to come to court to answer to that charge.

23 But you can't be convicted unless 12 members
24 of the community unanimously agree that the evidence
25 proves that guilt beyond a reasonable doubt. So we

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

45

1. thank you for your presence here.

2. I look forward to speaking to you again in
3. what we call the closing argument in the case. On
4. behalf of George Middleton, I thank you once again for
5. your presence and your close attention. Thank you.

6. THE COURT: Thank you very much, Mr. Floyd.

7. Solicitor, you may call your first witness.

8. MS. HOWARD: Thank you, Your Honor. The State
9. calls Detective Eric Kirkland.

10. THE COURT: Detective Kirkland, if you would
11. come around and be sworn.

12. ERIC KIRKLAND, being
13. first duly sworn, testifies as follows:

14. CLERK: Speak up loud and clear. State your
15. full name, spelling your last, please.

16. THE WITNESS: Detective Eric Kirkland.

17. DIRECT EXAMINATION

18. BY MS. HOWARD:

19. Q Good afternoon, Detective Kirkland.

20. A Good afternoon.

21. Q Can you please tell the jury where you are
22. employed.

23. A Lexington County Sheriff's Department.

24. Q And how long have you been with the Sheriff's
25. Department, Detective?

1 A A total of seven years now.

2 Q And tell me, what is your specific job description
3 at the Sheriff's Department?

4 A I am assigned to the Lexington County Multiagency
5 Narcotics Enforcement Team as a narcotics
6 detective.

7 Q Before you came to Lexington County and became a
8 member of the narcotics team, did you have any
9 other background in law enforcement?

10 A Yes, ma'am, I have four years of corrections with
11 the Barnwell County Detention Center. From there I
12 was with the Orangeburg County Sheriff's Department
13 prior to coming here, and I left there and came --
14 gave up the rank of lieutenant to come to the fine
15 County of Lexington.

16 Q And how long have you been specializing in
17 narcotics, Detective Kirkland?

18 A Probably 8 of those 15 years.

19 Q Is the N.E.T. team a nickname for the Narcotics
20 Enforcement Team here in Lexington County?

21 A Yes, it is.

22 Q As a member of this N.E.T. team, can you tell us
23 what some of your specific duties are?

24 A Yes, ma'am. We investigate all narcotics
25 complaints within Lexington County. We do some

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

47

1 prostitution, vice, anything that pertains to
2 specialized crimes, mostly narcotics.

3 Q As you investigate these narcotic crimes, how do
4 your investigations come about?

5 A Most of it is by anonymous phone calls. We have
6 confidential informants that give us information.
7 We have some people that reside in the county that
8 live near a drug house -- correction -- live near
9 where narcotics activity is. They call it in. So
10 we get various ways of investigating.

11 Q Can you explain to the jury what a controlled buy
12 is.

13 A Sure. We utilize a confidential informant,
14 undercover operative, that we place a wire on.
15 Prior to doing that, we actually search them. We
16 make sure they don't have any money, they don't
17 have any weapons or any illegal narcotics on them
18 at the time.

19 We wire them. Once the location of where they
20 are going has been established, they go there with
21 us following behind them closely. We have to watch
22 at a safe distance to make sure nothing happens to
23 them.

24 Once we are there, we utilize audio. We
25 listen over the wire, what we refer to as our

1 audio. Once the buy has been made or completed, we
2 meet back up with them. At that time we retrieve
3 the narcotics.

4 Another search takes place of that person and
5 that vehicle to make sure they haven't withheld any
6 other evidence or brought anything out for their
7 own personal use.

8 They give us what is called a statement to
9 what took place. If they are actually receiving
10 monetary -- money for the purchase they made, we
11 get them let me to sign a voucher, and that is
12 pretty much a controlled buy.

13 Q Breaking that down a little bit, what is the
14 objective of a controlled buy?

15 A To make sure that everything evidentiary taking
16 place is actually legal. We want to make sure that
17 they have actually bought from the person, if they
18 know who they are going to buy from, make sure the
19 evidence is kept in place. We want to make sure
20 everything is done correctly. We keep visual on
21 them and pretty much when we get to this point, I
22 guess everything is done correctly.

23 Q Agent Kirkland, can the target of a controlled buy
24 be a location?

25 A Yes, ma'am.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

49

1 Q Or it could be a specific person?

2 A It can be either/or..

3 Q And how do you come about, you and the other
4 narcotics agents, selecting who is going to be or
5 what place is going to be a target?

6 A Most times a confidential informant has prior
7 knowledge of where they are going to buy, and they
8 provide us with that information.

9 Q And a confidential informant, can a confidential
10 informant be someone perhaps who has charges,
11 criminal charges, against them?

12 A Yes, ma'am.

13 Q Can it be someone who walks off the street and
14 decides they would like to help you and work for
15 the narcotics team?

16 A Yes, ma'am.

17 Q Can a confidential informant be paid for his or her
18 services?

19 A Yes, ma'am.

20 Q Can a confidential informant also receive some type
21 of consideration for their services, another type
22 besides money payment?

23 A Yes, ma'am. Most of the time they are working off
24 charges. A lot of times if they are working off
25 charges and if we are able to help them or assist

1 them in their charges, we do so.

2 Q Can you explain why a confidential informant who
3 might be working off charges. Can you explain that
4 a little bit more for the jury.

5 A If someone gets a minor traffic offense, maybe
6 simple possession of marijuana, something along
7 those lines, we can assist them in their traffic
8 charge if they meet certain requirements, and that
9 is their criminal history is not too awfully bad.

10 My lieutenant is the one that reviews all of
11 that to make sure they pass qualifications to
12 become a C.I. We do not allow people with crimes
13 involving victims to work, i.e., criminal domestic
14 violence, things of that nature. It's a victimless
15 crime. We sometimes or most often we can assist
16 them with their charges.

17 Q And, Detective, what we call a C.I., that means a
18 confidential informant?

19 A Yes, ma'am.

20 Q Would you say that most of these C.I.s have pending
21 criminal charges?

22 A Yes, ma'am.

23 Q And they are assisting you in order to help
24 themselves in the end?

25 A Yes, ma'am.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

51

1 Q But there are also confidential informants who are
2 paid by the hour, by the transaction but paid
3 monetarily to do this?

4 A Yes, ma'am, by the transaction.

5 Q Can you explain a little bit more to the jury about
6 these paid C.I.s.

7 A There are a number of reasons that someone would
8 want to work with narcotics to be paid. A lot of
9 times they may want to help out someone else, maybe
10 a situation where someone can't drive, and a person
11 wants to become a paid informant to drive that
12 particular person or help them out.

13 If they are running low on money or if they
14 have prior charges, they just want to, I guess,
15 make a little additional money. They help us out.
16 Most often though the number of persons that we get
17 are actually working off charges and sometimes
18 after they work off their charges, they just decide
19 that they want to work monetarily.

20 Q Agent Kirkland, why is it necessary to use a
21 confidential informant?

22 A It is virtually impossible for us to conduct the
23 type of investigations that we do without the use
24 of a confidential informant. If you are not a part
25 of that element, you just can't successfully...

1 Q It would be difficult for you as a narcotics agent
2 to just walk in off the street and try to buy drugs
3 from a drug dealer?

4 A Oh, yes, ma'am, impossible.

5 Q So a confidential informant, whether paid, working
6 off charges, has to, would you say, be familiar
7 with the type of activity that is going on?

8 A Yes, ma'am.

9 Q Most confidential informants would you say know the
10 target?

11 A Yes, ma'am.

12 Q As to a controlled buy, Agent Kirkland, why is it
13 called a controlled buy?

14 A It's called a controlled buy for a number of
15 reasons. Like I stated earlier, the way that we
16 conduct a buy, we call it a controlled buy because
17 we try and keep as much level and control of that
18 buy as humanly possible.

19 Q The way you control it, do you videotape it ever?

20 A In some cases we do.

21 Q Do you normally videotape?

22 A No, ma'am.

23 Q So you use audiotapes or recording devices?

24 A Audio.

25 Q Do you keep a visual surveillance on your

1 confidential informant when they go to these target
2 locations to purchase the drugs?

3 A Yes.

4 Q Do they drive sometimes?

5 A Yes, ma'am.

6 Q Sometimes walk?

7 A Yes, ma'am.

8 Q But always you keep your finger on the pulse, so to
9 speak, of what is going on?

10 A Yes, ma'am.

11 Q And why is this? Why is it that you keep control
12 over this?

13 A We want to make sure that they are going exactly
14 where they say they are going beforehand, number
15 one. Number two, as soon as -- we refer to it as
16 the deal -- the job is completed, we want to make
17 sure we keep an actual eye on them to make sure
18 that nothing else takes place during the time it
19 takes for us to meet back up with them and give us
20 back whatever they purchased at that time.

21 Q Is it also to make sure they are safe when they are
22 at the location, at the target location?

23 A Oh, yes, ma'am.

24 Q Can you tell me how somebody signs up to be a
25 confidential informant with you?

1 A Most times, like I stated earlier if they want to
2 come in, they will just make contact with us via
3 phone. A lot of times if they are arrested, they
4 can actually send a letter through the jail to
5 actually contact us if they want to be met with.

6 We will meet with them and interview them, and
7 at that time once the interview takes place, then
8 the process starts if they qualify to work. From
9 there we may sign them up.

10 Q You meet them and sign them up?

11 A Yes, ma'am.

12 Q Do you explain to them what they are going to be
13 doing for you?

14 A Yes, ma'am. We have a safety packet with a number
15 of rules, cans and can't dos while they are working
16 with us.

17 Q You have looked into the confidential informant's
18 background?

19 A Yes, ma'am.

20 Q Their history?

21 A History, driving history, yes, ma'am.

22 Q So this isn't something they can walk in and pretty
23 much do right off the street?

24 A No, ma'am.

25 Q Do you have a confidential informant that works

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

55

1 under your control named Freda Broach?

2 A Yes, ma'am.

3 Q Can you tell me how long she has been working for
4 you as a confidential informant?

5 A Around January of 2007.

6 Q Can you explain to the jury how Freda became a
7 confidential informant for the N.E.T. team?

8 A Sure. Freda's then boyfriend had some charges on
9 him at that time. Freda actually started working
10 with us in hopes of helping her boyfriend out who
11 at that time could not drive. He actually had
12 charges on him.

13 She agreed to drive him and to do the work,
14 and in exchange for him working off his charges,
15 she received monetary pay as well. So he was
16 working off charges, and he didn't have a driver's
17 license, so she agreed to help him.

18 Q And how much was she paid for her services as being
19 his driver?

20 A I want to say \$60.

21 Q But when she first signed up, she wasn't actually
22 going in and taking part in the deal?

23 A No, ma'am, just the driver.

24 Q At some point though did she become a full working
25 confidential informant that did take part in these

1 deals?

2 A Yes, ma'am.

3 Q And how did that come about?

4 A After George worked off his charges, he -- I can't
5 remember actually if George quit calling, but Freda
6 expressed interest in possibly doing some work with
7 us. She had already been signed up, and we
8 immediately just started working from there.

9 Q Just to be clear, when you say George, you are not
10 referring to George Middleton?

11 A No, ma'am. No, ma'am.

12 Q Can you estimate about how many times you have used
13 Freda as a confidential informant?

14 A Estimating I would say about 20, 25 maybe.

15 Q Is she paid regardless of the outcome of the buy?

16 A Yes, ma'am.

17 Q So if she comes back with nothing, she still gets
18 paid?

19 A Yes, ma'am.

20 Q If she comes back with crack cocaine, marijuana,
21 cocaine, whatever you are trying to buy, is she
22 paid more?

23 A Yeah, a little bit more. Yes, ma'am.

24 Q So how much is she normally paid per transaction?

25 A Eighty dollars.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

57

1 Q Is that what most confidential informants who are
2 paid get paid?

3 A Yes, ma'am.

4 Q Can that go up or down depending on their work?

5 A Yes, ma'am, it can.

6 Q But that's the standard.

7 A But that's the standard, yes, ma'am.

8 Q On July 15, 2008, did you meet with your
9 confidential informant Freda Broach?

10 A Yes, ma'am.

11 Q Tell me about that meeting.

12 A We made contact earlier that morning via telephone.
13 We agreed, myself and Agent Strange, to meet her at
14 a location on Highway 6. At that point in time, we
15 actually searched her, searched the vehicle. She
16 was wired at that time. A wired was placed on her
17 leg. She was given a backup recorder.

18 We had established the location of possibly
19 going down to make a controlled purchase for Austin
20 Court. She was give \$60. At that point in time,
21 we left en route to Austin Court.

22 Q Can a confidential informant sometimes contact you
23 and ask you if there is any work to be done that
24 day?

25 A Yes, ma'am.

1 Q Or you might call them and to tell them you need
2 them to work that day?

3 A Yes, ma'am.

4 Q On this particular day, you and Agent Strange met
5 with Freda Broach?

6 A Yes, ma'am.

7 Q And you decided on a target for her to try to
8 purchase crack cocaine from that day?

9 A Yes, ma'am.

10 Q Where was that target location?

11 A That target location was [REDACTED] Austin Court.

12 Q Did you have a specific person in mind?

13 A Yes, ma'am.

14 Q And who was that person?

15 A George Middleton.

16 Q And Freda believed that she might be able to go
17 through with this purchase?

18 A Yes, ma'am.

19 Q Did you give Freda money to purchase this crack
20 cocaine?

21 A Yes, ma'am.

22 Q Where does this money come from?

23 A It comes from our narcotics team. We have a
24 special fund.

25 Q How much money did you give her?

1 A Sixty dollars.

2 Q Before you gave her this money, did you search
3 Freda, her person and her body?

4 A Yes, ma'am.

5 Q Can you tell the jury a little bit about how you
6 might search somebody who is going to conduct a
7 deal like this.

8 A Yes, ma'am. If they have on shoes and socks, we
9 immediately search their shoes and socks. We do a
10 pat down of the outer pockets. We look all inside
11 the waistband, check their shirts.

12 For females we don't. We allow them to bend
13 over and shake their bra to make sure they have
14 nothing in them. It's the shirt pockets, around
15 the rim of the collar, the shirt, and inside the
16 hat band if they have a hat on.

17 Q You turn their pockets inside out?

18 A Yes, ma'am.

19 Q You virtually make sure there isn't anywhere they
20 can hide something on them?

21 A Correct.

22 Q On that particular day, did you search Freda's
23 body?

24 A Yes, ma'am.

25 Q And her clothing?

1 A Yes, ma'am.

2 Q What about her vehicle? Did she drive to Austin
3 Court?

4 A Yes, ma'am, she did.

5 Q Do you search a confidential informant's vehicle if
6 they are driving one?

7 A We do.

8 Q Can you explain to the jury how you search this
9 vehicle.

10 A We search that vehicle thoroughly, from the pockets
11 of the vehicles, the console, all in the chairs,
12 all under the seats, in the trunk, under the hood,
13 anywhere you might be able to conceal anything. So
14 the vehicle search actually takes longer than the
15 search of the person because you have more to
16 search.

17 Q Who conducted the vehicle search on this particular
18 day?

19 A Agent Strange, Todd Strange.

20 Q Did you and Agent Strange work together a lot
21 before?

22 A Yes, ma'am.

23 Q Does he conduct a pretty thorough search that you
24 have seen?

25 A Yes, ma'am.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

61

1 Q If Freda or the confidential informant were to have
2 a purse sitting in the car, would that be searched,
3 too?

4 A Yes, ma'am, anything in that vehicle is susceptible
5 to search and will be searched.

6 Q And the object of this search is to make sure that
7 there isn't drugs or money anywhere?

8 A No contraband, no weapons, no money, drugs
9 included, yes, ma'am.

10 Q So the confidential informant is supposed to leave
11 and go to this target location with the money and
12 only the money that you have given them?

13 A That's correct.

14 Q In this case that would be \$60?

15 A Yes, ma'am.

16 Q If everything goes according to plan, they come
17 back with \$60 worth of the drugs that you sent them
18 to buy?

19 A That's correct.

20 Q When they come back and meet up with you, are they
21 searched again?

22 A Yes, ma'am, immediately.

23 Q Body?

24 A Body, shoes, clothing, person.

25 Q Vehicle?

1 A Vehicle, pocketbooks, and any items inside that
2 vehicle.

3 Q On July 15, 2008, did Freda conduct a purchase of
4 crack cocaine at [REDACTED] Austin Court?

5 A Yes, ma'am.

6 Q Who did she conduct that purchase of crack cocaine
7 from?

8 MR. FLOYD: Your Honor, I object that would
9 have to be hearsay if he wasn't present.

10 THE COURT: I would sustain the objection
11 unless he is an eyewitness.

12 MS. HOWARD: Okay, Your Honor.

13 BY MS. HOWARD:

14 Q She did conduct a purchase from [REDACTED] Austin Court?

15 A Yes, ma'am.

16 MS. HOWARD: Permission to approach?

17 THE COURT: Yes, ma'am.

18 BY MS. HOWARD:

19 Q Mr. Kirkland, do you recognize what has been marked
20 as State's Exhibit 1?

21 A Yes, ma'am.

22 Q How about Exhibit 2?

23 A Yes, ma'am.

24 Q State's Exhibit 3?

25 A Yes, ma'am.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

63

- 1 Q And finally State's Exhibit 4?
- 2 A Yes, ma'am.
- 3 Q Do you recognize what is in these photos?
- 4 A Yes, ma'am.
- 5 Q State's Exhibit 1, is that a fair and accurate
- 6 depiction -- excuse me. Describe to me what is in
- 7 these photos.
- 8 A That is an aerial photo of [REDACTED] Austin Court and all
- 9 other residences surrounding that.
- 10 Q Are you familiar with this area, Agent Kirkland?
- 11 A Yes, ma'am.
- 12 Q Can you briefly describe where Austin Court is.
- 13 A One-seventy-eight just outside of the town of
- 14 Pelion, Austin Court is off to the right. If you
- 15 are heading towards Highway 3, it's just outside of
- 16 Pelion.
- 17 Q And State's Exhibit 1 that you have in front of
- 18 you, is that a fair and accurate depiction of
- 19 [REDACTED] Austin Court and the surrounding area?
- 20 A Yes, ma'am.
- 21 Q Does it fairly and accurately represent the way
- 22 that area looked around July 15, 2008?
- 23 A Yes, ma'am.
- 24 Q Is that the same for State's Exhibits 2, 3, and 4?
- 25 Are they fair and accurate depictions of this area

1 that you just described to the jury?

2 A Yes, it is.

3 MS. HOWARD: At this time, Your Honor, we
4 would ask that State's Exhibit 1 through 4 be moved into
5 evidence.

6 THE COURT: Mr. Floyd?

7 MR. FLOYD: If I may just look at them, Your
8 Honor.

9 THE COURT: Sure.

10 (Pause).

11 MR. FLOYD: Your Honor, may we approach just a
12 moment?

13 THE COURT: Yes, sir.

14 (Whereupon there is a bench conference off the
15 record in the presence of the jury but out of the
16 hearing of the jury).

17 THE COURT: State's 3 and 4 are in evidence
18 without objection. Solicitor, if you would lay a
19 foundation for 1 and 2.

20 MS. HOWARD: Sure, Your Honor.

21 (State's Exhibits Number 3-4 are received into
22 evidence).

23 BY MS. HOWARD:

24 Q Detective Kirkland, State's Exhibit 1 and 2, do
25 they show roads around -- running in and around --

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

65

1 ■ Austin Court?

2 A Yes, ma'am

3 Q Do they show the major structures along Austin
4 Court and maybe a few of the surrounding streets?

5 A Yes, ma'am.

6 Q And to the best of your knowledge, those are the
7 same structures, the same roadways, that were there
8 on July 15, 2008?

9 A Yes, ma'am.

10 Q So if there's vehicles or a person walking, a dog
11 walking. Those may not have been there on July 15,
12 2008, but the roadways and the structures and the
13 gist of the area was, on that date, as it is
14 depicted in those pictures?

15 A Yes, ma'am.

16 MS. HOWARD: Your Honor, at this time we would
17 ask that these photos, State's Exhibit 3 and 4 -- 1 and
18 2, I'm sorry.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: No objection, Your Honor.

21 THE COURT: State's 1 and 2 are also in
22 evidence without objection.

23 (State's Exhibits Number 1-2 are received into
24 evidence).

25 ---

1 BY MS. HOWARD:

2 Q Detective Kirkland, is [REDACTED] in
3 Lexington County?

4 A Yes, it is.

5 Q Before you went to [REDACTED] on July 15,
6 2008, where did you meet your confidential
7 informant Freda?

8 A At a location on Highway 6.

9 Q And at that location is that where she was given
10 \$60?

11 A Yes, ma'am.

12 Q Is that where she was told about this target area?

13 A Yes, ma'am.

14 Q The target address?

15 A Yes, ma'am.

16 Q The target, Mr. George Middleton?

17 A Yes, ma'am.

18 Q Is that where she was searched?

19 A Yes, ma'am.

20 Q Was her vehicle also searched there?

21 A Yes, ma'am, that's correct.

22 Q And is that where she was wired so the transaction
23 could be recorded?

24 A Yes, ma'am.

25 Q Can you explain to me how you wire up one of your

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

67

1 confidential informants.

2 A Yes, ma'am. We actually strategically place the
3 wire on the outer leg. It's a little wire about
4 that big (indicating). We place it on and it's
5 very, very concealable. We run the antenna of the
6 outer portion of the pant leg on the seam, and we
7 take the microphone and run it up the inner portion
8 of the pant leg.

9 Q And this device that goes around the leg, it
10 records real-time conversation?

11 A Yes, ma'am.

12 Q So wherever you are, you hear what is going on as
13 it is going on?

14 A Yes, ma'am, that's correct.

15 Q Do you place any other kind of recorder or receiver
16 on your confidential informants?

17 A Yes, ma'am, we place a backup digital recorder on
18 the person as well.

19 Q And in this case of Freda, where did you place that
20 backup digital recorder?

21 A We allowed her to place it in her bra under her
22 armpit.

23 Q And that also records real-time conversation?

24 A Real time as well.

25 Q Wherever you are you are hearing the same thing

1 coming off of that?

2 A Yes, ma'am.

3 Q After she was searched, given the money, and wired
4 up, what happened then?

5 A She drove to [REDACTED] Austin Court with us following
6 behind her.

7 Q How long did that take?

8 A I am guesstimating. The trip itself from Highway 6
9 to there was probably a 15 to 20-minute ride.

10 Q During that 15 or 20 minutes you followed behind
11 her, is she ever out of your sight?

12 A No, ma'am.

13 Q You stay within a couple of car lengths the entire
14 way?

15 A One to two.

16 Q Did you ever stop anywhere, besides a traffic
17 light, on the way to this target location?

18 A No, ma'am.

19 Q No drive-throughs?

20 A No, ma'am.

21 Q You listen to what is going on in Freda's car as
22 you are following behind her?

23 A Yes, ma'am.

24 Q So you have an audio and a visual method of control
25 as to where she is going and what she is doing?

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

69

1 A That's correct.

2 Q Agent Kirkland, this is a red pointer. Is it
3 working?

4 A (Pause).. No.

5 MR. STUMBO: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause).

9 THE WITNESS: Thank you.

10 BY MS. HOWARD:

11 Q Agent Kirkland, can you use State's Exhibit 1 to
12 point to the jury where Austin Court is.

13 A Austin Court is right there (indicating).

14 Q That dirt road?

15 A Yes, ma'am.

16 Q Where is [REDACTED] Austin Court off that dirt road?

17 A Right there (indicating).

18 Q That dirt road, is there one way in?

19 A Yes, ma'am.

20 Q One way out?

21 A Yes, ma'am.

22 Q Did you follow Freda all the way onto Austin Court
23 that day after you left your original meeting spot?

24 A No, ma'am. We followed her up until the point she
25 turned off onto Austin Court, and because that is a

1 one way in and one way out dirt road, for her
2 safety it would have been to her best advantage not
3 to go down there. We actually went and parked
4 right there. There is like an open field with a
5 water tower that is right there (indicating).

6 Q The paved road that you parked on, what road is
7 that?

8 A It's actually not a paved road. It's just a
9 little -- that paved road right there (indicating)
10 is 178.

11 Q That's what I meant.

12 A Right, that's 178.

13 Q So you followed her one to two car lengths behind
14 all the way until she turned onto that dirt road at
15 Austin Court?

16 A Yes, ma'am.

17 Q You had visual on her and everything she was doing?

18 A Yes, ma'am.

19 Q As well as the audio?

20 A Yes, ma'am.

21 Q Can you tell me why you did not follow her on the
22 dirt road?

23 A Austin Court is one way in and one way out. There
24 is a lot of family down there. We like to refer to
25 it as counter surveillance, which means if we go

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

71

1: in, most times they know what we drive. So for
2 safety reasons we did not find it feasible to
3 follow her in on that road.

4 THE COURT: What number is that, Solicitor?

5 MS. HOWARD: State's Exhibit 1.

6 THE COURT: That's State's 1. The first one
7 you posted, what was that?

8 MS. HOWARD: This is State's Exhibit 1. I
9 just zoomed in a little bit. I apologize.

10 THE COURT: All right. Thank you.

11 BY MS. HOWARD:

12 Q When you conduct these controlled buys, if you do
13 have to let somebody out of your surveillance for a
14 reason such as this, if she were in the house and
15 needed your help, how long would it take you to get
16 there?

17 A Approximately from the distance where I was to
18 where she was there, maybe 30 seconds, 45 maybe.

19 Q So you and Agent Strange are right off of 178?

20 A Yes, ma'am.

21 Q Perhaps 30 seconds while she goes onto the dirt
22 road and pulls into [REDACTED] Austin Court?

23 A Yes.

24 Q You don't have visual surveillance?

25 A Correct.

1 Q But are hearing real-time audio. Did you hear her
2 park and get out of the car?

3 A Yes.

4 Q Did you hear her speaking to some other people on
5 the audio?

6 A Yes.

7 Q About how long do you think she was in the house?

8 A Maybe five minutes.

9 Q Did you talk to her on the way to [REDACTED] Austin Court?

10 A Yes, ma'am.

11 Q Do you remember what you talked to her about?

12 A Yes, ma'am. I distinctly remember telling her what
13 I always tell her in any of my other transactions,
14 make sure to get pertinent information, like color
15 of the house, location, address, any pertinent
16 information that we may need for our investigation.

17 Q Details?

18 A Details, yes, ma'am.

19 Q When she pulled up at the house, did she speak to
20 you out loud so that you could hear her?

21 A Yes, ma'am.

22 Q From where you were conducting surveillance?

23 A Correct.

24 Q What did she tell you when she was talking to you?

25 A I think she called up and said this address is [REDACTED].

1 Q She described the house?

2 A Yes, ma'am.

3 Q The colors?

4 A Yes, ma'am.

5 Q Surroundings?

6 A Yes, ma'am.

7 Q After she left Austin Court, did she talk to you
8 again into the device as she was walking out?

9 A Yes, ma'am, when she got in her vehicle.

10 Q Do you remember what she said?

11 A Gave me again the address, location, and whom she
12 made the purchase from.

13 Q She got back in her car and drove back down Austin
14 Court?

15 A Yes, ma'am, drove right back out to 178.

16 Q At that time what happened?

17 A At that point in time, us hearing the real-time
18 audio, got a visual on her at the corner, we pulled
19 out onto 178. She pulled out behind us. You have
20 to zoom back in for me to show them.

21 Q Okay.

22 A Right there (indicating).

23 Q At this point you come this way (indicating)?

24 A I go that way (indicating). She pulls out and goes
25 that way (indicating) and follows me.

- 1 Q She follows you?
- 2 A Yes, ma'am.
- 3 Q So once she hit the paved road again, you got
- 4 visual surveillance right back on her?
- 5 A Yes, ma'am.
- 6 Q And she followed you where?
- 7 A She follows me probably maybe five minutes. Down
- 8 the road there is a fire station on 178, yes,
- 9 ma'am.
- 10 Q As she followed you, did you ever lose sight of
- 11 her?
- 12 A No, ma'am.
- 13 Q She is always right behind you?
- 14 A Correct.
- 15 Q Did you talk to her on the phone as she was
- 16 following you?
- 17 A Yes, ma'am.
- 18 Q What did you tell her?
- 19 A To follow me and gave her the location where we
- 20 were going.
- 21 Q When you got to that location, that was a fire
- 22 station?
- 23 A Yes, ma'am.
- 24 Q What happened then?
- 25 A We immediately retrieved the crack cocaine from

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

75

1 her.

2 Q How did you retrieve it from her?

3 A Evidence bags, plastic bags. She immediately put
4 the crack cocaine in a plastic baggie and sealed it
5 automatically. We gave her some hand sanitizer and
6 cut off the audio.

7 Q Did Freda have the crack cocaine already in a
8 plastic baggie?

9 A No, ma'am, we are not allowed to give them plastic
10 bags. She had in it her hand.

11 Q How many pieces was it?

12 A Three.

13 Q She had three pieces in her hand until she dropped
14 them into a plastic bag?

15 A Yes, ma'am.

16 Q Did you hold it open while she dropped it in?

17 A I held the bag like that (indicating), and she
18 dropped it in the bag.

19 Q Did you seal the bag after that?

20 A Yes, ma'am.

21 Q Then what happened at the fire station?

22 A Once we retrieved the crack cocaine from her and we
23 cut off the audio, we went to another location. We
24 still had to conduct a search. We still had to
25 retrieve a statement, and there was some other

1 paperwork that needed to be done.

2 Q Did you turn off the audio recording when you got
3 to the fire station?

4 A Yes, ma'am.

5 Q Why wouldn't you just do it all at the fire
6 station?

7 A Well, at the fire station -- it requires a great
8 deal of time to do all of that, and we are still on
9 178. So we need to go to a more safe, secure
10 location. We try to get to the quickest place we
11 can get to to get the narcotics out of their
12 possession.

13 Q So she follows you from Austin Court. You keep
14 visual surveillance on her the entire way?

15 A Yes, ma'am.

16 Q To the fire station?

17 A Yes, ma'am.

18 Q Drop the crack in a bag?

19 A Yes, ma'am.

20 Q Seal it up?

21 A Yes, ma'am.

22 Q Then she follows you to a second location?

23 A Yes, ma'am.

24 Q And what happened at the second location?

25 A At the second location, we do a thorough search of

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

77

1 her and her vehicle. She then gives me a statement
2 to whom she just dealt with, the location she was,
3 and what transpired there. Then we actually do --
4 once the statement is reviewed, we actually let her
5 sign the voucher because she does receive monetary
6 expenses. She has to sign a voucher.

7 Q And how much did she get paid for this transaction?

8 A Eighty dollars.

9 Q When you get to this second location, you take the
10 wires off of her?

11 A Yes, ma'am.

12 Q The one from around her ankle?

13 A Yes, ma'am.

14 Q How about the one that is tucked underneath her
15 bra?

16 A Yes, ma'am, she gives that to me.

17 Q And then you conduct another full body search of
18 her person and her clothing?

19 A Yes, ma'am.

20 Q She empties out her pockets?

21 A Yes, ma'am.

22 Q No other drugs?

23 A No other drugs.

24 Q No other money?

25 A No, ma'am, weapons, nothing.

- 1 Q The \$60 you gave her is gone?
- 2 A Yes, ma'am.
- 3 Q You conduct another search of her car?
- 4 A Yes, ma'am.
- 5 Q No other drugs or money found there?
- 6 A No, ma'am.
- 7 Q Who conducted the search of her car the second
- 8 time?
- 9 A Agent Strange.
- 10 Q So you did her person again?
- 11 A I did.
- 12 Q You have her tell you what went on in there?
- 13 A Yes, ma'am.
- 14 Q She writes you a statement as to what went on in
- 15 there?
- 16 A Yes, ma'am.
- 17 Q Then you pay her?
- 18 A Yes, ma'am.
- 19 Q She is free to go?
- 20 A She is free to go.
- 21 Q Agent Kirkland, can you describe to me what is
- 22 marked in State's Exhibit 4.
- 23 A Yes, ma'am, that is [REDACTED] Austin Court.
- 24 Q It's hard to tell in this photo. What color is
- 25 that home?

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

79

1 A It's a brown single wide with white underpinning,
2 dark brown trim and white underpinning.

3 Q That's the view from the front?

4 A Yes, ma'am.

5 Q Did you take that picture?

6 A Yes, ma'am, I did.

7 Q Agent Kirkland, when you get the drugs from Freda,
8 drop in a plastic bag, what do you do with that
9 plastic bag?

10 A That plastic bag is then evidence, and we place it
11 in what we call a best kit. It's for evidence.

12 Q Can you explain to the jury a little bit more about
13 a best kit.

14 A A best kit consists of a property tag. It consists
15 of a form to be filled out for it to be tested. We
16 have an inventory form. Then we have the plastic
17 bag that it actually goes in. From there it's
18 submitted to the nice ladies in evidence.

19 Q And what's the purpose of a best kit?

20 A It's for sealing, for sealing evidence, to make
21 sure it goes to them. They keep an accurate record
22 of it, and we don't want anything to happen to it
23 until it comes to trial.

24 Q Once you have the crack cocaine in a smaller
25 plastic bag, you drop it into a best kit?

- 1 A Yes, ma'am.
- 2 Q You seal that best kit?
- 3 A Yes, ma'am.
- 4 Q Do you write anything on that best kit?
- 5 A Yes, ma'am.
- 6 Q Tell me what you write.
- 7 A All the information pertaining to the actual
8 transaction, a case number which we get. We
9 actually put the incident located where we made the
10 control purchase from, the individual that we made
11 the controlled purchase from. We actually put
12 where it is going into evidence, and we actually
13 put our names on it.
- 14 Q Put the date?
- 15 A The date and time, yes, ma'am.
- 16 Q Seal it up?
- 17 A Yes, ma'am.
- 18 Q You drop it off at the Sheriff's Department?
- 19 A Yes, ma'am.
- 20 Q Did you hand it to somebody at the Sheriff's
21 Department?
- 22 A No, ma'am, it's placed in an evidence locker.
- 23 Q Tell us a little bit about how that works.
- 24 A We actually have what we call a key to get in the
25 evidence. We go in. Once we find a locker open,

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

81

1 we actually put it in that locker and we close it.
2 We lock it at that time and make sure it's locked
3 and it's secured.

4 Q This best kit that is put in the locker, it has all
5 that information that you just told us about
6 written on the bag?

7 A Yes, ma'am.

8 Q You have a little piece of paper that goes along
9 with the bag?

10 A Yes, ma'am, evidence tag on the outside and all of
11 the information is in the contents on the inside of
12 the bag.

13 Q You, as the agent in charge of this particular buy,
14 you are the one that wrote down all this
15 information?

16 A Yes, ma'am.

17 Q Who gets it out of the locker?

18 A The evidence ladies when they come in the next
19 morning.

20 Q It doesn't sit there for months?

21 A No, ma'am.

22 Q If the evidence ladies are actually there when you
23 go to drop it off, can you personally hand it off
24 to them?

25 A They take it at that time if they are there, yes,

1 ma'am.

2 Q Agent Kirkland, do you recognize this, what has
3 been marked as State's Exhibit 6?

4 A Yes, ma'am.

5 Q What is that?

6 A That is the bag of crack cocaine with the contents
7 in it and the date on it and the case number, and
8 it's in my writing.

9 Q And that's the bag that you turned into the
10 evidence locker on July 15, 2008?

11 A Yes, ma'am.

12 Q And that is the crack cocaine -- what is inside of
13 it is the crack cocaine that you bought during this
14 controlled buy?

15 A Yes, ma'am.

16 Q Or that Freda bought during this controlled buy on
17 July 15, 2008?

18 A Yes, ma'am.

19 Q Are you positive?

20 A I'm positive.

21 Q How do you recognize it so well? Does it have your
22 handwriting on it?

23 A Yes, ma'am, I always put my name on that bag. So
24 that's mine. That's the one.

25 Q Has it been tampered with or unsealed since the day

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

83

1 that you dropped it off?

2 A Not that I can see, ma'am, no.

3 Q How about for testing purposes?

4 A For testing purposes, yes.

5 Q Agent Kirkland, do you recognize what has been
6 marked as State's Exhibit 5?

7 A Yes, ma'am.

8 Q Have you heard what is on State's Exhibit 5?

9 A Yes, ma'am.

10 Q Has it been substantially altered in any way?

11 Well, excuse me, what is on State's Exhibit 5?

12 A The transaction that occurred the day of July 15,
13 2008, between George Middleton and Freda.

14 Q And you heard that real time as it was occurring?

15 A Yes, ma'am.

16 Q You made a recording of it?

17 A Yes, ma'am.

18 Q You heard what is on this C.D.?

19 A Yes, ma'am.

20 Q Has the recording, as you heard it that day and
21 what is on that C.D., substantially the same?

22 A Yes, ma'am.

23 MS. HOWARD: Beg the Court's indulgence one
24 moment, Your Honor.

25 (Pause).

1 BY MS. HOWARD:

2 Q Is it fairly and accurately what you heard on
3 July 15 real time?

4 A Yes, ma'am.

5 Q Back to State's Exhibit 6, the best kit, can you
6 give us just a little bit of a rundown of what is
7 on the tag of that best kit, Agent Kirkland?

8 A Yes, ma'am. You mean the contents inside or this
9 tag?

10 Q That tag.

11 A This tag. Yes, ma'am, the 15th of July, 2008, at
12 15:54, which is 3:54 hours. It's my signature
13 where I turned it in.

14 Q You are the first name on there?

15 A Yes, ma'am.

16 Q Actually you got it from Freda, but you are the
17 first name of law enforcement?

18 A Yes, ma'am, first name of law enforcement is me.

19 Q Who is the second name?

20 A The second name is Beth Harmon.

21 Q The third name?

22 A It's actually Candy Kyzer.

23 Q The fourth name?

24 A Emily Wilson.

25 Q Any other names on it?

1 A No, ma'am.

2 Q The other three names besides yours, all employees
3 of the Sheriff's Department?

4 A All employees, yes, ma'am.

5 Q And the date you dropped it off and signed it?

6 A 7/15/08 at 3:54 p.m.

7 Q And the date that is the second name on there
8 picked it up?

9 A It looks like 7/17, maybe 7/17/08, I think.

10 Q But your signature is on there?

11 A Yes, my signature is on there at the top.

12 Q Detective Kirkland, from what you heard and saw
13 take place on July 15, 2008, at [REDACTED] Austin Court,
14 did you ultimately make the determination to charge
15 George Middleton with distribution of crack
16 cocaine?

17 A Yes, ma'am.

18 Q Please answer any questions Mr. Floyd may have.

19 THE COURT: Thank you, Solicitor. Mr. Floyd.

20 CROSS EXAMINATION

21 BY MR. FLOYD:

22 Q Agent Kirkland.

23 A Yes, sir.

24 Q Are these in this bag, is this the three pieces of
25 crack?

- 1 A Yes, sir.
- 2 Q That you said is \$60 worth of crack?
- 3 A Yes, sir.
- 4 Q Is that correct?
- 5 A Yes, sir.
- 6 Q Now, when the C.I. comes to you for this deal, you
- 7 say you search her to make sure she doesn't have
- 8 the crack on her?
- 9 A Yes, sir.
- 10 Q They are very small, aren't they?
- 11 A Yes, sir.
- 12 Q And you searched her underwear?
- 13 A No, sir.
- 14 Q You could easily secret that in your underwear,
- 15 couldn't you?
- 16 A That's correct.
- 17 Q Did you search between the seats of the car?
- 18 A Yes, sir.
- 19 Q Take the seats out?
- 20 A No, sir.
- 21 Q So you don't search between -- you don't pull out
- 22 the back seat and look underneath?
- 23 A Yes, sir.
- 24 Q You do do that?
- 25 A All seats that will come out, yes, sir.

ERIC KIRKLAND -- CROSS -- MR. FLOYD

87

- 1 Q All seats that will come out?
- 2 A All seats that will come out. Most of them won't.
- 3 Q The trunk?
- 4 A The trunk, yes, sir, accessible.
- 5 Q How long does it take you to do that?
- 6 A About ten minutes maybe depending on the size of
- 7 the car, maybe 20 depending on what is inside the
- 8 car.
- 9 Q That's if you do a complete search of the car?
- 10 A We always do a thorough search, yes, sir.
- 11 Q What time did you begin to search the car on this
- 12 day?
- 13 A The search began at 15:28.
- 14 Q What is the next thing?
- 15 A C.I. wire.
- 16 Q What time?
- 17 A 15:32.
- 18 Q That's four minutes, isn't it?
- 19 A Yes, sir, but Agent Strange searched the vehicle,
- 20 sir. I wired her. She does not stand there while
- 21 we search. That's an accurate thing because Todd
- 22 was busy searching the car. I wired her.
- 23 Q Nothing says here when you finish searching the
- 24 car?
- 25 A No, it doesn't, but those times are wrong. I wired

1 her. Todd was busy searching the car. If you are
2 trying to justify the search in four minutes, that
3 doesn't.

4 Q And so you are saying you do a ten-minute search of
5 the car?

6 A Ten, 15, 12 minutes, depending on the size and the
7 contents.

8 Q Actually you are only there for, what, 12 minutes?

9 A I can look at it and tell you if you don't mind,
10 15:27 and recorder started at 15:36.

11 Q Nine minutes?

12 A 15:27 to 15:36 would be what?

13 Q Nine minutes.

14 A Nine minutes, yes, sir.

15 Q So you were only there for nine minutes; is that
16 correct?

17 A Yes, sir. If that's what the map says, yes, sir.

18 Q Now, you left there and you go to Austin Court; is
19 that correct?

20 A That's correct, sir.

21 Q Now, you say she turned into Austin Court; is that
22 correct?

23 A Yes, sir.

24 Q You kept going?

25 A Sir?

1 Q You kept going?

2 A Yes, sir.

3 Q So you never turned down Austin Court?

4 A No, sir.

5 Q You never did see her bring her vehicle to a stop,
6 did you?

7 A No, sir.

8 Q So you don't have any way of knowing that she
9 stopped at [REDACTED] Austin Court without her telling you
10 that; is that correct?

11 A That's correct.

12 Q And now you are somewhere -- I don't have that
13 pointer -- but you are somewhere up at the top,
14 right?

15 A Uh-huh. (Indicating affirmative response).

16 Q And there is no way you can see to there, is it,
17 all those trees?

18 A No, sir.

19 Q So you don't know whether she stopped there at
20 [REDACTED] Austin Court or the place next it to there or
21 this place down here (indicating) or this place
22 over here (indicating)?

23 A Other than the fact that she stated [REDACTED] was on the
24 mailbox and gave an accurate description of the
25 residence, no, sir.

- 1 Q It's her word?
- 2 A Yes, sir.
- 3 Q You didn't see it?
- 4 A That's correct.
- 5 Q So you got to rely on her word?
- 6 A Yes, sir.
- 7 Q That's correct, isn't it?
- 8 A Yes, sir.
- 9 Q You don't even know whether or not she went inside
- 10 [REDACTED] Austin Court except that she told you?
- 11 A Correct.
- 12 Q Now, she might have even -- she could have even met
- 13 her boyfriend along in there somewhere, couldn't
- 14 she?
- 15 A If you say so, sir. When she pulled up, she was
- 16 invited inside. I am only basing on what I heard
- 17 on real time.
- 18 Q Yes, sir.
- 19 A Yes, sir.
- 20 Q She's going to get \$80; is that correct?
- 21 A That's correct, sir.
- 22 Q And then you are going to give her \$60? Is that
- 23 what you gave her to buy the crack with?
- 24 A Yes, sir.
- 25 Q You don't know how much that crack is really worth,

ERIC KIRKLAND -- CROSS -- MR. FLOYD

91

1 do you?

2 A Judging and looking at the \$20 pieces based on our
3 experience, we say \$60 but, no, sir.

4 Q She could have had this crack on her, in her bra,
5 in her underwear that she bought for \$30 somewhere,
6 give it to you and keep the 60 and the 80; is that
7 correct?

8 A The bra we searched but the panties, no.

9 Q Just to clear up one little thing that may be
10 confusing, Agent Kirkland. There is a garage
11 behind [REDACTED] Austin Court, isn't there?

12 A Yes, sir.

13 Q Where they work on cars --

14 A Yes, sir.

15 Q -- is that correct. So a lot of those cars you see
16 there are junk cars or cars to be worked on; is
17 that correct?

18 A That's correct.

19 Q So this C.I. she started out because her boyfriend
20 was under charges, and she was working her
21 boyfriend's charges off?

22 A Yes, sir.

23 Q She got \$60 for being the driver; is that correct?

24 A That's correct.

25 Q But then she graduated to being the participant and

1 she got 80 bucks?

2 A Correct.

3 Q Now, you mentioned that you let people work off
4 their cases if they have got traffic tickets and
5 things like that. You also let them work it off if
6 they have got pretty heavy drug charges, don't you?

7 A In some instances.

8 Q It's not just people who are just in a little bit
9 of trouble?

10 A That's correct.

11 Q Some people are in a lot of trouble?

12 A Yes, sir.

13 Q The more trouble they are in, the more they have
14 got to work?

15 A Sometimes but it doesn't -- that really depends on
16 their criminal record whether we can assist them or
17 not but sometimes.

18 Q Her boyfriend, he was in a lot of trouble?

19 A He had traffic charges.

20 Q Traffic charges?

21 A D.U.S., D.U.I. He couldn't drive. That's why she
22 became the driver.

23 Q Are you saying he was working off D.U.I. and
24 D.U.S.?

25 A Yes, sir.

ERIC KIRKLAND -- CROSS -- MR. FLOYD

93

1 Q He didn't have any drug charges?

2 A No, sir, not at the time. It would be the Town of
3 Swansea, Cliff Hayes. He didn't have any charges
4 other than D.U.S., D.U.I. with the Town of Swansea.
5 That's how I met him was through Chief Cliff Hayes.

6 Q Didn't he have some drug charges also at the time?

7 A I don't know now. He wasn't working off drug
8 charges with me. I assisted him in D.U.I. traffic
9 charges, sir. He wasn't working off any with me
10 now.

11 Q So how many buys did she make when working off her
12 boyfriend's charges?

13 A I will guesstimate maybe 10, maybe 10 of those 25
14 maybe.

15 Q And then the other 15 or so she has done on her
16 own?

17 A Yes, sir.

18 Q Well, for money.

19 A Yes, sir.

20 Q Did she always get \$80?

21 A Yes, sir.

22 Q No matter what happened?

23 A Yes, sir.

24 Q How many times have you paid her for no drugs?

25 A They get \$20 just for the attempt because a lot of

1 times there is gas involved, things of that nature.

2 Q So there is a difference?

3 A There is a difference.

4 Q So you are saying if she goes and gets no drugs,
5 she gets \$20?

6 A Uh-huh. (Indicating affirmative response).

7 Q If she brings back drugs, she gets \$80?

8 A Uh-huh. (Indicating affirmative response).

9 Q So it's to her benefit to come back and say, I got
10 drugs?

11 A I wouldn't say that.

12 Q You don't think \$80 is better than \$20?

13 A Yes, sir.

14 Q No question you couldn't see her car at [REDACTED]

15 A No, sir.

16 Q So you have no way of knowing she's at [REDACTED] other
17 than her telling you that?

18 A That's correct.

19 Q You have no way of knowing whether or not she is
20 even having a conversation with George Middleton
21 except she tells you that?

22 A That's correct.

23 Q So you have no way of knowing she ever purchased
24 any drugs from George Middleton except she told you
25 that?

1 A That's correct.

2 Q The whole case is based upon what she tells you?

3 A Yes, sir.

4 Q Thank you.

5 MR. FLOYD: No further questions, Your Honor.

6 THE COURT: Thank you, Mr. Floyd. Redirect,
7 Solicitor?

8 MS. HOWARD: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. HOWARD:

11 Q Agent Kirkland, once she turned onto Austin Court
12 onto the dirt road, how long do you think it took
13 her to pull in at [REDACTED] Austin Court?

14 A Not even 15 seconds.

15 Q And if she had given you a signal into that
16 recorder, you could have left your post and been at
17 that doorstep at [REDACTED] Austin Court in 30 to 45
18 seconds?

19 A Yes, ma'am.

20 Q Was there anything that you heard during that
21 real-time audio that led you to believe she wasn't
22 at [REDACTED] Austin Court.

23 A No, ma'am. She gave the description, the location,
24 right down to the shop in the back, and the number
25 on the mailbox.

1 Q Did she give you the description of the colors at
2 this trailer, the description she gave once she got
3 out of the car and was walking up?

4 A Yes, ma'am.

5 Q Do you know if she entered the front or the back
6 door?

7 A The back door.

8 MR. FLOYD: Objection, Your Honor, unless he
9 knows that of his own personal knowledge.

10 THE WITNESS: That was her on the audio.

11 THE COURT: Please let me rule. Solicitor,
12 that is correct. I would sustain the objection unless
13 the officer can testify of his own personal knowledge.

14 MS. HOWARD: Understood, Your Honor. I
15 withdraw that question.

16 BY MS. HOWARD:

17 Q Agent Kirkland, you heard Freda's voice in this
18 real-time audio?

19 A Yes, ma'am.

20 Q You heard what she has told you was George
21 Middleton's voice?

22 A Yes, ma'am.

23 Q Any other voices, any other people there?

24 A One other unknown voice that was outside.

25 Q That other unknown voice, was that also on the

1 recorder coming from the inside of the residence?

2 A No, ma'am.

3 Q Agent Kirkland, why didn't you go on the dirt road?

4 A That was a -- the dirt road is one way in, one way
5 out type dirt road. There is a lot of
6 countersurveillance down there. What I mean by
7 countersurveillance, there is a whole lot of people
8 that would immediately know who we were as soon as
9 we turned down that dirt road. So it would not be
10 safe.

11 Q How would somebody on Austin Court know that you
12 even turned onto their street?

13 A It's a very short street and it's mostly all
14 family.

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

16 THE COURT: Yes, ma'am.

17 (Pause).

18 BY MS. HOWARD:

19 Q Agent Kirkland, when you say countersurveillance,
20 do you have reason to believe there was video
21 cameras set up around Austin Court?

22 A Yes, ma'am, we had received that information.

23 Q Thank you, Agent Kirkland. Please answer any
24 questions Mr. Floyd may have.

25 THE COURT: Mr. Floyd?

RECROSS EXAMINATION

1

2 BY MR. FLOYD:

3 Q Agent Kirkland, you don't know whether or not the
4 conversation took place inside the house or outside
5 the house; do you?

6 A I could answer that. Based on my investigative
7 experience, you are able to distinguish between an
8 outside conversation and an inside conversation
9 once you hear the wire.

10 Q But you didn't see it?

11 A No, sir, I didn't see it, but I am able to
12 distinguish. There is a clear echo when you are
13 inside. It changes when you are outside. You hear
14 stuff like cars and car engines when there is a
15 garage around. Once you go inside, stuff like that
16 stops. It's all echo. It's quiet.

17 MR. FLOYD: No further questions, Your Honor.

18 THE COURT: Thank you. Thank you very much,
19 Agent Kirkland. You may step down.

20 THE WITNESS: Yes, sir.

21 (Witness leaves the witness stand).

22 THE COURT: Perhaps it would be a good time to
23 take our afternoon recess.

24 Madame Forelady, ladies and gentlemen of the
25 jury, we will take about a 15-minute recess. I would

1 remind you during this recess, you are not to discuss
2 this case. You are not to discuss this case with
3 anyone. That includes your fellow jurors or anyone
4 else.

5 If anyone tries to talk with you about the
6 case during this recess, please let me know. Remember
7 to keep an open mind and not begin your deliberations
8 until you are instructed to do so by the Court. You may
9 go with your bailiff. We will take about a 15-minute
10 recess. Thank you very much.

11 (The jury retires to the jury room).

12 THE COURT: Court will be in recess 15
13 minutes. Sheriff, Mr. Middleton is in custody.

14 (Whereupon there is a recess).

15 THE COURT: Anything before we bring in our
16 jury, Solicitor?

17 MS. HOWARD: Nothing from the State, Your
18 Honor.

19 THE COURT: Mr. Floyd.

20 MR. FLOYD: Nothing, Your Honor.

21 THE COURT: Mr. Bailiff, if you would bring
22 our jury, please.

23 (The jury returns to the courtroom).

24 THE COURT: Our jury is back present in the
25 courtroom. We are proceeding with the trial of the case

1 by the presentation of testimony by the State.

2 Solicitor, you may call your next witness.

3 MS. HOWARD: Your Honor, the State calls Agent
4 Todd Strange.

5 CHRISTOPHER TODD STRANGE,
6 being first duly sworn, testifies as follows:.

7 CLERK: State your full name, spelling your
8 last, please.

9 THE WITNESS: My name is Christopher Todd
10 Strange. The last name is S-T-R-A-N-G-E.

11 DIRECT EXAMINATION

12 BY MS. HOWARD:

13 Q Agent Strange, where are you employed?

14 A South Carolina Law Enforcement Division.

15 Q How long have you been with S.L.E.D.?

16 A Nine months.

17 Q What do you do at S.L.E.D.?

18 A I'm a special agent in narcotics.

19 Q And before you went to S.L.E.D., where were you
20 employed?

21 A Lexington County Sheriff's Department. I was a
22 member of the narcotics enforcement team.

23 Q Just like Agent Kirkland?

24 A Yes, ma'am.

25 Q How long were you with the N.E.T. time?

1 A Over three years.

2 Q Specializing in narcotics?

3 A Yes, ma'am.

4 Q And before that any other experience in law
5 enforcement?

6 A I had nine years I believe prior to that. I had a
7 total of twelve years with the county, twelve years
8 and a few months.

9 Q You worked with the Sheriff's Department and then
10 moved into the narcotic division?

11 A Right. I was still employed by the Sheriff's
12 Department but working for the Multiagency
13 Narcotics Enforcement Team for three years.

14 Q What we call the N.E.T. team?

15 A Right.

16 Q Did you work with Agent Kirkland?

17 A Yes.

18 Q Did you work with Agent Kirkland on July 15, 2008?

19 A Yes, ma'am.

20 Q Do you remember meeting Freda Broach on that day?

21 A Yes, ma'am.

22 Q And were you with Agent Kirkland during all of
23 the events of that day that we have already
24 covered?

25 A Yes, ma'am.

- 1 Q Did you meet at the same area on Highway 6?
- 2 A Yes, ma'am, riding with Agent Kirkland.
- 3 Q Did you participate in the search of Freda or her
- 4 car at all that day?
- 5 A I conducted the search of the vehicle.
- 6 Q Do you remember what kind of vehicle she was
- 7 driving?
- 8 A I believe it was a blue Dodge Intrepid.
- 9 Q Did she always drive her own vehicle?
- 10 A She drove several different vehicles when we were
- 11 working with her.
- 12 Q But she, most of the time she worked with you, she
- 13 drove separately to the target location?
- 14 A Correct. I understand the question now. Yes, she
- 15 would bring her own vehicle, and she would drive
- 16 herself to and from the controlled buy.
- 17 Q And on this day you remember searching her vehicle?
- 18 A I do.
- 19 Q Can you explain to us exactly what one of these
- 20 vehicles searches might entail?
- 21 A It's a pretty thorough search of the vehicle. You
- 22 start in the passenger compartment, search in
- 23 between the seats, up underneath the seats, all
- 24 through the carpet, underneath the mats, search the
- 25 ashtray, the glove compartment, underneath the

TODD STRANGE -- DIRECT -- MS. HOWARD

103

1 dashboard, anywhere I could reach or visually
2 inspect, anywhere in the console I could reach or
3 visually inspect, up above in the visor, searched
4 the visors, search anything over head that was
5 available to place any object in.

6 As has been mentioned before, most of these
7 crack rocks are very small. So there's a lot of
8 places that it can be found. So I search pretty
9 thoroughly to make sure I locate -- make sure there
10 is nothing in there.

11 Once we search the seats and all the passenger
12 compartments, then we go back to the trunk and
13 search throughout the trunk. Once again, while I
14 am searching inside, if there is any envelopes,
15 anything inside the vehicle that could hold this
16 evidence or this contraband, narcotics or a weapon
17 even, we don't allow weapons either or any kind of
18 currency.

19 Anything that could hold that, I search inside
20 of it. So a pocketbook, I search the pocketbook
21 thoroughly, I search anything, any billfolds or
22 whatever might be in there, any cans or containers.
23 Anything that would hold anything and then search
24 throughout the trunk, search around the tire and up
25 underneath where you lift up to find the spare tire

1 and throughout the trunk, items in the trunk.

2 Q Agent Strange, can you estimate how many of these
3 vehicles searches you have conducted during your
4 years as a narcotics agent?

5 A Hundreds.

6 Q You fine tuned it after a while?

7 A I have.

8 Q So is it possible to do a thorough vehicle search
9 on a C.I. or on their vehicle in nine minutes?

10 A I can do it in an expedient manner because I have
11 done so many of them I know where to look. There's
12 various places to hide, not just -- it's from
13 experience from searching people to find drugs, not
14 just doing these deals but trying to locate drugs
15 in people's vehicles that we end up charging. So I
16 know where to look and I know how -- common places
17 where people hide things and know how to search
18 thoroughly pretty quickly.

19 Q You are not trying to leave it as you found it
20 either, are you?

21 A No.

22 Q Throw things around a little bit?

23 A As quickly as I can do it.

24 Q You rode in the car with Agent Kirkland and
25 followed Freda to Austin Court that day?

1 A I did.

2 Q Did you listen along on the real-time audio?

3 A I did.

4 Q You sat across the street, across 178 with Agent
5 Kirkland, while she went down the dirt road?

6 A Right, in a field beside a tree I remember.

7 Q Would you agree that it would have been against the
8 best interest of your investigation to have
9 attempted to go down to Austin Court that day?

10 A We were aware that there was -- we had been told
11 there was cameras --

12 MR. FLOYD: Objection to any hearsay, Your
13 Honor.

14 THE COURT: I would sustain -- well, approach
15 the bench a moment.

16 (Whereupon there is a bench conference off the
17 record in the presence of the jury but out of the
18 hearing of the jury).

19 THE COURT: I am going to overrule the
20 objection. I believe the testimony is being offered as
21 to why the officers took certain actions. It's not
22 being offered to prove the matter asserted, i.e.,
23 whether there was or was not video cameras. With that
24 being said, Solicitor, you may proceed.

25 MS. HOWARD: Thank you, Your Honor.

1 BY MS. HOWARD:

2 Q So you agreed with Agent Kirkland's assessment that
3 it would have been against the best interest of
4 your investigation to have followed?

5 A Definitely. A lot of these drugs areas we know
6 from experience that there is a lot of
7 countersurveillance. Usually there's people down
8 the road. Sometimes they are even paid to sit down
9 the road and just watch to see if they see anything
10 that looks like police or anybody doing
11 surveillance on the area or coming in to do any
12 kind of police work.

13 A lot of times they are aware of what kind of
14 vehicles we drive. They have seen them coming in
15 and out the sheriff's department. These people do
16 their homework just like we do ours so they keep
17 their business going.

18 This was a one-way in, one-way out, a dead-end
19 road. We were aware other family members lived on
20 this road, and we were aware that there was
21 countersurveillance on the road.

22 So had we gone in, they would have immediately
23 recognized us as police and not done the deal or
24 would jeopardize her safety at that time. That's
25 one of our main concerns is trying to keep her

1. safe.

2 Q Agent Strange, in order to conduct control over
3 this buy, you and Agent Kirkland did the next best
4 thing, sat across the street?

5 A Right.

6 Q You could have gotten to her in 30 to 45 seconds if
7 she needed you?

8 A Sure.

9 Q Listened in real-time audio to everything she did
10 and said during the time you didn't have a visual
11 on her?

12 A Correct.

13 Q What happened after she left that dirt road?

14 A She pulled out. We noticed her. We immediately
15 pulled out in front of her and she followed us
16 back. We surveilled her back to the meeting spot
17 over at the fire station where she gave the
18 evidence to Agent Kirkland. Then we proceeded to a
19 second meeting location to do the search.

20 Q Did Agent Kirkland re-search her clothes and her
21 body?

22 A I was searching the car. I believe he did. I
23 can't say that I witnessed it because I was busy
24 searching the vehicle.

25 Q My next question is did you re-search her vehicle?

1 A I did.

2 Q Did you find anything that wasn't there before?

3 A The vehicle appeared to be in the same condition as
4 when it left. I did not find any narcotics or
5 other contraband or weapons or currency within the
6 vehicle.

7 Q If you had, you would have to assume your first
8 search wasn't thorough?

9 A If I had, I would assumed it had been added since
10 my prior search because I did a pretty thorough
11 search to start with. So if I found dope in there,
12 I would assume it was from that deal, and then
13 there would have been some serious questions toward
14 the confidential informant about the origin of the
15 contraband, narcotics, weapons, currency, whatever.

16 Q Would you have felt confident in charging
17 Mr. Middleton if there had been anything additional
18 found in that vehicle?

19 A No, I would not.

20 Q Please answer any questions Mr. Floyd has.

21 THE COURT: Thank you, Solicitor. Mr. Floyd.

22 MR. FLOYD: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. FLOYD:

25 Q Agent Strange, you were present when Deputy

1 Kirkland testified; were you not?

2 A Yes, sir.

3 Q And he said it would take you 15 to 20 minutes to
4 thoroughly search a car?

5 A Yes, sir.

6 Q But you are telling us you did it in nine?

7 A Yes, sir, apparently so.

8 Q And you say you searched the interior?

9 A Yes, sir.

10 Q The seats?

11 A Yes, sir.

12 Q Any materials that she had in there of a personal
13 nature?

14 A Yes, sir.

15 Q What materials did she have in there of a personal
16 nature?

17 A I don't remember that exact day. I know on most
18 occasions she brought her purse along, and I
19 searched that every time. It usually had a
20 billfold in it. I searched that thoroughly. As
21 far as -- I can't remember anything else that would
22 have been in the vehicle that day.

23 Q You didn't make notes of it?

24 A No, sir.

25 Q You say you searched the trunk?

1 A Yes, sir.

2 Q And pulled up the carpet in the trunk?

3 A Yes, sir.

4 Q Did that all in just nine minutes?

5 A Yes, sir.

6 Q Does that thoroughly describe your search, what I
7 just asked you?

8 A Yes, sir, just went through the passenger
9 compartment, the trunk, and all the contents.

10 Q Don't people often secret drugs under the hood?

11 A In my experience, no, not unless they were
12 transporting large quantities. I have seen in
13 cases where they transport large quantities
14 underneath the hood, but generally that is not a
15 readily assessable area for them to have immediate
16 access.

17 It's also not that many easy places to place
18 drugs within the hood. You actually have to get
19 inside the engine, under covers and stuff like
20 that, underneath the air filters or somewhere where
21 it would be a secure spot.

22 Q You are secreting a very small quantity here.

23 A Yes.

24 Q There are plenty of little spaces underneath that
25 hood that you could put it, aren't there?

1 A It's possible.

2 Q In fact, all the time you have searched a vehicle,
3 you have never searched under the hood; have you?

4 A No, sir.

5 Q Do you complete the search on the return trip? Do
6 you do the same search?

7 A Yes, sir..

8 Q You don't look under the hood again, do you?

9 A No, sir. Once again, that is not a readily
10 accessible area.

11 Q Why not? It's just as easy to open the trunk as
12 the hood, isn't it? You just lift up something.

13 A Usually you have to pop the trunk -- I mean, pop
14 the hood, prop the hood up. Generally when we are
15 listening on a wire, I can probably hear them
16 popping the trunk and listening to that as opposed
17 to popping the hood -- excuse me -- as opposed to
18 the trunk.

19 Q Do you finish your search after the alleged
20 transaction before you pay her?

21 A Yes, sir. Yes, sir.

22 Q And when you pay her, does she sign a voucher?

23 A Yes, sir.

24 Q When did you -- what time did you begin your search
25 of the vehicle after this alleged transaction?

1 A After the transaction, it says 16:09, which would
2 be 4:09 p.m.

3 Q When did she sign the voucher?

4 A She signs the voucher at 4:16 p.m.

5 Q Seven minutes?

6 A Yes, sir.

7 Q No question -- were you with Agent Kirkland the
8 whole time?

9 A Yes, sir.

10 Q There is no question that y'all didn't follow her
11 down Austin Court, did you?

12 A No, sir, we did not.

13 Q You couldn't see the transaction as you were
14 listening to her?

15 A No, sir.

16 Q Thank you.

17 MR. FLOYD: No further questions, Your Honor.

18 THE COURT: Thank you Mr. Floyd. Anything in
19 redirect, Solicitor?

20 MS. HOWARD: Very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. HOWARD:

23 Q Agent Strange, you performed over a hundred
24 automobile searches. A thorough search can be done
25 in nine minute you believe?

1 A I would say so.

2 Q A thorough re-search in seven minutes?

3 A I believe so. Once again, the searches depend on
4 the quantity of items and the areas in the vehicle
5 that need to be searched. So if there is not a lot
6 of items in the -- and not a lot of hiding places
7 within the vehicle, then obviously it's going to
8 take less time.

9 Once again, I searched it and I believe once
10 you get the C.I. up here -- well, the C.I. has made
11 comments to me in the past that I have searched her
12 vehicle thoroughly. She was surprised at how
13 thorough.

14 Q Again, Agent Strange, you heard everything that
15 occurred from the time she left your sight to the
16 time she came back into your sight in real-time
17 audio?

18 A I did.

19 Q Did you ever hear anything that you believed was to
20 be a hood popping?

21 A I did not.

22 Q And when you had her in your visual sight on the
23 way to Austin Court and once you left Austin Court
24 on the way to the meeting location back, did you
25 ever see a hood pop?

1. A I did not.

2 Q Please answer any questions Mr. Floyd has.

3 THE COURT: Thank you, Solicitor. Anything in
4 recross, Mr. Floyd?

5 MR. FLOYD: Nothing further, Your Honor.

6 THE COURT: Thank you very much, Agent
7 Strange. You may step down.

8 (Witness leaves the witness stand).

9 THE COURT: Solicitor, you may call your next
10 witness.

11 MR. STUMBO: Thank you, Your Honor. The State
12 calls Freda Broach to the stand.

13 FREDA MICHELLE BROACH, being
14 first duly sworn, testifies as follows:

15 CLERK: Speak up loud and clear, stating your
16 full name, spelling your last.

17 THE WITNESS: Freda Michelle Broach.

18 DIRECT EXAMINATION

19 BY MR. STUMBO:

20 Q Good afternoon, Ms. Broach.

21 A Good afternoon.

22 Q Are you nervous?

23 A Yes, sir.

24 Q Have you ever testified before?

25 A Yes, sir.

1 Q You ever testified in court before in front of a
2 jury?

3 A No, sir.

4 Q Do you currently live in Lexington County?

5 A Yes, sir.

6 Q And tell us a little bit about yourself. Were you
7 born here in Columbia, in the Columbia area?

8 A No, sir.

9 Q When did you move to Columbia?

10 A When I was four.

11 Q And where did you live when you were a little child
12 in Columbia?

13 A Richland County.

14 Q Did you go to school over in Richland County?

15 A Yes, sir. I lived back and forth, Richland and
16 Lexington actually.

17 Q What high school did you go to?

18 A Northeast and Spring Valley.

19 Q Did you finish high school at Spring Valley or not?

20 A No, sir.

21 Q When did you move to Lexington County?

22 A I was 28 -- 26, 27, 28 -- somewhere around there.
23 I'm not exactly sure.

24 Q Who did you live with when you moved over to
25 Lexington?

- 1 A My mother at first and then George Corley.
- 2 Q Who is George Corley?
- 3 A The man I resided with for 21 years.
- 4 Q Your boyfriend?
- 5 A Yes, sir.
- 6 Q And where did you and George live when you were
- 7 over here in Lexington? What area of the county
- 8 were you in at that point?
- 9 A The Red Bank area and Pelion.
- 10 Q Ms. Broach, George Corley, tell us a little bit
- 11 about him. Did he have any drug problems?
- 12 A Yes, sir.
- 13 Q Was he a user?
- 14 A Yes, sir.
- 15 Q And what drugs would he use?
- 16 A Crack, marijuana, cocaine, meth, anything else I'm
- 17 not really sure of.
- 18 Q Did George Corley, your boyfriend at the time, in
- 19 addition to using those illegal drugs, did he ever
- 20 sell those drugs, too?
- 21 A Yes, he did.
- 22 Q Ms. Broach, I know it's a personal question, but I
- 23 believe we need to get into this, too. Have you
- 24 ever had any problems with drug use in the past?
- 25 A Not before George.

1 Q After you met George did you have problems with
2 drugs?

3 A A couple of years after I was with him, yes, I did.

4 Q What kind of drugs would you and George use
5 together?

6 A Coke. It started out as coke. Then it was crack
7 and then meth.

8 Q Did you have a pretty good idea of where you could
9 get those products in Lexington County?

10 A He did and made me affiliated with the rest.

11 Q Did y'all know people involved with those issues as
12 well? Did you know people in that world --

13 A Yes, sir.

14 Q -- over drugs. When did you meet Detective
15 Kirkland here standing to my right?

16 A January of '07.

17 Q How did you meet up with Detective Kirkland?

18 A George got into some trouble, and we was working
19 his charges off.

20 Q And do you remember what -- who had charged George?
21 What agency had charged George?

22 A It was Swansea. He got in trouble for stealing
23 some stuff out of the Dollar General.

24 Q So you met Detective Kirkland through George, your
25 boyfriend?

- 1 A Yes.
- 2 Q And the day you met -- you said you met Detective
- 3 Kirkland in January of '07?
- 4 A Yes, sir.
- 5 Q And that day that you met Detective Kirkland, what
- 6 were your discussions about? Did he ask you to do
- 7 anything that day or did you offer to do anything?
- 8 A George was to work off his stuff, and he asked if I
- 9 would be his driver and told him yes.
- 10 Q George was working off charges with Detective
- 11 Kirkland?
- 12 A Yes, sir.
- 13 Q And why did you need to drive?
- 14 A Because he had no license because they were taken
- 15 from him.
- 16 Q George Corley didn't have a license?
- 17 A Yes, sir.
- 18 Q Did you sign a contract with Detective Kirkland?
- 19 A I did.
- 20 Q You didn't have any charges at the time, did you?
- 21 A No, sir.
- 22 Q Tell me this, Ms. Broach, have you ever had a
- 23 conviction?
- 24 A No, sir.
- 25 Q You have no convictions on your record?

1 A No, sir.

2 Q So when you were driving George around were you
3 getting paid for this?

4 A Yes.

5 Q Now, at some point when did you and George -- are
6 you and George still together?

7 A No, sir.

8 Q When did you part ways?

9 A December of this past year, of 2008.

10 Q At some point during that time, between January of
11 '07 when you started working and the time you and
12 George split up, did you always go on buys with
13 George?

14 A Not always.

15 Q Did you do some on your own?

16 A I did.

17 Q Did you do some with Detective Kirkland?

18 A I did.

19 Q At the time you were working with Detective
20 Kirkland doing some of these buys, did you have any
21 other employment at the time?

22 A Yes, I did.

23 Q Where were you working?

24 A Kent's Corner.

25 Q Kent's Corner, what is that?

1 A And Total Eclipse Tanning Salon. Kent's Corner is
2 a convenience store.

3 Q You are not working there now?

4 A No, sir, I am unemployed right now.

5 Q Do you remember when you left Kent's Corner?

6 A I'm not sure the exact date.

7 Q You said you had done drugs with George and done
8 certain types of drugs. Have you ever used crack
9 cocaine?

10 A Yes, sir.

11 Q And did you have an addiction to crack cocaine,
12 Freda?

13 A I wouldn't say I had an addiction. I try not to
14 let nothing control me. I try to control myself
15 but, yes, there was a problem for a while.

16 Q Was this a time when you started doing more drugs
17 than before? Was there any event in your life that
18 triggered that?

19 A Yes, sir.

20 Q What was that?

21 A When my brother passed away in 2004.

22 Q Why did you increase your use of drugs after that?

23 A I was clean for two years and I knew he still had a
24 problem, and I told him not to bring nothing around
25 me because I was vulnerable and he did anyway.

- 1 Q You say he, you are talking about George Corley?
- 2 A George, yes.
- 3 Q This is about the time your brother passed?
- 4 A It was after he passed.
- 5 Q About how many buys, just an estimate, do you think
- 6 you have done with Detective Kirkland?
- 7 A I'm not real sure to be honest.
- 8 Q You said you got paid; is that correct?
- 9 A Yes, sir.
- 10 Q How much would you get paid for a successful buy?
- 11 A Anywhere from 80 to a hundred dollars.
- 12 Q Would you get paid if you didn't have any
- 13 success --
- 14 A Yes, sir.
- 15 Q -- for whatever reason. Was that less?
- 16 A Yes, sir, less.
- 17 Q I will take you to -- let me ask you this before we
- 18 go to July 15. You said you met Detective Kirkland
- 19 and were working with him, correct?
- 20 A Yes, sir.
- 21 Q How about Agent Strange who is with S.L.E.D. now,
- 22 do you know him?
- 23 A I sure do.
- 24 Q Who was he? Is he somebody who worked with
- 25 Detective Kirkland?

1. A Yes, he was a D.E.A. officer.
2. Q And at the time -- let me take to July 15,
- 3 Ms. Broach. Did you work with Detective Kirkland
- 4 that day?
- 5 A I did.
6. Q And was Detective Strange there as well?
- 7 A He was.
- 8 Q Who was the target that day on July 15?
- 9 A George Middleton.
- 10 Q What was the target location?
- 11 A [REDACTED] Austin Court.
- 12 Q Austin Court down in Pelion?
- 13 A Yes, sir.
- 14 Q That's in Lexington County --
- 15 A Yes, sir.
- 16 Q -- to the best of your knowledge. Let me ask you
- 17 this. Where did you meet the detectives, do you
- 18 remember?
- 19 A At a church.
- 20 Q Do you know what highway that was on where you met
- 21 them?
- 22 A Off Swansea Highway, I think, if I'm correct.
- 23 Q When you met them at the church, what did they do?
- 24 What did they do first? Did they search you?
- 25 A I was searched. My car was searched. After that I

1 was wired.

2 Q You say you were searched and your car was
3 searched. To your knowledge why do they do that?

4 A To make sure you have no money or no dope or no
5 weapons of any kind.

6 Q Who is the one that did the search of your person?

7 A Officer Kirkland.

8 Q Did he do a thorough search?

9 A Yes, he did.

10 Q Did you have any narcotics on your person at that
11 time?

12 A No, sir.

13 Q Did you have anything in your underwear?

14 A No, sir.

15 Q He didn't reach down into your underwear, did he?

16 A No, sir.

17 Q Were you hiding anything in your underwear,
18 Ms. Broach?

19 A No, sir.

20 Q Did you have any narcotics on your person
21 whatsoever when he searched you?

22 A No, sir.

23 Q How about your car? Did you have anything in
24 there?

25 A No, sir.

1 Q Who is the one that searched your car?

2 A Officer Strange.

3 Q You said they put a wire on you. Who is the one
4 that did that?

5 A Officer Kirkland.

6 Q Where did he put that wire?

7 A Around my ankle.

8 Q Did you have another digital recorder on you?

9 A I did.

10 Q Where was that?

11 A In my bra.

12 Q Did he put that in or did you put that in?

13 A I put that in.

14 Q At that time where did you leave and go to from
15 that location?

16 A To [REDACTED] Austin Court.

17 Q What were you driving?

18 A A Dodge Intrepid.

19 Q Was that your vehicle?

20 A Yes, sir.

21 Q And did the detectives follow you in their car?

22 A They did.

23 Q Did you have any communication with them during the
24 drive between the church and [REDACTED] Austin Court?

25 A I did.

FREDA BROACH -- DIRECT -- MR. STUMBO

125

- 1 Q Ms. Broach, I will refer you to what is in evidence
2 as State's Exhibit Number 1. Do you recognize what
3 is in State's 1?
- 4 A I do.
- 5 Q What area is this?
- 6 A That's on 178 and that's Austin Court.
- 7 Q You say 178. I will hand you this little laser
8 pointer here. Show us on there where 178 is.
- 9 A That's 178 right there (indicating), that's Austin
10 Court (indicating) and that Mr. Middleton's
11 (indicating).
- 12 Q That little house or trailer that you pointed to
13 that is [REDACTED] Austin Court there?
- 14 A Yes, sir.
- 15 Q Is that where you went that day on July 15?
- 16 A It is.
- 17 Q When you turned onto Austin Court, onto the dirt
18 road there off of 178, did the detectives follow
19 you down there?
- 20 A No.
- 21 Q Why didn't they follow you down?
- 22 A Because it was a monitored area.
- 23 Q When you turned down Austin Court and lost contact
24 with them, where did you go from that point? You
25 can use the laser pointer to point where you pulled

1 in.

2 A I pulled in right there (indicating), kind of to
3 the end, the end front of the mobile home.

4 Q So where you just pointed beside the mobile home,
5 is that where you parked your car?

6 A Yes, sir, somewhere between in there.

7 Q Did you go straight there to that place?

8 A I did.

9 Q You didn't drive down the road and come back?

10 A No, sir.

11 Q Did you sit in the car for a while when you got
12 there? What did you do? Did you get out?

13 A I got out and went into the back, went in the back
14 door.

15 Q The back door of the trailer. I will zoom this in
16 on State's 1 for you. Show us where you walked
17 around and went in, using the pointer.

18 A I walked around there (indicating) and went in that
19 door right there (indicating).

20 Q Did you see anybody out in the back of the house?

21 A Yeah, there was several people in the back.

22 Q Do you remember talking to anybody back there at
23 all?

24 A I remember speaking with one person, but I don't
25 remember their name.

1 Q Did you go right in the house or did somebody have
2 to take you in?

3 A They took me in.

4 Q Ms. Broach, this whole time did you still have the
5 wire on your ankle and the recorder in your bra
6 strap?

7 A I did.

8 Q Let me back up a little bit. Before you got out of
9 the car at the house when you were pulling up, were
10 you able to communicate with Detective Kirkland on
11 what you saw?

12 A I was.

13 Q Did you describe the house to him?

14 A I did.

15 Q Ms. Broach, when you went into the house, what is
16 the first thing you saw?

17 A A bedroom to the right and a bathroom straight in
18 front.

19 Q Who is the first person you made contact with
20 inside that house?

21 A There was a white man there, and Mr. Middleton was
22 sitting like between the kitchen and the front door
23 in front of a monitor.

24 Q Was Mr. Middleton on a chair or on a couch?

25 A In a wheelchair.

- 1 Q In a wheelchair?
- 2 A Yes, sir.
- 3 Q You said he was watching a monitor, could you see
4 what was on that monitor?
- 5 A Yes, the front yard and part of the road.
- 6 Q The front yard and part of the road?
- 7 A Yeah, he could see like the yard across the street
8 from him and the surroundings of his trailer.
- 9 Q What you saw on that monitor was an area in front
10 of the house; is that correct?
- 11 A Yes, sir.
- 12 Q Did you ask Mr. Middleton for anything?
- 13 A I did.
- 14 Q What did you say you wanted?
- 15 A Sixty dollars worth.
- 16 Q At first did he want to sell it to you?
- 17 A He did not.
- 18 Q Was there anything that you were able to tell him
19 to convince him that he needed to sell it to you?
20 Did he recognize you? Let me back up first. Did
21 he recognize you?
- 22 A I'm not sure that he did. I don't think that he
23 did. I'm not sure actually.
- 24 Q Had you ever met George before?
- 25 A I had.

- 1 Q Who introduced you to George?
- 2 A His mate, Miss Shirley.
- 3 Q When did you go over to the house with Miss
- 4 Shirley?
- 5 A In April.
- 6 Q April of 2007?
- 7 A Yes, sir.
- 8 Q You say it was in April. Why does that stand out
- 9 in your mind? What was important about that day?
- 10 A Because her son went to jail.
- 11 Q Miss Shirley's son?
- 12 A Yes.
- 13 Q Were you able to remind George of that of when he
- 14 met you, when you had met him before?
- 15 A I did.
- 16 Q Miss Freda, after you reminded him of that, was he
- 17 comfortable enough to do what you asked him to do?
- 18 A Yes, he was.
- 19 Q What did he do at that point?
- 20 A He pulled out a cigar tube and opened it up and
- 21 poured it on the counter.
- 22 Q You said poured it on the counter, what was it?
- 23 A Crack cocaine.
- 24 Q Is that what it looked like? What did it look
- 25 like?

- 1 A Crack cocaine.
- 2 Q Out of the cigar tube?
- 3 A Yes, sir.
- 4 Q Did he pour it on the table?
- 5 A He poured it on the countertop, yes, sir.
- 6 Q How much money did you have with you again?
- 7 A Sixty dollars.
- 8 Q And about how much crack would that get you?
- 9 A Sixty dollars, three pieces.
- 10 Q Three pieces, so \$20 a piece?
- 11 A Yes, sir.
- 12 Q If my math is correct.
- 13 A Yes, sir.
- 14 Q Were you able to buy three pieces?
- 15 A I was.
- 16 Q Did you pick them out off the table?
- 17 A I did.
- 18 Q Did anybody else in that house give you crack
- 19 cocaine?
- 20 A No, sir.
- 21 Q The three pieces that you got are ones that he
- 22 poured on the table?
- 23 A Well, there was bigger pieces, but he wouldn't let
- 24 me have the bigger ones because he said they were
- 25 \$40 pieces if I remember correctly.

FREDA BROACH -- DIRECT -- MR. STUMBO

131

- 1 Q Did you take three of the other pieces?
- 2 A I did.
- 3 Q What did you give Mr. Middleton?
- 4 A Sixty dollars.
- 5 Q This person who you had this transaction with, is
- 6 he in the courtroom today?
- 7 A Yes, sir.
- 8 Q Where is he?
- 9 A He is sitting over there in a wheelchair.
- 10 Q What kind of color shirt does he have?
- 11 A A blue one.
- 12 Q Are you sure that's him?
- 13 A I'm positive.
- 14 Q You had met him before that day?
- 15 A Yes, sir.
- 16 Q After the transaction took place, where did you go
- 17 from there?
- 18 A To meet back up with the agents.
- 19 Q Did you go to your car?
- 20 A I did.
- 21 Q Did you go straight to your car?
- 22 A Yes, sir.
- 23 Q Did you talk to anybody between the door and before
- 24 you got back to the car?
- 25 A I don't believe so.

1 Q And, Ms. Broach, when you got back in the car and
2 started to drive away, were you able to make
3 contact with Detective Kirkland?

4 A I was trying to make contact with him, but the
5 phone call wasn't going through. It took a minute
6 or two.

7 Q Let me get State's Exhibit 1 back out. What
8 direction did you turn off of when you went down
9 Austin Court?

10 A I went down the dirt road, took a right, and then
11 took a right onto 178.

12 Q And at that point where were Detectives Kirkland
13 and Strange?

14 A They came out in front of me if I remember
15 correctly.

16 Q Did you follow them?

17 A I followed them.

18 Q During that car ride, were you able to make
19 contact?

20 A I was.

21 Q The three rocks you took out of the house, where
22 did you have those?

23 A In my hand.

24 Q Did you have them in your hand while you were
25 driving?

- 1 A I did..
- 2 Q Did you ever have any need to set them down for any
- 3 reason?
- 4 A No, sir.
- 5 Q Where did you meet back up with Detectives Kirkland
- 6 and Strange?
- 7 A At the fire department.
- 8 Q How far away was this from this location?
- 9 A I'm really not sure. It wasn't far.
- 10 Q More than five minutes, less than a five-minute
- 11 drive?
- 12 A Probably like five minutes. I'm really not sure
- 13 though.
- 14 Q When you meet back up with Detectives Kirkland and
- 15 Strange, what do they do?
- 16 A I gave them the crack cocaine, and I got hand
- 17 sanitizer to wash my hands.
- 18 Q When you handed him the three rocks, where did you
- 19 put them?
- 20 A Where did I put the rocks? Into a plastic bag.
- 21 Q Did he hold the plastic bag open for you?
- 22 A Yes, sir.
- 23 Q Did you ever have possession of those rocks after
- 24 that?
- 25 A No, sir.

- 1 Q Between the time you purchased those rocks at
2 ■ Austin Court and the time you get to meek back
3 and hand those to Detective Kirkland, did you add
4 anything to those rocks?
- 5 A No, sir.
- 6 Q Did you take anything away from them?
- 7 A No, sir.
- 8 Q Did you hide any of those drugs anywhere?
- 9 A No, sir.
- 10 Q Did you give Detective Kirkland what you had bought
11 at that residence?
- 12 A Yes, sir.
- 13 Q Did they conduct a search of you at that time, of
14 your person?
- 15 A Yes, they did.
- 16 Q Who did that?
- 17 A Kirkland searched me and Strange searched my
18 vehicle.
- 19 Q Did they cut the wire off at that time?
- 20 A Yes, sir.
- 21 Q Did you give it back to them?
- 22 A I did.
- 23 Q Did y'all go somewhere else after the fire
24 department or did you leave them at that point?
25 Where did y'all go?

1 A We went to a church.

2 Q Why did you go to a church?

3 A So I couldn't be recognized.

4 Q Was it somewhere further away from Austin Court?

5 A It was further away, yes, sir.

6 Q Did you write a statement for the detectives?

7 A Yes, sir, that's when I wrote the statement.

8 MR. STUMBO: Beg the Court's indulgence, Your
9 Honor.

10 THE COURT: Yes, sir.

11 (Pause).

12 BY MR. STUMBO:

13 Q Ms. Broach, I am going to show you what is in
14 evidence as State's Exhibit Number 3. Can you
15 identify what is in State's 3 for the jury?

16 A That's [REDACTED] Austin Court.

17 Q Is it a fair and accurate representation of what
18 you saw that day, at the house you saw that day?

19 A Yes, sir.

20 Q What color was the house?

21 A Brown and beige if I remember correctly.

22 Q What color is the underpinning?

23 A White.

24 Q Let me ask you this, Ms. Broach. You say you saw
25 Mr. Middleton watching a monitor screen. Is there

1 anything else specific that you notice about him,
2 any physical features?

3 A His fingernails were long.

4 Q Long fingernails?

5 A Yes, sir.

6 Q Can you describe the inside of the house for us?

7 A It was immaculate. It was clean.

8 Q You said you had gone over there to his house one
9 time, correct?

10 A (Witness nods). (Indicating affirmative response).

11 THE COURT: You need to answer out loud.

12 THE WITNESS: Yes.

13 BY MR. STUMBO:

14 Q That place where you went into the back door, I
15 will show you State's Exhibit 1 again. You pointed
16 to us where you went in the back door there. Where
17 did you go in? Were there steps or how did you get
18 up into the house?

19 A It's a deck with a ramp on the back.

20 Q What kind of ramp is that?

21 A A wheelchair ramp.

22 Q That's what you walked up in to get in the house?

23 A Yes, sir.

24 Q I will show you what you has been marked for I.D.
25 purposes as State's Exhibit 6. Do you recognize

1 the contents of the bag?

2 A Yes, sir.

3 Q Do you recognize those contents?

4 A Yes, sir.

5 Q Does it appear to be what you gave to Detective
6 Kirkland that day?

7 A Yes, sir.

8 Q On July 15?

9 A Yes, sir.

10 Q I am going to show you what has been marked for
11 I.D. purposes as State's Exhibit Number 5. Do you
12 recognize that C.D.?

13 A I do.

14 Q Have you listened to the contents of that C.D.?

15 A I have.

16 Q Is your voice one of the voices on this disk?

17 A Yes, sir.

18 Q Were you a party to all the conversations that
19 occurred on the audio on this disk?

20 A Yes, sir.

21 Q Is it substantially an accurate representation of
22 what conversation you had on July 15?

23 A Yes, sir.

24 Q That were recorded by the wire on your person?

25 A Yes, sir.

1 MR. STUMBO: Your Honor, the State would offer
2 State's Exhibit 5, an audio recording of the controlled
3 buy on July 15 into evidence and permission to publish
4 to the jury.

5 THE COURT: Mr. Floyd?

6 MR. FLOYD: I have no objection, Your Honor.

7 THE COURT: State's 5 is in evidence without
8 objections. You may publish it.

9 MR. STUMBO: Thank you, Your Honor.

10 (State's Exhibit Number 5 is received into
11 evidence).

12 (State's Exhibit Number 5 is played for the
13 jury).

14 MR. STUMBO: Your Honor, if we may approach?

15 THE COURT: Yes, sir.

16 (Whereupon there is a bench conference off the
17 record in the presence of the jury but out of the
18 hearing of the jury).

19 THE COURT: Ms. Broach, if you would please
20 step down from the witness stand and sit on the bench
21 behind the State's table.

22 (Witness leaves the witness stand).

23 THE COURT: Madame Forelady, ladies and
24 gentlemen of the jury, I believe we will break now for
25 our evening recess. The solicitor has a little bit more

1 examination of the witness and then Mr. Floyd's cross
2 examination.

3 So rather than get back into that, I'm not
4 sure how long that will take, we will go on and take our
5 evening recess. Again, I would remind you during this
6 recess, you are not to discuss this case with anyone.
7 That includes your family members, your friends your,
8 fellow jurors or anyone else.

9 As I tell jurors week to week, if your home is
10 anything like my home used to be, when I would get home
11 in the evening, my wife or one of my children would
12 always say, What did you do today, daddy? What did you
13 do today, momma?

14 Of course, the children -- I miss those days.
15 They are not longer at home. They are out of the house.
16 They are off the payroll. They are all doing very
17 well -- pretty much off the payroll.

18 But you can certainly tell your family you
19 have been selected as a juror in the trial of the case,
20 but you cannot discuss the facts of the case, even with
21 your family members.

22 Also, I would doubt there would be any news
23 coverage of this case, but should there be any, you
24 cannot listen to any news reports or watch any news
25 reports or read any news reports about the case, whether

1 on radio or television or otherwise.

2 Also I have been noticing and reading some
3 articles where it appears in other states jurors have
4 began doing investigations on their own on the internet
5 or researching legal terms or such like that.

6 Again, I would advise you, you are not to do
7 any independent research on the internet or any
8 independent investigation on your own. Remember to keep
9 an open mind about the case, and do not begin your
10 deliberations until you are instructed to do so.

11 I would ask you to please be back in your jury
12 room promptly at 9:30 tomorrow, promptly at 9:30 in the
13 morning. Be back promptly at 9:30. You are now excused
14 for the evening. I hope y'all have a pleasant evening.
15 Thank you very much.

16 (The jury is excused for the day at 6:00 p.m.)

17 THE COURT: Ms. Broach, I would remind you
18 that you are still on the witness stand subject to
19 continuing direct and cross examination, perhaps
20 redirect and recross. Having said that, you may not
21 discuss your case with anyone -- excuse me -- you may
22 not discuss your testimony with anyone during this
23 recess.

24 I will also ask you in the morning before we
25 begin if you have discussed that. So please keep that

1. in mind you may not discuss your testimony with anyone
2. during this recess.

3. Mr. Floyd, I am looking at Mr. Middleton's
4. bond. Do you have any position in that matter?

5. MR. FLOYD: Your Honor, we request that Your
6. Honor allow him to go home for the evening. He is
7. having some problems with his catheter. It slipped out.
8. So he does need to get home and take care of that
9. situation. It's my understanding the jail is not really
10. equipped for him. The last time he went to jail, they
11. kept him outside in booking.

12. He has been to court every time he is supposed
13. to have been. He has been here now. We were supposed
14. to try this case last week and he was here. Of course,
15. he has been here this week when they called it again.
16. He assures me that he will be here tomorrow.

17. THE COURT: Solicitor, do you have any
18. position in this matter?

19. MR. STUMBO: Beg the Court's indulgence just
20. briefly.

21. THE COURT: All right.

22. (Pause).

23. MR. STUMBO: Your Honor, the State's position
24. here would be what it always is in these kind of cases,
25. particularly one that involves a confidential informant.

1 We believe that if Mr. Middleton were out tonight, he
2 may have communication with other people he is involved
3 with.

4 Quite honestly, Your Honor, our witness that
5 was on the stand just now could be at risk tonight if he
6 is allowed to be out and have communication with his
7 associates. So our position would be that he remain in
8 custody during the trial.

9 MR. FLOYD: Your Honor, everybody has known
10 the identity of this woman for months. I represent
11 three or four people. They all know who she is. It's
12 nothing new learned here today about her identity.

13 MR. STUMBO: Just as an officer of the Court,
14 Your Honor, I believe Ms. Howard and I both observed
15 this last week when we were going to call this case for
16 trial.

17 It appeared Mr. Middleton was in court with
18 others looking at the entrances and trying to find out
19 who this confidential informant is. Like I said, I
20 don't know if we can prove anything other than we would
21 feel more comfortable if Mr. Middleton were in custody.

22 THE COURT: Mr. Floyd, I am going to revoke
23 his bond. I will take him into custody. That is my
24 habit. I see that he has a \$95,000 surety bond. He is
25 facing -- what is his potential sentence, solicitor?

1 MR. STUMBO: Thirty years, 15 to 30, Your
2 Honor.

3 THE COURT: Fifteen minimum/mandatory?

4 MR. STUMBO: Yes, sir.

5 THE COURT: He is facing a minimum/mandatory
6 of 15 years, up to 30 years. I would like to visit one
7 other issue. I noticed twice this afternoon, primarily
8 I think during the playing of the audiotape, that he
9 appeared to have been, for lack of a better term, kind
10 of laid back in his wheelchair. What is his physical
11 condition and his mental state at this time?

12 MR. FLOYD: Your Honor, that's the spasms that
13 I mentioned to you.

14 THE DEFENDANT: I have to tilt my chair in
15 order to relax.

16 THE COURT: I don't want you to think I am
17 fussing at you at all, Mr. Middleton. I noticed that
18 you had about two that I noticed that appeared to be
19 very brief, less than a minute, perhaps less than 30
20 seconds. I still wanted to make sure that he was
21 mentally alert.

22 Mr. Floyd did not indicate to the Court that
23 he needed to take a break in any manner. I am just
24 asking and was concerned for his condition during those
25 two periods of time when I observed that. But that is

1 the spasms, Mr. Floyd, that you advised the solicitor
2 and the Court of earlier?

3 Is that right, Mr. Middleton?

4 THE DEFENDANT: Right. That's why -- that's
5 me holding the muscle spasms, to keep them --

6 THE COURT: Mr. Floyd, you are going to have
7 to move the microphone closer.

8 THE DEFENDANT: My catheter came off and
9 that's me minimizing the muscle spasms, so I won't come
10 up out my chair and make the whole place smell.

11 THE COURT: Anything further, Mr. Floyd?

12 Sheriff, if y'all would make sure if he needs
13 any medical attention tonight, advise that he gets it.
14 Makes sure he has all his medications. I don't want to
15 end up like I did last time when I sent a gentleman over
16 there that had medications.

17 The next day they bring him over here and
18 somehow the jail decides not to give him his medication.
19 I don't want the jailers to end up in their own jail
20 because they don't take care of Mr. Middleton like we
21 have or like they have a duty to do. Just make sure
22 they get that message.

23 Sheriff, if there are any issues with it, they
24 seem to be able to find me on the weekends any time they
25 need anything signed, so they can find me tonight.

1 Please have him here at -- what time you want him here
2 in the morning, Mr. Floyd?

3 THE DEFENDANT: I'm not thinking about
4 leaving.

5 THE COURT: No, sir, I have already made my
6 decision on that.

7 What time do you want him here in the morning,
8 Mr. Floyd?

9 MR. FLOYD: Your Honor, if we are starting
10 back at 9:30, if he could be here by 9:15.

11 THE COURT: If you will have him here in the
12 morning at 9:15, Sheriff. Anything further?

13 MR. STUMBO: Nothing further from the State,
14 Judge.

15 MR. FLOYD: Judge, can he be here at 8:30?

16 THE COURT: Sheriff, can you have him here at
17 8:30 in the morning..

18 (Whereupon the proceedings are concluded for
19 May 26, 2009).

20 (The following proceedings are reported on
21 May 27, 2009).

22 THE COURT: Did he get any clothes, Mr. Floyd?
23 That may be a different shirt. I can't tell,
24 Mr. Middleton. Quite frankly, I'm not a fashion person.

25 MR. FLOYD: He got some but he didn't have a

1 chance to change.

2 THE COURT: How are you feeling this morning,
3 Mr. Middleton?

4 THE DEFENDANT: So-so.

5 THE COURT: Put the microphone over near for
6 him, Mr. Floyd.

7 THE DEFENDANT: I said so-so.

8 THE COURT: So-so?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Me and you feel about the same
11 then. Well, you let me know if you have any problems or
12 you need to take a break or anything; all right?

13 THE DEFENDANT: All right.

14 THE COURT: Thank you. Anything before we
15 bring in our jury, Mr. Floyd?

16 MR. FLOYD: Nothing I can think of, Your
17 Honor.

18 THE COURT: Madame Clerk, anything before we
19 bring in our jury?

20 CLERK: No, sir.

21 THE COURT: Bring us our jury, Mr. Corley.

22 (The jury returns to the courtroom at
23 10:00 a.m.)

24 THE COURT: Good morning, ladies and gentlemen
25 of the jury panel. I hope you all had a pleasant

1 evening. As I told you at the beginning of the trial,
2 from time to time, there may be matters I have to take
3 up outside of your presence. That is part of the delay
4 this morning it has nothing to do with the tardiness of
5 any of the parties. They were all here early.

6 As a judge told me one time and I learned this
7 lesson very quickly when I was late for court, don't
8 ever be on time for court. I wasn't quite sure what he
9 was saying. I said yes, sir. He said always be early.
10 I learned that lesson, I would say as a young lawyer,
11 but I never was a young lawyer. I was an inexperienced
12 lawyer, but I wasn't a young lawyer.

13 These attorneys were here early. They were
14 present and working, so the delay is not caused by their
15 failure to be present. With that being said, as you
16 recall, we were continuing the trial of the case by the
17 presentation of the direct testimony of Ms. Broach by
18 the solicitor.

19 Ms. Broach, if you would come back around and
20 retake the witness stand for us, please.

21 FRED A MICHELLE BROACH, having
22 been previously duly sworn, resumes the witness stand
23 and testifies as follows:

24 THE COURT: Again, this is part of the State's
25 case in chief. I would ask you to please give the

1 parties your complete and undivided attention as you did
2 throughout the trial of this case yesterday.

3 With that being say, Solicitor, you may
4 proceed.

5 MR. STUMBO: Thank you, Your Honor.

6 THE COURT: You are still under oath, ma'am.

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. STUMBO:

10 Q Ms. Broach, we ended yesterday listening to the
11 audiotape. There was a lot of dead time on that
12 tape when nobody is talking. What are you doing
13 during that time?

14 A Just listening to the radio because it was cut down
15 low and paying attention to where I was going.

16 Q You were in the car?

17 A Yes, sir.

18 Q That was driving to the location?

19 A Yes, sir.

20 Q And after the buy, it was driving back to meet with
21 the deputies?

22 A Yes, sir.

23 Q During that time did you stop and meet with
24 anybody?

25 A No, sir.

1 Q Did you talk to anybody else, other than the
2 deputies?

3 A No, sir.

4 Q I believe there was a ring on your cell phone.

5 A That was my mechanic.

6 Q But you didn't answer the call?

7 A I don't think I did. I think I ignored it.

8 Q How do you know it was your mechanic. Was it on
9 your caller I.D.?

10 A Yes, sir.

11 Q Now, the voices on that tape, on the recording, we
12 heard your voice on there; correct?

13 A Uh-huh. (Indicating affirmative response).

14 Q Now, who was the person who told you that, I trust
15 no one. Who said that?

16 A George.

17 Q The Defendant, George Middleton?

18 A Yes, sir.

19 Q And who was the one on the tape that was discussing
20 with you which rocks you could buy and which ones
21 you couldn't buy?

22 A George Middleton.

23 Q Who was the one on the tape to told you to, hurry
24 back now, after you got done?

25 A George Middleton, I believe.

1 Q Did you carry anything into that house with you at
2 all, other than the money?

3 A No, sir, just myself, other than the equipment I
4 was wearing about my ankle.

5 Q Did you have a pocketbook or anything else?

6 A No, sir.

7 Q You mentioned the wire. Why do you wear the wire
8 around the ankle and put the other one in your bra
9 strap? Is there any significance to those
10 locations?

11 A For protection and so they can get the information
12 they need.

13 Q But as far as having it on your ankle and in your
14 bra, is there any reason why you have it there
15 rather than somewhere else on your body?

16 A Just so no one else knows it's there besides
17 myself.

18 Q I remember you say on the tape, [REDACTED]. It's [REDACTED].
19 You mentioned that several times. Did that
20 surprise you that that was the address? Was there
21 another address you had in mind?

22 A That was the address that he used to have when my
23 George used to go buy from him all the time --

24 MR. FLOYD: Objection, Your Honor, move to
25 have a motion.

1. THE COURT: Madame Forelady, ladies and
2 gentlemen of the jury, if you would step momentarily to
3 your jury room. Do not discuss the case during this
4 brief recess.

5 (The jury retires to the jury room).

6 THE COURT: What was that response to the last
7 question, Madame Court Reporter?

8 COURT REPORTER: Judge, what I have is, That
9 was the address that he used to have when my George used
10 to go by all the time.

11 THE COURT: Mr. Floyd.

12 MR. FLOYD: Thank you, Your Honor. Your
13 Honor, we would move, first of all, for a dismissal for
14 the prosecution bringing in evidence about another crime
15 which, of course would be inadmissible.

16 Alternatively we move for a mistrial as the
17 Defendant -- no way he can get a fair trial now that
18 this witness has said he sold in the past to her
19 husband, which she has already said he was a drug user
20 and a drug dealer.

21 THE COURT: Thank you. Solicitor.

22 MR. STUMBO: Your Honor, I think the way the
23 response was given, certainly we didn't elicit that. I
24 can strike that last question and reask it to get a more
25 specific answer, although I don't think the jury

1 necessarily would take that as he went to buy in the
2 past. It could be B-Y or B-U-Y.

3 THE COURT: What was the question, Solicitor?

4 MR. STUMBO: The question, Your Honor, was
5 trying to hone in on the specific address. She had
6 said -- at the beginning of the tape, Detective Kirkland
7 indicates there was going to be a buy at [REDACTED]
8 [REDACTED].

9 Several times on the audiotape when Ms. Broach
10 drives towards the house, she says it's [REDACTED]. It's [REDACTED].
11 It ultimately is a different address than she originally
12 was going to go to. My intent of the question, Your
13 Honor, was to clarify essentially why there was a change
14 and why there was a discrepancy in those two house
15 numbers.

16 THE COURT: Thank you. Anything in response,
17 Mr. Floyd?

18 MR. FLOYD: Only, Your Honor, that I don't see
19 that there is any way to cure it with any kind of
20 instruction. The jury is certainly left with the
21 impression that the reason she knew where he was, her
22 husband used to go buy his dope there.

23 THE COURT: Yes, sir. I am going to deny your
24 motion for dismissal. I am also going to deny your
25 motion for a mistrial. A mistrial is only appropriate

1 in the most unique set of factual circumstances.

2 During the course of the trial as I understand
3 her response was, That was the address my George would
4 go by all the time. I take that as there is no
5 indication, as you argue to the Court, that that is to
6 go by to buy dope or to buy drugs.

7 I don't see that at all, particularly given
8 the context in which the question was asked, being [REDACTED]
9 Austin Court versus [REDACTED] Austin Court. So I do not see
10 the prejudice to the Defendant in that regard for the
11 attempt to clarify the conflict between those two
12 addresses.

13 Now, do you have any further motion,
14 Mr. Floyd?

15 MR. FLOYD: Your Honor, I am not going to
16 argue with Your Honor's ruling. I don't understand how
17 we can avoid the impression the jury has that what she
18 just said was she knew the address and she knew the
19 place because her husband used to go buy dope.

20 THE COURT: She did not say he used to go buy
21 drugs there. You are mischaracterizing that. We can
22 have the court reporter play it back. Please play it
23 back, Madame Court Reporter.

24 COURT REPORTER: After listening to it, Judge,
25 the answer is, That was the address that he used to have

1 when my George used to go buy from him all the time. I
2 will play it from the backup tape.

3 (The question and answer are replayed).

4 THE COURT: Anything further, Solicitor,
5 Mr. Floyd?

6 MR. STUMBO: Your Honor, just to add to this
7 from what I heard on the tape, I would be glad, Your
8 Honor, if you instruct the jury that the last question
9 and answer be stricken.

10 I would be glad to rephrase that question to
11 hone it in more specifically. I think the objection is
12 hearsay. She is saying that's where George went to buy
13 all the time.

14 THE COURT: I don't think that is the
15 objection at all. I am going to grant the motion for a
16 mistrial. I think there is a manifest necessity. I
17 think the two words which I did not write down was,
18 That's where my George would go by, the address he would
19 go by, and buy from him all the time.

20 I took it as a preposition and not as a verb.
21 It appears to be a verb. It's clearly not admissible.
22 It clearly goes to the heart of a fair trial for this
23 the Defendant and would prejudice this Defendant.

24 I think it's very easy to connect the dots
25 back to Mr. George Corley and his use and misuse of

1 drugs and going by Austin Court. I am going to grant
2 the Defendant's motion for a mistrial.

3 That being said, when is the jury calling
4 back, Madame Clerk?

5 CLERK: After six tonight, Your Honor.

6 THE COURT: The jury is calling back after
7 6:00 p.m. tonight. I have to sit with the Supreme Court
8 in the morning. I would be glad to be back and select
9 another jury tomorrow afternoon at 2:00 o'clock if the
10 State chooses to do that.

11 Do you have any objections to that, Mr. Floyd?

12 MR. FLOYD: Yes, Your Honor. I think I would
13 be prejudiced by going back in front of another jury.
14 They may figure out what is going on in this case. This
15 man has been to trial and now we have got to get another
16 jury.

17 THE COURT: It might be to your advantage,
18 Mr. Floyd.

19 MR. FLOYD: Sir?

20 THE COURT: It might be to your advantage,
21 Mr. Floyd.

22 MR. FLOYD: I think he would be entitled to a
23 new jury panel.

24 THE COURT: He would be getting a new jury
25 panel.

1 MR. FLOYD: Well, I don't know if we have any
2 way of assuring that whatever we have had transpire in
3 this case would not in some way be transmitted to any
4 potential jury panel.

5 MR. STUMBO: Your Honor, I believe these 13
6 jurors were excused from the next panel. Obviously the
7 rest of the jury pool has not heard anything about this
8 case yet. I don't think it would affect it at all.

9 MR. FLOYD: I think he would be entitled --

10 THE COURT: I cannot hear you, Mr. Floyd. I
11 apologize.

12 MR. FLOYD: I think he would be entitled to
13 the entire jury panel for his selection process.

14 THE COURT: Thank you very much, Ms. Broach.
15 You may step down.

16 (Witness leaves the witness stand).

17 THE COURT: Bring us our jury please,
18 Mr. Bailiff.

19 (The jury returns to the courtroom).

20 THE COURT: Ladies and gentlemen of the jury
21 panel, because of certain rulings of the Court, your
22 participation in the trial of this case will not be
23 needed any further.

24 I am going to momentarily release you from
25 your jury service for the remainder of the day and the

1 remainder of the week. Thank you very much for your
2 patience and your attention this week and your hard work
3 in moving towards the resolution of this case between
4 the parties.

5 As I have stated to you, based on rulings of
6 the Court, your participation would no longer be needed.
7 Again, with that being said, you are now excused from
8 your jury service. I thank you for your participation
9 this week.

10 You do not have to call back. I guess that is
11 the good news. You do not have to come back for the
12 remainder of the week. You have protection from jury
13 service for the remainder of this calendar year as far
14 as State circuit court of record. With that being said,
15 the bailiffs will have you leave your buttons on the
16 shelf, and you are now excused.

17 (The jury is excused).

18 THE COURT: If I could see the attorneys in my
19 chambers, please.

20 (Whereupon there is a recess).

21 THE COURT: Where are we at, Solicitor,
22 Mr. Floyd?

23 MR. STUMBO: Your Honor, the State intends to
24 call this case for trial again tomorrow when we have a
25 jury panel at 2:00 o'clock. We will strike another jury

1 and try this case.

2 We just wanted to put the Defendant on notice
3 of that at this time, and we would ask Your Honor to
4 instruct the Defendant of that, that he is on notice.
5 We intend to proceed and we would you ask Your Honor if
6 he doesn't show back up tomorrow, we can proceed in his
7 absence to trial.

8 THE COURT: Thank you, Solicitor. Mr. Floyd.

9 MR. FLOYD: Judge, this man has always been
10 here whenever he is supposed to be here. I don't expect
11 him not to be here tomorrow. Of course, we will be
12 arguing some motions tomorrow as to whether or not he
13 should be tried again so quickly with the same panel,
14 but if we are required to be here, we will be here.

15 THE COURT: Well, I don't control the docket.
16 If the solicitor intends to call the case for trial at
17 2:00 o'clock tomorrow afternoon, Mr. Middleton's
18 presence is required. Should he fail to appear at the
19 call of the case for trial, the solicitor may proceed in
20 his absence.

21 Do you understand that, Mr. Middleton?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. You understand you
24 need to be back here at 2:00 o'clock tomorrow, which I
25 believe is the 28th of May of 2009. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Any questions?

5 THE DEFENDANT: No.

6 THE COURT: Anything further, Mr. Floyd?

7 MR. FLOYD: No, Your Honor.

8 THE COURT: Solicitor.

9 MR. STUMBO: Nothing further, Your Honor.

10 (Whereupon the proceedings are concluded for
11 May 27, 2009).

12 (The following proceedings are reported on
13 May 28, 2009).

14 THE COURT: Ladies and gentlemen of the jury
15 panel, we are waiting on the Defendant to arrive. He is
16 en route. His attorney has spoken with him. He has
17 also spoken with his client's family, and perhaps the
18 traffic is what has delayed him. I want to give him a
19 few minutes to see if he arrives. Please do not hold
20 that against the Defendant in any manner for his brief
21 delay.

22 (Pause).

23 THE COURT: Solicitor, you may call your case
24 for trial.

25 MS. HOWARD: Your Honor, the State calls

1 indictment Number 2008-GS-32-2898, the State of South
2 Carolina versus George Thomas Middleton, indictment for
3 distribution of crack cocaine.

4 (Hands to Court).

5 THE COURT: Thank you. Ladies and gentlemen
6 of the jury panel, if you would please give me your
7 complete and undivided attention. We are now going to
8 begin a process to qualify jurors to sit as fair and
9 impartial jurors during the trial of this case.

10 I would ask you to please consider yourselves
11 still under oath for purposes of this proceeding. I
12 will further advise, I know that you were all present
13 Tuesday when we selected jurors for the trial of this
14 same case.

15 If you are not familiar, I am sure all of you
16 are with the term starting from scratch, it is a
17 historical term that goes back into sporting, goes back
18 into boxing and cricket. Basically it's starting over
19 at the beginning. The reason for this has to do with
20 the prior jury panel that was selected.

21 Because of issues with that particular
22 panel -- it had nothing to do with any of the parties,
23 either the State nor the Defendant -- we have to start
24 from scratch.

25 In doing so I will ask you many of the same

1 questions and perhaps ask you some follow-up questions
2 also. Again, in that regard I remind you that you are
3 still under oath, and I would further advise that your
4 responses please be complete and accurate responses.

5 The State is represented by Assistant
6 Solicitor Howard and Stumbo. If y'all would please
7 stand and introduce yourselves to the jury panel.

8 MS. HOWARD: Good afternoon. My name is Emily
9 Howard. I am an assistant solicitor here in Lexington
10 County.

11 MR. STUMBO: I'm David Stumbo. I also
12 represent the Solicitor's Office in Lexington County.
13 Good afternoon.

14 THE COURT: Thank you, Solicitors. The
15 Defendant is represented by Mr. Wayne Floyd of the
16 Lexington County bar.

17 Mr. Floyd, if you would please stand and
18 introduce yourself and your client to the jury panel.

19 MR. FLOYD: Thank you, Your Honor. My name is
20 Wayne Floyd. I practice law on Highway 1 in West
21 Columbia, and next to me is the Defendant, Mr. George
22 Middleton.

23 THE COURT: Thank you. Thank you very much,
24 Mr. Floyd. Thank you, Mr. Middleton.

25 Is any member of the jury panel related by

1 blood or marriage or close personal friends of either
2 Assistant Solicitor Howard or Stumbo or any employee of
3 the Lexington County Solicitor's Office? If so, please
4 stand.

5 (There is no response).

6 THE COURT: Is any member of the jury panel
7 related by blood or marriage or close personal friends
8 of the defense attorney in this case, Mr. Wayne Floyd?
9 If so, please stand.

10 (There is no response).

11 THE COURT: Has any member of the jury panel
12 been represented by -- either you, your immediate family
13 or close personal friend -- been represented by either
14 Assistant Solicitor Howard, Stumbo or Mr. Floyd? If so,
15 please stand.

16 (Juror stands).

17 THE COURT: I recall this is Ms. Wright?

18 PROSPECTIVE JUROR: Right.

19 THE COURT: Your number?

20 PROSPECTIVE JUROR: One-eighty-five.

21 THE COURT: One-eighty-five. Refresh our
22 memory, Ms. Wright.

23 MR. FLOYD: It was my ex-husband that
24 Mr. Floyd represented.

25 THE COURT: The fact that your ex-husband was

1 represented by Mr. Floyd, could you still be a fair and
2 impartial juror to both the State and the defense in
3 this case?

4 PROSPECTIVE JUROR: Yes, Your Honor.

5 THE COURT: Thank you very much. You may be
6 seated.

7 (Juror stands).

8 THE COURT: Yes, sir, your number and name,
9 please?

10 PROSPECTIVE JUROR: One-seventy, Robert Watts.
11 I just found out yesterday afternoon that Mr. Floyd
12 represents three of my cousins I was notified.

13 THE COURT: He is currently representing them?

14 PROSPECTIVE JUROR: Two of them, yes.

15 THE COURT: And you didn't know that Tuesday,
16 but you found that out since Tuesday?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: The fact that you found that
19 information out and it is correct and accurate
20 information, could you still be a fair and impartial
21 juror to both the State and the defense?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you. You may be seated. I
24 will set you aside for the trial of this case. Thank
25 you very much. Any others?

1 (There is no response).

2 THE COURT: I am going to publish or read the
3 indictment to you. The purposes of doing this is to ask
4 you a series of questions. Again, the indictment is a
5 notice document. It is the formal document by which an
6 individual is placed on notice of the charges that have
7 been brought against him or her. It contains
8 allegations. These are mere allegations. They are not
9 evidence of any of the facts that may be alleged
10 therein.

11 Indictment Number 08-GS-32-2898 reads that on
12 July 15, 2008, the Defendant, George Middleton, did
13 distribute a quantity of crack cocaine to an undercover
14 operative of law enforcement.

15 This incident took place at [REDACTED] Austin Court
16 in the Pelion area of Lexington County, South Carolina.
17 This transaction was monitored and recorded by law
18 enforcement and constitutes a violation under the
19 provisions of 44-53-110 and 44-53-375 (b) of the Code of
20 Laws of South Carolina. That is an indictment for
21 distribution of crack cocaine.

22 Does any member of the jury panel have any
23 knowledge about the facts of this case? If so, please
24 stand.

25 (There is no response).

1 THE COURT: Does any member of the jury panel
2 have any bias or prejudice towards the parties or the
3 subject matter involved in the case? If so, please
4 stand.

5 (There is no response).

6 THE COURT: Again, the --

7 (Juror stands).

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR: It's the same one I had
10 Tuesday, but I think I could be impartial.

11 THE COURT: Tell me your name and number, sir.

12 PROSPECTIVE JUROR: Ken Kennerly, 82.

13 THE COURT: This is the gentleman that works
14 at the V.A.?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: As a psychologist.

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: The fact that you are so employed,
19 could you still be a fair and impartial juror to both
20 the State and the defense?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you, sir. You may be
23 seated.

24 Any others?

25 (There is no response).

1 THE COURT: Has any member of the jury panel
2 heard or know anything about the case from any source
3 whatsoever? If so, please stand.

4 (Juror stands).

5 THE COURT: Yes, ma'am, your name and number?

6 PROSPECTIVE JUROR: My number is 162. My name
7 is Vickie Finley Swygert.

8 THE COURT: If you would come forward, please,
9 ma'am.

10 (The following bench conference with the
11 Court, counsel, and the juror is reported).

12 THE COURT: Tell me your number and name.

13 PROSPECTIVE JUROR: Number 162, Vickie Finley
14 Swygert. I just heard a rumor since I have been in the
15 courtroom. All that is the rumor about the prior panel,
16 and I just want to make sure if I should divulge that or
17 not.

18 THE COURT: Yes, ma'am, tell me what you have
19 heard.

20 PROSPECTIVE JUROR: I have heard that one of
21 the jurors was approached, like jury tampering, and
22 offered money.

23 THE COURT: Who did you hear that from?

24 PROSPECTIVE JUROR: The lady sitting next to
25 me. She said it was a rumor.

1 THE COURT: Do you know who that lady is
2 sitting next to you?

3 PROSPECTIVE JUROR: I do not, and she shared
4 it with the people on the other side of her, too.

5 THE COURT: The fact that you heard that --
6 did you repeat it to anybody?

7 PROSPECTIVE JUROR: No.

8 THE COURT: The fact that you heard that
9 rumor, could you still be a fair and impartial juror to
10 both the State and the defense?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: This is Ms. Swygert?

13 PROSPECTIVE JUROR: Yes.

14 (The following is announced in open court).

15 THE COURT: Would that young lady sitting next
16 to Ms. Swygert come forward for me, please.

17 (The bench conference is continued).

18 THE COURT: Thank you, Ms. Swygert. You may
19 stay with us. You may go back and have your seat. Do
20 not say anything to your fellow jurors. Thank you.

21 (The juror leaves the bench, and a bench
22 conference with the next juror is reported as follows).

23 THE COURT: Good afternoon. How are you,
24 ma'am? Can you tell me your name and name.

25 PROSPECTIVE JUROR: Sherry Hooker, 71.

1 THE COURT: Ms. Hooker, did you hear a rumor
2 about this case?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: And what rumor did you hear?

5 PROSPECTIVE JUROR: A friend of his tried to
6 buy one of the jurors.

7 THE COURT: Who did you hear this from?

8 PROSPECTIVE JUROR: It was going around in the
9 Citgo.

10 THE COURT: Say again.

11 PROSPECTIVE JUROR: People talking in the
12 Citgo in Pelion.

13 THE COURT: People talking in the Citgo in
14 Pelion? Is the Citgo in front of Shumpert's store?

15 PROSPECTIVE JUROR: No, the Citgo is before
16 you get into Pelion.

17 THE COURT: I know where you are talking
18 about.

19 PROSPECTIVE JUROR: The one with the peanut
20 sign.

21 THE COURT: I know exactly where you are
22 talking about. I wasn't sure what gas station was there
23 at Shumpert's. Were any of those people that were
24 talking at that Citgo any jurors?

25 PROSPECTIVE JUROR: No, I wasn't in the store.

1 I was in the car. My boyfriend went in.

2 THE COURT: So you actually heard it from your
3 boyfriend?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Who heard it at the Citgo?

6 PROSPECTIVE JUROR: In the store.

7 THE COURT: In the store. Have you repeated
8 that to anybody? I'm not fussing at you. I want to
9 find out. Have you repeated that to anyone?

10 PROSPECTIVE JUROR: I talked to the person
11 sitting beside me.

12 THE COURT: Ms. Swygert, the lady who just sat
13 back down?

14 PROSPECTIVE JUROR: It was the guy sitting
15 beside me. She heard us talking.

16 THE COURT: So you spoke to the gentleman next
17 to you?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And to Ms. Swygert?

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: You didn't know her name.

22 PROSPECTIVE JUROR: No, I didn't. She just
23 asked what had we heard.

24 THE COURT: I am going to set you aside for
25 the trial of this case. I will ask you, please --

1 (The following is announced in open court).

2 THE COURT: Sheriff, I want Ms. Hooker to be
3 able to sit on the front right, outside of the gate.
4 All right.

5 Also, Ms. Swygert, if you would come sit over
6 there also for me, please.

7 (The bench conference is continued).

8 Which gentleman was it?

9 PROSPECTIVE JUROR: The one next to me.

10 (The following is announced in open court).

11 THE COURT: Would the gentlemen that was
12 sitting next to this young lady come forward for me,
13 please.

14 (The juror leaves the bench, and a bench
15 conference with the next juror is reported as follows).

16 THE COURT: Good afternoon. How are you, sir?

17 PROSPECTIVE JUROR: Fine.

18 THE COURT: Tell me your number and name, sir.

19 PROSPECTIVE JUROR: One-fifty-eight, Thomas
20 Stafford.

21 THE COURT: Mr. Stafford, did this young lady
22 I just spoke to you, Ms. Hooker, say anything to you
23 about the case?

24 PROSPECTIVE JUROR: She mentioned to me that
25 she had heard, I guess yesterday, that there had been

1 some tainting of the jury.

2 THE COURT: Have you repeated that to anybody?

3 PROSPECTIVE JUROR: Probably the gentleman who
4 was sitting next to me.

5 THE COURT: We will keep going. That's no
6 problem. I volunteered for this. It's not a problem at
7 all. I will set you aside for the trial of this case.
8 You only said something to the gentleman next to you?

9 PROSPECTIVE JUROR: Yes, that is correct.

10 THE COURT: I will ask you if you would sit up
11 here also.

12 PROSPECTIVE JUROR: There may have been others
13 that heard. That's the only one where we had any
14 conversation.

15 THE COURT: Thank you very much.

16 (The following is announced in open court).

17 THE COURT: Will the gentleman that was
18 sitting next to this gentleman, come forward for me,
19 please.

20 (The juror leaves the bench, and a bench
21 conference with the next juror is reported as follows).

22 THE COURT: Your name and number, please, sir?

23 PROSPECTIVE JUROR: One-zero-nine, McKensie.

24 THE COURT: Mr. McKensie, have you heard
25 anything about this case?

1 PROSPECTIVE JUROR: I did overhear a
2 conversation.

3 THE COURT: And that was the conversation
4 between?

5 PROSPECTIVE JUROR: The gentleman to my right
6 and the lady.

7 THE COURT: That's the gentleman I just talked
8 to?

9 PROSPECTIVE JUROR: On the same side.

10 THE COURT: And that was what number, Madame
11 Clerk? What juror number?

12 CLERK: One-fifty-eight?

13 THE COURT: Did you repeat that to anyone?

14 PROSPECTIVE JUROR: No, I was sitting on the
15 end.

16 THE COURT: Having heard that, I am going to
17 set you aside for the trial of this case.

18 PROSPECTIVE JUROR: I understand.

19 THE COURT: I will ask if you would please sit
20 on the end next to Mr. Stafford. Thank you very much,
21 Mr. McKensie.

22 (Juror stands).

23 PROSPECTIVE JUROR: Your Honor, before you sit
24 back down.

25 THE COURT: Yes, ma'am, if you would come up

1 here for me, please.

2 (Whereupon a bench conference with the Court,
3 counsel, and the juror is reported as follows).

4 PROSPECTIVE JUROR: I wanted to save you a
5 trip.

6 THE COURT: Tell me your number and name.

7 PROSPECTIVE JUROR: Number 48, Lynn Fallaw.

8 Let's see, Monday night I became aware that my husband
9 and the officer -- my husband is the Chief of Police in
10 North.

11 THE COURT: That's right.

12 PROSPECTIVE JUROR: And the officer have been
13 working on some cases together. I don't personally know
14 the officer.

15 THE COURT: When you say Monday night, was it
16 Tuesday?

17 PROSPECTIVE JUROR: I'm sorry, Tuesday night.
18 It was the first day.

19 THE COURT: I believe you are the young lady
20 who retired from the Criminal Justice Academy?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: The fact that you learned that
23 from your husband Tuesday night -- who was that officer?

24 PROSPECTIVE JUROR: Kirkland.

25 THE COURT: Kirkland. Could you still be a

1 fair and impartial juror?

2 PROSPECTIVE JUROR: I can, Your Honor.

3 However, I do want to put on the record that there was
4 some slight discussion about this case, so I would ask
5 to be excused from this case.

6 THE COURT: Tell me about the slight
7 discussion.

8 PROSPECTIVE JUROR: All that is that there was
9 a recent call because the Defendant has some medical
10 issues. I am trying to think if there is anything --
11 nothing other than what was written in the indictment
12 originally that was read in open court Tuesday.

13 THE COURT: Who was this discussion among?

14 PROSPECTIVE JUROR: I'm sorry?

15 THE COURT: Who was this discussion with?

16 PROSPECTIVE JUROR: My husband and myself
17 Tuesday night.

18 THE COURT: Not you and any of the other
19 jurors?

20 PROSPECTIVE JUROR: Now, when I got into court
21 this afternoon, people were asking questions, general
22 questions: I wonder what happened. I told the two
23 gentleman to my left that I had heard the Defendant had
24 some medical issues and that court had to be recessed.

25 THE COURT: The two gentleman?

1 PROSPECTIVE JUROR: To my left.

2 THE COURT: Anyone else?

3 PROSPECTIVE JUROR: I don't know if anybody
4 else heard that.

5 THE COURT: I will set you aside, Ms. Fallaw,
6 for the trial of this case. If you will sit with our
7 gentleman over here to the front right.

8 (The following is announced in open court).

9 THE COURT: Sir, in the blue shirt, would you
10 come forward for me.

11 (The juror leaves the bench, and a bench
12 conference with the next juror is reported as follows).

13 THE COURT: Good afternoon. Tell me your
14 name.

15 PROSPECTIVE JUROR: Larry Love, 187.

16 THE COURT: Have you heard anything about the
17 case since you have been here today?

18 PROSPECTIVE JUROR: I heard her talking about
19 it and just said that they offered him like seven years
20 and he didn't take it. That's all I know.

21 THE COURT: I will set you aside for the trial
22 of this case. Do not say anything to any of your fellow
23 jurors. If you would sit to my front right.

24 (The juror leaves the bench and the following
25 is reported).

1 MR. FLOYD: How would he know about seven
2 years?

3 MR. STUMBO: We didn't offer that.
4 (Juror stands).

5 THE COURT: Yes, sir, come forward, please.
6 (Whereupon a bench conference with the Court,
7 counsel, and the juror is reported as follows).

8 THE COURT: Good afternoon. How are you, sir?

9 PROSPECTIVE JUROR: Pretty good.

10 THE COURT: Tell me your number and name.

11 PROSPECTIVE JUROR: Number 7, Larry Jacobs.

12 THE COURT: Have you heard anything about the
13 case since you have been here today?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: What did you hear?

16 PROSPECTIVE JUROR: That he could have got
17 seven years if he pleaded guilty. If he didn't, I think
18 it was 15.

19 THE COURT: Who did you hear that from?

20 PROSPECTIVE JUROR: The young lady.

21 THE COURT: Did you repeat that to anyone?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: I will set you aside for the trial
24 of the case. If you would sit over here to my front
25 right.

1 (Whereupon the bench conference is concluded).

2 THE COURT: I will try to make it back to the
3 bench.

4 The jury panel to my front left -- and again
5 please remember that you are under oath and I do need
6 your responses to be full and complete and accurate. Is
7 there any member of the jury panel that has heard
8 anything, any rumors or otherwise, about the case? If
9 so, please stand.

10 (Juror stands).

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: If you would come forward for me,
13 please. Any others?

14 (There is no response).

15 THE COURT: As I say, that's whether you heard
16 it by way of rumor today or since Tuesday, anything at
17 all. If so, please stand.

18 (Jurors stand).

19 THE COURT: Thank you. If y'all would please
20 come forward for me.

21 Mr. Bailiff, if you would please line these up
22 for me.

23 (Whereupon a bench conference with the Court,
24 counsel, and the juror is reported as follows).

25 BAILIFF: Juror 112.

1 THE COURT: Yes, ma'am, your number and name?

2 PROSPECTIVE JUROR: One-twelve, Martha Mims.

3 THE COURT: Tell me your situation.

4 PROSPECTIVE JUROR: When I sat down, I heard
5 some people talking behind me, and they talked for a few
6 minutes. I said, What is it? We thought it was over
7 with. They said they had heard that someone tried to
8 buy one of the jurors in the case.

9 THE COURT: There's absolutely nothing wrong
10 with hearing things. I will set you aside for the trial
11 of this case. I will ask you to have a seat on the
12 front right.

13 PROSPECTIVE JUROR: My pocketbook is over
14 there? Can I get that?

15 THE COURT: Yes, ma'am.

16 (The juror leaves the bench, and a bench
17 conference with the next juror is reported as follows).

18 BAILIFF: Juror 119, Your Honor.

19 THE COURT: Yes, sir, your number and name,
20 please?

21 PROSPECTIVE JUROR: Terry Oldaker, 119.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: I was just sitting on the
24 bench before court and that lady over there had her head
25 down and just mentioned that one of the Defendant's

1 friends had paid one of the jurors.

2 THE COURT: Did you say anything about this to
3 anyone?

4 PROSPECTIVE JUROR: No.

5 THE COURT: I will set you aside for the trial
6 of this case.

7 PROSPECTIVE JUROR: I said something to the
8 people behind me.

9 THE COURT: That are coming up now?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: I will ask you to please sit on
12 the front right. Thank you.

13 (The juror leaves the bench, and a bench
14 conference with the next juror is reported as follows).

15 THE COURT: Yes, sir, your number and name,
16 please?

17 BAILIFF: Juror 104.

18 THE COURT: Good afternoon. How are you, sir?

19 PROSPECTIVE JUROR: Fine.

20 THE COURT: Your last name?

21 PROSPECTIVE JUROR: Maynor.

22 THE COURT: Tell me your situation.

23 PROSPECTIVE JUROR: I just heard the guy that
24 just left speaking about the case, about a thousand
25 dollars.

1 THE COURT: Did you repeat this to anyone?

2 PROSPECTIVE JUROR: No, sir, he was telling me
3 and the people sitting beside me.

4 THE COURT: I will excuse you from the trial
5 of this case. I will ask you to have a seat in the
6 front row. Thank you.

7 (The juror leaves the bench, and a bench
8 conference with the next juror is reported as follows).

9 BAILIFF: Juror 164, Your Honor.

10 THE COURT: Your number and name?

11 PROSPECTIVE JUROR: Gary Taylor, 164.

12 THE COURT: Tell me your situation.

13 PROSPECTIVE JUROR: I just overheard that
14 there was one of the friends of the Defendant that had
15 possibly tried to bribe the jurors.

16 THE COURT: I am going to excuse you from the
17 trial of the case and ask you to please go have a seat
18 on the front right next to the gentleman in the red
19 shirt.

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Thank you, sir.

22 (The juror leaves the bench, and a bench
23 conference with the next juror is reported as follows).

24 BAILIFF: Juror 124, Your Honor.

25 THE COURT: Your name?

1 PROSPECTIVE JUROR: Pam Pendleton.

2 THE COURT: Ms. Pendleton, your situation?

3 PROSPECTIVE JUROR: Terrance, the U.S.C. Aiken
4 baseball player, had heard that the Defendant tried to
5 pay a thousand dollars to a juror.

6 THE COURT: Who is Terrance?

7 PROSPECTIVE JUROR: The one in the red shirt
8 on the first row.

9 THE COURT: That I have already talked to?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Thank you very much. I will set
12 you aside for the trial of this case. If you would have
13 a seat on the front right. Thank you very much.

14 (Whereupon the bench conference is concluded).

15 THE COURT: I will ask again, is there any
16 member of the jury panel that has heard or knows
17 anything about the case from any source whatsoever? If
18 so, please stand.

19 (There is no response).

20 THE COURT: Of course, the record would
21 reflect that no one now stands. I am assuming that all
22 the members of the jury panel remaining on the front
23 left side have heard nothing about the case from any
24 source whatsoever, including any rumors, since you have
25 been in the courtroom today. If you have, please stand.

1 (There is no response).

2 THE COURT: I will call a list of potential
3 witnesses in the trial of this case. If any of them are
4 present, I would ask them to please stand and face the
5 jury panel when your names are called.

6 First, we have Detective Eric Kirkland,
7 Lexington County Sheriff's Department. This is
8 Mr. Kirkland to my front right. Thank you, Detective
9 Kirkland.

10 Agent Todd Strange, State Law Enforcement
11 Division to my front right. Thank you, Agent Strange.
12 Beth Harmon, Candy Kyzer, and Emily Wilson, all with the
13 Lexington County Sheriff's Department. They are not
14 present in the courtroom at this time. And Freda,
15 F-R-E-D-A, Broach, B-R-O-A-C-H.

16 Is any member of the jury panel related by
17 blood or marriage or close personal friends with any of
18 those individuals whose names I just called and/or who
19 stood before you? If so, please stand.

20 (There is no response).

21 THE COURT: Any additional requested voir dire
22 from the State?

23 MS. HOWARD: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. FLOYD: Your Honor, may we approach a

1 moment?

2 THE COURT: Yes, sir.

3 (Whereupon there was a bench conference off
4 the record in the presence of the jury panel but out of
5 the hearing of the jury panel).

6 THE COURT: Thank you Solicitor, Mr. Floyd.

7 Ladies and gentlemen of the jury panel, given
8 the fact that you are aware that the case was called for
9 trial earlier in the week, and we went through this
10 process earlier in the week, I believe on Tuesday, and
11 the fact that we are going through this process again on
12 Thursday, given that fact, is there any member of the
13 jury panel that feels like he or she could not be a fair
14 and impartial juror given the fact that the case was
15 called for trial twice in the same week, being a fair
16 and impartial juror to both the State and the defense?
17 If so, please stand.

18 (There is no response).

19 THE COURT: Does any member of the jury
20 panel -- you know yourselves. You know your own hearts.
21 Does any member of the jury panel know any reason
22 whatsoever why you feel like you could not be a fair and
23 impartial juror in the trial of this case for both the
24 defense and the State? If so, please stand.

25 (There is no response).

1 THE COURT: As to my last two questions, let
2 the record reflect that no juror stands or responds.

3 MR. FLOYD: Your Honor, may we approach with a
4 suggested follow up.

5 THE COURT: Certainly.

6 (Whereupon there was a bench conference off
7 the record in the presence of the jury panel but out of
8 the hearing of the jury panel).

9 THE COURT: Ladies and gentlemen of the jury
10 panel, cases are decided in court based on what is heard
11 in court, based on fair and impartial jurors using their
12 common sense and good judgment, listening to the
13 evidence, listening to the witnesses testifying under
14 oath and any exhibits placed in evidence, listening to
15 the attorneys, determining the credibility of witnesses,
16 following the law as the judge tells you the law is, and
17 making your decision based on what you hear in this
18 courtroom.

19 With that being said, is there any member of
20 the jury panel that has formed or expressed any opinion
21 as to whether or not the Defendant is guilty or not
22 guilty at this time? If so, please stand.

23 (There is no response).

24 THE COURT: Is there any member of the jury
25 panel that has formed or expressed any opinion about the

1 guilt or innocence of the Defendant based on the fact
2 that we are going through the process of selecting
3 another jury in the trial of this case during this
4 week's term of court? If so, please stand.

5 (There is no response).

6 THE COURT: Let the record reflect as to the
7 last two questions asked of the jurors, no one responds
8 and no one stands.

9 Ultimately, ladies and gentlemen of the jury
10 panel, in this and all cases, the ultimate inquiry, the
11 ultimate question -- not the only question but the
12 ultimate question -- is whether or not jurors that are
13 in the panel and that are selected from the panel are
14 unbiased and whether or not those jurors are impartial.

15 Is there any member of the jury panel that has
16 any reason whatsoever to feel like they could not be an
17 unbiased and impartial juror in the trial of this case
18 for the Defendant and for the State? If so, please
19 stand.

20 (There is no response).

21 THE COURT: Let the record reflect no one
22 stands. Again, Solicitor, Mr. Floyd, any additional
23 requested voir dire?

24 MS. HOWARD: None from the State, Your Honor.

25 MR. FLOYD: Your Honor, the question I asked

1 when we went up earlier.

2 THE COURT: I may not remember it. If you
3 would come forward for me, please, Mr. Floyd.

4 (Whereupon there was a bench conference off
5 the record in the presence of the jury panel but out of
6 the hearing of the jury panel).

7 THE COURT: Madame Clerk, do you have the
8 juror numbers of those jurors that are on the front
9 right? Do you have all those numbers?

10 CLERK: All but the one in the very corner. I
11 did not get his, the guy in the blue shirt.

12 THE COURT: The gentleman in the blue shirt,
13 your number, sir?

14 PROSPECTIVE JUROR: One-eighty-seven.

15 THE COURT: Do you have the others?

16 CLERK: Yes, sir.

17 THE COURT: How many do you have that I set
18 aside?

19 CLERK: I did not write it down but I do have
20 them out. I didn't keep records of it.

21 MR. FLOYD: I think there were 12, judge.

22 THE COURT: You have those jurors to my front
23 right out of the box or computer as it is now?

24 CLERK: Yes, sir.

25 THE COURT: If you would give us a jury,

1 Madame Clerk.

2 CLERK: Yes, but I am having some computer
3 issues. I will try to get it as quickly as possible.

4 THE COURT: The clerk has some computer
5 issues. She will get that clarified momentarily.

6 (Pause).

7 MR. FLOYD: Your Honor, before we call them,
8 may I approach the bench?

9 THE COURT: Yes, sir.

10 (Whereupon there was a bench conference off
11 the record in the presence of the jury panel but out of
12 the hearing of the jury panel).

13 THE COURT: Ladies and gentlemen, if your name
14 is called, if you would please gather up your personal
15 items and come to the podium that is in front of my
16 bench. If you would stand on the other side of the
17 podium, face out toward your peers, and wait for further
18 instructions from the clerk.

19 With that being said, Madame Clerk, if you
20 would give us a jury panel. The strikes are five and
21 five.

22 CLERK: Number 17, Larry D. Brigman.

23 (The juror, a white male, comes forward).

24 CLERK: What say you for the State?

25 MS. HOWARD: Please present the juror.

1 CLERK: What say you for the defense?
2 MR. FLOYD: Excuse Mr. Brigman, please.
3 CLERK: Return to your seat, please, sir.
4 Number 37. James S. Dicker.
5 (The juror, a white male, comes forward).
6 CLERK: What say you for the State?
7 MS. HOWARD: Please present the juror.
8 CLERK: What say you for the defense?
9 MR. FLOYD: Excuse Mr. Dicker, please.
10 CLERK: Return to your seat, please, sir.
11 Number 52, Madeline L. Fogg.
12 (The juror, a white female, comes forward).
13 CLERK: What say you for the State?
14 MS. HOWARD: Please present the juror.
15 CLERK: What say you for the defense?
16 MR. FLOYD: Seat Ms. Fogg, please.
17 CLERK: Have a seat in the jury box, please,
18 ma'am.
19 Number 1, David E. Abernathy.
20 (The juror, a white male, comes forward).
21 CLERK: What say you for the State?
22 MS. HOWARD: Please present the juror.
23 CLERK: What say you for the defense?
24 MR. FLOYD: Excuse Mr. Abernathy, please.
25 CLERK: Return to your seat, please, sir.

1 Number 42, Basil E. Duncan.
2 (The juror, a white male, comes forward).
3 CLERK: What say you for the State?
4 MS. HOWARD: Please present the juror.
5 CLERK: What say you for the defense?
6 MR. FLOYD: Seat Mr. Duncan, please.
7 CLERK: Have a seat in the jury box, please,
8 sir.

9 Number 12, Aaron J. Bennett.
10 (The juror, a white male, comes forward).
11 CLERK: What say you for the State?
12 MS. HOWARD: Please seat the juror.
13 CLERK: What say you for the defense?
14 MR. FLOYD: Excuse Mr. Bennett, please.
15 CLERK: Return to your seat, please, sir.
16 Number 2, Faye B. Amick.
17 (The juror, a white female, comes forward).
18 CLERK: What say you for the State?
19 MS. HOWARD: Please present the juror.
20 CLERK: What say you for the defense?
21 MR. FLOYD: Seat Ms. Amick, please.
22 CLERK: Have a seat in the jury box, please,
23 ma'am.

24 Number 15, Chadbourn Bolles.
25 (The juror, a white male, comes forward).

1. CLERK: What say you for the State?
2. MS. HOWARD: Please present the juror.
3. CLERK: What say you for the defense?
4. MR. FLOYD: Seat Mr. Bolles, please.
5. CLERK: Have a seat in the jury box, please,
6. sir.
7. Number 3, Shirley B. Amick.
8. (The juror, a white female, comes forward).
9. CLERK: What say you for the State?
10. MS. HOWARD: Please present the juror.
11. CLERK: What say you for the defense?
12. MR. FLOYD: Seat Ms. Amick, please.
13. CLERK: Have a seat in the jury box, please,
14. ma'am.
15. Number 86, Kenneth R. Kennerly.
16. (The juror, a white male, comes forward).
17. CLERK: What say you for the State?
18. MS. HOWARD: Please present the juror.
19. CLERK: What say you for the defense?
20. MR. FLOYD: Seat Mr. Kennerly, please.
21. CLERK: Have a seat in the jury box, please,
22. sir.
23. Number 179, Govie L. Williams, II.
24. (The juror, a white male, comes forward).
25. CLERK: What say you for the State?

1 MS. HOWARD: Please present the juror.

2 CLERK: What say you for the defense?

3 MR. FLOYD: Excuse Mr. Williams, please.

4 CLERK: Return to your seat, please, sir.

5 Number 172, Susan M. Welch.

6 (The juror, a white female, comes forward).

7 CLERK: What say you for the State?

8 MS. HOWARD: Please present the juror.

9 CLERK: What say you for the defense?

10 MR. FLOYD: Seat Ms. Welch, please.

11 CLERK: Have a seat in the jury box, please,

12 ma'am.

13 Number 146, Gaylon L. Scoates.

14 (The juror, a white male, comes forward).

15 CLERK: What say you for the State?

16 MS. HOWARD: Please present the juror.

17 CLERK: What say you for the defense?

18 MR. FLOYD: Seat Mr. Scoates, please.

19 CLERK: Have a seat in the jury box, please,

20 sir.

21 Number 41, Jeffrey P. Dowdy.

22 (The juror, a white male, comes forward).

23 CLERK: What say you for the State?

24 MS. HOWARD: Please present the juror.

25 CLERK: What say you for the defense?

1 MR. FLOYD: Seat Mr. Dowdy, please.

2 CLERK: Have a seat in the jury box, please,
3 sir.

4 Number 28, Donna I. Collins.

5 (The juror, a white female, comes forward).

6 CLERK: What say you for the State?

7 MS. HOWARD: Please present the juror.

8 CLERK: What say you for the defense?

9 MR. FLOYD: Seat Ms. Collins, please.

10 CLERK: Have a seat in the jury box, please,
11 ma'am.

12 Number 93, Harrison F. Lathrop.

13 (The juror, a white male, comes forward).

14 CLERK: What say you for the State?

15 MS. HOWARD: Please present the juror.

16 CLERK: What say you for the defense?

17 MR. FLOYD: Seat Mr. Lathrop, please.

18 CLERK: Have a seat in the jury box, please,

19 sir.

20 Number 13, Whitney P. Berry.

21 (The juror, a white female, comes forward).

22 CLERK: What say you for the State?

23 MS. HOWARD: Please present the juror.

24 CLERK: What say you for the defense?

25 MR. FLOYD: Seat Ms. Berry, please.

1. CLERK: Have a seat in the jury box, please,
2. ma'am.

3. Alternates, Your Honor?

4. THE COURT: Yes, ma'am, two alternates. The
5. strikes are one and two on each.

6. CLERK: Number 29, Cayce R. Cook.

7. (The juror, a white female, comes forward).

8. CLERK: What say you for the State?

9. MS. HOWARD: Please present the juror.

10. CLERK: What say you for the defense?

11. MR. FLOYD: Seat Ms. Cook, please.

12. CLERK: Have a seat in the jury box, please,
13. ma'am.

14. Number 184, Judith L. Rollings.

15. (The juror, a white female, comes forward).

16. CLERK: What say you for the State?

17. MS. HOWARD: Please present the juror.

18. CLERK: What say you for the defense?

19. MR. FLOYD: Seat Ms. Rollings, please.

20. CLERK: Have a seat in the jury box, please,
21. ma'am.

22. (The jury is impaneled at 3:12 p.m.)

23. THE COURT: Ladies and gentlemen of the jury
24. panel, I am going to momentarily ask you to step to your
25. jury room. Please remember you are not to discuss this

1 case in any manner whatsoever during the course of the
2 trial.

3 You are not authorized to discuss this case
4 with anyone. That includes your fellow jurors, your
5 family, your friends or anyone else until you have heard
6 all the evidence and the testimony in the case, the
7 closing arguments by the attorneys, and the charge on
8 the law by the Court, and then and only then after you
9 have been directed by the Court to begin your
10 deliberations.

11 I will ask you during this recess in your jury
12 room if you would please select among the number of the
13 primary jurors, the first 12, a foreperson of the jury.
14 That can be anyone but Ms. Cook or Ms. Rollings.
15 Although I am sure they would both make fine forepersons
16 of the jury, right now they are in the status of
17 alternate jurors.

18 So any one of your number may be elected to
19 serve as the foreperson of the jury. If you would
20 please make that selection and write that name out.
21 Once you have completed that selection process, knock on
22 the door and give that name to the bailiff. I will
23 allow you to take about a 15-minute recess if you would
24 conduct that procedure.

25 Again, you would not following your oath as

1 jurors if you discuss the case in any manner. Please
2 keep in mind, as I'm sure you will. With that being
3 said, if you would go with your bailiffs to your jury
4 room. Thank you very much.

5 (The jury retires to the jury room).

6 (The jury panel is excused).

7 THE COURT: Any motions regarding the jury
8 selection process from the State?

9 MS. HOWARD: None from the State, Your Honor.

10 THE COURT: From the defense?

11 MR. FLOYD: Yes, Your Honor, I do have a
12 motion. Your Honor, first of all, we would move that
13 the jury panel itself is unfair to this Defendant. I
14 note this is the second time we tried or approached the
15 jury on this particular case this week.

16 We have been through 24 jurors, 3 alternates,
17 and 13 strikes. So that is 40 potential jurors and not
18 a single one of them has been African-American. As you
19 are well aware, the Defendant is an African-American
20 male.

21 So it's our position that the jury panel
22 itself is unconstitutional and discriminatory against
23 this Defendant in that we haven't had a single potential
24 black juror the entire week for this case. That would
25 be my first motion.

1 THE COURT: Do you have any evidence you want
2 to present in that regard?

3 MR. FLOYD: No, Your Honor, only what has
4 happened during this week.

5 THE COURT: Thank you, Mr. Floyd. Further I
6 do not believe there was any member of the
7 African-American race that were selected out of the jury
8 box, so there were none struck by the State nor none
9 removed by the Court for cause in that regard. So I
10 would deny your motion in that regard.

11 MR. FLOYD: Thank you, Your Honor. Your
12 Honor, my next motion, I guess, I would put on the
13 record is that before the jury selection progress began,
14 we informed the Court that we would have a running
15 objection to all potential jurors from this panel, our
16 position being that all the jury panel has been tainted
17 by the fact that we tried this case once already this
18 week.

19 Now we are in the second trial, and it is
20 compounded dramatically by the fact that we have had 12
21 jurors come forward and admit that they heard rumors.
22 In fact, the rumors they all said they heard was that
23 somebody from this Defendant's family tried to buy a
24 juror, jury tampering. It's the worse kind of charge a
25 person can have.

1 We know of 12 who have admitted to having
2 heard this rumor. We know the rumor was circulated in
3 the courtroom because some of the jurors admitted
4 overhearing it.

5 The jurors are all seated right next to each
6 other, right behind each other, and right in front of
7 each other. We had people come from all portions of the
8 courtroom and admit they had heard this rumor.

9 I think we should -- I understand the Court
10 made an earnest effort to ferret out anybody who had
11 heard about this matter, but that is almost 20 percent
12 of the jury panel disqualified because of this rumor.

13 We think there is no way that the panel is not
14 tainted and that Mr. Middleton's rights to a fair and
15 impartial trial by a fair and impartial jury have been
16 compromised in violation of Article 1, Section 14 of the
17 South Carolina Constitution, and Article 5, 6, and 14 --
18 I believe 5, 6 and 14 -- of the United States
19 Constitution.

20 It's our position that this jury that has seen
21 this man go through the jury selection process one time;
22 they know a trial was begun, and they only can speculate
23 as to why the trial stopped.

24 I know of no speculation that would be
25 favorable to the Defendant in that manner, particularly

1 when what you have got going through the jury panel is
2 the fact that they have heard there was jury tampering
3 by the Defendant.

4 So we don't feel -- we would move to strike
5 the entire panel because we don't feel that we have a
6 fair and impartial panel.

7 THE COURT: Thank you, Mr. Floyd. Solicitor?

8 MR. STUMBO: Thank you, Judge. I will be
9 brief and take them up one at a time. Mr. Floyd's
10 motion in regards to there being tainting of the jury
11 based on the fact we had another trial earlier in the
12 week, Your Honor, I did pass up before and provided
13 Mr. Floyd a copy and Your Honor has reviewed it.

14 Just for the record, it's Neal versus United
15 States. That's a Fourth Circuit Court of Appeals case
16 from 1927. The cite on that is 22 F.2d 52. Your Honor,
17 that case stands for the proposition -- well, a couple
18 of things.

19 The judge did not -- in that case the judge
20 was asked to continue the case based on the fact there
21 had been a mistrial the same week. The Court said it
22 was not an abuse of discretion for the Court to deny
23 that motion for continuance. I realize that is not
24 Mr. Floyd's motion.

25 Secondly, the holding of that particular case

1 deals with the fact that the trial judge needs to only
2 make a very thorough inquiry to the jury panel the
3 second time around that they are fair and impartial.

4 Your Honor, it's the State's position Your
5 Honor did a fine job of that. You asked the jury
6 numerous times whether they had formed opinions in
7 regards to guilt or innocence, whether they could be
8 fair and impartial based on the evidence and the
9 testimony that they hear in this courtroom.

10 None of them stood up and said they could not
11 do that. In fact, we set aside a number of ones that
12 had, based on rumors, had heard stuff without going
13 through that inquiry. So we would ask Your Honor to
14 deny the motion in regard to the prior trial based on
15 the authority of Neal v. United States, a Federal Court
16 of Appeals case.

17 Your Honor, as to the rumors, there again I
18 believe Your Honor was able to ferret that out. We
19 asked the question -- Your Honor asked the question of
20 the panel more than one time whether they could be fair
21 and impartial, whether they had heard rumors of any
22 sort. None of them responded that they had.

23 Mr. Floyd said all corners of the courtroom.
24 From my recollections all the ones that were set aside
25 were kind of in the middle to the back area. In fact,

1 four of them came forward at once the second time around
2 after deciding, Well, we did overhear this and probably
3 need to disclose it to the Court.

4 I think we went above and beyond the call of
5 duty to make sure we have a fair and impartial jury,
6 despite the fact that these rumors -- not only that,
7 Mr. Floyd mentioned the rumor about the jury tampering.

8 As Your Honor recalls, we also had some
9 indication that there was a plea offer given. One of
10 the jurors said she had given that information to a
11 couple of other jurors. All of them came forward and
12 admitted that. All of them were set aside.

13 So we believe the jury that was selected, Your
14 Honor, is fair and impartial and comports with the
15 requirements of the Constitution.

16 THE COURT: Anything in response, Mr. Floyd?

17 MR. FLOYD: Yes, Your Honor. I would like to
18 couple this motion with a motion for continuance. Your
19 Honor, it's my understanding and my recollection that
20 there were at least several pews separating some of the
21 people with the jury tampering rumor.

22 I think we all agree that they all heard this
23 rumor here in the courtroom while all the rest of the
24 jury panel was here. So we have got two rumors. We
25 have got one rumor that the Defendant was offered seven

1. years, which he turned down, and that he was facing
2 fifteen. Then we have the rumor that somebody in his
3 family offered a bribe to a juror, and that's why the
4 trial got postponed.

5 Either one of these are highly prejudicial to
6 the Defendant, and the fact that that rumor is
7 circulating in the courtroom where we have the panel
8 seated, I would suggest in an abundance of caution that
9 this case must be continued because we will never know
10 for sure whether any member that has been select on this
11 jury actually heard this rumor.

12 We also have to worry about what they are
13 speculating about when they saw almost 20 percent of the
14 panel removed from the panel. They have got to be back
15 there thinking, What is going on here?

16 And nothing that can be going on here in their
17 minds could be favorable to the Defendant. Nothing
18 could be. There is no spin we could put on that would
19 be favorable to the Defendant.

20 The Defendant has got to have been prejudiced.
21 This jury cannot be impartial after all we have been
22 through in regard to this matter, and accordingly we
23 would like to move for a continuance.

24 THE COURT: The first juror that came forward
25 concerning the rumor was juror number 162. She

1 indicated that she had heard the rumor from number 71.
2 Number 71 who appeared to be the source of the rumor
3 concerning, quote, jury tampering, unquote, although I
4 don't recall whether she used that exact terminology or
5 not, heard it at the Citgo station at the big peanut on
6 Highway 302 just outside of Pelion. So the rumor did
7 not spawn in the courtroom. That appears to be the
8 origin of the rumor.

9 All of the jurors that heard that rumor came
10 forward, and they were clustered in the back, more than
11 halfway back. I believe that was nine jurors. Neither
12 the Court nor the State nor the defense attempted to
13 rehabilitate those jurors in any way.

14 I set aside any juror that heard that or any
15 rumor without even questioning them on voir dire of
16 whether or not they could set that aside and decide the
17 case based on the evidence and the testimony presented
18 in the courtroom.

19 The other rumor was three jurors on the front
20 row, and the source of that rumor was number 48.
21 Number 48 came forward and stated several things. One,
22 that her husband was -- and she had stated this the
23 other day -- was Chief of Police in North, South
24 Carolina, and knew Detective Kirkland and that her
25 husband had worked on some cases or was working on some

1 cases with Detective Kirkland.

2 The two gentlemen to her left were the other
3 two that came forward. That was number 187 and number
4 78. That was the source of the seven-year rumor. They
5 were also set aside.

6 I don't know why I should believe jurors when
7 they say they hear a rumor and why I should not believe
8 jurors when they say they haven't heard a rumor. I
9 don't understand why I weigh the credibility of jurors
10 differently when they stand up and come forward and say,
11 Yes, I have heard a rumor, and why, when a juror does
12 not respond to that question, I am to assume they are
13 not credible.

14 They are under oath. I advised them they were
15 under oath, that their answers should be accurate and
16 complete. I gave them every opportunity I could. They
17 saw these other jurors being set aside. I gave them
18 numerous opportunities to stand up, to come forward, and
19 asked them to search their hearts. They knew
20 themselves. None of them responded.

21 I also asked them, considering the fact that
22 this was the second time we selected a jury in the trial
23 of this case this week, if that caused them to form or
24 express any opinion concerning the guilt or innocence of
25 the Defendant, and no one stood.

1 The Court is satisfied that a fair and
2 impartial jury has been selected in the trial of this
3 case. They will be true to their oath. I can't predict
4 the future. If I find out they are not true to their
5 oath, I will take the appropriate action.

6 The Court also does not agree, and it may be
7 just phraseology, that the rumor circulated in the jury
8 panel or in the courtroom. It may have gone among 12
9 people, but that's what it was limited to based on the
10 responses of the jurors.

11 I am going to advise them not to speculate
12 concerning the fact that the case has been called for
13 trial the second time this week. That's not a part of
14 their consideration. It should not be discussed in any
15 manner.

16 With that being said, again, I deny that
17 motion for continuance. Anything further, Mr. Floyd?

18 MR. FLOYD: Your Honor, just to be sure I have
19 covered it, I want to make sure and I think the Court
20 understands as I was arguing this, but I am also making
21 a motion for a continuance based solely on the fact, in
22 addition to the grounds I have already argued, solely on
23 the fact that we have already picked one jury this week.
24 That's in addition to the fact with all these 12, almost
25 27 in the panel, that turned out to be disqualified

1 because of rumors that had occurred.

2 THE COURT: Almost what in the panel? I
3 didn't quite hear you.

4 MR. FLOYD: That had been disqualified because
5 of rumors.

6 THE COURT: Twenty-seven?

7 MR. FLOYD: Almost 27, 17 percent of the
8 panel.

9 THE COURT: I just couldn't quite hear you. I
10 couldn't quite hear your words.

11 MR. FLOYD: Seventeen percent, 12 of the 70.

12 THE COURT: All right.

13 MR. FLOYD: Your Honor, considering this I
14 think we need to keep in mind that the Defendant is not
15 the reason we are trying this case twice. It's not like
16 the Defendant did something to cause us to have to be
17 here twice this week.

18 It was the State's error that caused a
19 mistrial, not anything the Defendant did, but the
20 Defendant is suffering the consequences of it. It's a
21 highly unusual situation to require a defendant to come
22 to trial twice in the same week.

23 I don't know of it ever having been done in
24 the 30-something years I have practiced, and I couldn't
25 find any South Carolina cases on point. This case they

1 are relying on it, it likewise reversed the conviction.

2 It's got some language in there from a
3 hundred-year-old case that there could have been made a
4 way, that the judge could have devised a way, to get a
5 fair trial, but they certainly didn't in this case.
6 They reversed the conviction.

7 Your Honor, when you combine that with all
8 these rumors, on the one hand it's the constitutional
9 right of the Defendant to have a fair and impartial
10 jury, and on the other hand, we have got a jury panel
11 that has been -- we have to speculate. I understand you
12 asked all the questions. They all said, No, I didn't
13 hear anything else.

14 But we know that 17 percent of the panel was
15 tainted. We know that. We can speculate as to what the
16 other jurors may think happened, but we have no way of
17 knowing that. I think I asked the Court to question the
18 jury panel as to whether or not they formed any opinion
19 as to why the trial in this case was coming up again.

20 They know something happened, and I guess they
21 are speculating on what it was. We don't know what the
22 speculation is, but none of that speculation can be
23 helpful to the Defendant but would be harmful to him.

24 So in our way of thinking there is no way he
25 can have a fair and impartial jury out of this panel

1 because they know something has gone on. They know
2 something has gone on that's so bad that almost 20
3 percent of them were disqualified.

4 Now, another situation, too, is we expect that
5 they were truthful with Your Honor when you asked if any
6 others -- if they knew anything, but they didn't know
7 what was going to happen to these 12 people over there.

8 For all they knew these 12 people were in
9 trouble, and they didn't want to go join them. They
10 didn't know they were just going to get out of trying
11 the case. For all they knew, you were going to punish
12 them in some way simply because they had heard or passed
13 on a rumor.

14 So I think when you weigh the equities and the
15 fairness and the constitutional right of the Defendant
16 against this jury panel, it's our position that justice
17 demands a continuance.

18 THE COURT: If 17 percent were tainted, that
19 means 83 percent were not tainted, number one. Number
20 two, given the demeanor of those jurors that were not
21 set aside, I fail to see how they would speculate that
22 the jurors that were sat on the front right were in
23 trouble in some manner.

24 I do not think they got that from my demeanor.
25 The jury laughed at one point when someone else stood

1. up. Usually if somebody thinks they are in trouble for
2. doing that, there is not usually that type of attitude
3. or demeanor that was exhibited.

4. Again, I don't see why I am to believe the
5. 17 percent is credible and disbelieve the 83 percent as
6. not credible and why I am to have any speculation in my
7. mind as to what they are speculating on.

8. With that being said, I deny your motion,
9. Mr. Floyd. I deny your motion for a continuance. I
10. believe it is a fair and impartial panel that has been
11. selected. Do you have other motions?

12. MR. FLOYD: Yes, Your Honor. At this time we
13. would move that the charges against Mr. Middleton be
14. dismissed on the grounds of double jeopardy. It's our
15. position that the mistrial, which was caused by the
16. actions of the State, are such that jeopardy has
17. attached, and the retrial of him now, when he had
18. nothing do with the mistrial himself, would violate his
19. rights against double jeopardy, as provided by Article
20. 1, Section 12 of the South Carolina Constitution and the
21. Fifth and Fourteenth Amendments to the United States
22. Constitution.

23. THE COURT: Solicitor.

24. MR. STUMBO: Your Honor, Mr. Floyd's
25. characterization of, the State by its actions caused

1 this mistrial, I don't believe, Your Honor -- I don't
2 recall in our arguments during that motion for a
3 mistrial that Mr. Floyd made that it was ever -- that
4 Your Honor ever intimated we did something wrong.

5 We had a witness who said something that ended
6 up being not admissible. Because that came out, we
7 couldn't go forward with that particular jury. So for
8 him to imply the State has done something to cause a
9 mistrial, I don't know what motive we would have to do
10 that, first and foremost, to cause us to have great
11 inconvenience to have to try a case a second time. We
12 take no pleasure in doing so.

13 Secondly, Your Honor, I believe that the law
14 is very well established that after a mistrial, if we
15 haven't done anything intentionally to taint the first
16 trial, which we have not, Your Honor, that if the
17 mistrial is on the basis of inadvertent, inadmissible
18 evidence coming before the jury, that as you said to the
19 jury panel earlier, we start from scratch. That is
20 exactly what we are doing here today, Your Honor.

21 I don't have a case right on point. I do have
22 the State versus Francis R. McKey, which is an ancient
23 case, Your Honor, 1830 South Carolina case law. Your
24 Honor, I read this today and it deals with the double
25 jeopardy issue as to retrying a case after a mistrial.

1 I do have the cite for that if Your Honor would like
2 that.

3 THE COURT: That's all right.

4 MR. STUMBO: Thank you, Your Honor. But in
5 any event, we believe the law is well settled in this
6 State that if you mistry a case, but for some kind of
7 malfeasance on the State's part, that you don't dismiss
8 the charge.

9 We start from scratch and get a new jury panel
10 and get a fair and impartial jury and do it all over
11 again. We would ask the Court to deny Mr. Floyd's
12 motion. We don't believe it's double jeopardy under the
13 Constitution.

14 THE COURT: Thank you, Solicitor.

15 MR. STUMBO: Yes, sir.

16 THE COURT: Anything in response, Mr. Floyd?

17 MR. FLOYD: Your Honor, only that I take issue
18 that we are starting from scratch because we are not.
19 We are starting with a jury that has been exposed to
20 rumors detrimental to the Defendant and with a jury who
21 knows that we have been through a couple of days of
22 trial and that for some reason this matter is now being
23 retried.

24 So I wouldn't call that starting from scratch.
25 I think that, in fact, makes my double jeopardy

1 argument, that if they wait and call this at another
2 time before another panel not exposed to the fact that
3 we already tried it twice, we would be starting from
4 scratch. When they are starting with the same jury
5 panel, then, Your Honor, I think that double jeopardy
6 would attach.

7 THE COURT: Do you have any case you want me
8 to look at, Mr. Floyd?

9 MR. FLOYD: No, Your Honor. I cannot find
10 anywhere in the State of South Carolina where this
11 procedure has occurred before.

12 THE COURT: I didn't think it was based on the
13 procedure. I thought your double jeopardy motion was
14 based on the fact that the State presented evidence that
15 the Court relied on in granting your motion for a
16 mistrial.

17 I didn't think your double jeopardy motion was
18 based on this procedure. I thought it was based on the
19 mistrial and that the State somehow caused,
20 intentionally I guess, caused a mistrial.

21 MR. FLOYD: That is correct, Your Honor. That
22 is the basis for the motion, but inherent in the
23 motion -- and that makes it different from the normal
24 situation where you have a mistrial motion, where you
25 have a double jeopardy motion after mistrial -- is the

1 added situation that we are having to try this matter at
2 the State's request, not at our request, at the State's
3 demand in front of the same jury panel that the mistrial
4 occurred in.

5 So we would suggest that that procedure that
6 the State is utilizing would make the double jeopardy
7 argument stronger and require a dismissal.

8 THE COURT: So you would not make the double
9 jeopardy argument if the State did not call the case for
10 trial this week?

11 MR. FLOYD: That is correct, Your Honor.

12 THE COURT: You do not contend that the Court
13 improvidently granted the mistrial?

14 MR. FLOYD: No, I do not, Your Honor.

15 THE COURT: My determination that double
16 jeopardy on a mistrial attaches -- that double jeopardy
17 attaches would depend on whether or not there was some
18 type of prosecutorial misconduct with specific intent to
19 subvert the protection afforded by the double jeopardy
20 clause.

21 I believe as I recall the mistrial, in
22 response to a question from the solicitor attempting to
23 clarify the address of [REDACTED] versus
24 [REDACTED], it appeared to the Court it was an
25 inadvertent response by the witness concerning the fact

1 that her husband George had gone by [REDACTED] in the past and
2 bought from him -- from him I think referring to the
3 Defendant.

4 I do not think it was any prosecutorial
5 misconduct at all. As you recall, Mr. Floyd, at first I
6 denied your motion for a mistrial until I reheard the
7 tape because I missed the words "from him." And after
8 hearing the words "from him," I felt it was not
9 something that could be cured with an instruction.

10 I do not see how the procedure of impaneling a
11 second jury the same week is relevant to the issue of
12 double jeopardy. With that being said, I would deny
13 your motion as far as double jeopardy is concerned. Do
14 you have any other motions?

15 MR. FLOYD: Nothing further, Your Honor.

16 THE COURT: Madame Clerk, may I see the
17 clerk's file on Mr. Middleton, please. Yes, sir,
18 Mr. Floyd. I wasn't cutting you off. You were still
19 standing.

20 MR. FLOYD: No, Your Honor. I was going to
21 ask before we bring the jury back in, if we might have a
22 rest room break.

23 THE COURT: Yes, sir. I wanted to address one
24 issue before we take a break. I wanted to address one
25 issue before we did that. Assuming we get started this

1 afternoon, which I intend to do, of course, at the end
2 of the day, as you know, my practice is to -- my rule as
3 opposed to my exception is to jail a defendant during
4 the course of his or her trial.

5 As you know, I did that earlier this week with
6 Mr. Middleton. Part of my reasoning for that was given
7 the fact that he is on a surety bond and that there is a
8 professional bonding company on his bond in the amount
9 of \$95,000. It is Brad's Bailing Bonding, 120 Barr
10 Road, Lexington, 996-0888.

11 Perhaps during the break if you could have
12 someone see if you could get an agent from Brad's
13 Bonding over here at the end of the day today to address
14 whether or not they would be willing to remain on his
15 bond. I'm not deciding at this time what I will do, but
16 that would be a factor that I would consider concerning
17 Mr. Middleton's bond.

18 MR. FLOYD: Yes, sir, we will try to make some
19 contact.

20 THE COURT: With that anything further before
21 we take a break, Solicitor Howard, Solicitor Stumbo?

22 MR. STUMBO: Nothing further from the State,
23 Your Honor.

24 THE COURT: Let's take about a 15-minute
25 recess. Thank you very much.

1 (Whereupon there is a recess).

2 THE COURT: Anything before we bring in our
3 jury from the State?

4 MS. HOWARD: Nothing from the State?.

5 THE COURT: From the defense?

6 MR. FLOYD: No, Your Honor.

7 THE COURT: Were you able to get the bonding
8 company, Mr. Floyd?

9 MR. FLOYD: Yes, Your Honor. My understanding
10 is they are trying to get over here. They are in bond
11 court, but they will try to get over here before the day
12 is over.

13 THE COURT: Thank you. Thank you very much.
14 Bring us our jury, please.

15 (The jury returns to the courtroom at
16 4:05 p.m.)

17 THE COURT: Madame Clerk, if you would please
18 swear our jury in.

19 CLERK: Yes, sir.

20 (The jury is duly sworn).

21 THE COURT: Ladies and gentlemen of the jury
22 panel, the case we about to try is the case of the State
23 versus George Thomas Middleton, the Defendant. What I
24 now say is intended to serve as an introduction to the
25 trial of the case.

1 These remarks are not a charge or instruction
2 on the law. I will instruct you on the law applicable
3 to this case at the end of trial before you retire to
4 consider your verdict. This is merely an explanation of
5 the procedure that we will follow in the trial of the
6 case so that you may better understand what may be
7 happening.

8 The Defendant is charged by indictment filed
9 in this court with the crime of distribution of crack
10 cocaine, the elements of which will be explained to you
11 later.

12 The indictment is simply the notice document,
13 the charge, by which the case is brought into court. It
14 is not in any sense evidence of any of the allegations
15 that it contains.

16 The Defendant has pled not guilty to this
17 indictment. The State therefore has the burden of
18 proving each and every element of the indictment beyond
19 a reasonable doubt. It will be your duty, ladies and
20 gentlemen, to decide whether the State has met that
21 burden.

22 Your purpose as jurors is to find and
23 determine the facts. You the jury are the sole judges
24 of the facts. If at any time I make any comment about
25 the facts, you must disregard it. You are to determine

1 the facts from the testimony you hear and the other
2 evidence introduced in court.

3 It is up to you to determine the inferences
4 which may be properly drawn from the evidence. It's
5 especially important that you perform your duty of
6 determining the facts diligently and conscientiously
7 because ordinarily there is no way to correct an
8 erroneous determination of the facts by a jury.

9 On the other hand and with equal emphasis, the
10 same law that makes you the judges of the facts makes me
11 the judge of the law. The law as given by the Court is
12 the only law you may consider. You must accept and
13 follow the law even though you may disagree with it.

14 I cannot tell you what the facts are, and you
15 cannot disagree with me about what the law is or should
16 be. Your job is to take the law as I give it to you and
17 apply it to the facts as you find the facts from the
18 testimony of the witnesses, the sworn witnesses under
19 oath, and any other evidence that is introduced.

20 After doing that you will render your verdict,
21 a true and just verdict, under the solemn oath that you
22 just took as jurors. Until I advise you to begin your
23 deliberations, you must not discuss this case with
24 anyone, including your fellow jurors, your friends, your
25 family members or anyone else involved in the case.

1. After the case is submitted to you, you must
2 discuss it only in the jury room with your fellow
3 jurors. The attorneys and the parties in the case have
4 been advised that they are not to talk to you at all if
5 they see you coming and going from the courthouse.

6 So if you see anyone involved in the case and
7 they do not even say hello or good morning, good
8 evening, they are not being unfriendly. They are merely
9 following the instructions of the Court.

10 Should there be any, please do not read,
11 listen to or watch any news reports about the case.
12 This includes anything that may be in the newspapers or
13 on the internet, radio or television.

14 You must not consider anything -- I
15 emphasize -- you must not consider anything that you may
16 have read or heard about the case outside the courtroom
17 whether before or during the trial. Do not do any
18 independent investigation or any investigation on the
19 internet.

20 It is important that you keep an open mind and
21 not decide any issue in the case until you have heard
22 all of the evidence, the parties have made their closing
23 arguments to you, and I have instructed you on the law.

24 It is your solemn responsibility to determine
25 the guilt or innocence of the Defendant. Your verdict

1 must be based solely on the evidence as it is presented
2 to you in this trial and on the law as I instruct you
3 during and at the close of the trial.

4 In just a moment, the solicitor will make what
5 is called an opening statement in which the solicitor
6 will explain to you the issues in this case or at least
7 what the solicitor thinks the issues are in the case.

8 Mr. Floyd, the attorney for the Defendant, may
9 also make an opening statement, although he is not
10 required to do so. What the attorneys tell you during
11 their opening statements is not evidence in the case.
12 It is only their contention as to what the issues are.

13 The evidence in this case will be presented to
14 by the testimony of sworn witnesses under oath from this
15 witness stand and/or by any exhibits that may be
16 introduced into evidence.

17 From time to time during the trial, you may
18 hear one of the attorney say something like, Your Honor,
19 I believe we have a question of law or a matter of law
20 to discuss with you or Your Honor, may we approach the
21 bench or sometime I myself might find it necessary to
22 excuse you from the courtroom for a short while so that
23 the attorneys and I can discuss a matter of law.

24 The reason for this is because you are the
25 judges of the facts in the case, and sometimes when I am

1 discussing matters of law with the attorneys. I may find
2 it may become necessary for me to make some comment as
3 to the facts in connection with ruling whether or not a
4 particular law applies.

5 I am not supposed to tell you what I think the
6 facts are. So I will excuse you from the courtroom
7 while these discussions take place so that in no way
8 will you be influenced by anything that I might say or
9 do in connection with the facts.

10 In determining what the true facts are in this
11 case, you must decide whether or not the testimony of
12 the witnesses is believable. It will be my
13 responsibility to rule as a matter of law as to whether
14 or not certain testimony is admissible at all or not,
15 but once it is admitted whether or not you believe it is
16 solely for you to decide.

17 In deciding whether to believe a witness, you
18 have a right to consider the interest of any witness,
19 the bias of any witness, the prejudice of any witness,
20 the opportunity for the witness to have seen the matters
21 and things about which the witness may testify, and the
22 way the witness acts on the witness stand.

23 You have the right as jurors to consider
24 anything that is in the record that will help you
25 evaluate the testimony of the witnesses. That means it

1 will be your duty to pay close attention to these
2 witnesses, to observe the witnesses, to listen to the
3 witnesses, and to pay close attention to the attorneys
4 and to the Court.

5 Don't let your thoughts wander but give strict
6 attention to the testimony in the case so that at the
7 end of all the testimony, after the arguments of
8 counsel, and the charge on the law by the Court, you
9 will then be in a position to determine what the true
10 facts are and to apply the law to those facts and thus
11 render a true and just verdict.

12 It will be your added duty, Madame Forelady,
13 to preside in the jury room and to be the jury's
14 spokesperson here in court. It will also be your duty
15 to write the verdict, but I will give you further
16 instructions about that at the conclusion of the trial.

17 Ladies and gentlemen, just a couple of other
18 matters. I tell jurors when I want to take a break, we
19 take a break. Well, this isn't some type of judicial
20 marathon.

21 I know if you sit out here too long and listen
22 too long, your thoughts may wander. You will get
23 fidgety in your chair. Any time -- any time -- any of
24 you need a break, please raise your hand. Y'all will
25 take your break and we will take our break.

1 Also, we have a sound system in here, but if
2 you cannot hear the witnesses or the attorneys or the
3 Court, although I try to be loud enough to be heard, if
4 you cannot hear the parties, please raise your hand, cup
5 your ear. We will have them speak up.

6 I don't know what evidence or testimony may be
7 presented. Many times there could be photographs,
8 charts, diagrams. Many times when they are introduced,
9 they may be handed to the foreperson, and they are
10 passed around the jury while you are out here in your
11 jury box in the courtroom.

12 You may look at them all you want. Take all
13 the time you want with those items. Remember that's not
14 the only time or the last time you will have an
15 opportunity to look at those items.

16 If they are introduced into evidence, if I
17 allow them into evidence, all those exhibits will be
18 with you in the jury room at the time of your
19 deliberations. Again, look at them as long as you wish,
20 but keep in mind that's not the only opportunity you
21 will have to look at those items.

22 When we take our breaks, Madame Forelady,
23 ladies and gentlemen, if you have any questions or
24 concerns or issues, if you would just write out a note
25 for me, knock on the jury room door. Give it to one of

1 our fine bailiffs. They will get our attention.

2 Also we went through the process of selecting
3 you as fair and impartial jurors. I know you will be.
4 I know you will follow your oath. The fact that we went
5 through that process a second time this week is not
6 evidence in this case. It's a procedure that had to be
7 followed. It should not even be discussed in the jury
8 room. There should be no speculation whatsoever
9 concerning that matter.

10 You are selected as fair and impartial jurors
11 in the trial of this case, the State of South Carolina
12 versus George Thomas Middleton. The State has the
13 burden of proving its case beyond a reasonable doubt.
14 The Defendant is presumed to be innocent.

15 Listen to the evidence. Follow your oath.
16 Determine what the facts are. Apply the facts to the
17 law as I tell you the law is during and at the close of
18 the trial and return a true and just verdict.

19 Any objections from the State to anything I
20 have advised the jury, Madame Solicitor, Mr. Solicitor?

21 MS. HOWARD: None from the State, Your Honor.

22 THE COURT: From the Defendant?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: With that being said, we will now
25 begin the trial. Solicitor, you may address the jury.

1 MR. STUMBO: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, sir.

4 OPENING STATEMENT

5 MR. STUMBO: Crack cocaine. If you folks are
6 anything like me, it probably doesn't conjure up the
7 most positive of image. When I hear crack cocaine, I
8 think of addiction.

9 MR. FLOYD: Your Honor, I object. We are
10 not --

11 THE COURT: If you would approach the bench.

12 (Whereupon there is a bench conference off the
13 record in the presence of the jury but out of the
14 hearing of the jury).

15 THE COURT: I sustain your objection,
16 Mr. Floyd. You may continue, Solicitor.

17 MR. STUMBO: Ladies and gentlemen, you are
18 going to hear a lot in this case about burden of proof.
19 You have already heard it from the judge. I am sure you
20 will hear it several times from Mr. Floyd in his opening
21 and closings statements that it's the State's burden of
22 proof in this case to prove Mr. Middleton guilty.

23 Now, what is that burden? The judge is going
24 to tell you what that burden is. It's beyond a
25 reasonable doubt. I want you folks to know that

1 Ms. Howard and I gladly bear that burden in this case.
2 What we have to prove to you beyond a reasonable doubt
3 is that George Middleton distributed crack cocaine back
4 on July 15, 2008.

5 What does beyond a reasonable doubt mean?
6 There is nothing magical about the term, ladies and
7 gentlemen. You will hear the judge instruct you at the
8 end of this case, and I want you to listen to this term.
9 What our law says is beyond a reasonable doubt is proof
10 that leaves you convinced beyond a reasonable doubt and
11 proof that leaves you firmly convinced. Remember that
12 term, firmly convinced.

13 Ms. Howard and I have the burden of proving in
14 this case is that you, at the end of this case, are
15 firmly convinced that George Middleton sold crack
16 cocaine on July 15, 2008.

17 How are we going to do that? You are going to
18 hear from Detective Kirkland first. Detective Kirkland
19 has been with the Sheriff's Department here in Lexington
20 for the past seven years. You will hear from him. He
21 was down in Orangeburg before that. He has been a
22 narcotics officer for a long time.

23 He is going to tell you how he catches someone
24 who sells crack cocaine, and, if you listen closely, to
25 the methods they use and the methods they used in this

1. case.

2 Next you are going to hear from Agent Todd
3 Strange. Agent Strange used to work with and was
4 Detective Kirkland's partner until he recently went over
5 to the State Law Enforcement Division to start
6 employment there.

7 After you hear from Agent Strange, you are
8 going to hear from the key person in this case, ladies
9 and gentlemen, and that is Ms. Freda Broach. You are
10 going to hear about Ms. Broach. She is going to tell
11 you a little bit about her history.

12 She is no saint, ladies and gentlemen. I can
13 assure you of that. She is going to tell you about
14 that. She is someone who has had her demons and has
15 struggled with and had addiction problems, someone who
16 has done drugs in the past.

17 It makes her the perfect person to go in. She
18 has the credibility to go in and buy crack cocaine. She
19 has had problems with that drug in the past and others.
20 She will tell you about that.

21 After you hear from Ms. Broach, to tell you
22 about what she did on July 15, you are going to hear
23 about where that substance went that she bought. She
24 bought three rocks.

25 Of course, those could be rocks of anything.

1 Detective Kirkland takes those rocks, takes them down to
2 the Sheriff's Department, and puts them into evidence.
3 You are going to hear from the evidence custodian.
4 Everybody who handles those rocks, you are going to hear
5 from this witness stand. Our evidence custodians do a
6 fine job. You will hear from them in this case.

7 Ultimately you will get to hear from Emily
8 Wilson. She is the drug chemist here in Lexington
9 County and works for the Sheriff's Department.
10 Ms. Wilson is going to tell you what she found when she
11 did a chemical analysis of those three rocks.

12 After you hear all these witnesses, ladies and
13 gentlemen, Ms. Howard and I aren't just confident that
14 you are going to find that Mr. Middleton sold crack
15 beyond a reasonable doubt, we are confident you are
16 going to find that he sold it beyond all doubt.

17 I want you to listen carefully to all the
18 witnesses and listen carefully to Mr. Floyd as well. At
19 the end of the day, you will be able to go back to that
20 jury room and have all the tools you need to deliberate
21 and come out with one verdict that speaks the truth.

22 That's what the word verdict means, to speak
23 the truth. The truth is George Middleton sold crack on
24 July 15, 2008, in violation of the laws of this State.
25 I thank you for your attention. I thank you for your

1 time this week.

2 This will be a short case. It won't be the
3 longest case you've ever heard. It's a good thing
4 because it's Thursday afternoon. I look forward to
5 speaking and seeing you throughout this case.
6 Ms. Howard is going to come back at the end of case and
7 bring it all together, and you will be able to go back
8 in that jury room and come back with a guilty verdict
9 against George Middleton. Thank you.

10 THE COURT: Thank you, Mr. Solicitor..
11 Mr. Floyd.

12 OPENING STATEMENT

13 MR. FLOYD: Madame Foreperson, and ladies and
14 gentlemen of the jury, this man is George Middleton,
15 George Middleton. He is the Defendant in this case. He
16 is the man about who you will make one of the most
17 important decisions you have ever made.

18 Because you are going to decide tomorrow based
19 on what you hear in this courtroom whether or not George
20 Middleton should be branded a criminal and convicted of
21 this allegation for something that they say occurred on
22 July 15, 2008.

23 If you have never served on a criminal jury
24 before, you almost have to set aside human nature.
25 Because you may have a thought in your mind that because

1 George has been charged with this crime, because he has
2 been arrested for this crime, because he is coming
3 before you to be judged for this crime, you may have a
4 thought in your mind that he must be guilty.

5 If you got that kind of thought, you have got
6 to erase it. Because, you see, George has the same
7 rights we all have. One of the most important rights is
8 what we call the presumption of innocence.

9 So when you look at George, you must say in
10 your heart and in your mind, George Middleton is
11 innocent, and he remains innocent unless the State
12 proves his guilt to each one of your satisfactions
13 beyond a reasonable doubt.

14 That's the burden of proof that Mr. Stumbo was
15 talking to you about. Because, you see, the Defendant
16 doesn't have to prove anything to you. The State must
17 prove the Defendant's guilt beyond a reasonable doubt.

18 All that we can ask is that you keep an open
19 mind and that you listen carefully to the evidence that
20 the State presents to you. What we are going to suggest
21 to you is this.

22 The only evidence they have that George
23 Middleton did this, what they are accusing him of, comes
24 out of the mouth of a paid snitch with her own drug
25 problems.

1 So we ask you to listen closely, and we think
2 you will conclude at the end of this case that the only
3 fair and just verdict is one of not guilty. I thank you
4 very much for your attention. I look forward to
5 speaking to you again in what we call the closing
6 argument stage of the trial. Thank you very much.

7 THE COURT: Thank you Mr. Floyd. Solicitor,
8 you may call your first witness.

9 MS. HOWARD: Thank you, Your Honor. The State
10 calls Detective Eric Kirkland.

11 THE COURT: If you would come around and be
12 sworn, please.

13 ERIC KIRKLAND, being
14 first duly sworn, testifies as follows:

15 CLERK: Please state your name, spelling your
16 last name for the record.

17 THE WITNESS: Detective Eric Kirkland,
18 K-I-R-K-L-A-N-D.

19 DIRECT EXAMINATION

20 BY MS. HOWARD:

21 Q Good afternoon, Detective Kirkland.

22 A Good afternoon.

23 Q Can you please tell jury where you work.

24 A I work at the Lexington County Sheriff's
25 Department.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD..

231

1 Q What do you do over at the Sheriff's Department?

2 A I am a narcotics investigator with the narcotics
3 enforcement team.

4 Q Is that also called the N.E.T. team?

5 A Yes, it is.

6 Q And as a narcotics investigator, what kind of
7 special work do you do?

8 A We investigate all narcotics activity, organized
9 crime, and we actually do vice, i.e., prostitution,
10 as well.

11 Q How long have you been with the narcotics division?

12 A Five years.

13 Q And before that?

14 A I was with the Orangeburg County Sheriff's
15 Department.

16 Q How long were you at Orangeburg?

17 A Nine years.

18 Q Fourteen years in law enforcement?

19 A Yes, ma'am.

20 Q Can you explain to the jury some of your duties as
21 to narcotics, how you investigate narcotics.

22 A We receive narcotic complaints via telephone. We
23 get citizens that call in with complaints that live
24 in the nearby neighborhoods that want to avoid the
25 activity.

1 Individuals that come to jail that want to
2 report activity to help themselves out with their
3 previous charge, they give us information. There
4 are a number of ways that we can investigate
5 narcotic activity. Those are a few.

6 Q Is a controlled buy something that you do to
7 investigate narcotic activity?

8 A Yes, ma'am.

9 Q Can you please explain what a controlled buy is.

10 A Yes, ma'am. After the location is determined where
11 we will be going to make the buy, we meet up with
12 the confidential informant, do a search of the
13 vehicle and that person takes place.

14 The C.I. is then wired using a body wire that
15 we use, a listening device, audio. We leave and we
16 go to the location. We surveil that person there.
17 We make sure we keep an accurate and a constant
18 view of them at all times.

19 After the controlled delivery is made, we then
20 meet back up with the confidential informant. We
21 retrieve the drugs at that time and another search
22 takes place of the vehicle and that person as well.
23 There is a voluntary statement of who, what, where
24 it took place. If they are paid, they sign a
25 voucher. They receive money. That in a sense is a

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

233

1 controlled buy.

2 Q I will break that down just a little bit. A
3 confidential informant, can you tell us a little
4 bit about that.

5 A A confidential informant is someone that we utilize
6 to make controlled purchases of crack cocaine,
7 realizing that we are ourselves cannot go in and
8 buy illegal narcotics.

9 They come from a number of ways. Most times
10 deputies out on patrol will encounter these people.
11 They state that they have information they want to
12 give us or are interested in working.

13 Sometimes they have charges. They want help
14 with their charges. Sometime they want to gain
15 money, monetary, because we do give monetary if
16 they qualify.

17 If their criminal records aren't too bad and
18 we can actually work with them, then they are
19 signed up at that time and they become a C.I. They
20 achieve confidential and reliable status based on
21 the level of work they do for us.

22 Q So a confidential informant might have charges in
23 Lexington County?

24 A Yes, ma'am.

25 Q And might want to work off those charges by working

1 for you?

2 A That's correct.

3 Q Or a confidential informant might be paid for the
4 work that they do?

5 A That's correct.

6 Q If a confidential informant is paid, can you
7 explain how they are paid.

8 A Yes, ma'am. Most times they are paid by the level
9 of work they do, but 80 to \$100 is about the going
10 rate for a controlled buy involving a confidential
11 informant.

12 Q Can you explain how you select a target for a
13 controlled buy.

14 A Yes, ma'am. Some of these targets are prior people
15 that we are investigating, some are targets that
16 the confidential informant themselves is familiar
17 with and they are interested in making buys.

18 Q Can a target also be a location?

19 A Yes, a target can also be a location.

20 Q Can you explain to me the elements of control in a
21 controlled buy?

22 A I'm sorry, can you?

23 Q Can you explain the elements of a control in a
24 controlled buy.

25 A Meaning?

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

235

1 Q Let me rephrase that. Do you listen in as the
2 controlled buy takes place?

3 A Yes.

4 Q And how do you listen in?

5 A We have an audio that we place strategically on the
6 C.I. that enables us to listen as well as record.

7 Q Do you perform a search of the C.I. before they go
8 to this target person or location?

9 A Before and after. And if they are driving, we also
10 search the vehicle and all contents in the vehicle
11 as well.

12 Q Do they drive their own vehicle?

13 A If they have a driver's license and they have
14 transportation, then they can drive their own
15 vehicle. If they don't then we have to provide
16 adequate transportation for them.

17 Q Is Freda Broach a C.I. who has worked for you in
18 the past?

19 A Yes.

20 Q How did she become a C.I.?

21 A Freda, I met her back January of 2007. Her then
22 boyfriend George had actually some charges with the
23 Swansea Police Department through Chief Cliff
24 Hayes. She had contacted Cliff Hayes about wanting
25 to help George out with his charges.

1 George, of course, had charges; Freda did not.
2 He did not have a driver's license. So Freda
3 became the driver for George to work off his
4 charges.

5 Q When you say George, you are not referring to
6 George Middleton?

7 A No, ma'am. George Corley was his name.

8 Q Did Freda get paid for driving her boyfriend to
9 these controlled buys?

10 A Yes, ma'am. She didn't have any charges on her and
11 no criminal record, so she qualified to work and
12 she got paid for driving.

13 Q Before you allowed her to become a confidential
14 informant, a C.I., did she sign a contract with
15 you?

16 A Yes, ma'am, a contract had to be signed. It's a
17 contract with rules and regulations of cans and
18 can'ts do while you are working with our agency or
19 with us, and she had to pass a South Carolina
20 driving test to make sure she had a valid driver's
21 license, which she did.

22 Q Did you perform a background check on her?

23 A Yes, ma'am, criminal history.

24 MR. FLOYD: Your Honor, may we approach the
25 bench.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

237

1 THE COURT: Yes, sir.

2 (Whereupon there is a bench conference off the
3 record in the presence of the jury but out of the
4 hearing of the jury).

5 THE COURT: Thank you, Solicitor. You may
6 proceed.

7 MS. HOWARD: Thank you, Your Honor.

8 BY MS. HOWARD:...

9 Q Detective Kirkland.

10 A Yes, ma'am.

11 Q You performed a background check on Freda Broach?

12 A Yes, ma'am.

13 Q On July 15, 2008, did you meet with Freda Broach to
14 conduct a controlled buy?

15 A Yes, ma'am.

16 Q Where did you meet with her on this day?

17 A At a church off Highway 6.

18 Q Did you have a target in mind that day for the
19 controlled buy before you met her?

20 A Yes, ma'am.

21 MS. HOWARD: Permission to approach the
22 witness, Your Honor?

23 THE COURT: Yes, ma'am.

24 BY MS. HOWARD:

25 Q I show you what has been marked as State's 1, 2, 3,

1 and 4, and ask if you recognize what is in those
2 photos.

3 A Yes, ma'am.

4 Q Do those photos -- can you explain to us what is in
5 those photos, the area.

6 A That is the residence itself. It's actually
7 [REDACTED] Austin Court and the aerial photos are Austin
8 Court [REDACTED], [REDACTED], and all houses surrounding it.

9 Q And where is Austin Court?

10 A Austin Court is just outside of Pelion, South
11 Carolina, on 178.

12 Q Is that in Lexington County?

13 A Yes, it is in Lexington County.

14 Q Is there a specific address that Ms. Broach went to
15 on July 15, 2008?

16 A [REDACTED].

17 Q And [REDACTED] is in Lexington County?

18 A Yes, ma'am.

19 Q Do those pictures -- are those a fair and accurate
20 representation of this area as you know it?

21 A Yes, ma'am.

22 MS. HOWARD: Your Honor, at this time we would
23 ask to move State's 1 through 4 into evidence.

24 THE COURT: Mr. Floyd?

25 MR. FLOYD: I have no objections to the

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

239

1 photographs.

2 THE COURT: State's 1 through 4 are in
3 evidence without objection.

4 (State's Exhibits Number 1-4 are received into
5 evidence).

6 BY MS. HOWARD:

7 Q Detective Kirkland, while we are working with a
8 technical problem, you met Freda Broach on July 15,
9 2008?

10 A Yes, ma'am.

11 Q Once you met her can you tell me what you did Agent
12 Kirkland?

13 A Yes, ma'am, we met behind the church. The very
14 first thing we did was being that the location had
15 been established, we conducted a search of her that
16 day. A vehicle search was also conducted as well.

17 Her body search was negative for weapons,
18 narcotics, and money. We then placed a wire on
19 her, which was placed on her ankle, and that
20 particular wire is the audio for listening. Do you
21 want me to continue on?

22 Q In just a moment. Agent Kirkland, did you perform
23 the body search on Freda that day?

24 A Yes, I did.

25 Q Did you perform a search of her clothing?

1 A Yes.

2 Q And then a search of her body?

3 A Yes. It starts with the shoes, socks, pants,
4 waistband. If they are female, they actually lift
5 their bra up. We don't grope them per se, but
6 pockets, hatbands, scarfs.

7 Q And why do you search for weapons, drugs or money
8 on this person and in this vehicle?

9 A Because it's not a controlled buy if they are
10 allowed to have those things. They are not allowed
11 to have those items trying to go in and make a
12 purchase for us.

13 Q Did you have Ms. Broach turn out her pockets?

14 A Yes, ma'am.

15 Q Where did you place a wire on her body?

16 A The wire was actually placed on her ankle, the
17 first wire being the antenna, going up the inside
18 pants, and the outer wire being the mike on the
19 outer pants leg.

20 Q Did you place a second wire on her?

21 A Yes, I did. A second wire, body recording device,
22 was actually given to her and she placed it in her
23 bra under her armpit.

24 Q And these recording devices, do you listen in on
25 what is being picked up on her body?

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

241

1. A That's correct.
2. Q Do you hear it in real time as it happens?
3. A Yes, ma'am.
4. Q Did you perform a search of her car that day?
5. A Agent Strange did, that's correct.
6. Q Agent Strange?
7. A Agent Strange performed that vehicle search.
8. Q Did she drive her own car to Austin Court?
9. A Yes.
10. Q Did you follow her?
11. A Yes.
12. Q Did you stop anywhere along the way?
13. A No, ma'am.
14. Q Were you recording her along the way?
15. A Yes, ma'am.
16. Q And listening in real time audio?
17. A Yes, ma'am.
18. Q From the time that you left your meeting location
19. until you got to Austin Court?
20. A Yes, ma'am.
21. Q Agent Kirkland, can you explain what is in State's
22. Exhibit 1, the roadway.
23. A This is actually a photograph, aerial, of 178
24. Austin Court and the residence of [REDACTED] and all
25. houses surrounding it.

- 1 Q Agent Kirkland, can you tell me what this paved
2 road is?
- 3 A The paved road is Highway 178.
- 4 Q Highway 178. This dirt road?
- 5 A That's actually Austin Court.
- 6 Q Do you know this address?
- 7 A Yes, ma'am, that is [REDACTED].
- 8 Q Thank you. You followed Ms. Broach from your
9 meeting spot to Austin Court?
- 10 A I followed Ms. Broach from the meeting spot until
11 the entrance of Austin Court.
- 12 Q Where did you go when she turned onto that dirt
13 road?
- 14 A As soon as she turned off onto the dirt road, I
15 went just beyond -- I can't get this to work -- I
16 went just beyond Austin Court. On the opposite
17 side is a water tower and an open piece of land
18 right there. I parked right there.
- 19 Q Somewhere in this area (indicating)?
- 20 A Yes, ma'am, somewhere in that area.
- 21 Q Off the paved road?
- 22 A Yes, ma'am.
- 23 Q Why didn't you follow Ms. Broach onto the dirt
24 road?
- 25 A Austin Court is a one-way in, one-way out type dirt

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

243

1 road. There is a lot of family. We like to refer
2 it as to counter surveillance. It may or may not
3 be. We tactually it would not be safe for her to
4 have us follow her in. We also received some
5 information that there might be --

6 MR. FLOYD: Your Honor, I object to any
7 hearsay.

8 THE COURT: I would overrule the objection. I
9 think the response is in regard to why the officer took
10 certain actions.

11 You may continue your response, Officer.

12 THE WITNESS: Thank you, sir.

13 A We had received information that there might or
14 might not be surveillance cameras. We hadn't
15 proved that, so we didn't take the risk of
16 following her in.

17 Q However you did keep constant eye contact on her
18 until she turned onto that road?

19 A Yes, ma'am.

20 Q And then you parked across the paved road on 178?

21 A Yes, ma'am.

22 Q Did you listen as she pulled into the dirt road and
23 into the drive of [REDACTED] Austin Court?

24 A Yes, ma'am.

25 Q Did you listen as she went into a home on Austin

1. Court?

2 A Yes, ma'am.

3 Q At any time did this audio stop?

4 A No, ma'am.

5 Q If you had needed to get in to Ms. Broach at
6 ■ Austin Court, about how long would it have
7 taken you and Agent Strange to get to her? .

8 A From where we were to getting to her would have
9 taken us about .30 to 45 seconds.

10 Q Did you hear her speaking to some people inside
11 ■ Austin Court?

12 A Yes, ma'am.

13 Q When she came out, did she speak to you through her
14 audio wire?

15 A Yes, ma'am.

16 Q Did she speak to you before she got there?

17 A Yes, ma'am, she was calm.

18 Q What happened when she left?

19 A When she left she actually gave the house, the
20 description of the house, what was on the mailbox
21 and I think that was about the extent of the
22 conversation.

23 Q When she pulled out of ■ Austin Court onto the
24 dirt road, when did you meet back up with her?

25 A When she pulled out of Austin Court, I then pulled

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

245

1 off of the paved portion on the other side, and she
2 followed me directly on 178.

3 Q She was out of your surveillance, your visual site,
4 from here to here (indicating)?

5 A Yes, ma'am.

6 Q And from here to here (indicating)?

7 A Yes, ma'am.

8 Q When you reached that point, what happened?

9 A When she reached that point and made the right onto
10 178, I pulled out in front of her and she followed
11 me to a safe location.

12 Q Where did she follow you to?

13 A The fire station just down 178.

14 Q Did you ever lose visual sight of her once she
15 followed you to your second meeting location?

16 A No, ma'am.

17 Q When you got to that location, what happened?

18 A The first thing we did was retrieve the crack
19 cocaine from her.

20 Q How did you do that?

21 A I have a plastic bag, evidence bag that we always
22 use. We opened the bag up and she drops it in the
23 bag, and we seal it, and she of course was given
24 hand sanitizer.

25 Q Do you remember how many pieces she dropped into

- 1 the bag that day?
- 2 A Yes, ma'am, three.
- 3 Q And how much money did you give her to purchase
- 4 this narcotic?
- 5 A Sixty dollars.
- 6 Q Where does that \$60 come from?
- 7 A It comes from our narcotics fund.
- 8 Q She doesn't have any other money on her?
- 9 A No, ma'am.
- 10 Q After she gave you the crack cocaine, what
- 11 happened?
- 12 A A search of the vehicle and her person again takes
- 13 place.
- 14 Q You search her body the same as before?
- 15 A Yes, ma'am, vehicle same as before.
- 16 Q Do you have any other money show up in that second
- 17 search?
- 18 A Oh, no, ma'am.
- 19 Q Any weapons or other narcotics?
- 20 A No, ma'am.
- 21 Q Did you search her body after this transaction?
- 22 A I did.
- 23 Q Did Agent Strange search her car?
- 24 A Yes, ma'am.
- 25 Q When did you take the recording device off of

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

247

1 Ms. Broach?

2 A As soon as the search was complete.

3 Q What happened after that?

4 A A voluntary statement was then taken from her about
5 what actually took place during the deal, as we
6 refer to it.

7 Q Did you call Ms. Broach between Austin Court --

8 THE COURT: Let me stop you just a moment,
9 Solicitor. Madame Forelady, and ladies and gentlemen of
10 the jury, please step to your jury room. Do not discuss
11 the case during this recess. We will take about a
12 ten-minute recess.

13 (The jury retires to the jury room).

14 THE COURT: One of the jurors indicated that
15 they needed to take a rest room break. We will take
16 about a ten-minute recess.

17 Officer, you may certainly step down and
18 refresh yourself. You are subject to continuing direct
19 and cross. Please do not discuss your testimony during
20 this brief recess. Thank you very much.

21 (Whereupon there is a recess).

22 THE COURT: Anything before we bring in our
23 jury from the State, Solicitor?

24 MS. HOWARD: Nothing from the State, Your
25 Honor.

1 THE COURT: From the defense?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: Bring us our jury, please.

4 (The jury returns to the courtroom).

5 THE COURT: All parties are present, the
6 Defendant, and the jury is back present in the
7 courtroom. Solicitor, you may proceed.

8 MS. HOWARD: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. HOWARD:

11 Q Detective Kirkland, you recovered three pieces of
12 what you believed to be crack cocaine from
13 Ms. Broach at the fire station?

14 A Correct.

15 Q Re-searched her body, her vehicle?

16 A Correct.

17 Q Did she write a statement as to what she had just
18 done?

19 A Yes, ma'am.

20 Q Was she paid for what she had just done?

21 A Yes, ma'am.

22 Q How much did you pay her?

23 A Eighty dollars.

24 Q Is that the norm?

25 A Yes, ma'am.

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

249

1 Q For a controlled purchase?

2 A Yes, ma'am, eighty to a hundred, yes, ma'am.

3 Q Did you leave the fire station at any time during
4 this process?

5 A No, ma'am.

6 Q Did you go to a second location down the road to
7 have a little more privacy?

8 A Afterward at the church at 178 and Highway 4, yes,
9 ma'am. I thought you meant during the process of
10 riding.

11 Q After you recovered three pieces of crack cocaine,
12 what did you do with them, Officer Kirkland?

13 A The plastic bag that it was sealed in, it was then
14 placed into what we call a best kit, which is
15 actually an evidence kit. It's then turned into
16 evidence at the Lexington County Sheriff's
17 Department.

18 Q All evidence is turned in a best kit?

19 A Oh, yes, ma'am.

20 Q Did you hand this evidence that was put into the
21 best kit over to a person at the Sheriff's
22 Department?

23 A I can't remember if a custodian was there.
24 Normally we leave it in what is called a lock box.
25 I can't remember if someone was there or not. If

1 they were there, certainly they would take it. If
2 not, we leave it in a lock box, secure.

3 Q You secure the evidence into a bag?

4 A Right.

5 Q Did you write on that bag in any way?

6 A Yes, ma'am, the case number, the individual's name
7 that we made the controlled buy from if it's known,
8 the location, the date and time, and things of that
9 nature, all pertinent information to it.

10 Q And if you put it in a evidence locker, can it get
11 mixed up with anything else?

12 A No, ma'am, not supposed to. No, ma'am, it's in
13 there by itself.

14 Q Agent Kirkland, do you recognize what has been
15 marked as State's Exhibit Number 6?

16 A Yes, ma'am.

17 Q How do you recognize that?

18 A That is my handwriting inside with the date of the
19 controlled purchase -- not the date, but the case
20 number, incident date, and three pieces of
21 rock-like substance consistent with crack.

22 Q That's a best kit?

23 A That's a best kit, yes, ma'am.

24 Q Because of your writing on it, you know that is the
25 one you turned into the evidence locker?

ERIC KIRKLAND -- DIRECT -- MS. HOWARD

251

- 1 A Yes.
- 2 Q Is there a tag on that best kit?
- 3 A Yes, ma'am, on the front.
- 4 Q Who else has been in contact with this plastic bag?
- 5 A Beth Harmon, Candy Kyzer, our nice ladies in
6 evidence, and Ms. Emily Wilson who is actually our
7 chemist.
- 8 Q And your name is the first one on that list?
- 9 A The first one on it, yes, ma'am.
- 10 Q And you received it from your confidential
11 informant, Freda Broach?
- 12 A Yes, ma'am, 7/15/08 at 3:54 p.m.
- 13 Q What is the location written on that bag?
- 14 A [REDACTED] Austin Court, Pelion, South Carolina.
- 15 Q To your knowledge has that been altered in any way
16 except for the chemist?
- 17 A No, ma'am.
- 18 Q Agent Kirkland, do you recognize what has been
19 marked as State's Exhibit Number 5?
- 20 A Yes, ma'am.
- 21 Q How do you recognize that?
- 22 A That is the audio that was turned in with the
23 controlled purchase.
- 24 Q Have you heard what is on that C.D.?
- 25 A Yes, ma'am.

1 Q Is it substantially the same as what you recorded
2 and heard through the wires you attached to
3 Ms. Broach?

4 A It is.

5 Q On July 15, 2008?

6 A It is.

7 Q Have you heard what is on that C.D.?

8 A Yes, ma'am.

9 Q Agent Kirkland, how many times have you used Freda
10 Broach in the past as a confidential informant?

11 A I will guesstimate about 25 to 30 times.

12 Q Agent Kirkland, were you present when George
13 Middleton was later arrested on this charge?

14 A Yes, ma'am.

15 Q Where was he arrested?

16 A At [REDACTED] Austin Court.

17 Q Is that his home?

18 A Yes, ma'am.

19 MS. HOWARD: Beg the Court's indulgence one
20 moment, Your Honor.

21 THE COURT: Yes, ma'am.

22 (Pause).

23 BY MS. HOWARD:

24 Q Agent Kirkland, please answer any questions
25 Mr. Floyd may have for you.

ERIC KIRKLAND -- CROSS -- MR. FLOYD

253

1 THE COURT: Thank you, Solicitor. Mr. Floyd.

2 MR. FLOYD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. FLOYD:

5 Q Agent Kirkland, these crack pieces, they are very
6 small; aren't they?

7 A Yes, sir.

8 Q They can easily be hidden, can they not?

9 A Yes, sir.

10 Q This Freda lady, did you search her underwear?

11 A No, sir, we don't look in her underwear.

12 Q Do you always search her the same way each time?

13 A We try to change up a lot of the ways we search so
14 they don't get used to the way we search.

15 Q Do you ever search her underwear?

16 A No, sir.

17 Q Do you search the car or does somebody else search
18 the car?

19 A While I am searching her, Agent Strange is busy
20 searching the car or vice-versa.

21 Q How long does it take to search a car?

22 A Fifteen to 20 minutes, depending on the size of the
23 vehicle and the contents in it. That's a rough
24 estimate.

25 Q On this occasion -- do you need to refresh your

- 1 memory?
- 2 A That would be fine. Thank you.
- 3 Q How many minutes were used in searching the
- 4 vehicle?
- 5 A From 15:28 until the time we departed at 15:37, I
- 6 will say.
- 7 Q Nine minutes?
- 8 A Yes, sir, nine minutes.
- 9 Q And is the car searched when she returns?
- 10 A Yes, sir.
- 11 Q How many minutes was spent searching the car upon
- 12 her return?
- 13 A 16:09 to 16:16.
- 14 Q Seven minutes?
- 15 A Seven minutes.
- 16 Q Now, was it [REDACTED] or did you tell her [REDACTED] Austin
- 17 Court?
- 18 A His address at one point in time I knew based on my
- 19 investigation and through his prior D.L. On his
- 20 prior D.L. was [REDACTED]. As I stated on my wire,
- 21 possibly [REDACTED]. But you will note when she arrived
- 22 there, she said the address on the mailbox was [REDACTED].
- 23 Q The prior D.L. you are talking about his driver's
- 24 license?
- 25 A His driver's license and his prior booking photo at

1 ■ Austin Court.

2 MR. FLOYD: Your Honor, may we approach?

3 THE WITNESS: That was based on investigation.

4 THE COURT: Yes, sir.

5 (Whereupon there is a bench conference off the
6 record in the presence of the jury but out of the
7 hearing of the jury).

8 THE COURT: Madame Forelady, and ladies and
9 gentlemen of the jury, if you would step momentarily to
10 your jury room. Do not discuss the case during this
11 brief recess.

12 (The jury retires to the jury room).

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor. At this
15 time the defense would move for a dismissal of the
16 charges, alternatively for a mistrial, on the ground
17 that the witness has just revealed to the jury that the
18 Defendant had a prior arrest when he told the jury he
19 got the address off his prior booking report.

20 Everybody on the jury knows what that means.
21 He has been booked in the jail in the past and that
22 would be inadmissible. It's the same thing we went
23 through earlier this week. I think since this is the
24 second time, dismissal would be appropriate, but in any
25 event it certainly should be declared a mistrial.

1 THE COURT: Solicitor.

2 MS. HOWARD: Thank you, Your Honor. It would
3 be our contention that Mr. Floyd asked the question. He
4 received the same discovery we have that there was a
5 discrepancy in addresses.

6 Officer Kirkland answered the question that he
7 had had a prior investigation, and he looked into it on
8 his D.L. record. That was a sufficient answer.
9 Mr. Floyd then went further to clarify that, a driver's
10 license record, further causing Officer Kirkland to say
11 a booking photo.

12 In addition, Your Honor, a booking photo
13 doesn't necessarily mean that the Defendant has a prior
14 conviction. It certainly doesn't -- there is no
15 reference as to what type of booking photo that might
16 be. It could be something in family court or
17 magistrate's court, Your Honor.

18 It would be our contention that Mr. Floyd knew
19 there were some discrepancies in addresses. Obviously
20 it caused a mistrial yesterday, and it would be our
21 contention that he opened the door on this one, and he
22 enticed that answer, Your Honor.

23 THE COURT: Madame Court Reporter, if you
24 would go back and read from the discrepancy in address,
25 please.

1 COURT REPORTER: Yes, sir.

2 Question: Now, was it [REDACTED] or did you tell her
3 [REDACTED] Austin Court?

4 Answer: His address at one point in time I
5 knew based on my investigation and through his prior
6 D.L. On his prior D.L. was [REDACTED]. As I stated on my
7 wire, possibly [REDACTED]. But you will note when she arrived
8 there, she said the address on the mailbox was [REDACTED].

9 Question: The prior D.L. you are talking
10 about his driver's license?

11 Answer: His driver's license and his prior
12 booking photo at [REDACTED] Austin Court.

13 THE COURT: Anything further, Solicitor?

14 MS. HOWARD: Your Honor, to clarify. There
15 had been an address at [REDACTED] Austin Court for George
16 Middleton through his prior driver's license records.
17 There was an address of [REDACTED] Austin Court on a prior
18 booking form.

19 So it would be our contention that
20 certainly -- and I believe on his tape Officer Kirkland
21 says [REDACTED] or thereabouts on Austin Court. So we have got
22 [REDACTED], Your Honor.

23 To clear up the discrepancy, Mr. Floyd asked
24 the question about [REDACTED] Austin Court. That was what was
25 on the prior driver's license records. One-forty-six he

1 knew was on the booking sheet.

2 Your Honor, Officer Kirkland answered the
3 question, that through his investigation before he had
4 gotten a different address for Mr. Middleton. However,
5 that day it was [REDACTED] Austin Court. He has already
6 testified he arrested him at his home at [REDACTED] Austin
7 Court.

8 I believe that the [REDACTED] response Mr. Floyd knew
9 that was going to come off of a booking sheet. He knew
10 that was going to be Officer Kirkland's response, and I
11 believe he tried to elicit it. He made his point that
12 there were two different addresses.

13 THE COURT: I don't think Mr. Floyd ever asked
14 him about [REDACTED]. I think Mr. Floyd asked him about [REDACTED].

15 MS. HOWARD: I apologize, Your Honor.

16 THE COURT: I may be wrong. My memory may be
17 no better or may be worse than yours, Solicitor. I
18 think the officer's response said [REDACTED], I got that from
19 an investigation and off his prior D.L.

20 Then I thought Mr. Floyd asked him, When you
21 say D.L., you are referring to driver's license? And
22 the officer's response was, Yes, prior driver's license
23 and prior booking report.

24 MS. HOWARD: I apologize.

25 THE COURT: You don't owe me an apology. If

1 you think you do, I will certainly accept it. That's my
2 memory. I didn't Mr. Floyd ever asked him about [REDACTED]. I
3 thought he only asked him about [REDACTED].

4 MS. HOWARD: Okay, Your Honor.

5 THE COURT: Does that make a difference in
6 your argument, Solicitor?

7 MS. HOWARD: We can retract that last argument
8 if that was said. Also, Your Honor, I do believe he
9 said a booking photo. He didn't say there had been any
10 prior convictions.

11 A booking photo does not necessarily mean that
12 Mr. Middleton has a record or any prior convictions,
13 Your Honor. I believe that we could strike that last
14 answer or also give the jurors instructions that a
15 booking photo does not equal a record, Your Honor.

16 THE COURT: Well, I think the question,
17 Solicitor and Mr. Floyd, at least in my mind is whether
18 or not the witness' response in each instance, the
19 witness' answer in each instance, was responsive to
20 counsel's question because they were in response to
21 Mr. Floyd's question.

22 I am using the word question too much, but the
23 question is actually whether or not Officer Kirkland's
24 response was -- Mr. Floyd asked him, D.L., you are
25 talking about driver's license?

1. Then it's whether or not the officer's
2 response, Yes, prior driver's license and prior booking
3 photo. I think that is the first inquiry is whether or
4 not that is responsive.

5 MR. FLOYD: Your Honor, the only purpose of
6 the question was to clarify to the jury that D.L. didn't
7 mean any kind of record. This was his driver's license.
8 That's the only reason I asked what a D.L. is, a
9 driver's license. That's all that was requested.

10 THE COURT: Of course, it's all balled up in
11 the issue of the address where the incident occurred, if
12 it did occur, of whether it's [REDACTED] or now perhaps
13 [REDACTED].

14 MR. FLOYD: Well, the only reason I went into
15 that is because the testimony was different today than
16 it was two days ago. Two days he talked about [REDACTED] and
17 today he said [REDACTED]

18 THE COURT: Her question, Mr. Floyd, was:
19 Were you involved in the arrest and where was he
20 arrested? And his response was [REDACTED]

21 MR. FLOYD: I agree with that.

22 THE COURT: On the audiotape he refers to [REDACTED]
23 at some point, and she does say -- I mean, I don't think
24 the officer's testimony is any different. I think he
25 was asked an additional question in that regard. I

1 don't recall him being asked about his arrest,
2 Mr. Middleton's arrest, nor the location of
3 Mr. Middleton's arrest.

4 MR. FLOYD: I think you are right there.

5 THE COURT: Maybe I misunderstood.

6 MR. FLOYD: Just the other day in his
7 testimony, [REDACTED] came out. Then, of course, she gets on
8 the tape and says it's really [REDACTED]

9 THE COURT: Here is an interesting case,
10 Mr. Floyd, State versus Washington, 432 S.E.2d 448,
11 where the defense attorney is examining an officer that
12 wrote an incident report.

13 He asked him, he asked the officer if he saw
14 this incident report, and the officer said, Yes, sir, he
15 had a copy of the report, the original report. He asked
16 this officer, Did he, the other officer, add anything to
17 it? The response: Yes, sir.

18 What did he add? Asking the officer
19 testifying if he added anything to it. The officer
20 responded, I had a copy of the previous booking report
21 of Mr. Washington. He added the date of birth, black
22 male, age 35, and his Social Security number, which I
23 had.

24 Rita Washington's name is on that report,
25 isn't it?

1 Yes, sir.

2 Well, you heard he had an A/K/A Scrubby, and
3 when I talked to Ms. Green, I had a copy of his previous
4 booking report, and I added that information that
5 normally goes in the report. He added it. I gave the
6 information to him as far as the date of birth.

7 The defense attorney says then, Just a minute,
8 Your Honor. We have a matter we would like to take up
9 outside the presence of the jury.

10 The Court -- and I don't know who the judge
11 was. It was the Honorable, late Honorable, C. Anthony
12 Harris -- the Court then says, We don't need to. You
13 are examining this witness, and you are eliciting the
14 information. You go ahead.

15 I think the officer's response is in regards
16 to the discrepancies in the addresses and how he,
17 Detective Kirkland, came to those -- how he had the
18 belief that Mr. Middleton's address wasn't [REDACTED]. With
19 that being said, you go back to your original question,
20 One time you thought it was [REDACTED]. Do you have anything
21 further in that regard?

22 MR. FLOYD: The problem, Judge, is that the
23 offensive testimony was totally unresponsive. All I
24 asked was, By D.L. do you mean driver's license? Just
25 to make sure the jury understood that didn't mean any

1 kind of arrest situation, that's just a driver's
2 license. That's all I asked.

3 THE COURT: I try to be a good judge. I
4 really do. Don't you have to look at it in the context
5 of where that area of questioning was at. That area of
6 questions was in regards to this officer's prior belief
7 that Mr. Middleton's address was as he testified today,
8 [REDACTED].

9 In the context of his responses and the
10 subject matter of your questioning, he is responding
11 still to why he thought it was [REDACTED] and not [REDACTED] (sic). I
12 understand your position, too, Mr. Floyd.

13 I was only asking him, What did D.L. mean at
14 that point? Still in the context, the greater context
15 of your questioning, is still the discrepancy in the
16 address. Do you agree with that? You certainly don't
17 have to. Do you care to respond to that perhaps?

18 MR. FLOYD: Your Honor, number one, I asked
19 him [REDACTED] which he said that's what the driver's license
20 address was. All I did, the only follow-up, because he
21 said D.L. -- if he had said driver's license, I wouldn't
22 have said anything.

23 I just wanted to make sure that the jury
24 understood that D.L. was driver's license. So his
25 response going to the booking record had nothing to do

1 with [REDACTED], and it had nothing to do with the driver's
2 license.

3 THE COURT: What are you asking me to do,
4 Mr. Floyd.

5 MR. FLOYD: Well, my first motion would be for
6 a dismissal and in the alternative for a mistrial.

7 THE COURT: Anything further, Solicitor?

8 MS. HOWARD: Just briefly, Your Honor.

9 THE COURT: Certainly.

10 MS. HOWARD: The simple term booking photo is
11 not so hurtful to the Defendant to cause a mistrial. I
12 believe it can be cured if Your Honor feels so inclined
13 to do so.

14 Third, Your Honor, the response was booking
15 photo or driver's license. It could have been first.
16 It could have come out in the opposite order. It was
17 still eliciting a response.

18 THE COURT: Thank you. I am going to deny
19 your motion for dismissal. I will deny your motion for
20 a mistrial. Obviously the issue of the address is a
21 moving target to both parties.

22 Because, now as I understand it, there are
23 potentially three addresses of Mr. Middleton. I don't
24 know if they are all the same location on Austin Court,
25 but it's three addresses.

1 It's clear to the Court that that is a
2 sensitive area to both parties because that's actually
3 what elicited the testimony of witness Broach that led
4 to the mistrial in the first instance in this case.

5 I do agree, in looking at State versus
6 Washington, it's different now than it was before
7 because this testimony comes up in the context of
8 Mr. Floyd cross examining the officer concerning the
9 address, and his belief that the address was not [REDACTED] but
10 some other address that he now says is [REDACTED].

11 I think clearly it's responsive to the extent
12 that the officer can give his answer and explain his
13 answer why he thought it was [REDACTED], and I think still it's
14 in context.

15 I further would follow up that a booking photo
16 does not necessarily -- it may be to us that deal in
17 this field all the time obviously indicating an arrest.
18 As I charge the jury, this arrest is not evidence, the
19 prior arrest is not evidence, and the jury is not versed
20 in these terminologies.

21 I deny your motion for a mistrial. I will
22 give whatever curative instruction you would like me to
23 give in that regard, Mr. Floyd, if any.

24 MR. FLOYD: Your Honor, how can there be a
25 curative instruction? They have just been told he was

1 arrested before. There is no way to get that out of
2 their minds. Do we say, just ignore the fact that he
3 has been arrested before? How do we get it out of their
4 minds.

5 THE COURT: I never heard that testimony that
6 he had been arrested before.

7 MR. FLOYD: I think everybody on the jury
8 knows what a booking photo is, Judge.

9 THE COURT: They had been told there was a
10 prior booking photo. I'm just saying I think it's a
11 mischaracterization of the record that this jury has
12 been told this he has been arrested before.

13 I didn't hear that testimony. If I misheard,
14 I would be glad to go back and listen, but I didn't hear
15 that testimony. I heard the officer say prior booking
16 photo. That's the only point I am making.

17 MR. FLOYD: I think everybody on the jury
18 knows what that means, Judge.

19 THE COURT: I don't know. I'm not clairvoyant
20 in that regard. I just don't know. As I say, I will be
21 glad to give any curative instruction that you request.

22 MR. FLOYD: Your Honor, there is no way to
23 cure. There is no way to cure it. Why don't we ask
24 them if they know what a booking report is. I would bet
25 that all 12 of them would say it's at the jail when you

1. get arrested.

2 Every T.V. program just about anymore is about
3 law enforcement and booking photos. You see it all the
4 time. There is no way nobody on the jury doesn't know
5 that he just testified he has got a prior arrest.

6 I don't think there is any way we can ignore
7 that. That's out there and there is no way to cure
8 that. So I don't know what a curative instruction could
9 be.

10 THE COURT: Do you want me to ask the jurors
11 if they know what a booking photo is?

12 MR. FLOYD: Yes, Your Honor. If they say they
13 know what it is, and they know it means he has been
14 arrested, then I would ask for a mistrial.

15 THE COURT: And if they know what it is, you
16 think there is no way to give a curative instruction for
17 them to set that aside?

18 MR. FLOYD: I think so. You see, this kind of
19 case makes it's very difficult, Judge. He has already
20 got up there and talked about how people become targets.

21 THE COURT: How what?

22 MR. FLOYD: How people become targets. He has
23 already testified to that. He said one of the ways they
24 become targets is because they have prior dealings with
25 them.

1 Now, they hear he has got a booking report.
2 They know they have had prior dealings with him. So the
3 clear implication is he has got a drug record. It's not
4 his first time.

5 THE COURT: Yes, sir. You asked this officer,
6 At one time you thought his address was [REDACTED]? So you
7 have asked this witness about his prior knowledge of
8 this Defendant.

9 So in asking him that, that inference has gone
10 to the jury that this 14-year veteran of law
11 enforcement, seven-year member of the N.E.T. team, you
12 have asked him: You had prior knowledge, thought his
13 address was [REDACTED]? You asked that question.

14 MR. FLOYD: I actually asked him about his
15 lack of prior knowledge, Judge, because I said, Didn't
16 you think it was [REDACTED], not [REDACTED]? That's showing he did
17 not have good knowledge about him.

18 Then he says it's his driver's license, which
19 is fine. All I asked, Does that mean driver's license?
20 He is the one that carried it further and gave us the
21 booking information. They know he has been arrested
22 now, and if that's fair, we can go forward.

23 THE COURT: I disagree with that. I think
24 it's a mischaracterization that they know he has been
25 arrested. I didn't hear that testimony. Anything

1 further, Solicitor?

2 MS. HOWARD: Nothing from the State, Your
3 Honor.

4 THE COURT: Anything further, Mr. Floyd?

5 MR. FLOYD: No, Your Honor.

6 THE COURT: Bring us our jury, please.

7 MR. FLOYD: Your Honor, before they come out,
8 I have a representative from the bonding company here.
9 I wasn't sure exactly when you would need that.

10 THE COURT: Come around for me, please. Step
11 up to the podium? What is your name, please?

12 MS. ZINC: Linda Zinc.

13 THE COURT: Ms. Zinc, you are employed by who?

14 MS. ZINC: Brad's Bail Bonding company.

15 THE COURT: Mr. George Thomas Middleton has a
16 bond with Brad's Bail Bonding company in the amount of
17 \$95,000 surety. Of course, we have already started the
18 trial of his case.

19 I am going to have to deal with his bond later
20 on as to whether or not I release him from custody
21 overnight or have him taken into custody. Would y'all
22 have any position as to whether or not y'all would
23 remain on his bond?

24 MS. ZINC: We will remain on his bond.

25 THE COURT: He has appeared every time? Is

1 that my understanding, Mr. Floyd?

2 MR. FLOYD: That's my understanding, yes, Your
3 Honor.

4 THE COURT: Is that my understanding,
5 Solicitor? Mr. Middleton has appeared each and every
6 time when he was called for court?

7 MS. HOWARD: Yes, sir, Your Honor.

8 THE COURT: So should he fail to appear if he
9 is released overnight, y'all would still be on that
10 bond; is that right, Ms. Zinc?

11 MS. ZINC: Yes, sir.

12 THE COURT: Thank you very much for being
13 here. I will certainly take that into consideration at
14 the end of the day. Thank you.

15 Bring us our jury, please.

16 (The jury returns to the courtroom).

17 THE COURT: Thank you very much. We are
18 continuing with the trial of the case with the cross
19 examination of this witness by Mr. Floyd.

20 Mr. Floyd, you may proceed.

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. FLOYD:

24 Q Now, Mr. Kirkland, this lady, Ms. Broach?

25 A Yes, sir.

ERIC KIRKLAND -- CROSS -- MR. FLOYD

271

1 Q She first started working with you when her husband
2 was in trouble?

3 A That's correct.

4 Q And what was he in trouble for?

5 A He had some traffic offenses with the Swansea
6 Police Department. I think it was shoplifting, I
7 believe.

8 Q You didn't tell us yesterday that, did you, Tuesday
9 when you testified before? You didn't tell us
10 about the shoplifting, did you?

11 A I knew he had a previous charge he was working off.

12 Q You told us they were traffic charges, did you not?

13 A Traffic offense. That is a misdemeanor offense.

14 Q Shoplifting is not a traffic offense, is it?

15 A I think it might have been shoplifting. I'm not
16 sure. I would have to research that. I'm not
17 sure.

18 Q When she worked with you initially, she was the
19 driver for Mr. Corley; isn't that correct?

20 A Correct.

21 Q How much did she get paid when she was a driver?

22 A Eighty dollars.

23 Q She got \$80 then?

24 A Yes, sir.

25 Q Did he get \$80, too?

1 A No, no. He was actually working off a charge.
2 They do not get paid when they are working off
3 charges. She did not have any charges at all;
4 therefore, she was paid.

5 Q Didn't you tell us the other day she got \$20 for
6 driving?

7 A I don't recall you asking me. I thought you asked
8 me whether they get paid when they don't do a deal.
9 I don't recall. I don't think I told you \$20. If
10 it's a paid C.I., they don't get that amount. I
11 think what I told you was they get paid when they
12 don't do a deal. If they do a deal, they get paid
13 80. If they don't get, they get 20 for the
14 attempt. I don't think I told you 20 just for
15 that, sir.

16 Q Okay.

17 A I'm almost certain I didn't.

18 Q So basically the C.I. gets \$20 if they are
19 unsuccessful in making a buy, \$80 if they are
20 successful in making a buy?

21 A That is what I told you, sir.

22 Q If they bring you back some dope, they get \$80?

23 A If they make a controlled purchase, they get \$80.

24 Q On this particular day, you never saw your C.I.
25 from the time she gets onto Austin Court until the

1 time she got off Austin Court; is that correct?

2 A That is correct. I lost visual when she turned off
3 onto Austin Court.

4 Q There are a lot of trees in there, and you have no
5 view or no vision of [REDACTED] Austin Court from where
6 you were sitting?

7 A No, sir.

8 Q So the only information you have about what went
9 on, if anything, in [REDACTED] Austin Court is what she
10 told you happened?

11 A And what I heard.

12 Q And whatever is on that audiotape?

13 A Correct, sir.

14 Q And how many times has she done this?

15 A Roughly I will say about 25 to 30. That's a rough
16 estimate.

17 Q Has she always brought dope back to you?

18 A Not always, no, sir.

19 Q How many occasions has she not brought dope back to
20 you?

21 A I can't recall. I never kept track. I would have
22 to go back to my file to give you an accurate
23 answer. I don't know, sir.

24 Q So you give her \$60; is that correct?

25 A That's correct.

1 Q So if she has her own dope, which she may have paid
2 whatever for, gives you that dope, she gets to keep
3 her \$60 and \$80 you paid her; is that correct?

4 A If she passes a lawful search of her vehicle and a
5 lawful search of her person and manages to get that
6 money in, that's fair to say, but Agent Strange and
7 I are very thorough in our searches.

8 Q But you don't search her underwear, do you?

9 A No, sir, I do not.

10 Q So you have no way of knowing whether or not she
11 had it secreted in her underwear, do you?

12 A That's very possible.

13 MR. FLOYD: No further questions.

14 THE COURT: Redirect, Solicitor?

15 MS. HOWARD: Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. HOWARD:

18 Q Agent Kirkland, did you hear everything your
19 confidential informant was doing in real time?

20 A Yes, ma'am.

21 Q Through the audio that you wired up to her?

22 A Yes, ma'am.

23 Q Did you hear anything on that audio that led you to
24 believe that she did anything other than what she
25 told you later she did?

ERIC KIRKLAND -- RECROSS -- MR. FLOYD

275

1 A No, ma'am.

2 Q When you conducted a search, did you find any money
3 in her vehicle or on her person before she left you
4 to go to [REDACTED] Austin Court?

5 A No, ma'am.

6 Q You gave her \$60 before she left?

7 A Yes, ma'am.

8 Q After she left Austin Court and met back up with
9 you, did you find any money on her person or in her
10 vehicle?

11 A No, ma'am.

12 Q Did she have \$60 worth of crack cocaine?

13 A Yes, ma'am.

14 Q Agent Kirkland, if you heard anything on that audio
15 that would have led you to believe differently than
16 Freda told you, would you have charged
17 Mr. Middleton?

18 A No, ma'am. No, ma'am.

19 MS. HOWARD: Beg the Court's indulgence.

20 (Pause).

21 MS. HOWARD: No further questions, Your Honor.

22 THE COURT: Recross, Mr. Floyd?

23 **RECROSS EXAMINATION**

24 BY MR. FLOYD:

25 Q Before she left to go on this venture, did you

1 search her underwear to see if she had some crack
2 in it?

3 A No, sir.

4 Q When she got back did you search her underwear to
5 see if she had \$60 in it?

6 A No, sir.

7 Q Thank you.

8 MR. FLOYD: No further questions.

9 THE COURT: Thank you very much. You may step
10 down.

11 (Witness leaves the witness stand).

12 THE COURT: Solicitor, you may call your next
13 witness.

14 MR. STUMBO: Your Honor, may we briefly
15 approach?

16 THE COURT: Yes, sir.

17 (Whereupon there is a bench conference off the
18 record in the presence of the jury but out of the
19 hearing of the jury).

20 THE COURT: Does anybody have any commitments
21 that they need to be out of here before 6:30? If you
22 do, raise your hand. I don't like to cut people off if
23 you have to pick up children or anything like that.

24 (There is no response).

25 THE COURT: Solicitor, you may call your next

TODD STRANGE -- DIRECT -- MS. HOWARD

277

1 witness.

2 MS. HOWARD: Thank you, Your Honor. The State
3 calls Agent Todd Strange.

4 THE COURT: If you would come around, please,
5 and be sworn.

6 TODD STRANGE, being
7 first duly sworn, testifies as follows:

8 CLERK: Please state your name; spelling your
9 last name for the record.

10 THE WITNESS: My name is Todd Strange. The
11 last name is S-T-R-A-N-G-E.

12 DIRECT EXAMINATION

13 BY MS. HOWARD:

14 Q Good afternoon, Agent Strange, or good evening.

15 A Yes, ma'am.

16 Q Agent Strange, where are you employed?

17 A South Carolina Law Enforcement Division.

18 Q How long have you been there?

19 A Nine months.

20 Q Before you went over to S.L.E.D., where were you
21 employed?

22 A Lexington County Sheriff's Department. I was
23 assigned to the Lexington County Multiagency
24 Narcotics Enforcement Team.

25 Q Did you partner up with Detective Kirkland?

- 1 A I was partnered with Detective Kirkland.
- 2 Q And how long were you on the narcotics team here in
3 Lexington?
- 4 A Three years.
- 5 Q Before that any experience in law enforcement?
- 6 A Nine years prior with the Sheriff's Department.
- 7 Q Thirteen years total?
- 8 A Going on 13 years.
- 9 Q Do you remember being with Detective Kirkland on
10 July 15, 2008?
- 11 A Yes.
- 12 Q Do you remember meeting up with him and Freda
13 Broach, a confidential informant he used?
- 14 A Yes, ma'am.
- 15 Q Did you conduct a controlled buy using Freda Broach
16 as your confidential informant with Agent Kirkland?
- 17 A Yes, ma'am.
- 18 Q On that day do you remember where that took place?
- 19 A Yes, ma'am.
- 20 Q Was it [REDACTED] Austin Court?
- 21 A Yes, ma'am.
- 22 Q When you met Freda initially before she left to go
23 to Austin Court, did you search her vehicle?
- 24 A Yes, ma'am.
- 25 Q Do you remember what kind of car she was driving

TODD STRANGE, -- DIRECT -- MS.. HOWARD

279

1 that day?

2 A Blue Intrepid.

3 Q Have you performed a lot of vehicle searches in
4 your 13 years of law enforcement?

5 A Hundreds.

6 Q Can you briefly describe how you would go through a
7 vehicle looking for money, narcotics, weapons.

8 A I search the entire passenger compartment, anything
9 that the driver might have immediate access to
10 obviously. We search inside through the seats,
11 make sure there is nothing in the seats, search
12 underneath the seats, search throughout the
13 floorboard search, search underneath the mats,
14 search underneath any accessible -- readily
15 accessible parts in the dashboard, including the
16 conceal, underneath the dash, in the ashtray, glove
17 box, searching any compartments in the doors, any
18 compartments in the visors, over the visor,
19 anything on the ceiling. Some vehicles have
20 compartments in the ceiling also.

21 We search any type containers in the car,
22 whether it be an envelope or any type container,
23 bottle, can, whatever it might be, search through
24 that. As has been mentioned there's multiple
25 places you can hide crack cocaine in because it's

1. very small.

2. I searched thoroughly throughout that
3. compartment, searched the trunk, throughout there,
4. searched the sides, searched the top layer, search
5. underneath the carpet, searched around the tires,
6. around the jack, whatever.

7. Q If Ms. Broach had a pocketbook that day, would you
8. have searched through her purse?

9. A We search through any articles, including the
10. purse. We search her purse, search her billfold,
11. search anything. If she has medicine bottles, we
12. open them up and look inside there, any kind of
13. makeup bottles, anything.

14. Q Did you find anything that day?

15. A I did not find any type of contraband, no kind of
16. currency, no narcotics, no weapons.

17. Q How long do you think it would take to do a proper
18. search on one of these vehicles, the Dodge
19. Intrepid, to look for what you were looking for
20. that day?

21. A It depends on the quantity of articles inside
22. obviously and the compartments. We are talking
23. anywhere from five to ten minutes I can do a search
24. easy of a vehicle. Five minutes is a very normal
25. time. If you are doing something in a hurry, which

TODD STRANGE -- DIRECT -- MS. HOWARD

281

1 we have got a limited amount of time to do these
2 operations, then you do it fast and efficiently.

3 I have prior -- a lot of prior experience
4 searching cars. So I know a lot of places where
5 you can hide items and everything. So obviously I
6 look there, and I have had a lot of success in the
7 past finding contraband in vehicles. I know where
8 to look.

9 Q You are not trying to leave it nice and neat?

10 A No, ma'am.

11 Q When you are finished searching?

12 A No, ma'am.

13 Q After you left that location, were you in the car
14 with Agent Kirkland?

15 A Yes.

16 Q Did you follow Freda to [REDACTED] Austin Court?

17 A Yes, ma'am.

18 Q Or to Austin Court.

19 A Yes, ma'am, I was riding with Agent Kirkland.

20 Q Were you across the road, Highway 178, when she
21 pulled down Austin Court and went into [REDACTED]

22 A Yes.

23 Q Were you listening in real time along with Agent
24 Kirkland?

25 A Yes, ma'am.

1 Q At any time up until she turned onto [REDACTED] was she
2 ever out of your visual sight?

3 A No, ma'am.

4 Q And when she was out of sight, she was not out of
5 earshot?

6 A Correct. We could hear everything that was going
7 on around her.

8 Q If she had popped a hood perhaps and then had to
9 shut it, would you have heard it on the audio?

10 A You can hear everything that is going on in the
11 vehicle. You can hear opening the glove box. You
12 can hear doors opening and closing. You can hear
13 windows going down, the radio.

14 We make them keep the radio down or off so
15 that we can hear every little detail. You can
16 definitely hear anything they are doing within that
17 compartment and whether they travel outside that
18 compartment.

19 Q After she left [REDACTED] Austin Court, she followed you
20 and Agent Kirkland to the fire station?

21 A She did.

22 Q Did you ever lose visual over there --

23 A No, ma'am.

24 Q -- until you got there. Did you re-search her
25 vehicle at that point?

1. A Yes, ma'am.

2 Q Same search as before?

3 A Yes, ma'am.

4 Q Did you find any drugs, weapons, contraband?

5 A No, ma'am.

6 Q If you had would you have felt confident in
7 charging George Middleton for distribution of crack
8 on July 15, 2008?

9 A No, ma'am, we would not have.

10 Q Please answer any questions Mr. Floyd may have for
11 you.

12 THE COURT: Thank you, Solicitor. Mr. Floyd.

13 MR. FLOYD: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. FLOYD:

16 Q Agent Strange, were you able to see Freda Broach
17 while she was on Austin Court?

18 A No, sir.

19 Q So she was completely out of your sight; is that
20 right?

21 A Yes, sir.

22 Q The whole time she's on Austin Court?

23 A Yes, sir.

24 Q Now, can you tell us, do you recall searching her
25 vehicle?

1 A Yes, sir.

2 Q And what containers did she have in it that day?

3 A As far as do I remember that specific date? No,
4 sir, I don't remember.

5 Q So when you told you the jury the way you searched
6 that car and how thorough it was, you don't really
7 remember that day; do you?

8 A No, sir.

9 Q Thank you.

10 MR. FLOYD: No further questions.

11 THE COURT: Redirect, Solicitor?

12 MS. HOWARD: Briefly Your Honor.

13 **REDIRECT EXAMINATION**

14 BY MS. HOWARD:

15 Q Agent Strange, you've searched hundreds of vehicles
16 you say?

17 A Yes, ma'am.

18 Q Did I just ask you to describe a vehicle search for
19 me?

20 A Yes, ma'am, you did.

21 Q And you described what you would typically do for a
22 vehicle search?

23 A Yes, ma'am.

24 Q Are you confident that you conducted a typical
25 vehicle search on that day?

MARGARET HARMON -- DIRECT -- MS. HOWARD

285

1 MR. FLOYD: Your Honor, I object. He has
2 already testified he doesn't remember.

3 THE COURT: Yes, sir, I would sustain the
4 objection.

5 MS. HOWARD: No further questions.

6 THE COURT: Thank you. Recross?

7 MR. FLOYD: Nothing further.

8 THE COURT: Thank you very much, Agent
9 Strange. You may step down.

10 (Witness leaves the witness stand).

11 THE COURT: Solicitor, you may call your next
12 witness.

13 MS. HOWARD: Your Honor, the State would call
14 Beth Harmon.

15 MARGARET ELIZABETH HARMON,
16 being first duly sworn, testifies as follows:

17 CLERK: Once you are seated, please state your
18 name, spelling your last name for the record.

19 THE WITNESS: Margaret Elizabeth Harmon,
20 H-A-R-M-O-N.

21 DIRECT EXAMINATION

22 BY MS. HOWARD:

23 Q Good evening, Ms. Harmon.

24 A Good evening.

25 Q Would you tell the jury where you are employed.

1. A I am employed with the Lexington County Sheriff's
2 Department as an evidence custodian.

3 Q Can you tell us, what exactly is an evidence
4 custodian?

5 A Evidence custodians are responsible for the care
6 and control of all evidence in the Sheriff's
7 Department. We receive evidence from officers,
8 narcotics officers, road officers, investigators,
9 crime scene officers, occasionally other agencies.

10 We are responsible for verifying that their
11 paperwork that we require them to fill out is
12 correct and accurate. We also enter all evidence
13 into a computer system, assign it a bar code, and
14 store it until it is sent to be tested or until it
15 is brought to court.

16 Q In this case did you receive evidence from Agent
17 Kirkland?

18 A I did. I received it out of the locker at the
19 Lexington County Sheriff's Department.

20 Q And how do you know that you received evidence in
21 this case?

22 A Agent Kirkland filled out what we call an evidence
23 property record form. That's a general form we ask
24 all evidence to be entered in under. Every officer
25 is required to complete an evidence property record

MARGARET HARMON -- DIRECT -- MS. HOWARD

287

1 for each case of evidence they submit to us. They
2 are required to put a case number, the primary
3 incident type; a location where they found that
4 evidence, as well as a description of what that
5 evidence is.

6 Q The evidence that you received from Agent Kirkland,
7 was it in a best kit?

8 A Yes, it was.

9 MS. HOWARD: Permission to approach, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. HOWARD:

13 Q Ms. Harmon, can you explain to the jury what this
14 is?

15 A It's an empty best. These are available to the
16 officers from the evidence room. Best kits are
17 unique because they have control numbers on them.
18 Those control numbers are never duplicated. For
19 example, this best kit is control number C-017423
20 this will be the only best kit with those numbers
21 on it.

22 We have a Lexington County best kit. It has
23 our agency name on it. It does have continuous
24 circles around the three sealed edges. It also has
25 an adhesive tape on the top of it.

1 Once the officer tears the protective covering
2 off of the tape and closes the best kit, it is then
3 sealed. If it were to be tampered with in any way,
4 this best kit is tamper evident.

5 That means if someone were to try to pull that
6 seal, it would distort the image underneath. If
7 you try to maybe tear in here, you would know that
8 the image had been distorted. If it was cut, you
9 would see that it had been cut.

10 Q So once an officer places something into a best kit
11 and seals it, does he write on that outside of that
12 best kit?

13 A He does write on the best kit. He also signs that
14 he is the person that sealed that best kit. The
15 best kit comes into the evidence room. If it has
16 any type of indication that it has been tampered
17 with, we do not accept it, and we call the officer
18 in.

19 Q Ms. Harmon, do you recognize what has been marked
20 as State's Exhibit 6?

21 A Yes, I do.

22 Q Can you tell us what State's Exhibit 6 is.

23 A State's Exhibit Number 6 is a best kit with a
24 control number of 17265. This was completed by
25 Officer Eric Kirkland.

MARGARET HARMON -- DIRECT -- MS. HOWARD

289

1 Q Is there a tag on top of that kit?

2 A Yes, it is.

3 Q Is everyone who touches that kit supposed to sign
4 that tag?

5 A Yes, they are.

6 Q Is your signature on it?

7 A Yes, it is.

8 Q And whose signature is before yours?

9 A Eric Kirkland.

10 Q Would that mean that Eric Kirkland was the last
11 person to touch that best kit before you received
12 it into evidence?

13 A Yes, it does.

14 Q Did you receive it from a locker?

15 A Yes, I did.

16 Q Can anyone else -- after Detective Kirkland puts
17 the best kit in the locker and closes it, can
18 anyone else pull that evidence out besides you?

19 A Only the three evidence custodians. Lockers at the
20 Sheriff's Department are designed with a push
21 button access point for the officers. That means
22 they have an access to a door. They put their
23 evidence in there and close the door and push a
24 button.

25 Once that button has been pushed, the evidence

1 locker will not open from that side. In the
2 morning whoever the evidence custodian is that
3 comes in will open that locker from the back side.
4 Then we take out all the evidence, verify that it's
5 correct, and begin entering it.

6 Q And you were the evidence custodian to come in on
7 that morning and retrieve that evidence from the
8 locker?

9 A That's correct.

10 Q And you fill out paperwork explaining that?

11 A That's correct.

12 Q To the best of your knowledge had that evidence
13 best kit been tampered with in any way?

14 A No, it did not appear to tampered with.

15 Q What did you do once you took the evidence from the
16 locker?

17 A Once I took the evidence from the locker, we verify
18 that what they said they turned in is actually what
19 they turn in. Once that has been verified, we
20 enter it into the computer, assign it a bar code,
21 and place it in a location we call the drug lab
22 temp box.

23 The drug lab temp box is in our drug room.
24 It's the evidence room of the Lexington County
25 Sheriff's Department. You would associate our drug

1 room as something similar to a bank vault. It's
2 built like a bank vault.

3 It is only assessable from the evidence
4 custodian. You wouldn't be able, just like with a
5 bank, you wouldn't be able to break into a vault by
6 drilling through their vault. You wouldn't be able
7 to break into the evidence by drilling through our
8 drug room. It stays in the drug lab temp box until
9 it is sent to be tested.

10 Q You left it in the drug lab temp box?

11 A That's correct.

12 Q Did you tamper with that evidence at all before you
13 left it there?

14 A No, I did not.

15 Q Please answer any questions Mr. Floyd may have.

16 THE COURT: Thank you, Solicitor. Mr. Floyd.

17 CROSS EXAMINATION

18 BY MR. FLOYD:

19 Q Ms. Harmon. You don't have any personal knowledge
20 of what, if anything, went on at [REDACTED] Austin Court?

21 A No, sir, I do not.

22 Q Thank you.

23 MR. FLOYD: No further questions.

24 THE COURT: Redirect, Solicitor?

25 MS. HOWARD: Nothing further, Your Honor.

1 THE COURT: Thank you very much, Ms. Harmon.
2 You may step down.

3 (Witness leaves the witness stand).

4 THE COURT: Solicitor, you may call your next
5 witness.

6 MS. HOWARD: The State would call Candy Kyzer.

7 CANDY KYZER, being
8 first duly sworn, testifies as follows:

9 CLERK: Please state your name, spelling your
10 last name for the record.

11 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

12 DIRECT EXAMINATION

13 BY MS. HOWARD:

14 Q Good afternoon, Candy.

15 A Good afternoon.

16 Q Candy, can you please tell the jury where you are
17 employed.

18 A I am employed with Lexington County Sheriff's
19 Department as an evidence custodian.

20 Q We have heard what an evidence custodian does. Did
21 you fill out a form on a best kit pertaining to
22 this case?

23 A Yes, I did.

24 Q Is your name on the tag for this best kit?

25 A Yes, it is.

CANDY KYZER -- DIRECT -- MS. HOWARD

293

1 Q Can you tell us why it would be on that tag?

2 A One time it was when I went into the drug room, got
3 it from our drug lab temp box, and gave it to the
4 chemist for her to test. The next time is when the
5 chemist was finished testing it and returned it
6 back to the drug room or to our evidence room for
7 us to put it back into our drug room to store.

8 Q When you remove evidence from the lab, the temp
9 room, and take it to chemist, did you fill out
10 paperwork saying that you have done this?

11 A Yes, we do.

12 Q Do you look at the bag to make sure it has not been
13 altered or tampered with in any way?

14 A Yes, I do.

15 Q And you put your signature on that bag, on that tag
16 saying that you have moved it, but that it was in
17 an unaltered condition when you received it?

18 A That's correct.

19 MS. HOWARD: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: Yes, ma'am.

22 (Pause).

23 BY MS. HOWARD:

24 Q Ms. Kyzer, on that specific best kit, that specific
25 bag of evidence, was that altered or manipulated in

1 any way?

2 A No, it was not until the chemist got a hold of it
3 and tested it.

4 MS. HOWARD: No further questions, Your Honor.

5 THE COURT: Thank you, Solicitor. Mr. Floyd.

6 CROSS EXAMINATION

7 BY MR. FLOYD:

8 Q Ms. Kyzer, do you have any personal knowledge of
9 what did or did not go on at [REDACTED] Austin Court?

10 A No, I do not.

11 Q Thank you.

12 MR. FLOYD: No further questions, Your Honor.

13 THE COURT: Redirect?

14 MS. HOWARD: No, sir Your Honor.

15 THE COURT: Thank you, Ms. Kyzer. You may.

16 step down.

17 (Witness leaves the witness stand).

18 THE COURT: Solicitor, you may call your next

19 witness.

20 MR. STUMBO: Your Honor, may we approach

21 briefly.

22 THE COURT: Yes, sir, certainly.

23 (Whereupon there is a bench conference off the
24 record in the presence of the jury but out of the
25 hearing of the jury).

1 THE COURT: Madame Forelady, ladies and
2 gentlemen of the jury, perhaps it would be a good time
3 now to take our evening recess. I would remind you that
4 during this recess, you are not to discuss this case
5 with anyone. That includes your fellow jurors, your
6 family member, friends or anyone else.

7 You may certainly tell your family members
8 that you have been selected for the trial of the case.
9 They are perhaps even now wondering where in the world
10 y'all are. Perhaps many of y'all work much, much later
11 than this.

12 You can certainly tell them you have been
13 selected for a trial on this jury, and I will back you
14 up on that, but you cannot discuss the facts of the case
15 in any manner with anyone.

16 If anyone should try to talk with you about
17 the case, please let me know. Remember, do not do any
18 investigation. Do not do any independent investigation
19 on your own. Do not do any investigation on the
20 internet. Don't look up terms. Don't look up law.
21 Nowadays there is so much information that is available
22 at our fingertips on the internet.

23 You have to decide this case based on the
24 evidence testimony presented in this courtroom and the
25 witnesses testifying under oath before you, and the law

1 as I tell you the law is.

2 Remember to keep an open mind about the case.

3 Do not begin your deliberations until you I direct you

4 to do so. Does anyone have a problem being here about

5 8:30 in the morning? We will take our evening recess,

6 and I would ask you to please be back promptly at 8:30

7 please be back promptly in your jury room at 8:30.

8 Thank you. Thank you very much.

9 (The jury is excused for the day at 6:16 p.m.)

10 THE COURT: Anything further from the State?

11 MS. HOWARD: Nothing from the State.

12 THE COURT: From the defense?

13 MR. FLOYD: Not at this time, Your Honor,
14 unless you want me to formally request it. We would ask
15 that he be allowed to go home for the evening.

16 THE COURT: I think I will allow him to do so
17 given the fact that he has been here every time this
18 week.

19 Mr. Middleton, you understand your trial has
20 started.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Should you fail to appear, your
23 trial will continue in your absence.

24 THE DEFENDANT: (Witness nods). (Indicating
25 affirmative response).

1 THE COURT: You have always appeared when I
2 have been presiding in court each and every time,
3 although you may be a little bit late. Of course, that
4 could be traffic coming into Lexington. I don't know.
5 I spend time sitting in that traffic at times myself.

6 We are going to start at 8:30 in the morning.
7 I would ask you to please be present and please be on
8 time. Should you not be present, the trial will
9 continue, as I said, in your absence. Do you understand
10 that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You will be here in the morning?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is that right?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I will leave him on
17 his bond, considering the fact that Brad's Bail Bonding,
18 Ms. Zinc, states that Brad would remain on the bond. I
19 would like to start at 8:30.

20 Of course, Mr. Garrick had asked me about
21 moving. At one time I had considered moving, but I
22 think given the time we are going to start, we will stay
23 up here. You have got two more witness and one should
24 be fairly brief.

25 Mr. Floyd, can you tell me now whether or not

1 you intend to produce any testimony? You certainly
2 don't have to tell me now.

3 MR. FLOYD: I'm not sure on that, Judge, until
4 they rest. I will have a long talk with Mr. Middleton.
5 We may not. I will tell you that we may not.

6 THE COURT: Do either of you have any specific
7 requests to charge at this time? I realize it may be a
8 little early, but it will at least give me time to look
9 over this evening. Solicitor? Mr. Floyd?

10 MS. HOWARD: No, Your Honor.

11 MR. FLOYD: No, Your Honor.

12 THE COURT: How about remain about ten
13 minutes, Mr. Middleton, before you leave the courtroom
14 and give the jurors time to clear the courthouse. Thank
15 you very much. I hope y'all have a pleasant evening. I
16 will see you in the morning at 8:30.

17 (Whereupon the proceeding are concluded for
18 May 28, 2009).

19 (The following proceedings are reported on
20 May 28, 2009).

21 THE COURT: Anything before we bring our jury
22 in from the State?

23 MR. FLOYD: Nothing from the State.

24 THE COURT: From the defense?

25 MR. FLOYD: No, Your Honor.

EMILY WILSON -- DIRECT -- MR. STUMBO

299

1 THE COURT: They were checking to see if all
2 our jurors are present. I haven't got a report yet.

3 BAILIFF: They are here, judge.

4 THE COURT: I'm ready.

5 (The jury returns to the courtroom at
6 8:35 a.m.)

7 THE COURT: It appears all the parties are
8 present and the Defendant. Our jury is now present in
9 the courtroom.

10 Good morning, ladies and gentlemen. I hope
11 you all had a pleasant evening. We are continuing the
12 trial of case by the presentation of testimony by the
13 State in their case in chief.

14 Solicitor, you may call your next witness.

15 MR. STUMBO: Thank you, Your Honor. The State
16 calls Emily Wilson to the stand.

17 EMILY WILSON, being
18 first duly sworn, testifies as follows:

19 CLERK: Please state your name, spelling your
20 last name for the record.

21 THE WITNESS: My name is Emily Wilson,
22 W-I-L-S-O-N.

23 DIRECT EXAMINATION

24 BY MR. STUMBO:

25 Q Good morning, Ms. Wilson. How are you doing?

1 A Good.

2 Q Could you tell the jury a little bit about your
3 educational background.

4 A I have a bachelor's degree in chemistry from the
5 University of South Carolina and a master's in
6 organic chemistry from the University of South
7 Carolina.

8 Q Where do you currently work?

9 A For the Lexington County Sheriff's Department.

10 Q What is your job there at the Sheriff's Department?

11 A I'm their chemist. I analyze drugs for drug cases,
12 and I also raise serial numbers that have been
13 obliterated.

14 Q Do you have any other specialized training in the
15 analysis, chemical analysis, of narcotics?

16 A Yes, I attended the D.E.A. special testing for
17 chemical analysis. I have also been certified from
18 S.L.E.D. Through the A.T.F. I was certified to
19 raise serial numbers.

20 Q So you have certifications from S.L.E.D. and the
21 F.B.I. and A.T.F.?

22 A And D.E.A.

23 Q And D.E.A. Ms. Wilson, do you have any other prior
24 law enforcement or jobs in a law enforcement agency
25 before you came to the Sheriff's Department?

EMILY WILSON -- DIRECT -- MR. STUMBO

301

1. A Yes, I worked for Charleston City Police Department
2 as a police officer.

3 Q And since you have been with the Lexington County
4 Sheriff's Department, has your sole job been as a
5 drug chemist there?

6. A Well, initially for about six months, I worked,
7 while I was training at S.L.E.D., I worked the road
8 and then I came on.

9 Q So you have a certification as a sworn law
10 enforcement officer?

11 A Yes, I am still a certified law enforcement officer
12 through S.L.E.D.

13 Q Ms. Wilson, about how many packets or containers
14 have you tested over the course of your time at the
15 Sheriff's Department to determine whether there
16 were narcotics there in that package?

17 A Each year I have approximately done around 500
18 cases, and I'm heading into -- I finished three
19 years there, so about 1,500 cases so far.

20 Q Have you ever been qualified as an expert as an
21 analyst with narcotics, chemical analyst with
22 narcotics?

23 A Yes, ten times.

24 Q Ten times.

25 MR. STUMBO: Your Honor, at this time the

1 State would offer Ms. Emily Wilson as an expert in the
2 field of chemical analysis in narcotics.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: No objection, Your Honor.

5 THE COURT: Madame Forelady, ladies and
6 gentlemen of the jury, normally a person cannot give
7 opinion testimony. Normally when a person testifies,
8 they must testify as to either what they saw, heard or
9 sensed by smell or something of that nature.

10 However, there is an exception when someone is
11 qualified because of education or experience, they are
12 permitted to give their opinions in certain areas if the
13 court qualifies them that way.

14 This witness, Officer Emily Wilson, will be
15 qualified in the area of the chemical analysis of
16 narcotics to give opinion testimony in that area. That
17 does not mean that you must accept the opinion, but it
18 is evidence for you to use in any way that you the jury
19 sees fit. Thank you so much. You may continue.

20 MR. STUMBO: Thank you.

21 BY MR. FLOYD:

22 Q Ms. Wilson, did you have occasion to analyze a
23 substance in the case involving the Defendant
24 George Middleton?

25 A Yes, I did.

EMILY WILSON -- DIRECT -- MR. STUMBO

303

1 Q And do you have your report with you?

2 A Yes.

3 Q I will hand you what has been marked for I.D.
4 purpose as State's Exhibit Number 6. Take your
5 time and refer back to your report, State's Exhibit
6 6. Do you recognize State's Exhibit 6?

7 A Yes, it matches. This is the same best kit that I
8 analyzed in referenced to the report that I issued.

9 Q And what was the date that you analyzed the
10 substance in that package?

11 A On September 16, 2008.

12 Q Now, I will refer you to the tag on top of State's
13 Exhibit 6. What is that?

14 A It's a chain of custody tag.

15 Q And can you identify all the names or signatures on
16 that tag?

17 A Yes, sir. Do you want me to read them?

18 Q Let me ask you this. Are all the signatures on
19 that tag people that work at the Sheriff's
20 Department?

21 A Yes.

22 Q And do you keep paperwork associated with the chain
23 of custody?

24 A Yes.

25 Q Do you attach that paperwork to your report?

- 1 A Yes, I keep it with the report.
- 2 Q And does the paperwork that you have match up with
- 3 every signature on that property tag?
- 4 A (Pause). Yes.
- 5 Q Who are the people that handled that evidence in
- 6 the Sheriff's Department before it came to you on
- 7 September 16?
- 8 A The person that handed it to me was Candy Kyzer.
- 9 Q Who had it before her according to the property
- 10 tag?
- 11 A Margaret Harmon.
- 12 Q Is that Beth Harmon?
- 13 A Yes, Beth Harmon.
- 14 Q Do you know Ms. Harmon?
- 15 A Yes.
- 16 Q Do you know Ms. Kyzer?
- 17 A Yes.
- 18 Q Who had it before Ms. Harmon?
- 19 A Eric Kirkland did.
- 20 Q Do you know Detective Kirkland?
- 21 A Yes, I do.
- 22 Q This packet that is State's Exhibit Number 6, what
- 23 kind of packet is in that bag? Can you identify
- 24 that for the jury?
- 25 A What this is is a best kit. Best stands for best

EMILY WILSON -- DIRECT -- MR. STUMBO

305

1 evidence sampling technique. It allows -- it's a
2 tamper evident packet. You can see the markings
3 along the side and the top and the bottom.

4 It allows the arresting officer or the agent
5 to place drugs of unknown substances into this bag
6 so that he is the last person to have actually
7 handled the actual evidence.

8 Once he seals it, if anyone tampers with that
9 bag, it's evident, and I would notate that in my
10 report. Usually I do not analyze it if the bag has
11 been tampered with.

12 Q Why is that? Why would you not analyze it if the
13 bag had been opened or manipulated in some way?

14 A Because the chain of custody might have been
15 tampered. There is another unknown in there. It's
16 just not ethical.

17 Q Now, State's Exhibit 6 you identified that as a
18 best kit that you analyzed the substance in that
19 best kit on September 16?

20 A Uh-huh. (Indicating affirmative response).

21 Q Did that best kit have the name of the Defendant on
22 it?

23 A Not on the actual best kit itself but on the
24 paperwork, on my chain of custody, the Form B.,
25 from the initial custody states that the suspect or

1 the Defendant's name.

2 Q When you got that best kit, State's Exhibit 6, on
3 September 16, had it been tampered with in any
4 way --

5 A No.

6 Q -- that you could tell?

7 A No, it had not been tampered with. The reason I
8 know that is because I would have marked -- I
9 always mark on here whether or not the seals are
10 okay.

11 Q You checked the bag --

12 A Yes.

13 Q -- to make sure the seals have not been broken?

14 A Right.

15 Q What did you do when you got that best kit into
16 your lab?

17 A Well, I received it from Candy Kyzer on August 26.
18 I then put it into -- we have a storage room for
19 evidence in the lab that only myself has a key to,
20 and I keep it on my person at all times. A lot of
21 times I will get a large quantity, but then I
22 analyzed this on September 16.

23 Q Is that area that you keep the substances in your
24 lab, is it climate controlled?

25 A Yes.

EMILY WILSON -- DIRECT -- MR. STUMBO

307

1 Q Why is it climate controlled?

2 A Because heat and extreme temperatures can tamper
3 with the evidence, but my whole lab is climate
4 controlled.

5 Q State's Exhibit 6, when you got that, did you open
6 that package at that time? Did you open the
7 package?

8 A Not until September 16.

9 Q On September 16 did you open the package?

10 A Yes.

11 Q What was inside that package?

12 A There was a Ziploc bag that had a rock substance.

13 Q How many rocks were inside of it?

14 A Usually I don't count the rocks because even though
15 it's tamper evident, a lot of times it can hit
16 against things, and the whole bag can be shuffled
17 around. It can hit against the wall of whatever
18 container, and these items are not -- they can
19 break apart. So I don't usually count how many
20 broken off pieces, but I did weigh it, and the
21 weight was .56 grams.

22 Q Point 56 grams and that was the total weight of
23 what substance was inside this best kit?

24 A Yes, sir.

25 Q Did you test those rocks that were inside the best

1 kit?

2 A Yes, I did.

3 Q And could you tell the jury what that .56 grams
4 was. What was that substance?

5 A It was cocaine base form. The street name is
6 crack, .56 grams of cocaine base.

7 Q Of crack cocaine?

8 A Crack cocaine.

9 MR. STUMBO: Permission to approach the
10 witness, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. STUMBO:

13 Q When you get done, could you explain for the jury,
14 when you get done with your analysis, what do you
15 do with the substance?

16 A I will place it back into -- if the original bag is
17 in good condition, I will place it back in the
18 original bag. I will take out my own -- it's
19 called a K-pack bag, and I will seal it and initial
20 where I have made the seal.

21 Q Is that this outer package?

22 A Uh-huh. (Indicating affirmative response).

23 Q Is that your initials and the date?

24 A Yes. The manner in which I seal it, I always write
25 on it before it's sealed so I can tell if my seal

1 has been tampered with.

2 Q What date do you have on the seal there?

3 A The 16th of September, the same day that I opened
4 it.

5 Q You put the substance back inside the bag?

6 A Yes.

7 Q Is it substantially the same as when you resealed
8 it that day when you finished analyzing it?

9 A Yes.

10 Q Does it look like it has been tampered with at all
11 since that time?

12 A No, sir.

13 MR. STUMBO: That's all the questions I have
14 at this time.

15 THE COURT: Thank you, Solicitor. Mr. Floyd.

16 MR. FLOYD: Just A couple of questions.

17 CROSS EXAMINATION

18 BY MR.. FLOYD:

19 Q Ms. Wilson, do you have any personal knowledge of
20 anything that did or did not go on at [REDACTED] Calvin
21 Court on July 15, 2008?

22 A No, sir.

23 THE COURT: Did you say Calvin Court?

24 MR. FLOYD: I believe I did. It's Austin
25 Court. Thank you, Your Honor.

1 A Honestly, sir, I don't even look at the addresses
2 for the cases that I get in.

3 Q Do you do your report the same day you do your
4 analysis?

5 A No, sir, I do my work sheet the same day I do the
6 analysis. I will get a number of cases completed
7 and then just take over my worksheets and refer
8 back to my worksheets when I write up my report.

9 Q Do you test -- how many of the rocks do you test?

10 A I take a sample from at least two or three of them.
11 Because like I said, you can't tell if it's been
12 hit against anything, if the rocks broke apart.

13 Q Do you recall this particular package?

14 A I have worked 1,500 cases. I have to refer back to
15 my handwriting.

16 Q I understand. So you don't remember how many
17 pieces it was?

18 A No, sir. We are not required to count the number
19 of pieces. That's not how S.L.E.D. has trained me.

20 Q So you don't know how many of the pieces you
21 tested?

22 A I always take -- I never take just one sample. I
23 always take, if there is multiple things inside one
24 package because of any mixture therefore, I at
25 least take two or three samples.

1 Q So you don't remember how many pieces were in this
2 one; is that correct?

3 A No, I am not required to count.

4 Q How can you tell the jury this is substantially the
5 same as it was when you tested it if you don't
6 remember how many pieces it was?

7 A Because when I put it back into the bag, the bag
8 itself is the same and by my initials.

9 Q The bag is the same but you can't tell us that the
10 number of pieces is the same.

11 A I know rock substances and there is still a rock
12 substance in there.

13 Q But you don't remember how many pieces you had at
14 the time, do you?

15 A Well, you are not required to by the State for
16 cocaine base. It's just amount and weight. The
17 only thing you have to pay attention to is the
18 number of pieces in the dosage units of, say,
19 prescription drugs where you have numbers of
20 tablets. When you are referring to cocaine base
21 and cocaine hydrochloride, the only thing that
22 matters is the weight.

23 Q I understand that, Ms. Wilson. What I'm asking you
24 is this. If you don't know how many pieces were in
25 this when you tested it, how can you tell the jury

1 it's substantially the same?

2 A Because there is no difference. Someone could have
3 taken that and put something on top of it, and it
4 would have broken up one of those pieces into two
5 or three. That is still the same substance, but
6 it's just been broken into two or three more
7 pieces.

8 Q Thank you.

9 MR. FLOYD: No further questions.

10 THE COURT: Redirect?

11 MR. STUMBO: Just a couple, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. STUMBO:

14 Q Ms. Wilson, Mr. Floyd asked you how could you tell
15 it's substantially the same. You told us that you
16 initialed this seal here when you sealed the outer
17 package up?

18 A Yes, sir.

19 Q Has that been opened since then?

20 A No, sir. If it had there would be ink in the
21 middle of it where it would have been clearer than
22 the ink around the outside.

23 Q The words would be distorted, right?

24 A It would be distorted.

25 Q You said a second ago your job and your training

1 when you're testing a substance believed to be
2 crack cocaine your concern is the weight, correct?

3 A Right.

4 Q So the amount of pieces are really irrelevant for
5 your analysis; is that correct?

6 A Yes.

7 Q You are looking for weight and what the substance
8 is?

9 A Right. The only thing I pay attention to in the
10 number of dosage units or the number of pieces is
11 with tablets, capsules with a prescription drug or
12 controlled prescription drugs.

13 Q You testified to us that this substance was
14 .56 grams of crack cocaine, correct?

15 A Yes, sir.

16 MR. STUMBO: No further questions, Your Honor.

17 THE COURT: Recross, Mr. Floyd?

18 MR. FLOYD: Nothing further, Your Honor.

19 THE COURT: Thank you. Thank you very much,

20 Ms. Wilson. You may step down.

21 (Witness leaves the witness stand).

22 MR. STUMBO: Your Honor, may Ms. Wilson be
23 excused at this time?

24 THE COURT: Do you have any objections

25 Mr. Floyd if Ms. Wilson is excused?

1 MR. FLOYD: No, Your Honor.

2 THE COURT: Thank you. Thank you very much
3 for being with us, Officer Wilson.

4 Solicitor, you may call your next witness.

5 MR. STUMBO: Your Honor, the State calls
6 Ms. Freda Broach to the stand.

7 THE COURT: Ms. Broach, if you would come
8 around and be sworn, please.

9 FREDA MICHELLE BROACH, being
10 first duly sworn, testifies as follows:

11 CLERK: Please state your name spelling your
12 last name for the record.

13 THE WITNESS: Freda Michelle Broach,
14 B-R-O-A-C-H.

15 DIRECT EXAMINATION

16 BY MR. STUMBO:

17 Q Good morning, Ms. Broach.

18 A Good morning.

19 Q Are you nervous here today?

20 A Yes, sir.

21 Q Is this week the first time you have ever had to
22 come to court and testify, this week?

23 A Yes, sir.

24 Q And, Ms. Broach, tell the jury a little bit about
25 your background. Were you born in Columbia?

FREDA BROACH -- DIRECT -- MR. STUMBO

315

1 A No, sir.

2 Q Where were you born?

3 A Horry County.

4 Q And about when did you move to Columbia?

5 A When I was probably three or four.

6 Q Did you live in Lexington County or Richland County
7 as a child?

8 A Both Richland County and Lexington County, back and
9 forth as a child.

10 Q Where did you go to high school?

11 A Northeast and Spring Valley.

12 Q And after graduating high school, what did you do
13 after that? After you left Spring Valley, what did
14 you do after you left Spring Valley?

15 A I was a mother, got married, divorced.

16 Q You say you are a mother. Did you have a son or
17 daughter then?

18 A Yes, sir.

19 Q Both?

20 A Both.

21 Q Freda, I will throw a name out at you, and I want
22 you to tell the jury who it is. Who is George
23 Corley?

24 A Someone I cohabitated with for a number of years.

25 Q He was your boyfriend?

1 A Yes, sir.

2 Q About how long did you and George Corley live
3 together?

4 A About 21 years.

5 Q Did you live in Richland County or Lexington
6 County?

7 A Lexington County.

8 Q What area of the county did y'all live in back
9 then?

10 A Me and him?

11 Q Yes.

12 A In the Red Bank area.

13 Q Now, did George have problems with narcotics?

14 A Yes, sir.

15 Q What kind of drug did George use? We are talking
16 about George Corley?

17 A Marijuana, cocaine, meth, pills occasionally, I
18 assume. If there was anything else, I was in the
19 dark about it.

20 Q Did Mr. Corley ever sell drugs to your knowledge?

21 A Yes, sir.

22 Q Ms. Broach, during the time you lived with George
23 Corley, did you have some substance abuse problems
24 as well?

25 A Yes, I did.

FREDA BROACH -- DIRECT -- MR. STUMBO

317

1 Q What drugs did you use?

2 A Cocaine, crack, and meth.

3 Q Was there some event in your life that triggered
4 any increased drug use?

5 A The loss of my brother in 2004. I was clean for
6 two years. It was brought back around me, and I
7 fought the devil for three hours and gave in.

8 Q Mr. Corley brought it back around?

9 A Yes, sir.

10 Q You started smoking crack again. Did you have an
11 addiction for some time to that?

12 A It was in my life. I never called it an addiction,
13 I don't let nothing control my life or try not to.

14 Q About how often during that time period after your
15 brother passed or before did you use crack cocaine?

16 A Every day.

17 Q During that time when you lived with George Corley
18 and were around the use of crack cocaine every day,
19 did you have an opportunity to get to know that
20 area of Lexington County?

21 A Yes, sir.

22 Q Pretty well?

23 A (Witness nods). (Indicating affirmative response).

24 Q When did you meet Detective Kirkland?

25 A January 2007.

1 Q And what was the event that caused -- that put you
2 and Detective Kirkland together?

3 A George got into some trouble, and he was working
4 off the trouble that he got into, and I was the
5 driver.

6 Q He had some charges?

7 A Yes, sir.

8 Q Do you remember where his charges were?

9 A He had stole some stuff from the Dollar General.

10 Q Where?

11 A In Swansea.

12 Q You say he was working off charges. What kind of
13 work was he doing to work off his charges?

14 A Undercover work.

15 Q Working with Detective Kirkland?

16 A Yes, sir.

17 Q Was he a confidential informant?

18 A Yes, sir.

19 Q For Mr. Kirkland?

20 A Yes, sir.

21 Q And the day you met Mr. Kirkland, did you sign a
22 contract with him to work as well?

23 A I did.

24 Q And did you have any charges at that time?

25 A No, sir.

FREDA BROACH -- DIRECT -- MR. STUMBO

319

1 Q Do you have any convictions on your record
2 whatsoever?

3 A No, sir.

4 Q At that time when you signed up to do this work to
5 drive for your boyfriend George Corley, were you
6 getting paid?

7 A I did.

8 Q How much would Detective Kirkland pay you per job?

9 A Anywhere between 80 and a hundred bucks.

10 Q Was it less, more, the same when you were driving
11 as opposed to the time you would drive for George
12 Corley?

13 A Huh-uh. (Indicating negative response). It was
14 the same.

15 THE COURT: You will have to speak up. One of
16 the jurors indicate to me Ms. Broach that she can't
17 quite hear.

18 THE WITNESS: I'm sorry.

19 THE COURT: Speak up where all of them can
20 hear you and also Mr. Floyd and Mr. Middleton.

21 Thank you, Solicitor. You may continue.

22 MR. STUMBO: Thank you, Your Honor.

23 BY MR. STUMBO:

24 Q You said you drove for your boyfriend for a while.

25 That was the work you were doing?

1 A Yes, sir.

2 Q And at any point after that, did you do jobs on
3 your own?

4 A I did.

5 Q Would you get paid for those jobs?

6 A I did.

7 Q Do you know the Defendant George Middleton?

8 A Yes, sir.

9 Q Who introduced you to Mr. Middleton?

10 A His housekeeper, Miss Shirley.

11 Q Was Miss Shirley a friend of yours?

12 A Yes, sir.

13 Q And where did you meet George, do you remember?

14 Where did you meet him, his house, your house or
15 where was that?

16 A It was at his house.

17 Q And do you remember when that was?

18 A In April.

19 Q April of what year, do you know?

20 A 2007.

21 Q Why does April of 2007 stand out to you as the time
22 you met him?

23 A Because it was the time when her son went to jail.

24 Q Miss Shirley's son?

25 A Yes, sir.

FREDA BROACH -- DIRECT -- MR. STUMBO

321

1 Q You said you met him at his residence. And where
2 was that? Was that down on Austin Court?

3 A Yes, sir.

4 Q That's in Pelion?

5 A Yes, sir.

6 Q Lexington County?

7 A Yes, sir.

8 Q Ms. Broach, I will take you to July 15th of 2008.

9 Did you work with Detective Kirkland that day?

10 A Yes, sir, I did.

11 Q And were there any other detectives with Detective
12 Kirkland that day?

13 A Yes, sir, there was.

14 Q Who was that?

15 A Officer Strange.

16 Q Officer Strange, who is now with S.L.E.D.?

17 A Yes, sir.

18 Q Did you work with Mr. Kirkland and Mr. Strange
19 before that day?

20 A Yes, sir.

21 Q Where did you meet them that day?

22 A At a church.

23 Q Where was that church? Do you remember what area
24 it was in?

25 A It was off of Swansea Road.

1 Q When you met up with Detective Kirkland and
2 Detective Strange or now Agent Strange, what's the
3 first thing that they did?

4 A They searched me and my vehicle.

5 Q Who searched your person?

6 A Eric searched me.

7 Q Detective Kirkland searched your person?

8 A Yes, sir.

9 Q What kind of search does he do of your person? Can
10 you describe that for the jury, how he searches
11 you.

12 A I am patted down from head to toe. I hold my bra
13 out and shake it to make sure there is nothing
14 inside.

15 Q Does Detective Kirkland do that -- has he done that
16 every time he has searched you in the past?

17 A Yes, sir.

18 Q Did he find anything that day?

19 A No, sir.

20 Q Did he find any narcotics?

21 A No, sir, not on me.

22 Q Did he find any money?

23 A No, sir. Any time I have money I surrendered it
24 over.

25 Q Before you went on the buy, you gave it to him?

FREDA BROACH -- DIRECT -- MR. STUMBO

323

- 1 A Yes, sir.
- 2 Q How about your car? Who searched your car?
- 3 A Officer Strange searched my car.
- 4 Q And what kind of car did you have at that time?
- 5 A Intrepid.
- 6 Q Ms. Broach, what kind of condition did you keep
7 that car in? Would you consider it messy, clean,
8 somewhere in between?
- 9 A In between.
- 10 Q Had Officer Strange searched that vehicle before?
- 11 A Yes, sir.
- 12 Q Before that day?
- 13 A (Witness nods). (Indicating affirmative response).
- 14 Q And how would you describe how thorough that
15 Detective Strange was. Was he thorough in his
16 search?
- 17 A Very much so.
- 18 Q When he got done with it, did it look the same?
- 19 A It was a little messy when he got finished with it.
- 20 Q Now, Detective Kirkland searched your entire
21 person. Did he go into your underwear at all?
- 22 A No, sir.
- 23 Q Would they ever do that?
- 24 A No, sir.
- 25 Q Did you bring any narcotics and hide them in your

- 1 underwear?
- 2 A No, sir.
- 3 Q Did you have any kind of substance on you at all on
- 4 your person when he searched you?
- 5 A No, sir.
- 6 Q What would happen if he found narcotics on you when
- 7 he searched you before you went on a buy?
- 8 A I would be arrested and go to jail.
- 9 Q Ms. Broach, after they searched your person, your
- 10 car, did they put anything on you?
- 11 A Yes, sir.
- 12 Q What did they put on your body?
- 13 A I put a wire on and a recording.
- 14 Q Did they do this the same way that they had done it
- 15 on times before?
- 16 A It's all done the same each time.
- 17 Q After they put the wire on you, did they give you
- 18 anything to take to the target location?
- 19 A Money.
- 20 Q How much money did you get?
- 21 A Sixty dollars.
- 22 Q And when you left, did you leave the church there
- 23 on Swansea Highway in your car?
- 24 A Yes, sir.
- 25 Q Did these guys follow you, Detective Kirkland and

1 Strange?

2 A Yes, sir.

3 Q And did they follow you all the way down to Austin
4 Court?

5 A Yes, sir.

6 Q Did they drive into Austin Court with you or not?

7 A No, sir.

8 Q Where did they stop?

9 A That one I'm not quite sure. It was somewhere real
10 close.

11 Q You just know they didn't turn back behind you and
12 follow you back down the road?

13 A Yes, sir.

14 Q Ms. Broach, I will show you what has been entered
15 in evidence as State's Exhibit Number 1. I will
16 refer you to State's 1 here. Do you recognize this
17 area?

18 A Yes, sir, I do.

19 Q Where is this?

20 A This (indicating) is 178, this (indicating) is
21 Austin Court, and this (indicating) is George
22 Middleton's.

23 Q Highway 178 is the paved road at the top?

24 A Right there, yes, sir.

25 Q And the dirt road that you turn onto is Austin

1 Court?

2 A Yes, sir.

3 Q Did you turn into any houses there on Austin Court
4 that day?

5 A The only one I turned onto was George Middleton's,
6 which was this single wide right there
7 (indicating).

8 Q You didn't go anywhere else. You turned straight
9 into the driveway for that single wide?

10 A Yes, sir.

11 Q If you could point to that single wide again that
12 you just pointed to.

13 A Right here (indicating).

14 Q Who lives there?

15 A George Middleton.

16 Q What's the address on that house?

17 A [REDACTED] Austin Court.

18 Q When you drove in that day, were you able to see
19 those numbers somewhere on the house?

20 A Yes, sir.

21 Q On the mailbox?

22 A It was on the mailbox.

23 Q Describe for me when you turned in or show us on
24 the map here where you parked there outside.

25 A It was somewhere in here (indicating), somewhere in

1 this area.

2 Q During the time before you got out of the car, were
3 you able to talk to Detective Kirkland at all on
4 the wire?

5 A I was.

6 Q Did you describe for him what you saw?

7 A I did.

8 Q And did you get out of the car after that?

9 A Yes, sir.

10 Q What did you do after you got out of the car?

11 A I went into the back door.

12 Q Did you see anybody in the back yard? Did you talk
13 to anybody before you went in?

14 A There were several people in the back.

15 Q Outside the house?

16 A Yes, sir.

17 Q Did you greet them in some way, say something to
18 them before you went in the house?

19 A Yes, I did.

20 Q When you go into the back door, show me where you
21 go into the back of the house there.

22 A I walked around. There is a deck here (indicating)
23 with a wheelchair ramp, and I went into the back
24 here (indicating).

25 Q You say there is a wheelchair ramp on that deck?

1 A Yes, sir.

2 Q And there is a door attached to that ramp?

3 A Right in that area, yes, sir.

4 Q When you walk in the door, who do you see inside
5 the trailer?

6 A When I walked in the door, there is a bedroom here
7 (indicating), a bathroom, a bedroom, and then there
8 was a hall, the living room and the kitchen. He
9 was in between the living room and the kitchen.

10 Q On the other side, the near side of the trailer?

11 A Yeah, he was in this area (indicating).

12 Q When you walked in, you said you saw Mr. Middleton?

13 A Yes, sir.

14 Q What was he doing when you walked in the house?

15 A Watching a monitor.

16 Q When you say watching a monitor, did you see what
17 was on that monitor?

18 A The surroundings of the outside.

19 Q So he was watching what was going on outside?

20 A Yes, sir. You could see across the street into the
21 neighbor's yard.

22 Q Was he sitting on a couch or in a chair or his
23 wheelchair?

24 A He was in his wheelchair.

25 Q You said you took in with you \$60?

FRED A BROACH -- DIRECT -- MR. STUMBO

329

1 A Yes, sir.

2 Q Did you have any other money when you walked in?

3 A No, sir.

4 Q Did you have any other drugs when you walked in
5 that house?

6 A No, sir.

7 Q When you greeted Mr. Middleton, did you ask him for
8 anything?

9 A Yes, sir, I asked him for \$60 of crack cocaine.

10 Q At first was he ready to give that to you?.

11 A No, sir.

12 Q Did he recognize you right off?

13 A Not quite so sure if he recognized me or not, but
14 he didn't want to sell to me.

15 Q What did you do? Did you remind him of who you
16 were and when you had met him?

17 A Yes, sir, I did. I reminded him of back in April
18 when I came there --

19 THE COURT: Just a minute.

20 MR. FLOYD: Your Honor?

21 THE COURT: Approach the bench.

22 MR. FLOYD: I was just going to object to
23 leading questions.

24 MR. STUMBO: I can rephrase it, Your Honor.

25 (Whereupon there is a bench conference off the

1 record in the presence of the jury but out of the
2 hearing of the jury).

3 THE COURT: If you would rephrase the
4 question, Solicitor.

5 MR. STUMBO: Yes, sir.

6 THE COURT: Thank you.

7 BY MR. STUMBO:

8 Q You mentioned April and Miss Shirley?

9 A Yes, sir.

10 Q Did you remind him of that?

11 A Yes, sir.

12 Q After that did he give you anything?

13 A It took him a few minutes but, yes, he did.

14 Q What did he give you, Ms. Broach?

15 A Crack cocaine.

16 Q In exchange for how much money?

17 A Sixty dollars.

18 Q Where did he get the crack cocaine from?

19 A Out of a cigar tube from his pocket.

20 Q Was that cigar tube on his person or did he have to
21 get it from somewhere else?

22 A It was on him..

23 Q So he pulls out that cigar tube. Does he get the
24 substance out for you or do you have to get it from
25 him?

FREDA BROACH -- DIRECT -- MR. STUMBO

331

- 1 A He pours it on the counter in front of the monitor.
- 2 Q And about how much crack cocaine will \$60 buy you?
- 3 A Three pieces normally, depending on the size.
- 4 Q So if my math is correct here, about \$20 apiece?
- 5 A Yes, sir.
- 6 Q And he allows you to pick out those pieces
- 7 yourself?
- 8 A Sometimes they do; sometimes they don't.
- 9 Q Were there ones you could get and couldn't get?
- 10 A Yes, sir.
- 11 Q Now, how many pieces of crack cocaine did you get
- 12 off the table after he poured them onto the
- 13 counter?
- 14 A Three.
- 15 Q Did you give him the \$60?
- 16 A Yes, sir I did.
- 17 Q The whole time you still have your audio wire on?
- 18 A Yes, sir.
- 19 Q Everything is being recorded?
- 20 A Yes, sir.
- 21 Q When you walked out of that house, what did you
- 22 walk out with?
- 23 A Sixty dollars worth of crack cocaine.
- 24 Q Were you holding it?
- 25 A In my hand.

- 1 Q Show the jury how you were holding it.
- 2 A (Witness complies). I held it in my left hand.
- 3 Q Where did you go after you left the house?
- 4 A To my car and met back with the agent or Officer
- 5 Kirkland.
- 6 Q As you are driving, which direction do you turn out
- 7 of his driveway?
- 8 A I go back out the driveway, go to 178, and turn to
- 9 the right.
- 10 Q The right comes back towards Lexington?
- 11 A No, it goes back toward Swansea.
- 12 Q Towards Swansea?
- 13 A Yes, sir.
- 14 Q You still have the three pieces of crack in your
- 15 hand?
- 16 A Yes, sir.
- 17 Q When you take a right onto 178, when do you see
- 18 Detective Kirkland and Strange?
- 19 A They pull out in front of me and I followed them?
- 20 Q You followed them?
- 21 A Yes, sir.
- 22 Q Where did you follow them to?
- 23 A The fire department.
- 24 Q Was it close to this area?
- 25 A It wasn't too far.

FREDA BROACH -- DIRECT -- MR. STUMBO

333

1 Q When you get there between -- in the trip, in the
2 car between Austin Court and the fire station --
3 did you have communication with Detective Kirkland?

4 A I did. It took a minute because the phones weren't
5 going through, but I did get in contact with him.

6 Q Did you tell him how the job went?

7 A I did.

8 Q When you get to the fire station, what happens then
9 when you get out of the car?

10 A I hand him the crack cocaine, and I took hand
11 sanitizer to wash my hands with.

12 Q That's the first thing you did was hand him the
13 crack cocaine?

14 A Yes, sir, and then I gave him the recording.

15 Q Where did he put the crack cocaine? Did he put it
16 in his hand?

17 A He put it in a plastic bag.

18 Q He opened the bag for you?

19 A He opened it up and I put it in the plastic bag,
20 yes, sir.

21 Q How many rocks did you put in that bag?

22 A Three.

23 MR. STUMBO: Permission to approach, Your
24 Honor.

25 THE COURT: Yes, sir.

1 BY MR. STUMBO:

2 Q Ms. Broach, I will show you what has been marked
3 for I.D. purposes as State's Exhibit Number 6. If
4 you could, can you see what is inside of that bag?

5 A I can, yes, sir.

6 Q What does that look like in there?

7 A Crack cocaine.

8 Q Does it look the same as the crack cocaine you
9 handed Detective Kirkland that day?

10 A To the best of my knowledge, yes, it does.

11 Q You handed him three rocks?

12 A Yes, sir.

13 Q And how long was that from the time you left Austin
14 Court to the time you put those three rocks in the
15 bag?

16 A To be honest I'm not sure.

17 Q Less than five minutes, more than five minutes?

18 A In between. I'm not sure.

19 Q Did you alter or manipulate it in any way --

20 A No, sir.

21 Q -- from the time you had it in your hands?

22 A No, sir.

23 Q Did you add any rocks to it?

24 A No, sir.

25 Q Did you take any rocks away from it for your own

1 personal use?

2 A No, sir.

3 Q What would happen if you had held something out for
4 yourself?

5 A That would be being dishonest, and if they found it
6 on me, I would have went to jail.

7 Q You didn't do that that day?

8 A No, sir.

9 Q Did you take anything out of your underwear and add
10 it to the bag?

11 A No, sir.

12 MR. STUMBO: Your Honor, having laid a
13 foundation and a complete chain of custody, the State
14 would offer State's Exhibit 6 into evidence at this
15 time.

16 THE COURT: Mr. Floyd?

17 MR. FLOYD: I have no objection, Your Honor.

18 THE COURT: State's 6 in evidence without
19 objection.

20 (State's Exhibit Number 6 is received into
21 evidence).

22 BY MR. STUMBO:

23 Q Before I hand you State's 5, Ms. Broach, can you
24 tell the jury what kind of search occurred on your
25 body when you got back to Detective Kirkland and

1 Detective Strange.

2 A It was the same. I was patted down from head to
3 toe. I opened my bra, opened it and shook it out
4 so he could see there was nothing in there. I was
5 patted down from head to toe and then inside of my
6 pants was checked around the edge.

7 Q Did Detective Kirkland find anything on you?

8 A No, sir.

9 Q How about your car? Who searched your car?

10 A Officer Strange.

11 Q Did he search it the same way he did before?

12 A Oh, yeah.

13 Q Did he find anything else?

14 A No, sir.

15 Q One other question in regards to your car,
16 Ms. Broach. Did you pop the hood at any time
17 between the time you left Detective Kirkland and
18 Strange and the time you got back?

19 A No, sir.

20 Q What happened after they searched your person and
21 your car?

22 A I wrote a statement.

23 Q How about the wire? What happened to that?

24 A It was taken off before I wrote my statement.

25 Q That was before?

1 A Yeah. Everything was taken off before I was patted
2 down.

3 Q And then you wrote your statement afterwards?

4 A And then I wrote my statement afterwards, yes, sir.

5 Q Did you tell the detectives who had sold you the
6 crack cocaine?

7 A Yes, sir, I did.

8 Q Who sold you the crack cocaine that day,
9 Ms. Broach?

10 A George Middleton.

11 Q Is he in the courtroom?

12 A Yes, sir.

13 Q Where is he sitting?

14 A The gentleman in the green shirt.

15 Q Beside Mr. Floyd over here?

16 A Yes, sir.

17 MR. STUMBO: Your Honor, let the record
18 reflect the witness has identified the Defendant.

19 BY MR. STUMBO:

20 Q Miss Freda, after you were patted down, after they
21 took the wire off, after you wrote the statement,
22 did you depart at that time? Did you leave
23 Detective Kirkland? Did y'all part ways? Did
24 y'all do anything else before you left?

25 A I'm not sure.

1 Q But you know after you wrote your statement, that
2 was the last thing you remember doing?

3 A Yes, sir.

4 MR. FLOYD: Your Honor, I object, leading
5 again. She says she doesn't remember.

6 THE COURT: I would sustain the objection.

7 BY MR. STUMBO:

8 Q Then after you leave that day, you are done with
9 them?

10 A Yes, sir.

11 Q I have got State's Exhibit 5. It has been marked
12 for I.D. purposes in my hand. I will show that to
13 you and ask you if you recognize it?

14 A Yes, sir.

15 Q And have you listened to this C.D.?

16 A Yes, sir.

17 Q Is your voice one of the voices on that C.D.?

18 A Yes, sir.

19 Q What is that a recording of?

20 A That day.

21 Q It's what was recorded by your audio wire?

22 A Yes, sir.

23 Q Is it substantially the same conversation as you
24 had that day?

25 A Yes, sir.

FREDA BROACH -- DIRECT -- MR. STUMBO

339

1 MR. STUMBO: Your Honor, the State would offer
2 State's Exhibit 5 into evidence and permission to
3 publish to the jury.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: No objection, Your Honor.

6 THE COURT: State's 5 is in evidence without
7 objection. You may publish.

8 (State's Exhibit Number 5 is received into
9 evidence).

10 BY MR. STUMBO:

11 Q While I am getting this set up, Ms. Broach, I will
12 ask you a couple of other questions. From the time
13 you left Detective Kirkland and Detective Strange
14 the first time, was it a short trip there to the
15 house? How long did that take you?

16 A I'm not quite sure. It wasn't quite so short. It
17 wasn't like around the block or anything.

18 Q And when you leave to go back to meet them, is that
19 another several miles?

20 A I follow them, yes, sir.

21 MR. STUMBO: Beg the Court's indulgence, Your
22 Honor.

23 THE COURT: Yes, sir.

24 (State's Exhibit Number 5, the C.D., is played
25 for the jury).

1 BY MR. STUMBO:

2 Q Ms. Broach, I will refer you back to what we just
3 heard. And ask you this first. I refer you back
4 to State's Exhibit 1 and 2. And what we just
5 heard on the audio, is that where you pulled up
6 that day?

7 A Yes, it was.

8 Q The voice on the audio, the voice on there that
9 says, Trust no one, who was that?

10 A George Middleton.

11 Q The voice, the person who said, This one is for
12 sale. This one is not, who was that?

13 A George Middleton.

14 Q At the end of the conversation, the voice who said,
15 Hurry back now, who was that?

16 A George Middleton.

17 Q What was the condition the house was in?

18 A It was clean. He kept a clean house. It was
19 immaculate.

20 Q Were there any other physical features that you
21 noticed about him that day?

22 A Long nails.

23 Q Fingernails?

24 A Yes, he has long fingernails.

25 Q Freda, on July 15, 2008, did you get paid that day

1 by Detective Kirkland?

2 A Yes, I did.

3 Q How much did he pay you?

4 A Eighty dollars if I remember correctly.

5 Q This time in July of 2008, did you have another
6 job? Was your own only source of income being a
7 confidential informant?

8 A No, I had other jobs.

9 Q Where did you work?

10 A Honestly I do not remember if it was at Kent's
11 Corner or at the tanning salon that I ran. It was
12 at one of the two places. I am thinking it was
13 Kent's Corner though.

14 Q You had other sources of income besides this?

15 A Oh, yes, sir.

16 Q Do you have any reason that day on July 15 to set
17 up George Middleton?

18 A I didn't have a reason, no.

19 Q You didn't have any vendetta against George
20 Middleton?

21 A No, sir.

22 Q You told us you got paid as a source of
23 supplemental income for you. Why else did you do
24 C.I. work, Ms. Broach?

25 A Why? To do justice and service back, for me to

1 give something back in where I lost a lot over the
2 years.

3 Q Because of drug use?

4 A Because of drug use.

5 Q Drug use has negatively affected your life?

6 A It did. It destroyed me mentally, physically, and
7 now I am doing something that I feel is right.

8 MR. STUMBO: No further questions at this
9 time, Your Honor.

10 THE COURT: Thank you. Thank you very much,
11 Solicitor.

12 Ms. Broach if you would just remain right
13 there.

14 Madame Forelady, ladies and gentlemen of the
15 jury, I think we will take our brief morning recess. We
16 will take about 15 minutes. Remember during this break
17 you are not to discuss this case whatsoever. Remember
18 to keep an open mind until you have heard all the
19 evidence and testimony. It will be about 15 minutes.
20 Thank you very much.

21 (The jury retires to the jury room).

22 THE COURT: Ms. Broach, you may certainly step
23 down from the witness stand and refresh yourself during
24 this brief recess; however -- let me finish -- however,
25 you are subject to cross examination and potential

1 redirect and recross. You cannot discuss your testimony
2 with anyone during this recess.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you. You may step down.
5 Anything further before we take our recess, Solicitor?

6 MS. HOWARD: Nothing, Your Honor.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: No, Your Honor.

9 THE COURT: Thank you. Thank you very much.
10 Court will be in recess 15 minutes.

11 (Whereupon there is a recess).

12 THE COURT: It appears all the parties are
13 present. Anything before we bring in the jury,
14 Solicitor?

15 MS. HOWARD: Nothing from the State, Your
16 Honor.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: No, Your Honor.

19 (The jury returns to the courtroom).

20 THE COURT: Our jury is back present in the
21 courtroom. Before we get started, ladies and gentlemen,
22 just one thing. One of the bailiffs indicated to me
23 that perhaps one of the jurors was taking notes during
24 the testimony. There is absolutely nothing wrong with
25 that, with taking notes. I am a note taker myself and I

1 have a problem trying to read my notes later on, but I
2 am a note taker.

3 You may take notes during the trial, but
4 please remember that some people are better note takers
5 than others. Jurors' notes should not be given any
6 greater weight than the recollection of other jurors.
7 The recollections of an individual juror should be
8 considered as reliable as notes taken by any other
9 juror.

10 I would also advise you that when you are
11 taking notes during the testimony of the witness, you
12 may not notice the body language of the particular
13 witness or the demeanor of the witness, which could be
14 used by you in deciding the witness' credibility.

15 If anyone wants a note pad or pencil or pen, I
16 will certainly be glad to have the clerk provide them to
17 you. Are there any takers in that regard? If so, raise
18 your hand.

19 (There is no response).

20 THE COURT: Thank you very much. We are
21 continuing with the trial of the case with the cross
22 examination, I believe, of Ms. Broach by Mr. Floyd.

23 Mr. Floyd, you may proceed.

24 MR. FLOYD: Thank you, Your Honor.

25 THE COURT: Yes, sir.

CROSS EXAMINATION

1

2 BY MR. FLOYD:

3 Q Ms. Broach, how many times have you discussed your
4 testimony with the Solicitor's Office?

5 A With the Solicitor's Office?

6 Q Yes.

7 A How many times have I talked about it with the
8 solicitor?

9 Q Yes.

10 A None other than this week.

11 Q And how many times this week have you talked to
12 them?

13 A We went over the notes one time. That was it.

14 Q You certainly went over everything before you got
15 on the stand with them, didn't you?

16 A The one day, yes, not since.

17 Q Pardon?

18 A Not since.

19 Q Before you took the stand, you talked with them
20 about what you would say; did you not?

21 A Not about what to say, about what occurred on the
22 one day.

23 Q On the one day?

24 A On the one day.

25 Q Ms. Broach, there is no question -- how many times

- 1 have you done these deals, C.I. deals?
- 2 A I'm not sure, sir.
- 3 Q Is it over 20?
- 4 A I'm not sure.
- 5 Q Is it over three?
- 6 A Yes, sir.
- 7 Q Is it over five?
- 8 A Yes, sir.
- 9 Q Is it over ten?
- 10 A Probably.
- 11 Q Is it over 15?
- 12 A I'm not sure.
- 13 Q Is it over 25?
- 14 A Sir, I'm not sure. I never counted. I didn't take
- 15 notes.
- 16 Q And on each occasion you got paid 80 to a hundred
- 17 dollars?
- 18 A Yes, sir.
- 19 Q That's if you make a buy?
- 20 A Yes, sir.
- 21 Q If you don't make a buy, what do you get paid?
- 22 A Twenty dollars for my time.
- 23 Q So you get \$20 if you don't bring them back crack
- 24 and \$80 if you bring them back crack?
- 25 A Uh-huh. (Indicating affirmative response). Yes,

1 sir.

2 Q Is that correct?

3 A Yes, sir.

4 Q Now, they don't ever search your underwear; do
5 they?

6 A No, sir.

7 Q Would you agree with me that items this large
8 (indicating) could easily be hidden in your
9 underwear?

10 A Very easily, yes, sir.

11 Q Just like \$60, it could be hidden in your
12 underwear; couldn't it?

13 A If you wanted to put nasty stuff in your underwear.

14 Q It could be, couldn't it?

15 A Yes, sir.

16 Q Now, Ms. Broach, I think you testified that you got
17 involved because George Corley, your boyfriend, got
18 in trouble for stealing at the Dollar General; is
19 that correct?

20 A Yes, sir.

21 Q Weren't you involved in that also?

22 A No, sir. I was there but I did not participate.

23 Q Were you charged?

24 A No, sir, I wasn't charged. I went to jail.

25 Q So you were charged?

- 1 A I did not get -- it didn't go to court. I mean,
2 when we went to court, mine was throwed out.
- 3 Q Because George was going to help you?
- 4 A No.
- 5 Q Isn't that true?
- 6 A No.
- 7 Q You got arrested the same time George did, didn't
8 you?
- 9 A Yes, sir, I did but my charges was dropped.
- 10 Q And George ended up --
- 11 A And George waited a year to not pay his fine. Then
12 they were going to put him in jail, and then is
13 when his work came in.
- 14 Q Now, Ms. Broach, where were you and George living
15 back in '08?
- 16 A In '08 I lived at my mother's.
- 17 Q Didn't you testify earlier this week you and he
18 separated in December of '08?
- 19 A Yes, sir.
- 20 Q Is that when y'all separated?
- 21 A Yes, but I still lived at my mother's.
- 22 Q But y'all were still dating?
- 23 A We saw one another, but I cut him off in December.
- 24 Q But you were still seeing him? In July of '08, you
25 were still seeing George Corley?

1 A Off and on, yeah. I didn't cut my ties with him
2 until December of '08, and I have had no contact
3 with him since then.

4 Q And in July of '08, you still had contact with him?

5 A Yes, sir.

6 Q And you would see him on occasion?

7 A Not too frequently but, yes, probably.

8 Q Was he still using drugs?

9 A Sir, I'm really not sure if he was or not.

10 Q You don't know?

11 A I'm sure he probably was. I am sure he still does
12 to this day if I had to be a guessing person.

13 Q And if you had wanted any crack, you could have got
14 it from him; couldn't you?

15 A If I would have wanted it, probably or I could have
16 bought my own after I made my deal.

17 Q Now, do you know someone named Renee Golson?

18 A Yes, I do.

19 Q Is she in the courtroom?

20 A Yes, she, is.

21 Q Which person is she?

22 A She's the lady sitting in the middle with the teal
23 or whatever color it is in between the two.

24 Q You lived with her at one time, didn't you?

25 A Not actually with her, in the trailer that my ex

1 sold to her husband or whatever he was.

2 Q So it's the guy she had been with 10 or 11 years;
3 is that correct?

4 A Yes, sir.

5 Q And they had about three kids, didn't they?

6 A I'm not sure.

7 Q And isn't it true you had an affair with her
8 husband, with her boyfriend?

9 MR. STUMBO: Your Honor, I will object to the
10 relevancy.

11 MR. FLOYD: Your Honor, I will get to that.

12 THE COURT: Step up here just a moment,
13 please.

14 (Whereupon there is a bench conference off the
15 record in the presence of the jury but out of the
16 hearing of the jury).

17 THE COURT: Madame Forelady, ladies and
18 gentlemen, if you would step momentarily to your jury
19 room. Do not discuss the case amongst yourselves during
20 this brief recess.

21 (The jury retires to the jury room).

22 THE COURT: Mr. Floyd.

23 IN CAMERA EXAMINATION

24 BY MR. FLOYD:

25 Q Ms. Broach, what was Ms. Golson's boyfriend's name?

FREDA BROACH -- IN CAMERA -- MR. FLOYD

351

1 A Frederick Jones.

2 Q And did you have an affair with Frederick Jones?

3 A What does that have anything to do with this case?

4 THE COURT: I will rule on the evidence one
5 way or the other, but I have got to hear the responses
6 to the evidence.

7 A We were close. Yes, we were close.

8 Q Did you have sex with him?

9 A Yes, sir.

10 Q Now, did he buy you a car?

11 A No, he gave me a car because his girlfriend busted
12 out all my windows of my vehicle.

13 Q Because --

14 A Because the night before he was supposed to go to
15 jail, there was a cookout, and she came over there
16 in all intents that we were together. I had a suit
17 to wear and she said it was her daughter's. She
18 destroyed my \$200 suit, along with every window in
19 my vehicle that my insurance company had to pay
20 for, about \$6,000 worth of damage.

21 Q And that car got to you from Mr. Jones, did it not?

22 A Yes, he bought the car from a man at -- he paid
23 \$200 for the car.

24 Q And that money from the car came from --

25 A I don't know where the money came from.

1 Q Ms. Golson was upset about it, wasn't she?

2 A Well, I was told it was a drug transaction is how I
3 was told it was paid for, with \$200 of crack if you
4 want me to be honest about it. So she is telling a
5 lie.

6 Q You were upset with her, weren't you?

7 A No, I'm not upset with anybody, but I am being
8 upset because this doesn't have anything to
9 participate (sic) with what happened on July?

10 Q Ms. Broach, you got very angry with Renee when she
11 did that?

12 A No, she is the one that came in the house and threw
13 a glass and hit me in the jaw. I didn't even know
14 she was there. She came up from behind me and
15 attacked me. So if she wants to tell it, tell the
16 truth, not a lie because she's the one that went to
17 jail. And she's the one that don't take of her
18 children either.

19 Q You have a lot of animosity towards her?

20 A No, I don't have animosity towards her. She has it
21 towards me.

22 THE COURT: Let me stop you a minute.

23 Mr. Floyd, get to the point. I thought the point was
24 when y'all stepped up here was that Ms. Golson is
25 related to Mr. Middleton. When did this happen?

1 BY MR. FLOYD:

2 Q When did all this happen?

3 A Let's see. The fight when she came in from behind
4 me and tried to attack me happened the night before
5 the windows were busted out. But when we lived
6 with her, it was way before that ever occurred. It
7 was the year before. So it didn't have anything to
8 do with --

9 THE COURT: When did this happen?

10 A -- and even if you want --

11 THE COURT: Stop, Ms. Broach. My question is
12 when did it happen?

13 Mr. Floyd, can you tell me? Is there an
14 incident report? Is there an incident report on this?

15 MR. FLOYD: I'm sure there is, Your Honor. I
16 don't have it.

17 THE COURT: Do we have one? When did it
18 happen?

19 MR. STUMBO: It's the first we have heard of
20 it, Your Honor.

21 THE COURT: Tell me when --

22 THE WITNESS: It happened in April.

23 THE COURT: Of when?

24 THE WITNESS: Of 2008.

25 THE COURT: Of '08?

1 THE WITNESS: Yes, sir. When her husband or
2 whatever he was went to jail, the night before. She
3 went to jail.

4 THE COURT: The connection is supposed to be,
5 as I understand it, is because Ms. Broach may have had a
6 close relationship with Frederick Jones, and Frederick
7 Jones' girlfriend was Renee Golson, and Renee Golson is
8 a cousin to George Middleton?

9 MR. FLOYD: That is correct, Your Honor.

10 THE COURT: May, June, July, that's four
11 months later, she goes and buys, allegedly buys, crack
12 cocaine from George Middleton to get back at Renee
13 Golson, who knocked the windows out of her car?

14 MR. FLOYD: That's correct, Your Honor.

15 THE COURT: It's not admissible. What rule
16 would you think that would be admissible under,
17 Mr. Floyd?

18 MR. FLOYD: Your Honor, I think it would be a
19 jury question whether or not she has got bias towards
20 George Middleton because of this incident.

21 THE COURT: So it would be under what rule? I
22 take it that would be 608(b)?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: Specific instances of conduct of a
25 witness for purpose of attacking or supporting the

1 witness' credibility, other than conviction of a crime
2 provided by Rule 609, may not be proved by extrinsic
3 evidence.

4 They may, however, in the discretion of the
5 Court, if probative for truthfulness or untruthfulness,
6 be inquired into on cross examination of the witness
7 concerning the witness' character for truthfulness or
8 untruthfulness or concerning the character for
9 truthfulness or untruthfulness or another witness as to
10 which character the witness being cross examined has
11 testified.

12 The giving of testimony, whether by an
13 accused or by any other witness, does not operate as a
14 waiver of the accused or the witness' privilege against
15 self-incrimination when examination with respect to
16 matters which may relate only to credibility. And
17 608(c)?

18 MR. FLOYD: (C).

19 THE COURT: States bias, prejudice or any
20 motive to misrepresent may be shown to impeach the
21 witness either by examination of the witness or by
22 evidence otherwise adduced.

23 This does not fall in the confines of 608(c).
24 If there is anything further you want to put, as far as
25 protecting the record in that regard, I will certainly

1 allow you to do so.

2 BY MR. FLOYD:

3 Q So these incidents that you had, the last incident
4 you had with Ms. Golson, were in April of '08; is
5 that correct?

6 A She came into where I worked at the Dollar General
7 Store and made up a whole bunch of lies, and there
8 was a police report done on her, too, at that time.
9 She was barred from Dollar General. Yes, there was
10 because my manager, she put -- she banned her from
11 the store. A police officer came to the store.
12 She said I was stealing from the store Polo
13 shirts. Dollar General does not sell Polo
14 shirts --

15 THE COURT: Let me stop you again, Ms. Broach.
16 When was that?

17 THE WITNESS: It was right after all that
18 happened.

19 THE COURT: When you say right after all that
20 happened --

21 THE WITNESS: I'm not sure the date on that,
22 sir. That was like in November, but she still --

23 THE COURT: November of?

24 THE WITNESS: '08.

25 THE COURT: Of '08. All right. It's just not

FREDA BROACH -- IN CAMERA -- MR. FLOYD

357

1 relevant to the alleged transaction between this witness
2 and Mr. Middleton.

3 MR. FLOYD: Your Honor, it's our position
4 that's for the jury to determine.

5 THE COURT: It would be for the jury to
6 determine if I allow it into evidence. I am ruling it's
7 not admissible. It's not admissible. There is no nexus
8 between this testimony and what Mr. Middleton is on
9 trial for on July 15, '08.

10 MR. FLOYD: Your Honor, we submit it shows a
11 motive to misrepresent.

12 THE COURT: I understand. I understand your
13 argument, Mr. Floyd, and I'm sustaining the solicitor's
14 objection. Are there any other areas that you want to
15 go into that you think I need to rule on outside of the
16 presence of the jury? I would be glad to do that now.
17 You don't have to. I will bring the jury right back in.

18 BY MR. FLOYD:

19 Q You are aware that George Middleton is Renee's
20 first cousin?

21 A I wasn't at the time, no. Afterwards, I was, yes,
22 afterwards.

23 Q After April?

24 A After, after the transactions.

25 THE COURT: After what transaction?

1 THE WITNESS: Of the purchases or the purchase
2 should I say.

3 THE COURT: Even taking that into
4 consideration also, Mr. Floyd, if she had no knowledge
5 of any kinship between Ms. Golson and Mr. Middleton.

6 MR. FLOYD: If we believe what she says, Your
7 Honor. I can certainly put up evidence otherwise.

8 THE COURT: Certainly you can but it's not
9 admissible even if she knew that, but she says she
10 doesn't know that. Are you ready for the jury?

11 MR. FLOYD: Yes, Your Honor.

12 THE COURT: Anything further, Solicitor?

13 MR. STUMBO: Your Honor, we would request,
14 one, that if Your Honor would sustain our objection on
15 the record in front of the jury.

16 Ms. Broach, she looks -- I don't know if she
17 needs a break or not, but, Your Honor, we would inquire
18 of her whether she needs a few minutes to cool off. He
19 is bringing up a lot of stuff that is embarrassing for
20 her, and obviously if she could take a couple of
21 minutes, Your Honor, that would be a request.

22 THE COURT: I sustained your objection.
23 Anything further, Mr. Floyd?

24 MR. FLOYD: Not on this point, Your Honor.

25 MR. STUMBO: Nothing further, Your Honor.

FREDA BROACH -- CROSS -- MR. FLOYD

359

1 THE COURT: Bring us our jury, please.

2 (The jury returns to the courtroom).

3 THE COURT: It appears our jury is back
4 present in the courtroom.

5 I sustained the objection. Thank you,
6 Mr. Floyd, Solicitor. Mr. Floyd, you may proceed.

7 MR. FLOYD: Thank you.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. FLOYD:

11 Q Ms. Broach, had you ever seen an aerial photograph
12 before this incident?

13 A No, sir.

14 Q So when you are showing us these things on the
15 photograph, did the agents discuss that with you
16 and show you where the stuff was?

17 A They showed me pictures on the first day and asked
18 me if I recognized this area, and I said yes, I
19 did.

20 Q But you had never seen an aerial photograph before?

21 A No, sir.

22 Q How many men were in that trailer that day you say
23 you went inside?

24 A Inside? There was three.

25 Q Were you still doing drugs at this time?

1 A Frequently.

2 Q So on July 15 what was the closest -- had you had
3 any drugs that day?

4 A No, sir.

5 Q How about on the 14th?

6 A Sir, I don't know. I didn't keep track of when I
7 did dope. It's nothing I am proud of. I doesn't
8 make a ledger, sorry.

9 Q So you can't tell us whether you had done drugs the
10 day before that?

11 A No, sir, I can't tell you that.

12 Q How often were you doing drugs back then?

13 A When I was with George and lived in Pelion, about
14 every day.

15 Q That's George Corley you are talking about, right?

16 A Yes, sir.

17 Q So you said that you wanted to help the community?
18 That's kind of why you were doing this work?

19 A Sir, I've done a lot. I've been through a lot
20 since 2004. You don't understand the things I have
21 seen. The things I've seen children do without, go
22 without lights and everything else. It's because
23 of dope dealers.

24 Children do without a lot and it hurts to see
25 kids do that. I went six months without

1 electricity. So now it's my time to do justice, to
2 do something good for the children and women that
3 are put in situations like me.

4 Q And the money has nothing to do with it?

5 A No, it does not.

6 Q So why don't you do it for free?

7 A I will do it for free.

8 Q If you are so interested in it, why didn't you set
9 George Corley up?

10 A Let's see. He is about to go to prison for it
11 right now.

12 Q Did you ever set him up?

13 A Did I ever set him up? No, sir.

14 Q Could you have set him up?

15 A I didn't have to. He set his own self up.

16 Q If you are so interested in cleaning up the
17 community --

18 A Sir, I am clean now. I am clean now and I have
19 been clean.

20 Q I am talking about in '08.

21 THE COURT: Let me stop you. Ms. Broach, let
22 him finish his question. It's question and answer. Let
23 him finish his question so the court reporter can take
24 it down, and you can respond fully and completely. I
25 won't let him cut you off either, which he has not done.

1 THE WITNESS: I'm sorry.

2 THE COURT: It's all right.

3 BY MR. FLOYD:

4 Q In July of '08, when you were so into this cleaning
5 up the community, and you knew George Corley was
6 selling drugs, why didn't you set him up?

7 A He wasn't selling drugs then. He was a product of
8 what he became at that time. His drug selling days
9 was before that.

10 Q Why didn't you turn him in for possessing drugs?

11 A He has got his record and his rap sheet. This is
12 not about him. Wasn't I not supposed to talk about
13 him about the other day? Why is it now all of
14 sudden we've got to talk about George again?

15 Q We are talking about you, Ms. Broach.

16 A That's true.

17 MR. STUMBO: Your Honor, I will object to the
18 relevance again.

19 THE COURT: Of what?

20 MR. STUMBO: Of this line of questioning about
21 George Corley.

22 THE COURT: Well, it was brought out on
23 direct.

24 MR. STUMBO: She has asked and answered the
25 question about his use and whether she turned him in

1. several times.

2 THE COURT: Overruled. You may proceed,
3 Mr. Floyd.

4 MR. FLOYD: Thank you.

5 BY MR. FLOYD:

6. Q Well, if you were using drugs while you were
7 setting other people up for drugs, why didn't you
8 turn yourself in?

9 A Let's see. In order to play the game, you got to
10 be a part of the game, don't you know.

11 Q Did you tell them you were using drugs?

12 A No, sir.

13 Q In fact, you weren't supposed to be using drugs;
14 were you?

15 A I didn't use no drugs while I was working.

16 Q You weren't supposed to be using at all while you
17 were a confidential informant under contract, were
18 you?

19 A But when I used -- when I was on time to do my
20 work, I was clean.

21 Q Ms. Broach?

22 A Yes, sir.

23 Q Didn't you sign an agreement with them where you
24 agreed not to break the law while you were under
25 contract with them?

1 A I don't remember what my contract said. It was
2 back in 2007, sir.

3 Q Did you tell them you were using drugs while you
4 were setting other people up?

5 A I can't remember, sir.

6 Q Did they ever arrest you for it?

7 A I've never been arrested for that, no, sir.

8 Q So either you didn't tell them or you told them and
9 they didn't care? Is that what you are saying?

10 A That's not what I'm saying, no. That's words you
11 are putting in my mouth.

12 Q What are you saying?

13 A I'm not saying anything.

14 Q Did you use the drugs while you weren't working
15 undercover?

16 A Occasionally maybe I did.

17 Q Didn't you just tell us frequently?

18 A That was when George was in my life, and I was
19 coming off them, yes, it was frequently. When he
20 was first in my life, it was constant, and then it
21 became frequent use, and now it's no use.

22 Q Ms. Broach, didn't about two minutes ago or maybe
23 three minutes ago, you told the jury that back in
24 2008 you were frequently using drugs?

25 A Yes, I did.

1 Q So when you just said occasionally, that wasn't
2 true; was it?

3 A Occasionally, frequently. Aren't they two in the
4 same?

5 Q Are they?

6 A Yes, sir.

7 Q Doesn't frequent mean -- isn't frequent more often
8 than occasionally?

9 A (No response).

10 Q And you can't tell us the last time you used drugs
11 in relation to July 15 of '08, before that day?

12 A What has that got anything to do with this case?

13 THE COURT: The answer is you can or you
14 can't. Answer the question.

15 THE WITNESS: Have I used drugs since?

16 THE COURT: Just a moment. Step to your jury
17 room, please. Do not discuss the case during this brief
18 recess.

19 (The jury retires to the jury room).

20 THE COURT: Ms. Broach, the question may or
21 may not be relevant, but if nobody objects, then the
22 question is on the table.

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. I'm not fussing at
25 you.

1 THE WITNESS: Yes, sir.

2 THE COURT: You are not a professional
3 witness. I don't mean it like that at all. I just
4 don't want to advise you like this in front of the jury.
5 If the solicitor objects, I will rule on his objection
6 one way or the other. I may sustain it or overrule it.
7 If I overrule it, answer the question. Don't debate
8 with Mr. Floyd.

9 THE WITNESS: Yes, sir, I'm sorry.

10 THE COURT: If he asks you a question, don't
11 respond by saying, What does that have to do with this?
12 If you know the answer, answer the question. All right?

13 THE WITNESS: Yes, sir.

14 THE COURT: Bring us the jury.

15 (The jury returns to the courtroom).

16 THE COURT: Our jury is back present.

17 Thank you very much, ladies and gentlemen, for
18 your continued, undivided attention. With that being
19 said, Mr. Floyd, you may continue.

20 MR. FLOYD: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. FLOYD:

23 Q So, Ms. Broach, back in July of 2008, you were
24 using crack on a frequent basis?

25 A Occasionally, yes, sir.

1 Q Didn't you tell us a while ago frequently?

2 A Yes, sir.

3 Q So is it frequent or is it occasionally?

4 A In my book frequently and occasionally are
5 basically hand in two.

6 Q When you use crack, does it affect your memory?

7 A Not mine.

8 Q You remember everything on crack?

9 A Yes, sir. I don't do it as much as you think I do.
10 I didn't do it in great big heaps like most people
11 that do it.

12 Q Would you sell your house for crack?

13 A No, I would not.

14 Q That didn't happen?

15 A I didn't sell my house. My ex sold his.

16 Q So you are saying crack does not affect your
17 memory?

18 A It doesn't affect my memory, no, it does not. I
19 remember everything perfectly fine. I'm not -- I
20 wasn't a heavy user, sir. That was my ex. He is
21 not here.

22 Q Does it affect your judgment?

23 A No, it makes me more keener.

24 THE COURT: What was that answer?

25 THE WITNESS: It makes me more keener, more

1 alert.

2 THE COURT: I just didn't understand you.

3 Thank you.

4 BY MR. FLOYD:

5 Q So it doesn't affect your judgment?

6 A To some it does, but I normally say no, sir. I
7 don't let it control me. I never have let it. It
8 doesn't control me. It controlled my ex. That's
9 the reason he lost everything and I cried many a
10 tears because everything I did, I lost.

11 Q But you continued to use?

12 A Well, if you lost \$30,000 worth of jewelry to crack
13 dealers and you lost your livelihood and your
14 self-esteem and everything, you know, yeah.

15 Q So would you say it does affect your judgment?

16 A No, I wouldn't say it affected my judgment. It has
17 made me angry, yes. Maybe you should try going
18 around sometime and checking out situations and see
19 how little kids live, sir, and the type of
20 environment they are brought up in. You should try
21 it sometimes. It might be heart wrenching for you.

22 Q But it didn't affect your judgment?

23 A No, sir.

24 MR. STUMBO: Objection, Your Honor, asked and
25 answered.

1 THE COURT: He is on cross examination,
2 overruled.

3 BY MR. FLOYD:

4 Q So did you use good judgment to use crack rather
5 than pay for the electricity?

6 A Sir, I lost my brother. I lost my life. I died
7 when my brother died. I was hurting, okay. My
8 judgment was bad when my brother died. It wasn't
9 because of the dope. It was because of the loss of
10 someone I loved dearly and I still miss dearly to
11 this day.

12 Q So it doesn't affect your judgment and it doesn't
13 affect your memory. It doesn't affect your powers
14 of observation?

15 A The lost of my brother affected my life. The dope
16 controlled my life for a while, but the hurt is
17 still there, and I overcame it because of God, not
18 because a dope dealer kept me in the mud.

19 Q This is George Corley you are talking about?

20 A This is because -- this is because of any dope
21 dealer. Nothing has control my life but for a
22 small period of time. I don't let nothing control
23 my life.

24 Q So the frequent times you took crack back in
25 July of '08, that didn't control your life?

1 A I was a product of my environment. It took myself
2 a while to wean myself off. You just don't stop
3 doing it overnight. Just like an alcoholic don't
4 stop drinking alcohol overnight, you can't recover
5 overnight. He falls off the wagon from time to
6 time.

7 Q But you didn't tell these narcotics agents you were
8 using, did you?

9 A Sir, I don't recollect. I don't recollect. That
10 was a while back. I haven't had contact with them
11 since last year.

12 Q Thank you.

13 MR. FLOYD: No further questions, Your Honor.

14 THE COURT: Redirect, Solicitor?

15 MR. STUMBO: Just a couple, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. STUMBO:

18 Q Mr. Floyd was asking you about your addiction. You
19 said you didn't let it control you. Did you go
20 through periods of time when you said it would?

21 A Yes, sir. I mean, it's like a drunk who gets drunk
22 every day and stays drunk for weeks at a time.
23 Then they get clean and then something happens and
24 it makes them start back again. It's like a
25 numbing medicine.

1 If you have ever been to a psychiatrist, they
2 will tell you it's like a numbing medicine.

3 Anybody who craves nicotine, anything, it's a
4 numbing medicine. When you feel pain, a lot of
5 times people fall on whatever it is to take the
6 pain away. It's no different than alcohol. It's
7 an addiction.

8 Q So you used it to mask your pain?

9 A Yes, sir.

10 Q But you did say that the days you were working with
11 Detective Kirkland and Detective Strange, you were
12 doing work for them, were you high those days?

13 A No, sir.

14 Q Would they be able to tell if you walked in there
15 high?

16 A Yes, sir.

17 MR. FLOYD: I object, Your Honor, speculation.

18 THE COURT: Yes, I would sustain that
19 objection.

20 BY MR. STUMBO:

21 Q Would you be able to keep working for them --

22 A No, sir I would not.

23 Q -- if you were working high?

24 A No, sir, I would not be able to. I wouldn't want
25 to.

1 Q Mr. Floyd asked you a question again about your
2 underwear. Did you put crack cocaine down in your
3 underwear during one of these?

4 A No, sir, I would never do nothing like that.

5 Q Did you hide it in your underwear on July 15?

6 A No, sir. Why would I have to hide it if I was just
7 going to get paid? I would go buy it after I did
8 the deal. I mean, what business would it serve to
9 hide it when I would have more money to go purchase
10 it if I wanted it afterwards?

11 Q Nothing would prevent you from going to purchase it
12 somewhere else afterwards?

13 A Correct.

14 Q Mr. Floyd asked you about the charges when George
15 got caught stealing stuff down in Swansea?

16 A Right.

17 Q You said first you went to jail for it, but those
18 charges were thrown out?

19 A Right.

20 Q Were they thrown out because you were working for
21 Detective Kirkland?

22 A No, sir.

23 Q Why were they thrown out?

24 A Because I wasn't guilty of his crime. He did the
25 crime. He threw my keys in my hand and told me to

1 walk away.

2 Q George was the one who --

3 A He ran and I was left the keys, not knowing what he
4 did.

5 Q One more question, Ms. Broach. Mr. Floyd asked you
6 if there was more than one person inside the
7 trailer on Austin Court?

8 A Yes, sir.

9 Q Which one of the three men in that trailer sold you
10 dope that day?

11 A George Middleton.

12 MR. STUMBO: Nothing further, Your Honor.

13 THE COURT: Thank you, Solicitor. Mr. Floyd,
14 recross?

15 **RECROSS EXAMINATION**

16 BY MR. FLOYD:

17 Q Did you ever use the drugs the same day you did a
18 deal?

19 A Not to my recollections, no, I have not. My deals,
20 I went home, I put minutes on my phone and I put
21 gas in my car and I went home. Nine times out of
22 ten the officers were behind me. They would be
23 going the way that I was going, so...

24 Q But you never told them that you were frequently
25 using crack?

1 A I can't recollect, sir, I'm sorry.

2 MR. FLOYD: No further questions.

3 THE COURT: Thank you, Mr. Floyd. Thank you
4 very much, Ms. Broach. You may step down. Thank you.

5 (Witness leaves the witness stand).

6 THE COURT: Solicitor, you may call your next
7 witness.

8 MS. HOWARD: The State rests, Your Honor.

9 THE COURT: Thank you. Thank you very much,
10 Solicitor.

11 Madame Forelady, ladies and gentlemen of the
12 jury, at this stage when the State rests, I have to take
13 up certain motions. It shouldn't take too long, but
14 rather than say I will bring you right back out here,
15 why don't y'all take about a 15-minute recess.

16 Do not discuss the case with anyone, with your
17 fellow jurors or anyone else, during this brief recess.
18 With that being said, you may go with your bailiffs to
19 the jury room.

20 (The jury retires to the jury room).

21 THE COURT: Anything motions, Mr. Floyd?

22 MR. FLOYD: Yes, Your Honor.

23 THE COURT: Yes, sir.

24 MR. FLOYD: Your Honor, at this time the
25 defense would renew all motions made. First, we renew

1 our motion objecting to the composition of the jury
2 panel, and I think we went into detail at the
3 appropriate time.

4 But, Your Honor, George Middleton is a black
5 male. We had a jury panel of 70 people, I believe, 70
6 or 71. We started with 71. One got excused for Friday.
7 Of that there were only four black potential jurors.

8 We went through two jury selections, the first
9 one on Tuesday and then again on Thursday, and at no
10 time was any potential black juror called. We feel that
11 the composition of the panel and the way that it was
12 called deprives Mr. Middleton of a fair trial in that it
13 effectively excluded any participation in this trial by
14 members of his race. So we renew that motion.

15 We renew our motion in which we objected to
16 the retrial of Mr. Middleton after his case was mistried
17 during this same week, our position being that the jury
18 panel would be influenced by knowing that he had already
19 been tried once and something happened to the case.

20 They certainly recognized him, and they knew
21 it was the same person because he's in a wheelchair and
22 he has no legs. They certainly remember it's the same
23 guy that was here Tuesday.

24 So they knew something happened, and I think
25 the procedure or practice of retrying someone the same

1 week in which their case has been mistried is in and of
2 itself inherently prejudicial against the Defendant. It
3 denies him the right to a fair and impartial jury.

4 In this case it, of course, is compounded
5 because in our jury venire for this second trial of the
6 week, there were 12 jurors out of the potential pool of
7 70 who indicated they had heard things that actually
8 disqualified them from the jury.

9 These people heard these things in large
10 respect right here in this courtroom where jurors were
11 seated right next to each other and words were passed
12 between jurors. Three or four of those jurors said they
13 had heard something about plea negotiations.

14 What is real troubling is the remaining eight
15 or nine said that they had heard there was a mistrial
16 because someone had attempted to bribe one of the
17 jurors, jury tampering, one of the most serious charges
18 we have in our society.

19 If any of those jurors got a whiff of that
20 rumor and did not disclose that, there is no way this
21 man can get a fair trial. Our position is there is no
22 way he can get a fair trial just by the process of
23 ferreting out that information.

24 Because what happens is we took 12 jurors, we
25 removed them from the pack, and put them over there

1 separately. Even we assume they didn't know why they
2 were put over there, they knew there was something that
3 they had found out that was prejudicial to the
4 Defendant.

5 They would have to know that. That's why they
6 couldn't serve in that trial. So those remaining
7 jurors, we would suggest, there is a good possibility,
8 although you asked them questions, there is a good
9 possibility that people heard some stuff they didn't
10 tell us. They didn't admit it because they didn't know
11 what was going to happen to them if they did because
12 they had no idea what was going on.

13 What they did know was that there was some
14 information out there that disqualified people because
15 of this mistrial, something went on with this mistrial
16 that nobody was supposed to know about and there was
17 prejudicial to the Defendant. So we feel that that
18 process itself was in error and that we should have been
19 granted a motion for a continuance. We would renew that
20 motion.

21 Furthermore, we renew our motion for a
22 dismissal or alternatively for a mistrial because of the
23 testimony of Agent Kirkland who voluntarily advised the
24 jury that he was familiar with Mr. Middleton's address
25 through a prior booking report.

1 It's our position, Your Honor, that everybody
2 on the jury knows what that means. So what they were
3 told -- and it was certainly not responsive to the
4 question he was asked -- what they were told was that
5 George Middleton has an arrest record. That's what they
6 all know now because they all know what a booking report
7 is.

8 I think we all understand that the jury is
9 never supposed to know about prior arrests unless and
10 until the Defendant gets on the stand. The cases are
11 clear on that point. That should have been a mistrial.
12 We renew our motion for dismissal, and for mistrial on
13 that issue.

14 Lastly, we move for a mistrial because of the
15 Court's failure to allow the Defendant to go into
16 evidence of bias of the witness Broach that we just had
17 that hearing on. We renew our motion for a mistrial
18 because we feel that that was prejudicial to the
19 Defendant.

20 THE COURT: I don't believe you made that
21 motion when that testimony was offered. You are saying
22 you are renewing your motion for a mistrial.

23 MR. FLOYD: I mischaracterized that then. We
24 renew our objection.

25 THE COURT: To my ruling.

1 MR. FLOYD: To your ruling.

2 THE COURT: I don't believe --

3 MR. FLOYD: Right.

4 THE COURT: -- you made a motion for a
5 mistrial for me to rule on at that time.

6 MR. FLOYD: That's correct, Your Honor.

7 THE COURT: All right. You are renewing your
8 objection to my ruling.

9 MR. FLOYD: Right.

10 THE COURT: Thank you.

11 MR. FLOYD: Thank you, Your Honor.

12 THE COURT: Any other motions, Mr. Floyd, at
13 this stage?

14 MR. FLOYD: Not at this stage, Your Honor.

15 THE COURT: Where the State has rested.

16 MR. FLOYD: Oh, Your Honor, we would also move
17 for a directed verdict of acquittal. It's our position
18 that the State has failed to establish the elements of
19 this offense beyond a reasonable doubt.

20 THE COURT: Thank you. Thank you very much,
21 Mr. Floyd.

22 Solicitor, do you have any response to any of
23 these five motions?

24 MR. STUMBO: Your Honor, I think our position
25 is on the record as to the first five. Number six, the

1 traditional D.V. motion, Mr. Floyd's assumption there is
2 a lack of evidence to go forward to the jury, Your
3 Honor, we would submit there is plenty of evidence to go
4 forward with the jury on the elements of distribution of
5 crack cocaine with Mr. Middleton based on Detective
6 Kirkland's detailed testimony, based on Ms. Broach's
7 detailed testimony this morning, and based on the
8 exhibits we have put into evidence.

9 We have Ms. Wilson's identification of this
10 substance that was sold as crack cocaine this morning,
11 Your Honor. It tested positive for crack. The chain of
12 custody was clean on that substance, Your Honor.

13 Ms. Broach very conclusively and clearly
14 identified Mr. Middleton as the one who sold her that
15 cocaine in State's Exhibit 6 on July 15, 2008, in
16 Lexington County. Jurisdiction is established as well,
17 Your Honor. So we would ask Your Honor, respectfully
18 ask Your Honor, to deny Mr. Floyd's directed verdict
19 motion.

20 THE COURT: Thank you, Solicitor. As to the
21 first motion Mr. Floyd revisited for the record, the
22 composition of the jury panel, concerning the racial
23 composition of the entire panel for this week, there is
24 no showing that the panel was selected in any manner
25 other than according to the normal drawing of the jury

1 venire, however you say that word. I never know how to
2 pronounce it.

3 They were notified properly. They appeared in
4 their own proper person. Further, the two panels, the
5 one on Tuesday and the one on Thursday, were drawn,
6 again, according to proper procedures with the selection
7 of jury panels in criminal court. I would renew my
8 rulings in that regard and deny your motion.

9 As to the second motion for retrial the same
10 week after a mistrial and that it was somehow inherently
11 prejudicial to the Defendant, I think the procedure used
12 resulted in a fair and impartial jury. I asked
13 extensive voir dire questions.

14 Plus this happens -- I don't know if it's
15 commonly and I don't know if it's frequently or
16 occasionally. I'm not sure what term exactly to use.
17 But obviously in Batson motions when they are granted,
18 you reselect a jury from the same full panel.

19 Granted obviously we all know it's not post
20 mistrial, but even in that situation jurors are not
21 aware of why there is a reselection of a jury panel
22 immediately after the first panel has been selected, and
23 everyone is actually put back in the pool.

24 I took the first panel this week, the first
25 13, and excused them for the week. The first jury that

1 was selected in the trial of this case, they did not
2 return on Thursday and were not part of the panel that
3 did return on Thursday, of which the trial jury was
4 selected out of.

5 Again, I think it's a fair and impartial jury.
6 I don't see any indication of why I should misbelieve
7 jurors that were under oath in their responses or lack
8 of responses to the questions. In other words, if they
9 had not heard anything, had not formed an opinion. Of
10 course, the record will bear out the jury selection
11 process.

12 As to his third motion concerning renewing his
13 motion for a mistrial in this case concerning the
14 booking report, I'm not sure where my memory is at right
15 now, whether it was the testimony about a booking report
16 or a booking photo. I thought it was a booking photo,
17 and I cited a case in regard to a booking report.

18 Be that as it may, again, the record will bear
19 out the question and answer. I renew my ruling, putting
20 in the record that this jury was not told that George
21 Middleton had an arrest record.

22 The officer's response was to a question by
23 the Defendant's attorney in the context of the questions
24 and questioning concerning the address on Austin Court,
25 whether it was [REDACTED] or [REDACTED].

1 I think given the context of the questioning
2 that the officer's response was or the officer's answer
3 was responsive to the question, and I would renew my
4 denial of the motion for mistrial.

5 As to the fourth motion concerning the ruling
6 of this Court not allowing the cross examination of
7 Ms. Broach concerning testimony regarding Renee Golson,
8 who I understand and it's in the record, I think, that
9 Renee Golson is George Middleton's cousin.

10 I find that that testimony is not relevant. I
11 would renew my trial rulings in that regard. I fail to
12 see the bias and prejudice in that regard. The only
13 testimony in the record at this point, of course, is
14 that Ms. Broach was not aware of any kinship between
15 Renee Golson and Mr. Middleton until November of '08,
16 which was four months or so after the incident that we
17 are trying, which was 15 July of '08.

18 I would respectfully deny the motion for
19 directed verdict, the fifth and final motion, given the
20 fact there is direct and substantial circumstantial
21 evidence that Mr. Middleton distributed crack cocaine on
22 that date in the indictment.

23 Any other further motions, Mr. Floyd?

24 MR. FLOYD: No, Your Honor.

25 THE COURT: Mr. Floyd, does the State (sic)

1 intend to present any witnesses or testimony?

2 (Pause).

3 MR. FLOYD: No, Your Honor.

4 THE COURT: Do you want me to question
5 Mr. Middleton concerning his right to testify or not to
6 testify?

7 MR. FLOYD: If Your Honor wants. I have
8 explained it to him. He understands.

9 THE COURT: Well, perhaps I should do that.
10 Could you put the microphone closer to him, Mr. Floyd.

11 Mr. Middleton, I need to ask you some
12 questions. I do this with everyone who is on trial, and
13 I have them placed under oath for their responses.

14 Madame Clerk, would you please administer the
15 oath to Mr. Middleton.

16 CLERK: Yes, sir, Your Honor.

17 GEORGE T. MIDDLETON is first
18 duly sworn.

19 THE COURT: You need to speak up for me so
20 that I can hear you and so our court reporter can get
21 down what you say, all right?

22 THE DEFENDANT: All right.

23 THE COURT: We have reached the stage of the
24 trial where the State has rested, and your side, the
25 defense, now has the opportunity to present evidence for

1 the jury to consider. Do you understand where we are in
2 the trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In that regard you may call
5 witnesses to testify. If you choose to testify
6 yourself, you may do so. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: No one can force you to testify.
9 You have an absolute right to remain silent, and if you
10 choose not to testify, I will tell this jury that they
11 cannot hold your silence against you in any way. I will
12 tell them that they are not to discuss that in the jury
13 room. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If your side offers no evidence at
16 all, in other words, if neither you nor anyone on your
17 behalf testifies or offers any exhibits, then your
18 attorney, Mr. Floyd, will get to make the last argument
19 to the jury. Otherwise, the prosecutor gets to make the
20 last argument. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Solicitor, Mr. Floyd, does
23 Mr. Middleton have a criminal record that would subject
24 him to impeachment under the rules?

25 MR. STUMBO: Yes, Your Honor.

1 THE COURT: What would that be?

2 MS. HOWARD: Yes, sir, Your Honor. He has
3 four convictions of a possible sentence over ten years.

4 THE COURT: What are they?

5 MS. HOWARD: Your Honor, in 1999 he pled to
6 P.W.I.D. cocaine. In 1999 he pled to another count of
7 P.W.I.D. cocaine. In 2005 he pled to a distribution of
8 crack second offense. Also, in 2005 a P.W.I.D. crack
9 second offense. Your Honor, I missed one at the
10 beginning, in 1994 a possession of crack.

11 THE COURT: Would that one be admissible over
12 ten years old?

13 MS. HOWARD: No, sir. I apologize, Your
14 Honor, just the first four I gave you.

15 THE COURT: Under Rule 609(a)(1), evidence
16 that a witness other than the accused has been convicted
17 of a crime, shall be admitted subject to Rule 403 if the
18 crime was punishable by death or imprisonment in excess
19 of one year, and evidence that an accused has been
20 convicted of such crime shall be admitted if the Court
21 determines that the probative value of admitting this
22 evidence outweighs its prejudicial effect.

23 I find that in a case of distribution of
24 cocaine, that prior drug offenses, their probative value
25 for the same or similar type of offenses do not outweigh

1 their prejudicial effect, and I would not allow those to
2 be used on cross examination of the Defendant.

3 There is a case in that regard that Judge
4 Cottingham tried, and I don't have it in front of me. I
5 thought it was C-O-L-F, but that is not it. Does he
6 have any others beside drug offenses, Solicitor?

7 MS. HOWARD: No, sir, Your Honor.

8 THE COURT: I assume you would have no
9 objections to that, Mr. Floyd.

10 MR. FLOYD: No, Your Honor. Let me discuss
11 this with him.

12 THE COURT: All right.

13 MR. FLOYD: Is it your ruling that they would
14 not be able to bring up any record at all in any form?

15 THE COURT: As I understand it, he has one,
16 two, three, four prior drug offenses within the ten-year
17 period of time or maybe within the ten-year period of
18 time. I'm not sure about the '99 ones. This is 2009.
19 They didn't give me the date on those. So I don't know
20 the answers to those.

21 But I think when they are similar type crimes,
22 it increases their prejudicial effect to such an extent
23 that it does not overcome their probative value. So I'm
24 not allowing that.

25 MR. STUMBO: Your Honor, could I just get a

1 clarification on that briefly?

2 THE COURT: Yes, sir.

3 MR. STUMBO: Is that ruling that they are
4 inadmissible, would that be a blanket ruling regardless
5 of what the Defendant would testify to on the stand?

6 THE COURT: No, sir, that is under 609. That
7 is my only analysis right now is under Rule 609. Under
8 609(a)(1) where it states evidence that an accused has
9 been convicted of such a crime shall be admitted if the
10 Court determines that the probative value of admitting
11 the evidence outweighs its prejudicial effect to the
12 accused.

13 I'm only ruling under 609. If he testifies
14 and as other issues arise, that doesn't preclude it
15 being admissible, depending on what his testimony is.
16 No, sir, I am not ruling on that. I'm just saying as
17 far as evidence under 609.

18 MR. STUMBO: As far as where we stand.

19 THE COURT: That's the only rule I am focusing
20 on right now is 609.

21 MR. STUMBO: Yes, sir.

22 THE COURT: I will get you the cite on Judge
23 Cottingham's case. I apologize that I don't have it out
24 here in front of me.

25 MR. STUMBO: Thank you, Your Honor. I

1 understand.

2 THE COURT: That's my standard ruling
3 generally, Solicitor. If you are trying somebody for
4 armed robbery and he's got a prior armed robbery, I
5 usually don't allow them to go into the armed robbery.

6 If he has got shoplifitings and crimes of
7 dishonesty and things like that that goes to his
8 credibility, I would do that. That's my general ruling.
9 Mr. Floyd.

10 MR. FLOYD: Yes, Your Honor, if I just might
11 have a few minutes to talk with him.

12 THE COURT: Let me ask him a few more
13 questions. I will get these out of the way. I will
14 give you a few minutes. We will take our break, and you
15 can have a few minutes.

16 Mr. Middleton, the decision about whether you
17 testify or not is your decision to make and yours alone.
18 I expect that you may confer with your attorney or
19 others whose opinions you value on important decisions,
20 but the decision about whether you testify or not is
21 your call, your decision. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anyone exercised any undue
24 influence over you to get you to choose to testify or
25 not to testify?

1 THE DEFENDANT: Pardon me?

2 THE COURT: Sir?

3 THE DEFENDANT: Pardon me?

4 THE COURT: Has anyone exercised any undue
5 influence over you to get you to testify or not to
6 testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Today are you under the influence
9 of any drug, alcohol, medication or anything that
10 negatively affects your thinking ability?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you suffer from any physical or
13 mental problems that affect your thinking today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have any questions you
16 would like to ask me about your right to testify or not
17 to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: I find that the Defendant
20 understands his right to testify and not to testify. We
21 will take about a 15-minute recess, and that will give
22 you an opportunity to speak with your client, Mr. Floyd.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Whereupon there is a recess).

1 THE COURT: All parties are back present in
2 the courtroom. Mr. Middleton, I have several more
3 questions I need to ask you. You are still under oath.
4 Have you made a decision about whether to testify or not
5 to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What is your decision?

8 THE DEFENDANT: Not to.

9 THE COURT: You are not going to testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Is that correct?

12 THE DEFENDANT: Correct.

13 THE COURT: Is that decision your decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is that made of your own free will
16 and accord?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions you
19 would like to ask me about your decision not to testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Thank you. Thank you very much,
22 Mr. Middleton.

23 I find that Mr. Middleton is a very
24 intelligent gentleman. He has understood my questions,
25 responded in an appropriate manner to my questions. I

1 gave him the opportunity during the break to discuss the
2 issue further with his attorney. He has made a decision
3 not to testify in his own behalf, and that decision is
4 being made freely, knowingly, and voluntarily.

5 Mr. Floyd, does the defense intend to offer
6 any testimony or evidence?

7 MR. FLOYD: No, Your Honor.

8 THE COURT: What I will do is bring the jury
9 out. I will tell them where we are at during the trial
10 of the case. I would advise them that we will now look
11 to the Defendant to see if the Defendant wishes to
12 present testimony, although they are not required to.

13 The State has the burden of proving the case
14 beyond a reasonable doubt, and the Defendant is presumed
15 to be innocent. I will then turn to you, Mr. Floyd, and
16 ask, Do you intend to produce any evidence? You would
17 have to rest formally in front of the jury.

18 With that being said, I guess there would be
19 no reply if you no offer testimony, and then we will go
20 to closings. Is that correct? About how long will your
21 closings be?

22 MS. HOWARD: Ten minutes, if that, Your Honor.

23 THE COURT: Is that ten for you and ten for
24 Mr. Stumbo or ten for you, Solicitor?

25 MS. HOWARD: Ten for only me, Your Honor.

1 MR. STUMBO: Believe it or not, Your Honor, I
2 will shut my mouth and sit down.

3 THE COURT: I might have to chain you to the
4 chair.

5 Mr. Floyd, about how long do you think you
6 will be? I will not limit you.

7 MR. FLOYD: I imagine I would be 20 minutes or
8 so.

9 THE COURT: About 20 minutes. I will tell the
10 jury that it will probably be about 30 minutes for both
11 sides total. Then my charge is a little over 20
12 minutes, I think. Any specific requests to charge?

13 MR. FLOYD: Nothing unusual from us.

14 MR. STUMBO: We have heard your standard
15 charge on reasonable doubt and those issues.

16 THE COURT: Thank you. Thank you very much.
17 You can bring the jury.

18 MR. FLOYD: We would request also that you
19 charge them under Manning.

20 THE COURT: Hesitate to act. I will add that
21 sentence.

22 MR. FLOYD: Thank you, Your Honor.

23 (The jury returns to the courtroom).

24 THE COURT: All parties are present, the
25 attorneys, and the jury has returned to the courtroom.

1. Ladies and gentlemen of the jury, as you
2 recall, we are at the stage where the State has rested.
3 The defense now may present evidence or testimony if the
4 defense chooses to do so.

5 The defense, an individual, never has to prove
6 himself or herself innocent. They are presumed to be
7 innocent, and the State has the burden of proving its
8 case beyond a reasonable doubt.

9 However, if they choose to present evidence
10 and testimony, they may do so. So we will now turn to
11 Mr. Floyd and ask Mr. Floyd, Mr. Floyd, does the defense
12 intend to offer any evidence?

13 MR. FLOYD: No, Your Honor, the defense rests.

14 THE COURT: With that being said, the defense
15 has now formally rested. Motions are renewed and my
16 previous rulings are renewed.

17 With that being said, the stage we are at now,
18 ladies and gentlemen, is the closing arguments. The
19 closing arguments are different from opening statements.
20 They are true arguments.

21 The attorneys for each side may argue the
22 facts, the inferences to be drawn from the facts, and
23 how they apply to the law to try to convince you as to
24 their version of the facts. You are the fact finders.
25 I am the judge of the law.

1 The procedure we follow in a case such as this
2 is the solicitor will close first, will present the
3 closing argument first to you. As I said, the State has
4 the burden of proving its case beyond a reasonable
5 doubt.

6 After the solicitor's closing argument,
7 Mr. Floyd will have the opportunity to present a closing
8 argument on behalf of the Defendant, Mr. Middleton.
9 After both closings, which should take 30 to 40 minutes
10 total -- should take 30 to 40 minutes totally. Don't
11 watch your watch.

12 After the closings then I will charge you the
13 law that applies to the case. It should take me about
14 23 minutes to charge you the law. I would ask you to
15 please give the attorneys your complete and undivided
16 attention.

17 Mr. Derrick, I don't want anyone coming in and
18 out during the closing arguments. That goes for any
19 spectators in the courtroom. You may certainly leave
20 between closing arguments or someone can come in between
21 closing arguments.

22 You may certainly leave after Mr. Floyd's
23 closing argument and before my charge to the jury, but I
24 don't want people moving about while the attorneys or
25 the Court are addressing the jury.

1 Ladies and gentlemen, please give the
2 attorneys your complete and undivided attention. Thank
3 you very much. Solicitor.

4 CLOSING ARGUMENT

5 MS. HOWARD: Thank you, Your Honor. May it
6 please the Court.

7 Good afternoon, ladies and gentlemen of the
8 jury. For the past two days you have been subjected to
9 a world that many of you may have never experienced
10 firsthand. This is the world of crack cocaine.

11 It's dark, it's ugly, it's a scary place.
12 It's a world where addictions are fueled. Families are
13 broken. Lives are destroyed. George Middleton profits
14 off of that destruction.

15 When the train is sitting at the station
16 packed ready to leave for rock bottom, George Middleton
17 is ready to sell you a ticket. This world is not always
18 like it looks on T.V.

19 On T.V. narcotics agents go up to somebody
20 sitting on the street. They are undercover. They hand
21 them the money. Somebody hands them back drugs. Bam,
22 simple as that, they are arrested. No intelligence, no
23 C.I. needed, no search of a vehicle, search of a person,
24 all that stuff.

25 But we don't live in the world of T.V. We

1 live here in Lexington County. Dealers aren't out on
2 the street. It's not as simple as that. It takes
3 narcotics agents like Officer Kirkland and Officer
4 Strange years and years to build up the ability to
5 become narcotics agents.

6 They have to use tactics that aren't used on
7 T.V. and in movies. They have to use people and areas
8 that are known in the drug world, that know this drug
9 world.

10 These officers, Officer Kirkland has 15 years
11 almost law enforcement experience, seven in narcotics.
12 Officer Strange has, I think, nine years with the
13 Sheriff's Department and three years in narcotics and
14 now almost a year at S.L.E.D.

15 They know what they are doing. Their
16 credibility is on the line every day, and they do a good
17 job of it. In this case they used what they had and
18 what they had was Freda Broach.

19 Freda Broach is familiar with this world. She
20 knows this world. She told you she is no saint. She
21 has had her addiction. She has had her problems. She
22 has been a user. She has been involved.

23 You, I, these bailiffs, Agent Kirkland and
24 Strange, they can't use us to go into a house to try to
25 buy some crack from somebody they think might be

1 dealing. Why?

2 George Middleton told you on the tape. He
3 said it twice. I trust no one. He said it twice, and
4 Freda Broach was able to convince him to trust her and
5 why? Because she had a familiar face, because she was
6 able to name people he was familiar with, because she
7 was familiar with that world.

8 Freda Broach is a confidential informant. She
9 does what we can't do, what Agent Kirkland can't do
10 himself. Here she was searched. They checked all over
11 her, her vehicle. Freda Broach didn't have charges.

12 She is getting paid for this, as well she
13 should. I know it was no fun for her to sit up here
14 this week. She signed a contract saying that she would.
15 She got paid \$80 for it. She probably didn't think she
16 would have to actually sit up here and do it but she
17 did.

18 We can't do that. We have to rely on Fredas
19 to do it for us. She told you honestly everything she
20 has been through. She had no reason to lie to you. She
21 had no reason to set up George Middleton, other than he
22 was the target that day, and there have been many
23 others.

24 No bias against him, no vendetta. She gets
25 paid \$20 if she comes back with crack and 80 if she --

1 excuse me -- \$20 for her time if she doesn't come back,
2 and 80 to a hundred if she does.

3 . It takes maybe an hour, hour and a half of her
4 time out of the day. Freda does it partially for money,
5 and she told you other reasons why, and I think she said
6 it better than I could.

7 On the money, she has a job she could have
8 done, getting paid minimum wage at Kent's Corner, or she
9 can spend an hour and a half to work for Agent Kirkland
10 for something she feels is right and get paid \$80 for an
11 hour and a half.

12 But she knows if she messes up here, there are
13 officers listening to every single move that she makes.
14 You heard that tape. If a zipper goes down, they would
15 have heard it. She has got one recorder here
16 (indicating) and one here (indicating).

17 You can hear her pants swishing. Freda didn't
18 pull crack out of the hood of her car. She didn't pull
19 crack out of her underwear. If she had, what, she might
20 have made an extra \$60? She made 80 as opposed to 20.

21 Freda is not going to do that. She's got a
22 job. It not that big of a difference. She's also not
23 going to do that because, like I said, Freda is familiar
24 with this world.

25 Freda knows if she messes up, she goes to

1 jail, not George Middleton, not the target, Freda. She
2 is not going to risk that. There is no reason to, no
3 reason to do anything other than what she told you from
4 the stand that she did.

5 When Mr. Floyd stood up here in his opening,
6 he said a sentence, and I wrote it down. He said that
7 the only evidence we have to prove -- excuse me -- the
8 only evidence we have comes out of the mouth of a paid
9 snitch with her own drug problems.

10 Ladies and gentlemen, I submit to you that is
11 partially true. Freda is a paid snitch, and she has her
12 own drug problems. She told you. But that's not the
13 only evidence we have.

14 We have a lot of evidence, and I submit to you
15 if you add it all up and use common sense, you will find
16 George Middleton guilty beyond a reasonable doubt.
17 Beyond a reasonable doubt is some abstract term we can't
18 define, can't put a percentage on it, can't put a range
19 on it.

20 You have to define it for yourself. Judge
21 McMahon is going to tell you in a minute reasonable
22 doubt has been termed as evidence that leaves you firmly
23 convinced that this happened.

24 Ladies and gentlemen, you have heard Freda's
25 testimony. You've heard the testimony from two very

1 seasoned officers about the tactics they used on that
2 day, how they conducted every search, every pat down,
3 listened to everything that went on, and kept a visual
4 up until the moment that they could not.

5 You heard why they could not. Because George
6 Middleton has cameras. He's sitting there in his
7 kitchen, ready to sell that dope, and watches his
8 cameras for who is coming down his road.

9 Eric Kirkland is a pretty recognizable man.
10 If he comes down that road, everybody knows narcotics
11 agents are on the way. He stopped there 30 seconds from
12 Highway 178, on Highway 178, from 113 Austin Court, 30
13 seconds away. He does that for two reasons.

14 One, to protect Freda. You heard her say, If
15 I yell help, y'all better come in there. They are going
16 to be right there ready. Number two, because it's
17 called a controlled buy.

18 He has got to keep control over her. He has
19 got to make sure she is doing what she is supposed to
20 do. He is listening and he is watching up to the very
21 second. There was no stop, no drive through or somebody
22 who could have magically flipped crack cocaine into her
23 car.

24 He kept visual surveillance up until the point
25 that he could not, and the reason why he could not was

1 because this didn't happen on a street corner, like in
2 New York. This happened on a dirt road, one way in, one
3 way out here in Lexington County, and it happened on a
4 road that was monitored.

5 So Agent Kirkland used every tactic,
6 everything he knew in his arsenal of knowledge as a
7 narcotics officer to make sure this deal went down well.
8 I submit to you if it hadn't, Agent Kirkland wouldn't
9 have made the decision to charge George Middleton.

10 Ladies and gentlemen, you also have the
11 testimony of three of our drug analysts, our chemist and
12 two evidence custodians. They have shown you what a
13 best kit is. The best way I can describe it is a sealed
14 bag, a bag of chips.

15 If somebody opens a bag of chips, you've got
16 to know. They can't seal it back the way it was before.
17 Even if they could, even if they had that thing, the
18 shrink wrap, you've got your initials on it. You are
19 going to know.

20 The same crack that Freda handed to Agent
21 Kirkland was handed into a locker, locked. Three people
22 took it in a chain, formed a chain of custody, and
23 presented it to you until it finally went to that
24 chemist who tested it, and it was positive for crack
25 cocaine.

1 Finally, you have got that audio. George
2 Middleton tells you himself, This one is for sale. This
3 one is not. I trust no one. On that day but for all
4 the surveillance and all his being careful, he trusted
5 the wrong person. He trusted Freda.

6 He sold the wrong passenger the ticket to rock
7 bottom, and he said it when she left, Hurry back now.
8 You hear that term a lot down here in the south, like
9 when you are leaving a restaurant. You don't think of
10 it as leaving a drug deal. I will bring my business to
11 you, Freda said. Hurry back now, he said.

12 Ladies and gentlemen, when you put this
13 evidence together, I submit to you that once you do, you
14 will be firmly convinced that on July 15, 2008, George
15 Middleton sold crack cocaine to Freda Broach.

16 These officers believe that it happened. They
17 know that it did. You should be convinced, too. He was
18 careful. He did what he could to watch his back, but on
19 that day Freda got him. It takes one to know one. That
20 sums up this situation.

21 Somebody that was familiar with that world is
22 the only person who can penetrate it. Freda Broach did
23 it that day. George Middleton sold her drugs on
24 July 15, 2008. Thank you, ladies and gentlemen, for
25 your time.

1 THE COURT: Thank you, Solicitor. Mr. Floyd.

2 CLOSING ARGUMENT

3 MR. FLOYD: Thank you, Your Honor.

4 Madame Forelady, and ladies and gentlemen of
5 the jury, this portion of the trial is what we call the
6 closing argument. Before I get into that, I would like
7 to thank each and every one of you for the attention
8 that you have given to this matter.

9 This is an important day in the life of George
10 Middleton, and the decision that you make about him will
11 affect him for a long time, and we appreciate your
12 attention.

13 Now, I am going to discuss something with you
14 that we talked about in the opening statement. It's not
15 that I think you forgot it the first time. It's not
16 that at all. It's just that it's so important I really
17 need to address you about it again.

18 That is what you the jury have to decide.
19 Remember this, George Middleton comes before you with
20 what we call the presumption of innocence, the same
21 right we all have.

22 Basically what that means is that when you
23 look at George Middleton, you must say in your mind and
24 in your heart that George Middleton is innocent, and
25 George Middleton remains innocent unless the State

1 proves his guilt to each one of your satisfactions
2 beyond a reasonable doubt.

3 Now, what do we mean by that? A lot of people
4 define reasonable doubt as that doubt which would cause
5 a reasonable person to hesitate to act -- that doubt
6 which would cause a reasonable person to hesitate to
7 act.

8 So if we can somehow take all this evidence
9 and put it in the shape of this piece of paper, and
10 because one piece of that evidence or the lack of one
11 piece of that evidence, you would hesitate before you
12 would vote to convict, then your obligation as a juror
13 is to return a verdict of not guilty even if there is
14 evidence in the case to make you suspicious.

15 Because when you vote guilty or not guilty,
16 you are not voting on whether or not you think George
17 did it. What you voting on is does the evidence the
18 State has given me prove his guilt beyond a reasonable
19 doubt?

20 Now, let's talk about the evidence. As much
21 as the State would like you to think that there is
22 evidence in this case against George Middleton that
23 comes from anywhere other than the mouth of Freda
24 Broach, we suggest to you there is none.

25 Now, what do they have? They have officers

1 who didn't see it. They have people who analyzed it.
2 They weren't there. They have two people who passed it
3 back and forth in the lab to the evidence room. They
4 weren't there. The only person that was there was Freda
5 Broach.

6 Now, they try to say, Well, we've got that
7 covered. We searched the car. Ladies and gentlemen,
8 you heard Agent Strange. He doesn't remember searching
9 the car. We do know this. Agent Wilson said -- Agent
10 Kirkland said it takes 15 to 20 minutes to search a car.

11 What they are looking to see is does she have
12 any crack on her. The records are that he searched for
13 seven minutes. Then he searches coming back a second
14 time. Well, we know there was an inadequate search of
15 the car to determine whether or not there was any crack
16 cocaine in that car.

17 We know they say they searched her person.
18 They never searched the underwear. Crack cocaine can
19 easily be hidden in the underwear. So we don't really
20 have any evidence that will tell us for certain that
21 Freda Broach didn't take crack into that trailer, it's
22 not her own crack, but she is still making money on it.
23 She gets \$60 and she gets \$80. She makes money even if
24 it's her own.

25 Now, let's go to Freda. The only thing you

1 have heard is her saying it happened. What else? You
2 remember how they didn't tell us one thing to start with
3 until I examined her. They didn't want you to hear
4 this. Remember that piece of evidence that is so
5 important in this case.

6 When the State was putting up their evidence
7 and they put up this tape, did they ever tell you there
8 was more than one man in that trailer? Did they ever
9 tell you that? They didn't, did they? There were three
10 men in the trailer.

11 Whose voice is saying what? Is George
12 Middleton's voice even on that recording. If she did
13 get the dope in there, who did she get it from because
14 there's three men in there?

15 Now, let's talk about her C.I. status. She
16 was under contract. The thing that bothered me a little
17 bit -- I don't know if it bothered y'all -- nobody could
18 ever tell you exactly how many buys she had made.

19 They keep a record. How many times has she
20 come back with dope to get her \$80 or a hundred dollars
21 and how many times has she come back and only got \$20?
22 Does it make you a little curious why nobody has that
23 information for you?

24 Does it make you want to hesitate? How
25 reliable is this person? How reliable is the system

1 when they are paying somebody \$80 to bring me back
2 crack, but \$20 if you don't bring me any crack back.

3 It sounds to me like that's a system set up to
4 encourage the C.I. to have crack on them. Because if
5 they don't make the buy, they still can get their \$80,
6 whether they are bringing back \$20 worth of crack, \$40
7 worth of crack or \$60 worth of crack.

8 So when the system that they are relying upon
9 is geared to encourage it, that type of activity, it's
10 inherit to say: Is this the type of system that proves
11 to me that you are the person beyond a reasonable
12 doubt?

13 Then to top it all off, she is doing the crack
14 herself while she is supposedly being a C.I. She is
15 doing it herself. Do you believe what she says about
16 how it doesn't affect her memory, doesn't affect her
17 judgment, doesn't effect her powers of observation?

18 Or did you believe her when she said
19 frequently she did it, but then when seeing that is an
20 issue, it becomes occasionally? When somebody is
21 changing their testimony right up on the stand in front
22 of you, doesn't it make you doubt a little bit anything
23 that she says? Doesn't it?

24 You know, I will sit down and shut up. I see
25 you are expressing sighs of relief because I have been

1 up here a while. See, the problem with our system is
2 I'm not allowed to ask: Is there a question you have
3 that I need to try to answer?

4 Jurors and the attorneys are not allowed to
5 have dialogue between themselves. We can't know whether
6 or not there is some issue you've got in your mind that
7 we need to try to cover.

8 So we stand up here and ramble a lot trying to
9 think of everything you might have a question about, and
10 you know I've never been able to cover all the questions
11 in your mind. I understand that. I never can figure
12 them all out.

13 But all we can ask is that when you go back in
14 the jury room, think of how we could have answered that
15 question that you might have had. Think when you go to
16 vote, what are you voting on?

17 Does the evidence in this case prove the guilt
18 of George Middleton beyond a reasonable doubt? And
19 think whether or not you think evidence that is paid
20 for, paid for, \$80 if you bring me some crack, 20 if you
21 don't, does that type of evidence have any credibility?

22 Does that type of evidence convince you beyond
23 a reasonable doubt? And when that person is doing it,
24 is herself using crack and when that person gets up
25 there and testifies that George Middleton is saying all

1 this, saying all that and all that, never tells you,
2 Well, actually there's three men in that trailer.

3 I guess if you listen closely, you could hear
4 the different voices. Maybe she thought nobody would
5 pick up on that. So they never asked that question.
6 They are trying to hide it from you. They tried to hide
7 from you that there were three men in the trailer.

8 Doesn't it make you hesitate to act when you
9 understand the State tried to hide a very important
10 piece of evidence from you? Thank you very much for
11 your attention. We are confident of placing George
12 Middleton in your hands. Thank you.

13 THE COURT: Thank you. Thank you very much
14 Mr. Floyd.

15 (Whereupon the Court charged the jury as
16 follows).

17 THE COURT: Madame Forelady, ladies and
18 gentlemen of the jury, if you would please give me your
19 complete and undivided attention. I am going to charge
20 you or instruct you what the law is that applies to this
21 case.

22 The procedure that I use is that I charge the
23 general criminal law first that applies to all criminal
24 cases tried in South Carolina. When I change from one
25 section to another, I will give you the caption of the

1 paragraph I am fixing to cover and go over with you.

2 After I cover the general criminal law, I
3 will then cover the law that applies to this case
4 specifically, distribution of crack cocaine. After that
5 I will advise you on the form of verdict.

6 Charge, arrest, indictment not evidence. The
7 indictment in this case alleges an offense against the
8 Defendant. The charge is distribution of crack cocaine,
9 Indictment 2008-GS-32-2898.

10 I remind you that the fact the Defendant was
11 arrested, charged, and indicted in the case is not
12 evidence in this case and cannot be considered by you as
13 evidence of guilt in the case, nor does it create any
14 presumption or inference of guilt.

15 This document, this indictment, is simply the
16 formal written notice document which contains the charge
17 made against the Defendant. It is the formal document
18 by which this case is brought into court.

19 Presumption of innocence. The Defendant has
20 pled not guilty to this indictment and that plea puts
21 the burden of proof on the State to prove the Defendant
22 guilty. A person charged with committing a criminal
23 offense in South Carolina is never required to prove
24 himself innocent.

25 I charge you that it is an important rule of

1 the law that the Defendant in a criminal trial, no
2 matter what the seriousness of the charge may be, will
3 always be presumed to be innocent of the crime for which
4 the indictment was issued unless guilt has been proven
5 by evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 This presumption of innocence does not end
8 when you begin your deliberations, but it accompanies
9 the Defendant throughout the trial until you reach a
10 verdict of guilt based on evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 Defendant which remains with the Defendant until it has
15 been stripped from the Defendant by evidence satisfying
16 you of the Defendant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere
18 legal theory. It is not just a legal phrase. It is a
19 substantial right to which every defendant is entitled
20 unless you the jury are satisfied from the evidence of
21 the Defendant's guilt beyond a reasonable doubt.

22 What is a reasonable doubt? The State has the
23 burden of proving the Defendant guilty beyond a
24 reasonable doubt. Some of you may have served as jurors
25 in civil cases where you were told that it is only

1 necessary to prove that a fact is more likely true than
2 not true, such as by the greater weight or the
3 preponderance of the evidence.

4 In criminal cases such as this, the State's
5 proof must be more powerful than that. It must be proof
6 beyond a reasonable doubt. Proof beyond a reasonable
7 doubt is proof that leaves you firmly convinced of the
8 Defendant's guilt.

9 There are very few things in this world that
10 we know with absolute certainty. In criminal cases the
11 law does not require proof that overcomes every possible
12 doubt.

13 If based on your consideration of the evidence
14 you are firmly convinced that the Defendant is guilty of
15 the crime charged, you must find the Defendant guilty.
16 If, on the other hand, you think there is a real
17 possibility that the Defendant is not guilty, you must
18 give the Defendant the benefit of the doubt and find him
19 not guilty. A reasonable doubt is the kind of doubt
20 that causes a reasonable person to hesitate to act.

21 Duties of judge and jury. I remind you that
22 during this trial, you and I have certain duties to
23 perform. As the trial judge, it is my responsibility to
24 preside over the trial of this case, and I also have the
25 duty to rule on the admissibility of the evidence

1 offered during the trial.

2 You are to consider only the competent
3 evidence before you. If there was any evidence or
4 testimony ordered stricken from the record in this case
5 during the trial, you must disregard that testimony.
6 You are to consider only the testimony which has been
7 presented from the witness stand and any exhibits which
8 have been made a part of the record.

9 I have the additional duty to charge you the
10 law that applies to this case. As the presiding judge,
11 I am the sole judge of the law of this case, and it is
12 your duty as jurors to accept and apply the law as I now
13 state it to you.

14 If you already have any idea as to what the
15 law is or what the law ought to be and it does not agree
16 with what I now tell you the law is, you must abandon
17 your idea because you are sworn, you have taken an oath,
18 to accept the law and apply the law exactly as I state
19 it to you.

20 In every case tried in this courtroom before a
21 jury, the jury becomes the sole and exclusive judge of
22 the facts in a case. A trial judge cannot intimate,
23 state, comment on or make any statement to a trial jury
24 about the facts in a case.

25 Since you the jury are the sole judge of the

1 facts in this case, you are not to infer from what I
2 have said during the progress of this trial, in ruling
3 upon the admissibility of evidence or otherwise or
4 anything that I now say to you during the course of this
5 instruction that I have any opinion about the facts in
6 this case.

7 The law does not allow me to have an opinion
8 about the facts in this case. This is a matter solely
9 for you the jury to determine. As jurors it is your
10 duty to determine the effect, the value, the weight, and
11 the truth of the evidence presented during this trial.

12 Direct and circumstantial evidence. There are
13 two types of evidence which are generally presented
14 during a trial, direct evidence and circumstantial
15 evidence.

16 Direct evidence is the testimony of a person
17 who claims to have actual knowledge of a fact, such as
18 an eyewitness. It is evidence which immediately
19 establishes the main fact to be proved.

20 Circumstantial evidence is proof of a chain of
21 facts and circumstances indicating the existence of a
22 fact. It is evidence which immediately establishes
23 collateral facts from which the main fact may be
24 inferred. Circumstantial evidence is based on inference
25 and not on personal knowledge or observation.

1 The law makes absolutely no distinction
2 between the weight or the value to be given to either
3 direct or circumstantial evidence, nor is a greater
4 degree of certainty required of circumstantial evidence
5 than of direct evidence.

6 You should weigh all of the evidence in the
7 case. After weighing all of the evidence if you are not
8 convinced of the guilt of the Defendant beyond a
9 reasonable doubt, you must find the Defendant not
10 guilty.

11 Credibility of witnesses. Necessarily you
12 must determine the credibility of the witnesses who have
13 testified in this case. Credibility simply means
14 believability.

15 In using your good judgment and common sense,
16 it becomes your duty as jurors to analyze and to
17 evaluate the evidence and determine which evidence
18 convinces you of its truth.

19 In determining the believability of the
20 witnesses who have testified in this case, you may
21 believe one witness over several or several witnesses
22 over one. You may believe the part of the testimony of
23 a witness and reject the remaining part of the testimony
24 of that same witness.

25 You may believe the testimony of a witness in

1 its entirety or reject the testimony of a witness in its
2 entirety. You may consider whether any witness has
3 exhibited to you any interest, bias, prejudice or other
4 motive in this case. You may also consider the
5 appearance and manner of a witness while on the witness
6 stand.

7 I instruct you and emphasize the fact that the
8 Defendant, Mr. Middleton, did not testify is not a
9 factor to be considered by you in any way in your
10 deliberation and in your consideration on the question
11 of the guilt or innocence of the Defendant. It must not
12 be considered by you in any manner.

13 A defendant has the constitutional right to
14 remain silent, and the assertion of this constitutional
15 right must not be considered by you in your
16 deliberations.

17 I repeat, under your oath you are to draw no
18 conclusion whatsoever from the fact that the Defendant
19 in this case did not testify. The fact that the
20 Defendant did not testify should not even be discussed
21 in the jury room.

22 The burden of proof as I have stated to you is
23 on the State. The Defendant is not required to prove
24 his innocence. The burden of proof remains on the State
25 to prove guilt beyond a reasonable doubt.

1 Expert witnesses. The rules of evidence
2 ordinarily do not permit witnesses to testify to
3 opinions or conclusions. An exception to the rule
4 exists for witnesses we call expert witnesses.

5 A witness, who by education and experience,
6 has become an expert in some art, science, profession or
7 calling may state an opinion as to relevant and material
8 matter in which the witness claims to be an expert and
9 may also state the reasons for the opinion.

10 You should consider any expert opinion
11 received in evidence in this case and like any other
12 evidence, give it the weight you think it deserves. If
13 you decide that the opinion of the expert is not based
14 on sufficient education or experience or if you conclude
15 that the reasons given in support of the reason are not
16 sound or that the opinion is outweighed by other
17 evidence, you may disregard the opinion entirely.

18 An expert witness' testimony is to be given no
19 greater weight than that of other witnesses simply
20 because we call the witness an expert. Further, you are
21 not required to accept an expert's opinion even though
22 it is not contradicted.

23 I would ask to you please continue giving me
24 your complete and undivided attention. Intent. In
25 order to establish criminal liability, criminal intent

1 is required. For example, the mental state required to
2 be proven by the State for a particular crime might be
3 purpose, intent, knowledge, recklessness or even
4 criminal negligence.

5 Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a
7 matter that must be determined by the jury from the
8 circumstances surrounding the situation.

9 There is no way to prove intent to a
10 mathematical certainty. There is no way medical science
11 can dissect a person's brain and determine what the
12 person had in mind.

13 So the law says that criminal intent may be
14 inferred from the circumstances shown to have existed.
15 This is how you make your determination of whether or
16 not the element requiring intent was present.

17 It is not necessary to establish intent by
18 direct and positive evidence, but intent may be
19 established by inference in the same way as any other
20 fact, by taking into consideration the acts of the
21 parties and all the facts and circumstances of the case.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the
24 Defendant intended to do based on the circumstances
25 shown to have existed.

1. That is the general law, ladies and gentlemen.
2 Now I am going to cover the specific charge in this
3 case, distribution of crack cocaine. The Defendant is
4 charged with distribution of crack cocaine.

5 The State must prove beyond a reasonable doubt
6 that the Defendant distributed crack cocaine.
7 Distribution means to deliver or to actually,
8 constructively or attempt to transfer a drug other than
9 by administering or dispensing. Deliver means to
10 actually, constructively or attempt to transfer a drug.
11 A transfer can involve an exchange for money, a barter
12 or a gift.

13 Also under our code, there is a definition of
14 crack cocaine under Section 44-53-110. Cocaine base.
15 Cocaine base means an alkaloidal cocaine or free base
16 form of cocaine, which is the end product of a chemical
17 alteration whereby the cocaine in salt form is converted
18 to a form suitable for smoking. Cocaine base is
19 commonly referred to as rock or crack cocaine. That is
20 the charge of distribution of crack cocaine.

21 Finally, ladies and gentlemen, the verdict.
22 There are two possible verdicts which you may find in
23 this case, guilty or not guilty. There is absolutely no
24 significance whatsoever in the order in which I have
25 stated these possible verdicts. It is simply that one

1 must be stated first.

2 Ladies and gentlemen, your verdict must be a
3 unanimous one. All 12 of you must agree on the verdict.
4 Madame Forelady, ladies and gentlemen of the jury, you
5 will have a verdict form in the jury room with you. It
6 is very self-explanatory.

7 It has the caption of the case, the case
8 number. It tells you how to mark your verdict form
9 based on your determination of the facts in the case and
10 the inferences to be drawn from the facts, as you find
11 them to be, comparing those facts to the law as I have
12 instructed you on the law.

13 If you find that the State has proven its case
14 beyond a reasonable doubt, each and every element, your
15 verdict would be guilty. I will ask you -- if your
16 verdict is unanimous, if it would be guilty, I would ask
17 you to check to the left of the word guilty and circle
18 the check and the word guilty, sign and date it.

19 If based on your determination of the facts
20 and the inferences to be drawn, applying it to the law
21 as I have instructed you, you find that the State has
22 failed to prove its case beyond a reasonable doubt, your
23 unanimous verdict would be not guilty, check to the left
24 of not guilty, circle both the check and the two words
25 not guilty and sign and date it.

1 Your verdict cannot be based on sympathy,
2 passion, prejudice, emotion or any other consideration .
3 not in evidence in this case. Madame Forelady, when the
4 jury has agreed on the verdict and you have signed and
5 dated the verdict form, I would ask you to please knock
6 on the jury room door and inform the bailiff that you
7 have reached a verdict. At that time we will receive
8 you back into the courtroom.

9 I must ask you one final time to return to
10 your jury room, but do not begin your deliberations
11 until I instruct you to do so. The law requires I meet
12 with the attorneys one final time outside of your
13 presence.

14 If I do not have to bring you back out here
15 for further instructions, you will receive the verdict
16 form and all the items of evidence that were introduced,
17 and you will be instructed :- everyone looks fine.

18 So our two alternates will be brought out of
19 the jury room. You will then be instructed to begin
20 your deliberations. Do not begin your deliberations
21 until instructed to do so by the bailiff or the clerk.
22 With that being said, if you would please go with your
23 bailiffs to your jury room. Thank you very much. If
24 you have any questions, write down a note.

25 (The jury retires to the jury room).

1 THE COURT: Any exceptions or additions,
2 Solicitor?

3 MS. HOWARD: None from the State, Your Honor.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: None, Your Honor.

6 THE COURT: If y'all would check the exhibits.
7 I think we have 1 through 6.

8 (Pause).

9 MR. STUMBO: Judge, we do have an audio, and
10 we have this boom box type C.D. player. We can send
11 this back with them.

12 THE COURT: Do you have any objection,
13 Mr. Floyd, to the boom box going in?

14 MR. FLOYD: I don't have any problem with
15 that, Judge.

16 THE COURT: You can bring the alternates out
17 in the hallway.

18 (The jury begins their deliberation at
19 12:32 p.m.)

20 (Whereupon there is a recess).

21 (The following occurred at 1:05 p.m.)

22 THE COURT: Anything before we bring in our
23 jury from the State?

24 MS. HOWARD: Nothing from the State, Your
25 Honor.

1 THE COURT: From the defense?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: I remind everyone to please
4 control themselves during the receiving of the verdict.
5 Because if you don't control yourself, I will have the
6 sheriff take you into custody.

7 If you feel like you cannot control yourself
8 or your emotions, I would ask you to please leave at
9 this time. No one leaves. With that being said, bring
10 us our jury, please.

11 (The jury returns to open court to report its
12 verdict).

13 THE COURT: Madame Clerk.

14 CLERK: Madame Forelady, have you reached a
15 verdict?

16 FOREMAN: We have.

17 CLERK: Will you please pass it to the
18 bailiff.

19 (Hands to Court).

20 THE COURT: The verdict appears to be in the
21 proper form, Madame Clerk. If you would publish our
22 verdict, please.

23 (Whereupon the verdict of the jury is
24 published as follows).

25 CLERK: Yes, Your Honor. Indictment

1 Number 2008-GS-32-2898, the State of South Carolina
2 versus George Thomas Middleton, as to the charge of
3 distribution of crack cocaine, we the jury unanimously
4 find the Defendant, George Thomas Middleton, guilty, and
5 it is signed by the foreperson of the jury.

6 Madame Forelady, and ladies and gentlemen of
7 the jury, if this is your verdict, please indicate so by
8 raising your right hand.

9 (All jurors so indicate).

10 CLERK: All jurors are polled, Your Honor.

11 THE COURT: All hands were raised. Thank you,
12 Madame Clerk. Anything further from the jury for the
13 State?

14 MS. HOWARD: Nothing from the State, Your
15 Honor.

16 THE COURT: From the defense?

17 MR. FLOYD: No, Your Honor.

18 THE COURT: Thank you. Thank you very much.
19 Mr. Floyd, you would have motions?

20 MR. FLOYD: Yes, Your Honor.

21 THE COURT: Madame Forelady, ladies and
22 gentlemen of the jury, I am going to thank you very much
23 for your time and focus and attention during these last
24 two days and the entire week of jury service.

25 Although I realize you were not up here all

1 week, you did have to report Tuesday and back Thursday
2 afternoon. I believe your lunch is here. You may
3 certainly go back and get your lunch before you are
4 excused.

5 I will hear motions and then thereafter I will
6 impose sentence on the Defendant. You are certainly
7 welcome to stay for that procedure if you choose to do
8 so. If not, you are free to leave. You are released
9 from your jury service for the remainder of the day and
10 the remainder of the week.

11 I would need the forelady to meet our clerk
12 outside of the courtroom and sign the indictment. You
13 have signed, of course, the verdict form, but I also
14 need you to sign the indictment. So if would go with
15 your bailiff back to your jury room. Thank you very
16 much.

17 (The jury is excused).

18 THE COURT: Mr. Floyd, you have motions?

19 MR. FLOYD: Your Honor, at this time we would
20 move for a new trial. Your Honor, the basis for our
21 motion was the same arguments we made at the conclusion
22 of the State's case, which were renewed at the
23 conclusion of the entire case... Would you like me to go
24 through each one of them again, Your Honor?

25 THE COURT: Mr. Floyd, I certainly would not

1 require you to do so. I want you to be in your comfort
2 zone as far as the record for Mr. Middleton, but I am
3 certainly familiar with them. You have certainly done
4 an adequate job in the Court's opinion of placing them
5 on the record and stating the Defendant's position in
6 those regards.

7 MR. FLOYD: Thank you, Your Honor. Maybe I
8 will just reiterate them but not go into detail argument
9 wise.

10 THE COURT: All right.

11 MR. FLOYD: Your Honor, of course, our first
12 motion has to do with the composition of the jury panel
13 in that there were absolutely no black jurors ever
14 available for selection in the way the process worked
15 for either one of Mr. Middleton's trials.

16 Secondly, we object to Your Honor's refusal of
17 granting a motion, for the motion to dismiss or a motion
18 for mistrial because of the testimony of Agent Kirkland
19 that he had got an address from Mr. Middleton's booking
20 photo.

21 We object to the procedure and renew our
22 objections to the procedure of requiring Mr. Middleton
23 to go to trial twice in the same week after a mistrial
24 in front of the same jury panel and the failure to grant
25 a continuance even though there were many jurors who had

1 been subject to hearing rumors, some of which were very
2 detrimental to the Defendant.

3 We felt that basically tainted the entire jury
4 pool and that Mr. Middleton should have been granted a
5 continuance. All these actions by the State basically
6 deprived the Defendant of his right to a fair trial and
7 a fair and unbiased jury.

8 Lastly, we objected to the Court's refusal to
9 allow us to explore what we consider to be testimony of
10 bias by the witness, Ms. Broach, concerning events that
11 occurred between her and the Defendant's first cousin.

12 THE COURT: Thank you. Thank you very much,
13 Mr. Floyd. I would -- Solicitor, anything you care to
14 place on the record in regards to any of the motions?

15 MS. HOWARD: No, sir, Your Honor. I believe
16 you have covered it.

17 THE COURT: I would deny the Defendant's
18 motion for a new trial and deny all previously stated
19 motions and renew my rulings during the trial in regards
20 to the Defendant's motion.

21 Anything further before I impose the sentence,
22 Mr. Floyd?

23 MR. FLOYD: No, Your Honor.

24 THE COURT: Do you have a sentencing sheet,
25 Solicitor?

1 MS. HOWARD: Yes, sir, Your Honor.

2 THE COURT: If I could see it, please. Did
3 any of the jurors want to return?

4 BAILIFF: I think so. We will get them in.

5 THE COURT: If you would have them return to
6 the courtroom.

7 MS. HOWARD: May I approach, Your Honor?

8 (Hands to Court).

9 THE COURT: Come around, please, Mr. Floyd and
10 Mr. Middleton.

11 (Pause).

12 THE COURT: Solicitor, anything further from
13 the State prior to the imposition of sentence?

14 MS. HOWARD: Just very briefly, Your Honor.

15 THE COURT: Yes, ma'am.

16 MS. HOWARD: Your Honor, Mr. Middleton has
17 five prior drug convictions, the first one in 1994 and
18 the most recent in 2005. In '94 he was charged with
19 P.W.I.D. crack and pled to possession, received a
20 sentence of 15 months, suspended to 12 months.

21 THE COURT: Possession of crack in 1994?

22 MS. HOWARD: Yes, sir, Your Honor.

23 THE COURT: Fifteen months.

24 MS. HOWARD: Suspended to 12 months probation.

25 THE COURT: Twelve months probation. All

1 right.

2 MS. HOWARD: In 1999 he pled -- he was charged
3 with P.W.I.D. crack. He pled to a P.W.I.D. cocaine.

4 THE COURT: Possession with intent to
5 distribute cocaine?

6 MS. HOWARD: Yes, sir, Your Honor.

7 THE COURT: His sentence?

8 MS. HOWARD: He was sentenced to 15 years,
9 suspended to five years probation.

10 THE COURT: All right.

11 MS. HOWARD: Again, in 1999 he was charged
12 with distribution of crack. He pled to possession with
13 intent to distribute cocaine. He was sentenced to 15
14 years, suspended to five years probation.

15 THE COURT: Were those both the same day?

16 MS. HOWARD: The sentencing was on the same
17 date, Your Honor. The offense dates were five days
18 apart.

19 THE COURT: Both in Lexington County?

20 MS. HOWARD: Yes, sir, Your Honor.

21 THE COURT: Let me go back. Was the '94
22 possession of crack or possession of cocaine in
23 Lexington County?

24 MS. HOWARD: Yes, sir, Your Honor, all of them
25 have been.

1 THE COURT: Next?

2 MS. HOWARD: In 2005 he was charged with
3 distribution of crack third or subsequent offense. He
4 pled to a distribution of crack second offense. He was
5 sentence to ten years, suspended on six months and two
6 years probation.

7 THE COURT: That was in Lexington County?

8 MS. HOWARD: Yes, sir, Your Honor.

9 THE COURT: All right.

10 MS. HOWARD: Also in 2005 on the same plea
11 date, he was charged with trafficking crack third or
12 subsequent offense. That charge was pled down to
13 possession with intent to distribute crack second
14 offense.

15 He was sentenced to ten years suspended on six
16 months and two years probation concurrent. Your Honor,
17 one of those offenses occurred in March of 2003. The
18 other in November of 2003.

19 THE COURT: All right.

20 MS. HOWARD: Your Honor, I have spoken with
21 the narcotics agents here in Lexington County about
22 Mr. Middleton. I have been told that since 1986,
23 Mr. Middleton has been a plague on this community as far
24 as dealing drugs.

25 Mr. Kirkland has told me about numerous C.A.D.

1 reports they have of people in the community calling to
2 complain about drug activity upon Austin Court since
3 1986.

4 Your Honor, obviously it's obviously a third
5 or subsequent offense. It does carry a mandatory
6 minimum. For all of these dealings and all these
7 convictions, Mr. Middleton has spent a total of six
8 months behind bars and has received probation for
9 everything else.

10 As far as the sentence goes, we leave that in
11 Your Honor's discretion. I just wanted to let you know
12 those facts, and I do have copies of the certified
13 convictions.

14 THE COURT: I would like to see those, please.
15 (Hands to Court).

16 THE COURT: Solicitor, what is the
17 mandatory -- not the mandatory -- what is the maximum
18 sentence on distribution of crack third or subsequent
19 offense, both in terms of time and the minimum and
20 maximum in term of fines? I think the fine is also
21 mandatory. If you could provide me with that.

22 MS. HOWARD: Your Honor, it is a term of
23 imprisonment of 15, minimum mandatory, and a maximum of
24 30 years. The fine, I believe, is \$50,000.

25 THE COURT: Mandatory?

1 MS. HOWARD: I'm sorry, Your Honor. It's 15
2 to 30 years and/or up to \$50,000. I apologize.

3 THE COURT: That's not mandatory?

4 MS. HOWARD: No, sir, not for distribution.

5 THE COURT: Is it mandatory for trafficking?

6 MS. HOWARD: Yes, sir, Your Honor.

7 THE COURT: Mr. Floyd, do you agree that what
8 the solicitor stated is his correct prior criminal
9 history as far as drugs are concerned?

10 MR. FLOYD: Yes, Your Honor.

11 THE COURT: This will be a third or subsequent
12 offense?

13 MR. FLOYD: Yes, Your Honor.

14 THE COURT: It appears to be to me. She has
15 provided the Court with a certified true copy where he
16 pled guilty to possession of crack cocaine in 1994,
17 94-GS-32-1908. It appeared he had an attorney in that
18 regard.

19 He pled to possession with intent to
20 distribute powder cocaine. That particular offense,
21 just for possession, not being within the ten-year
22 period of time, I would not consider that particular
23 offense for purposes of sentencing today.

24 However, it appears he has possession with
25 intent to distribute powder cocaine and possession with

1 intent to distribute powder cocaine, two counts, that he
2 pled to in 1999.

3 Then he has a distribution of crack cocaine
4 second offense that he pled to in 2005 and another
5 possession with intent to distribute crack cocaine
6 second that he pled to also in 2005. So it appears that
7 it would at a minimum be a third or subsequent offense.

8 Thank you, Solicitor.

9 Anything, Mr. Floyd? I would be glad to hear
10 from you, sir.

11 MR. FLOYD: Thank you. Your Honor, George is
12 40 years of age. When George was 13, he had a diving
13 accident, diving into Cedar Creek, that rendered him a
14 quadraplegic. He has limited use of his arms but not
15 much.

16 Eventually he had to have his legs removed
17 about ten years ago, nine or ten years ago. So all of
18 his life he has been in a disabled capacity. He gets
19 like \$600 a month, 635. His medicine costs him 200,
20 200-something. So what you have got is a financial
21 situation.

22 THE COURT: You may have to speak up just a
23 little bit.

24 MR. FLOYD: What you have got is a very dire
25 financial situation that probably contributed to his

1 activities. He has had a hard life, and he has tried to
2 do with it the best he could.

3 He's not a bad person. He is a fine person to
4 deal with. He has good, strong family support.
5 Everybody likes him in the family and community that he
6 is friends with. We wish we weren't here to hear what
7 you next have to say, but we are here. I would ask
8 George if he has anything he would like to say.

9 THE COURT: You might want to pull the
10 microphone down for him.

11 Anything you would like to say, Mr. Middleton?

12 THE DEFENDANT: Yes, sir, I'm sorry. I just
13 had to do what I had to do to survive.

14 THE COURT: I didn't hear the last part.
15 Sorry and then what?

16 THE DEFENDANT: I had to do what I had to do.

17 MR. FLOYD: He does have serious health
18 problems. In addition, you can see he is going through
19 one of his seizures right now, seizures, muscle spasms.
20 We don't know how long he has got to live. Nobody knows
21 that. We are trying to figure out what the --

22 THE COURT: Me and you don't know that.

23 MR. FLOYD: That's true, too, Judge.

24 THE COURT: And nobody in this courtroom. I'm
25 not making light of his medical condition, of course,

1 Mr. Floyd. I didn't mean it like that, but nobody knows
2 the hour or the day.

3 MR. FLOYD: That's true.

4 THE COURT: You may proceed.

5 MR. FLOYD: They don't have a handle on what
6 is causing the spasms, and they are still trying to
7 figure that out. So his life has not been a good one,
8 not been an easy one, and he has done the best he could
9 with what he had. He had no way of making money other
10 than this route and he did it.

11 THE COURT: Thank you. Anything further,
12 Mr. Floyd, Mr. Middleton?

13 THE DEFENDANT: No, sir.

14 THE COURT: Anything further, Solicitor?

15 MS. HOWARD: No, sir, Your Honor.

16 THE COURT: 2008-GS-32-02,898 George Thomas
17 Middleton, the jury having returned a verdict of guilty
18 of distribution of crack cocaine, this being a third or
19 subsequent offense, the Defendant is committed to the
20 State Department of Corrections for a determinate term
21 of 21 years and to pay a fine of \$50,000. Good luck to
22 you, Mr. Middleton.

23 MR. FLOYD: Your Honor, just to be safe, now
24 that sentence has been imposed, I would like to renew my
25 motions for a new trial and make sure we don't have any

1 procedural issues.

2 THE COURT: And if you think that has
3 appropriately covered it on the record, I want you to do
4 whatever you think is appropriate on the record,
5 Mr. Floyd.

6 MR. FLOYD: Your Honor, we renew them just as
7 we made them right before the sentencing.

8 THE COURT: Thank you very much. Good luck
9 you to, Mr. Middleton.

10 Anything further for the Court today?

11 MR. STUMBO: I don't think we have anything
12 else.

13 THE COURT: Madame Court Reporter, if you
14 would mark these as a Court's Exhibit.

15 COURT REPORTER: Yes, sir.

16 (Court's Exhibit Number 1 is marked for
17 purposes of the record).

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 26th through the 29th days of May, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 30, 2009

COPY
L. Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA

County of Lexington

FILED

IN THE COURT OF COMMON PLEAS

2012 MAR 21 P 2:31

Full name and prison number (if any) of Applicant
George Thomas Middle
v. BETHA A. CARRIGG
CLERK OF COURT
LEXINGTON SC

State of South Carolina

VW

APPLICATION FOR

POST-CONVICTION RELIEF

2012CP3201282

INSTRUCTIONS TO 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 Lexington County Correctional Institution
Bishopville, South Carolina, 29010
2. Name and location of Court which imposed sentence Lexington County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) N/A **A TRUE COPY**
DCI
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-32-02898 Distribution of Crack Cocaine

Lex. Co. C.C.P. 08 & P.O.

(b)

(c)

5. The date upon which sentence was imposed and the terms of the sentence.

(a)

MAY, 28, 2009 Twenty-one (21) Years

(b)

(c)

FILED
2012 MAR 21 P 2:31GETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

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?

yes

8. If you answered Ayes@ to (7), list:

(a)

the name of each Court to which you appealed:

i.

State of South Carolina Court of Appeals

ii.

iii.

(b)

the result in each such Court to which you appealed:

i.

The Appeals Court Affirmed The Conviction

ii.

iii.

(c)

the date of each such result:

i.

July, 21st, 2011

ii.

iii.

(d)

if known, citations of any written opinion or orders entered pursuant to such results:

i.

See (2A) Attached

ii.

iii.

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a)

- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INADEQUATE ASSISTANCE OF COUNSEL
- (b) FAILURE TO ASK FOR CONTINUANCE TO FILE APPEAL ON TIME
- (c) INADEQUATE ASSISTANCE OF COUNSEL AND PLEA OFFER

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) FAILURE TO BRING FORTH ISSUES ON SEALED ITEMS SENT
- (b) THE RIGHT TO FILE AN APPEAL OBTAINED JURY PANEL NEVER USED
- (c) NEVER EXPLAINED PLEA OFFER AND CONSEQUENCE OF ADMISSION PLEA

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered Ayes to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____

FILED
MAR 21 P 2:31
ETHA A. CARRIG
CLERK OF COURT
LEXINGTON SC

iv. _____
 (c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

FILED

2017 MAR 21 P

BETH A. CAR
 CLERK OF CC
 LEXINGTON

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) _____ 2012 MAR 21 P 2:31
 (b) _____ JETHA CARRIGG
 (c) _____ CLERK OF COURT
 LEYINGTON SC

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? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or application with respect to this conviction, which you filed? _____

18. If you answered Ayes to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Wayne Floyd, Highway 1 Columbia, South
Caroline
 ii. Ben J. Mall A. Stitely, P.O. Box 849
Lexington, South Carolina, 29071-0849
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial, Sentencing
 ii. Appeal
 iii. _____

The Continuance of Issues set forth in # 10, Ineffective Assistance is hereby requested that the Applicant be allowed to add and amend the issues once an attorney has been appointed by the Court.

The Continuance of Issues set forth in # 10-(B) The Motion to Amend is also requested as Applicant is ignorant of the law and has very limited access to the person who is helping to prepare the PCR.

The Continuance of Issues set forth in # 10-(C) The Consequences of Not Accepting the Five (5) Year plea not being explained by the Attorney is hereby. The issues and that most assuredly have to be added and amended.

DETHA CARRIGG
CLERK OF COURT
LEXINGTON SC

MAR 11 P 23

FILED

ORIGINAL

Page # 3-B # 11

A. The Attorney did not bring forth the items seized from the property of the Applicant.

B. The Attorney failed to request the Court to allow him time to appeal the Trial Court's decision on the impaneled Jury Panel.

2012CP320128

C. The Applicant was advised that the Prosecution had made an offer for a guilty plea, but he was told that the Court was going to be compelled to grant a second mis-trial and the charges would be dismissed.

The Applicant has no other alternative but have a appointed Attorney Added and a mis-trial ISSUES.

FILED
JUL 21 2012
CLERK OF COURT
WASHINGTON

ORIGIN

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, George Thomas Middleton, 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.

George Thomas Middleton
Applicant

SWORN or affirmed to and subscribed before me this

7 day of March 2012.

Debra Sikes
Notary Public

My Commission Expires:

11-4-2015

2012CP3201282

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2012 MAR 21 P 2:31

FILED

19. State clearly the relief you seek in filing this application:

The motion for mistrial granted. The Charges
Dismissed, and Immediate Release of the
Defendant.

20. Are you now under sentence from any other court that you have not challenged?

N/A

Revised 3/200

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it 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.

Debra Sines
Debra Sines

SWORN to and subscribed before me this 7
 day of March, 2012.

Debra Sines (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

FILED
 2012 MAR 21 P 2 31
 BETH A. CARRIG
 CLERK OF COURT
 LEXINGTON SC

FORM 5

ORIGINAL

COPY

STATE OF SOUTH CAROLINA)

County of LEXINGTON)George Thomas Middleton)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012 CP3201282

AMENDED

APPLICATION FOR

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 LEE COUNTY CORR. INSTITUTION, Bishopville
S.C. 29010
2. Name and location of Court which imposed sentence LEXINGTON COUNTY
COURT OF GENERAL SESSIONS
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) 2008-GS-32-22898; Distribution of
CRACK COCAINE

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 28, 2009; Twenty ONE years (21),
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty in _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. YES; STATE COURT OF APPEALS, (S.C.)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED CONVICTION
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 21, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNKNOWN
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) SEE ATTACHED FOR ALL ISSUES REGARDING
 (c) INEFFECTIVE ASSISTANCE OF COUNSEL

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) FAILURE TO BRING FORTH FACTS ON SOLID ITEMS
 (b) DID NOT INFORM PETITIONER OF DETAILS OF PROFFER
 (c) SEE OTHER ISSUES ATTACHED. (SEE ALL OTHER ISSUES ATTACHED)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? first appeal
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE N/A
 (d) any other petitions, motions or applications in this or any other Court? None just

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. INITIAL PCR APPLICATION

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. PCR COURT - COURT OF GENERAL SESSIONS

ii. LEXINGTON COUNTY, S.C.

iii. _____

iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Items "A" & "C" from initial PCR Application
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. PCR initial Filing of Application
- ii. _____
- iii. _____

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) I HAVE ONLY PRESENTED PC & INEFFECTIVE
 (b) ASSISTANCE OF COUNSEL ARGUMENTS AND
 (c) ISSUES NOW RIFE FOR PRESENTATION TO THIS CO.

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? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

PRESENT APPOINTED COUNSEL

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. WAYNE FLOYD, HWY 2, COLUMBIA, S.C.

ii. BENJAMIN A. STITH, BOBON 848
LEXINGTON, S.C. 29051-0848

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL & SENTENCING

ii. STATE COURT OF APPEALS

iii. _____

ISSUES OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL:

ISSUE ONE

COUNSEL FAILED TO BE EFFECTIVE WHEN HE DID NOT BRING FORTH THE FACTS RELATING TO THE ITEMS SEIZED.

COUNSEL FAILED TO INFORM PLAINTIFF OF THE MERITS OF A PLEA AGREEMENT NOR THE CONSEQUENCES OF TAKING A PLEA. PLAINTIFF WAS NOT INFORMED OF THE DETAILS OF THE AGREEMENT AND THEREFORE WAS DEPRIVED OF HIS RIGHT TO ENTER INTO THE AGREEMENT. FURTHER COUNSEL INFORMED PLAINTIFF THAT HE WOULD RECEIVE THE ~~GRAND~~^{FIRST} MISTRIAL. COUNSEL SINCERELY BELIEVED THAT IN THE INTEREST OF JUSTICE HIS DEFENDANT WOULD RECEIVE A SECOND MISTRIAL DUE TO THE TRINITE EFFECTS OF THE FIRST MISTRIAL. THE LAWYERS & JUDGE MEMBERS STATEMENTS TO COUNSEL REGARDING SAME, THUS COUNSEL DECIDED A SECOND MISTRIAL WOULD BE RULED. (SEE TRIAL TR. PG. 200, LINE 2 THRU 213). THEREFORE COUNSEL WAS INEFFECTIVE.

6

ISSUE TWO:

TRIAL COUNSEL FAILED TO PRESENT FACTS REGARDING ITEMS SEIZED BY LAW ENFORCEMENT AGENTS.

TRIAL COUNSEL SHOULD HAVE VIEWED THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF. THE EVIDENCE SEIZED WAS NOT SUBSTANTIAL. FOR IT COULD NOT PROVE HE WAS A DEALER OF COCAINE BUT A USER OF DRUGS IN NEED OF REHABILITATION. NO SALES OR QUANTITIES OF COCAINE OR MARIJUANA WERE EVER MADE OR SEIZED. ONLY ROACHES AND SEDIMENTS OF CRACK AND MARIJUANA. THE SLEET OFFICER WHO TESTIFIED INCORRECTLY TESTIFIED THAT THERE WAS THREE (3) BUYS OF CRACK BUT THERE WAS NOT, THE ONE BUY WAS LESS THAN (56) GRAMS. YET THE PETITIONER RECEIVED (21) YEARS AND WAS TREATED AS IF HE WAS A LARGE DEALER OF DRUG, WHEN IN FACT HE NEVER HAS BEEN. THIS FACT OF QUANTITY AND NUMBER OF PURCHASES BY LAW ENFORCEMENT WITNESSES CLOUDED THE TRUTH AND PRESENTED A FALSE IMAGE IN THE MIND OF THE JURY CAUSING THEM TO SEE HIM AS THIS BIG DRUG LORD INSTEAD OF A ONE TIME THING. COUNSEL SHOULD HAVE OBJECTED TO THIS ERROR IN TESTIMONY. (SEE TP pg. 307 line 22-24)

ISSUE Three:

Counsel WAS IN AFFECTIVE WHEN HE FAILED TO OBJECT TO THE STATES PRESENTATION ~~AND~~ AND proffered a STATEMENT REGARDING THE USE OF CAMERAS IN HIS DRIVE WAY'S STATING THAT SUCH CAMERAS SITUATED - PROVES HE IS A DRUG DEALER. THUS ONCE AGAIN FURTHER TRAITING THE MINDS OF THE JURORS. (SEE TR. PG. 401 LINE 5 THRU 8.)

I WAS INEFFECTIVE COUNSEL FOR PLAINTIFF COUNSEL TO ALLOW THE PROSECUTING ATTORNEY TO TESTIFY TO THE JURY. HAVING CAMERAS DOES NOT MAKE ONE A DRUG DEALER. THE PRESIDENT HAS SUCH BUT IS NOT A DRUG DEALER.

19. State clearly the relief you seek in filing this application:

AFINDING OF INEFFECTIVE ASSISTANCE OF COUNSEL
WARRANTING; A NEW TRIAL, IMMEDIATE RELEASE
A LESSER SENTENCE, ETC.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, George Thomas Middleton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it 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.

George Middleton

SWORN to and subscribed before me this 26
 day of Sept., 2012.

Maurice Wilson (L.S.)
 Notary Public

My Commission Expires: 3/8/2020

RECEIVED
 10/1/12
 10/1/12

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, George Thomas Middleton, 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.

George T. Middleton
Applicant

SWORN or affirmed to and subscribed before me this

27 day of Sept 2012

Maureen W. Nier
Notary Public

My Commission Expires: 3/8/2026

CLERK OF COURT
EXHIBIT SC

COPY

STATE OF SOUTH CAROLINA

IN THE COMMON PLEAS COURT

COUNTY OF LEXINGTON

2013 AUG 21

A M

DOCKET NO.: 2012-CP-32-1282

George T. Middleton, 307245

BETH A. CARROLL
CLERK OF COURT
LEXINGTON, SCAMENDMENT TO POST
CONVICTION RELIEF APPLICATION

State of South Carolina

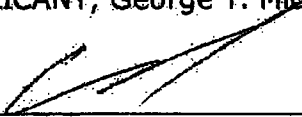
Respondent,

The Applicant through undersigned Counsel wishes to Amend his Post
Conviction Relief Application filed on March 21, 2012 as follows:

ATTACHED PAGES NUMBERED 9, 10, AND 11

Applicant is entitled to due process rights as well as any other right of the
Constitutional Amendments and feels that this was recklessly disregarded by Judge.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, George T. Middleton


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

August 19, 2013

ISSUE ~~_____~~

The TRIAL Judge STATED
in A BATSON MOTION WHEN
GRANTED TO SELECT a jury FROM
the SAME pool. IN BATSON V. KEN,
476 U.S. 29, 106 S.Ct. 1712 (1986) this
WAS ERROR,

TRIAL COUNSEL WAS INEFFECTIVE
IN NOT REMEDYING THIS ERROR dURING
TRIAL.

On May 25-26 I was taken before Judge Mc Mahan to be tried for "possession with intent to distribute crack cocaine" I was represented by Attorney Wayne Floyd at the time. Judge Mc Mahan denied me due process in regards to the jury being tainted. My Constitutional Rights allow me be tried in front of a jury of my peers in which Attorney Floyd brought to the courts attention because the jurors selected were 12 caucasians non black or any other nationality which is a requirement by law. The only evidence against me was a known drug user whom they admitted did favors for them for financial gain in regards to her services if she returned drugs back to them she would receive from 80 to 100 dollars in cash but if she didnt do the favor she would receive 20 dollars for trying. Ofc. Kirkland whom initiated the drug by along with Ofc Strange testified that all informant be thoroughly searched prior to and after all drug transaction. No to the fact that Freda Broach the said informant is a female who does buisness with law informant and is an occasional drug user. Preferably crack cocaine was said to have been thoroughly searched but limited to her underwear which is prohibited due to the

fact that she is a female and its not appropriate for males to search females. So they allow them to bend over and shake their bra as stated by the Officers which isnt a thorough search by no means. So if a known and admitted drug user is allowed to buy and use drugs how can she be trusted when a police officer is monitoring her and shes in a position to conceal the drugs on her person and wasnt immediately

^{searched} Because she was allowed to follow the Officers to another destination as stated on (pg. 75) 21-24 and (76) 22-23 also on (pg 86) 12-13 when asked during cross examination did they search her underwear ofc Kirkland replied no sir (On pg 90) 9-10 Ofc Kirkland stated that he didnt know rather or not the C.I. went inside 113 Austin Court and that he was going by the informant of a known drug user and their was no video to clarify where she actually was or who she was actually talking too due to fact that theirs also other buildings on the property Ofc. Kirkland stated from 23-25 and 1-3 on (pg 94-95) that he has no other proof that she purchased any drug other than what a drug user tells him for the sum of 80 to 100 dollars cash.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
George Thomas Middleton,	)	Case No. 2012-CP-32-01282
#307245	)	
Applicant,	)	
v.	)	RETURN
State of South Carolina,	)	
Respondent.	)	

In response to the post-conviction relief application filed March 21, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lexington County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2008 term of the Lexington County Grand Jury for distribution of crack cocaine – 3rd or subsequent offense (2008-GS-32-2898). Wayne Floyd, Esquire, represented the Applicant.

The State took the case to trial, and on May 28, 2009 the Applicant was found guilty. The Honorable R. Knox McMahon sentenced the Applicant to twenty-one years imprisonment for distribution of crack cocaine – 3rd or subsequent offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Benjamin A. Stitely, Esquire, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. George Thomas Middleton, Op. No. 2011-UP-373 (S.C. Ct. App. filed July 21, 2011). The Remittitur was sent on August 11, 2011.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the plea transcript, and appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Failure to bring forth issues on seized items."
 - b. "Failure to ask for continuance to file appeal on tainted jury."
 - c. "Ineffective assistance of counsel on plea offer."

III.

Applicant filed an amended application for post-conviction relief on October 8, 2012. In the amended application Applicant brought an additional allegation.

1. Ineffective assistance of counsel.
 - a. "Counsel was ineffective when he failed to object to the states presentation and proffered a statement regarding the use of cameras in his drive way stating that such cameras proves he is a drug dealer."

IV.

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 criminal 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.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JOHN W. WHITMIRE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:

John W. Whitmire
Attorneys for Respondent

12/3/12, 2012

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

2012-CP-32-01282

George Thomas Middleton, # 307245

Applicant,

vs

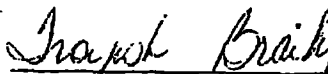
AFFIDAVIT OF SERVICE BY MAIL

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:

Ryan M. Wingard, Esquire
Post Office Box 489
Lexington, SC 29071

DATED this 3rd day of December, 2012


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	2012-CP-32-01282

GEORGE MIDDLETON	)	
APPLICANT	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

January 21, 2014
Lexington, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

CHARLES BROOKS, ESQ.
Attorney for the Applicant

WALTER WHITMIRE, ASSISTANT ATTORNEY GENERAL
Attorney for the State

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

WITNESSES:	PAGE
GEORGE MIDDLETON	
Direct Exam by Mr. Brooks	4
Cross-Exam by Mr. Whitmire	11
WAYNE FLOYD	
Direct Exam by Mr. Whitmire	16
Cross-Exam by Mr. Brooks	20

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: All right, Mr. Whitmire.

2 MR. WHITMIRE: May it please the Court.

3 The last case of today is George Thomas
4 Middleton v State of South Carolina, Case No.
5 2012-CP-32-1282.

6 Mr. Middleton was indicted for distribution of
7 crack cocaine, third or subsequent offense. He was
8 represented by Wayne Floyd. The State called the case for
9 trial on May 28, 2009, where the jury returned a guilty
10 verdict as indicted. Judge McMahon sentenced Mr.
11 Middleton to 21 years imprisonment for distribution of
12 crack cocaine, third or subsequent offense. Notice of
13 appeal was filed on Mr. Middleton's behalf. Benjamin
14 Stitely perfected the appeal. The Court of Appeals
15 affirmed his conviction in an unpublished opinion. He has
16 filed a timely post-conviction relief action.

17 And just for the Court's edification and
18 knowledge, there was an original mistrial as well as a
19 retrial and conviction.

20 I'll turn matters over to Mr. Brooks putting on
21 the record his allegations of ineffective assistance of
22 counsel, failure to bring forth issues on two items:
23 Failure to ask for a continuance to file an appeal on
24 tainted jury, failure to file ineffective assistance of
25 counsel on the plea offer.

1 Your Honor, I'll reserve arguments for the end.

2 THE COURT: Thank you.

3 Ready to proceed.

4 MR. BROOKS: Yes, sir.

5 THE COURT: Call your first witness.

6 MR. BROOKS: At this time we'll call George
7 Middleton.

8 THE COURT: Mr. Middleton, can you raise your
9 right hand over there?

10 THE APPLICANT: Yes.

11 GEORGE MIDDLETON, after being duly sworn,
12 testified as follows:

13 THE COURT: Go ahead.

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Mr. Middleton, you're seated over here and I know
17 you're in a wheelchair and have some disabilities, but I
18 want to remind you to make sure that you talk up so that
19 the court reporter can hear you and we can get a record of
20 it. And when I ask you a question, you can't just say
21 "uh-huh" and "unh-unh," you got to say "yes" or "no" so
22 she can pick that up. Do you understand that?

23 A Yes, sir.

24 Q Good. All right.

25 Now, Mr. Middleton, you brought this

1 post-conviction relief application alleging ineffective
2 assistance of counsel of Mr. Floyd; is that correct?

3 A Correct.

4 Q He represented you in this case?

5 A Yes, he did.

6 Q Now, you guys actually went to trial one time prior
7 and it ended up in a hung jury; is that correct?

8 A Right.

9 Q Now, one of the allegations that you made was you
10 really didn't understand the plea offer?

11 A Right.

12 Q Can you explain that to the judge?

13 A Well, talking to Mr. Floyd -- I talked to Mr. Floyd
14 when I hired Mr. Floyd the offer was that they were
15 offering five years. That's all I ever got.

16 Q Now, did you understand what you were facing if you
17 were convicted?

18 A Yeah, he said that.

19 Q Okay. So why didn't you take the deal of five years?

20 A Because at the time I was thinking five years was too
21 -- too long.

22 Q And you ended up getting convicted on the second
23 trial and getting 21 years?

24 A Right.

25 Q Now, you think that Mr. Floyd didn't do a good job of

1 explaining that to you versus what you could end up
2 getting; is that correct?

3 A Correct.

4 Q One of the allegations you talked about was him
5 failing to try and suppress the evidence; is that correct?

6 A Correct.

7 Q Can you explain that?

8 A Well, the evidence on the surveillance I think he
9 could have objected to, them bringing forth this evidence.

10 Q The Solicitor's office, they had some surveillance
11 evidence?

12 A That they seen.

13 Q Okay. And you think that Mr. Floyd could have had
14 that suppressed?

15 A Right.

16 Q Why do you think he could have done that?

17 A Well, they brought forth the evidence -- I don't
18 understand that.

19 THE COURT: Just take a deep breath and relax.
20 I want you to tell me -- today's your day in court. I
21 want you to tell me whatever you want to tell me. But do
22 me a favor. See how loud I get when I get close to the
23 microphone? I want you that close to the microphone,
24 okay?

25 THE APPLICANT: Okay.

1 THE COURT: Can you slide it towards you?

2 THE WITNESS: Yes.

3 Ask that question again.

4 BY MR. BROOKS:

5 Q Okay. Do you -- can you tell the Court why you think
6 Mr. Floyd should have done that, to try to have the
7 surveillance suppressed?

8 A Because they brought forth evidence that they seen
9 from surveillance.

10 Q Okay. Now, just for background information, as you
11 told me earlier, you've been a quadraplegic for most of
12 your life; is that correct?

13 A Correct.

14 Q And you lost your legs because of poor circulation?

15 A Right.

16 Q And this was the result of a diving accident when you
17 were 12?

18 A Yes, sir.

19 Q And as a result you've been in this position. And
20 how old are you now?

21 A Forty-five.

22 Q And I said you regained use of your hands; is that
23 correct?

24 A My arms and hands, yes.

25 Q And how long has it been since you regained use of

1 your arms and hands?

2 A I regained those about six months after my accident.

3 Q Okay. Now, you stated that Mr. Floyd when you talked
4 about this, he didn't really explain the offer of what you
5 were facing and why you perhaps should have taken the
6 offer; is that right?

7 A That's right.

8 Q That's one of your allegations?

9 A Yes, sir.

10 Q And the other allegation, you thought he should have
11 tried to suppress some evidence, some surveillance
12 evidence; is that correct?

13 A Correct.

14 Q And another allegation was you felt that he should
15 have asked for a continuance of the second trial?

16 A Yes.

17 Q Okay. And you said something about some juror,
18 tainting of the jury. Can you explain that to the Court?

19 A Well, the jurors talking, we heard talking amongst
20 one another that morning and they were talking about
21 things that took place at the peanut store in Pelion where
22 I lived.

23 Q Is this before the judge had given the case to them
24 to start talking about it and deliberating?

25 A Yes.

1 Q Okay. To your knowledge, was Mr. Floyd aware of
2 this? Like were y'all sitting at the table like you and I
3 at the table over here?

4 A Yes.

5 Q So you think he should have done something about
6 that; is that correct?

7 A He brought it to the Court's attention.

8 Q He brought it to the Court's attention?

9 A After the judge asked the jurors about talking like
10 that.

11 Q He had asked the jury about whether or not they had
12 talked anything about the case?

13 A Or they heard anything.

14 Q Heard anything about the case?

15 A Right.

16 Q Or discussed anything about the case?

17 A Right.

18 Q Okay. All right. So these are the allegations that
19 you've raised in your post-conviction relief application?

20 A Yes, sir.

21 Q Is there anything else you want to tell Judge Gibbons
22 today about why you should be granted a new trial?

23 A Well, I just thought that that sentence was kind of
24 harsh by -- well, no. The fact that Wayne Floyd, my
25 attorney, didn't explain the plea deal to me clearly and I

1 feel that he's ineffective on that behalf.

2 Q Is there anything else you want to tell Judge Gibbons
3 here today?

4 A Also, I never seen the discovery.

5 Q You never got a chance to see your discovery?

6 A Never.

7 Q You only met with Mr. Floyd one time?

8 A One time.

9 Q And you hired Mr. Floyd, but the transaction took
10 place with your brother coming and bringing the money; is
11 that correct?

12 A Well, I sent it to him.

13 Q You give it to your brother, your brother brought it
14 to Mr. Floyd?

15 A Yes.

16 Q So you never went into his office?

17 A Never. He came out to see me once.

18 Q And is that when he said they had an offer of five
19 years?

20 A Yes. Well, at first in the court, in the courtroom
21 when I came to roll call, that's when I hired Mr. Floyd.

22 Q Okay.

23 A And all he would ever say to me, you know, I never
24 talked to the solicitors or anything, and the only thing
25 he'd ever say to me is that they were offering five years

1 guilty.

2 Q Anything else you want to tell the judge here today
3 other than you would like to have your PCR granted?

4 A Right.

5 MR. BROOKS: All right. Now, I want you to
6 answer any questions this gentleman over here,
7 Mr. Whitmire has.

8 THE APPLICANT: Okay.

9 THE COURT: All right, Mr. Whitmire.

10 CROSS-EXAMINATION

11 BY MR. WHITMIRE:

12 Q Good afternoon, Mr. Middleton.

13 A Good afternoon.

14 Q So you were arrested for distribution on July 15,
15 2008; is that correct?

16 A Yes.

17 Q You just testified you retained Mr. Floyd at your
18 roll call?

19 A Right.

20 Q You only met with him one time?

21 A Once.

22 Q Did he discuss the State's evidence with you?

23 A Well, I think when he came out to my house he
24 discussed it.

25 Q And this isn't your first distribution or PWID

1 conviction, is it?

2 A Say it again.

3 Q This is not your first distribution or possession
4 with intent to distribution conviction?

5 A No, sir.

6 Q How were you caught the two previous times?

7 A How was I caught the two previous times? Well, one
8 was -- I can't think of what they call it.

9 THE COURT: You've got to speak up.

10 THE WITNESS: Okay.

11 Okay. I got caught by police officers coming by
12 my house looking for someone that didn't live there, and
13 he smelled marijuana and I was called in a probable cause
14 hearing. That's one way -- one time I got caught.

15 And the second, I got called -- the police
16 officer -- I can't explain it. I'm a little bit nervous
17 here.

18 THE COURT: You're doing fine. Take a deep
19 breath and relax.

20 THE WITNESS: Okay. My neighbors that lived up
21 at end of the road where I was staying at called in on me
22 and saying I was selling drugs. That was the second time
23 I had got caught.

24 BY MR. WHITMIRE:

25 Q In this case the police used an informant; is that

1 correct?

2 A Right.

3 Q And you knew this informant pretty well?

4 A No. He said I did, but I don't recall.

5 Q Do you recall listening to her mic, her wire with
6 Mr. Floyd in anticipation of trial?

7 A Yes.

8 Q And the informant was good friends with your
9 girlfriend; is that correct?

10 A No. No, sir. She got that wrong during the trial.

11 Q That was --

12 A She's friends with my uncle's girlfriend.

13 Q But that was you on that tape?

14 A Yes. Yes, that was me.

15 Q Inevitably you were arrested based on probable cause
16 for distribution right after?

17 A Right after what?

18 Q The controlled buy.

19 A No, sir. Oh, yes, yes, I was.

20 Q And this issue concerning cameras you had at your
21 house, that was what the CI testified to; is that correct,
22 what you witnessed?

23 A Yes.

24 Q So they weren't actually seized, she was just
25 testifying to seeing those cameras?

1 A No, they were actually seized.

2 Q Now, regarding a potential plea, it's your assertion
3 today that you had a five-year offer on the table?

4 A Yes.

5 Q For third or subsequent offense?

6 A Yes.

7 Q And do you recall the solicitor at trial who said he
8 never offered anything other than seven years?

9 A Say that again.

10 Q Do you recall Solicitor Stumbo telling the judge at
11 trial that he had never him anything other than seven
12 years?

13 A No, sir, I don't recall that.

14 Q Do you recall why at that point the solicitor was
15 even talking about a plea in front of the judge?

16 A Rephrase that. Say that again.

17 Q Do you recall even why the Solicitor would mention a
18 plea in front of the judge at your second trial?

19 A Why? I'm not --

20 Q If you don't remember, I'll move on. I apologize,
21 Mr. Middleton.

22 You allege that there was juror misconduct; is
23 that correct?

24 A Correct.

25 Q Wasn't there misconduct also from your family, too?

1 A Say that again.

2 Q Wasn't there allegations of misconduct, jury
3 tampering from your family and relatives?

4 A Yes.

5 Q And as a result, do you remember what Judge McMahon
6 did at trial?

7 A Yes, sir.

8 Q Did he go through each and every juror to find out if
9 there had been any taint?

10 A Not each and every.

11 Q And didn't Mr. Floyd argue for a mistrial at that
12 point?

13 A No, sir, I don't think so.

14 Q Have you had a chance to look at your appeal or the
15 Court of Appeals' opinion in your case?

16 A Yes.

17 Q Didn't they rule on that issue concerning alleged
18 juror misconduct?

19 A Yes.

20 MR. WHITMIRE: No further questions, Your Honor.
21 Thank you, Mr. Middleton?

22 THE COURT: Any redirect?

23 MR. BROOKS: No, sir, Your Honor.

24 THE COURT: All right. Call your next witness.

25 MR. BROOKS: Judge, that's the applicant's case.

1 THE COURT: All right.

2 MR. WHITMIRE: Your Honor, Respondent calls
3 Mr. Floyd.

4 THE COURT: All right, sir.

5 WAYNE FLOYD, after being duly sworn, testified
6 as follows:

7 THE CLERK: If you'll have a seat and state your
8 name for the record, please.

9 THE WITNESS: My name is Howard Wayne Floyd.

10 DIRECT EXAMINATION

11 BY MR. WHITMIRE:

12 Q Good afternoon, Mr. Floyd.

13 A Good afternoon.

14 Q Just a few standard questions for you. How long have
15 you been practicing law?

16 A Thirty-nine years.

17 Q Primary area of practice?

18 A Criminal law.

19 Q Can you give the Court your range of cases that you
20 have tried and handled?

21 A Oh, from misdemeanors in master's court to death
22 penalty.

23 Q Do you recall your representation in this matter?

24 A Yes.

25 Q How many times did you meet with Mr. Middleton?

1 A Well, we met several times here at court when we had
2 roll calls. George, of course, had difficulty
3 transportation-wise. I believe he did come to my office
4 one time with his brother. The main time I met with him
5 was in preparation for trial when I went out to his house
6 and went over everything with him and actually did trial
7 prep.

8 Q Did you independently evaluate the State's evidence
9 prior to trial?

10 A Yes.

11 Q Did you discuss your impressions with Mr. Middleton?

12 A Yes, I did.

13 Q At that juncture were there any plea offers on the
14 table?

15 A Yes, there had been a plea offer. I don't remember
16 it being five years, but it was substantially less than
17 what he got. The option was to plead. There was an offer
18 made to plead to a first offense, and he was charged with
19 third offense or greater, which I believe at that time
20 carried a mandatory minimum of 15, and we discussed that.

21 Q Can you briefly tell the Court your general practice
22 regarding the discussions of pleas with your clients, plea
23 offers.

24 A Well, I tell them what the offer is, I tell them what
25 the potential penalties are. I hardly ever tell someone

1 not to accept a plea because that would be putting the
2 onus on me if he got convicted. I don't force them to
3 take a plea, though, if they don't want to.

4 Q In this case the State's evidence was a buy-bust?

5 A Yes.

6 Q Did you discuss with Mr. Middleton potential
7 suppression defenses?

8 A Yes, we discussed the entire case. I mean,
9 hindsight's 20/20, and I guess if I had it to do over
10 again I'd maybe try to put a little bit more pressure on
11 him to take a plea.

12 Q Do you recall why that first trial resulted in a
13 mistrial?

14 A Well, it's actually both trials occurred the same
15 week.

16 During the first trial we picked a jury, we
17 started the trial, and I don't remember exactly what
18 happened during the trial, but something happened with the
19 State's case and I was able to move for and was granted a
20 mistrial. The judge then surprised everybody by calling
21 it back for trial later that same week. So when the jury
22 panel came back in, there were actually jurors in the jury
23 panel that had served in George's case that got mistried.
24 We had a lot of discussion on that. We moved for a
25 continuance, we moved for the jury panel to be

1 disqualified because there had also been some rumors in
2 the panel about why the first case had been mistried which
3 were erroneous because in a Lyle inquiry made of the jury
4 panel, some jurors did admit to hearing certain things and
5 they were disqualified, but the judge eventually ruled
6 that the panel was qualified and we had to proceed to
7 trial that same week with the same panel.

8 Q Would you have been able to file an appeal regarding
9 the venire, stopping the trial, an independent
10 interlocutory appeal?

11 A Well, there are instances where you can do something
12 like that, but I don't think that would have been
13 possible. In any event, that matter was raised subsequent
14 to trial and the appeals court ruled against George on
15 that point. But I really thought that was a really valid
16 appeal point.

17 Q And this might extend past the extent of your
18 representation, but were you able -- did you ever have the
19 opportunity to look at the Court of Appeals decision in
20 this case?

21 A Yes, I did.

22 Q Did they address the merits of that argument?

23 A Not really. They just basically said that he -- it
24 said -- there were several cases they cited saying the
25 judge had discretion in selecting the jury.

1 Q Let me rephrase. They found it preserved?

2 A Right, they found it preserved, but they ruled
3 against him.

4 Q Mr. Floyd, I believe you said you have been
5 practicing 39 years?

6 A That's correct.

7 MR. WHITMIRE: Thank you, Your Honor. No
8 further questions.

9 Thank you, Mr. Floyd.

10 THE COURT: All right. Mr. Brooks.

11 MR. BROOKS: Beg the Court's indulgence.

12 THE COURT: Okay.

13 (Pause.)

14 CROSS-EXAMINATION

15 BY MR. BROOKS:

16 Q Mr. Floyd, how are you doing today?

17 A Good, sir.

18 Q Did you -- when you went out to Mr. Middleton's
19 house, that's when you, I guess, discussed the case in
20 detail with him; is that correct?

21 A Yes. That's when we actually did trial preparation.

22 Q Okay. And you went over the discovery with him?

23 A Yes.

24 Q And you talked to him about the potential plea offer
25 that was on the table, or plea offer?

1 A Yes. We also talked about that earlier at his roll
2 call when Emily Howard was the solicitor at the time, and
3 she had made a plea offer to him and I discussed it with
4 him. He did not want to take a plea offer that had jail
5 time with it. He did not feel like he could do time. And
6 that was kind of the main reason he didn't want to accept
7 the plea.

8 Q Okay. And the way I understand this, it started out
9 with the first trial at the beginning of the week. It
10 ended up in a mistrial, and then they started off again
11 with the second trial in that same week?

12 A Same week. Never had seen that happen before.

13 Q Okay.

14 A Now, we were going -- George, I got to know George,
15 and I know his family. I'd represented his brothers
16 before, so I knew them all.

17 George is a special person. He's been through a
18 lot in life. And I tried to bring that out to the judge.
19 He had a diving accident, you know, when he was nine years
20 old and he's been disabled since then and eventually lost
21 his legs.

22 I think he got like \$635 a month, I believe it
23 was, in Social Security and he really had no money to live
24 on and he was just in a bad situation. And I was trying
25 to explain that to the judge, it's a financial situation,

1 some small kind of stuff, but the judge wasn't impressed.

2 George is a good person, I tell you that.

3 Q I saw that.

4 A Yes.

5 Q Did you think about trying to suppress any of the
6 evidence that the State was using against him?

7 A I'm trying to remember if there was a suppression
8 motion made. We certainly tried to attack the credibility
9 of the informant, but they had the -- they had audiotape
10 and it's on video, so I don't think I had a basis to
11 actually keep the drugs out other than attacking the
12 credibility of the -- the informant.

13 Q Did you explain all that to George prior to the trial
14 or trials?

15 A Yeah, we discussed the case. We discussed the case.

16 Q Did you -- and I -- you may have answer this question
17 when Mr. Whitmire asked you, but did you give him your
18 opinion as far as about taking the plea offer?

19 A Well, I told him it's always his decision, but I
20 thought it was a pretty good plea offer for what he was
21 facing. He just didn't want to commit to time.

22 Q And I think you testified earlier, you don't remember
23 it being five years, but you said you testified it was
24 significantly less than --

25 A Yes, than 21. I'm not sure if it was five. Could

1 have been seven, could have been nine, but it was a number
2 significantly less than what he was facing. And five
3 could be the number. I'm not saying it's not.

4 Q You just don't necessarily remember?

5 A I don't recall the exact figure.

6 Q But you do remember a plea offer being significantly
7 less than what he was --

8 A Than what his mandatory minimum was, yes.

9 MR. BROOKS: Beg the Court's indulgence.

10 THE COURT: Okay.

11 (Pause.)

12 MR. BROOKS: No other questions.

13 MR. WHITMIRE: Nothing further, Your Honor.

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

15 THE WITNESS: Thank you, Judge.

16 THE COURT: You're free to leave.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MR. WHITMIRE: Respondent rests, Your Honor.

20 THE COURT: Respondent rests.

21 Anything in reply?

22 MR. BROOKS: No, sir, Judge, other than
23 argument.

24 THE COURT: All right. Let's hear argument
25 then.

1 MR. BROOKS: Judge, basically in this situation
2 we would ask for post-conviction relief. Mr. Middleton,
3 as he's testified to, he really was kind of relying on his
4 counsel for advice and advising him as far as what to do
5 given these certain facts and based on the plea offer on
6 the table.

7 Now, my client testified it was five. Mr. Floyd
8 testified he doesn't necessarily remember it being five,
9 it might be seven, but it was significantly less than the
10 21 years that he got.

11 Judge, we think in light of his condition, we
12 think that sometimes defense lawyers probably need to lean
13 a little more on them to take this as opposed to what the
14 outcome could be, and in this case what the outcome ended
15 up being. Judge, for that reason alone we would ask the
16 Court to grant him his post-conviction relief.

17 THE COURT: Thank you, Mr. Brooks.

18 Mr. Whitmire.

19 MR. BROOKS: Your Honor, I'll be brief.

20 Mr. Floyd's been practicing for 39 years. He's
21 one of the best attorneys in the area and in Lexington
22 he's very well known. He explained to the Court his
23 general procedure of how he advises clients on plea
24 offers, the detailed discussions he had in this particular
25 case, and simply Mr. Middleton didn't want to do time. As

1 a result, he took the case to trial and tried the best
2 case he could.

3 Nothing further, Your Honor, unless you have any
4 questions.

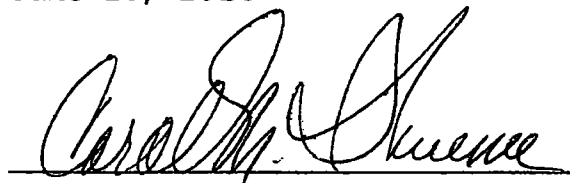
5 THE COURT: All right. Well, I reviewed the
6 record, the transcript, and of course considering the
7 testimony and evidence presented, I respectfully deny the
8 application. If you'll prepare the order.

9 MR. WHITMIRE: Thank you, Your Honor.

10 MR. BROOKS: Thank you, Your Honor.

11 (The proceedings were concluded.)

12 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6 COUNTY OF LEXINGTON)
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of Common Pleas for
14 Lexington County, South Carolina, on the 21st day of
15 January, 2014.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 June 10, 2014
2021 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No: 2012-CP-32-1282

George T. Middleton,
S.C.D.C. No. 307254,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

FILED
2014 MAR 13 A 10:50

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed March 21, 2012. Respondent made its Return on December 3, 2012. An evidentiary hearing into the matter was convened on at the Lexington County Courthouse on January 21, 2014. Applicant was present at the hearing and was represented by Charles T. Brooks, III., Esq. Respondent was represented by Walt Whitmire, Esq., of the South Carolina Attorney General's Office. This Court also had before it the records of the Lexington County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the July 2008 term of General Sessions for distribution of crack cocaine, third or subsequent offense. He was represented by Wayne Floyd, Esq. The State called its case to trial on May 28, 2009. Applicant

was found guilty as indicted. The Honorable R. Knox McMahon sentenced Applicant to a term of twenty-one years for distribution.

A timely Notice of Appeal was filed on Applicant's behalf and perfected by Benjamin A. Stitley, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion. State v. George Thomas Middleton, Op. No. 2012-UP-373 (S.C. Ct. App. filed July 21, 2011). The Remittitur soon followed. At the PCR hearing, Applicant moved forward on the following allegations:

1. Ineffective assistance of counsel:
 - a. failure to provide Applicant a copy of discovery;
 - b. failure to advise Applicant on the merits of accepting the guilty plea offer;
 - c. failure to make a motion suppress fruits of an alleged unlawful search and seizure;
 - d. failure to make a motion for continuance after the first trial resulted in a mistrial.

SUMMARY OF TESTIMONY

First, Applicant alleged counsel failed to provide discovery disclosure materials to him. As a result, he claims he did not appreciate the State's evidence. Second, Applicant alleged counsel was ineffective for failing to adequately apprise him on whether or not to accept the State's plea offer. Applicant stated counsel conveyed to him the State's offer to plead Applicant to a lesser-included offense for a five year term of imprisonment. Applicant stated counsel should have done a better job in explaining the benefits in pleading guilty. Applicant stated he would have accepted the plea offer but for counsel's deficient performance.

Third, Applicant alleged counsel was ineffective for failing to make a motion to suppress evidence pertaining to the surveillance system equipped at Applicant's residence. Applicant stated his surveillance equipment was improperly seized and used against him at trial.

Last, Applicant alleged counsel was ineffective for failing to make a motion for continuance after the first mistrial. Applicant claimed the remaining venire panel was tainted and resulted in the unfair and impartial jurors being seated in his second trial.

Counsel testified he has practiced criminal law for thirty-nine years. His experience encompasses the full spectrum of criminal practice from magistrate court to capital trials. Counsel testified that he personally liked Applicant and believed he engaged in narcotics distribution as means to survive. Counsel recalled his course of conduct throughout the representation. He met with Applicant on several occasions prior to trial at the scheduled court appearances. In addition, counsel ventured to Applicant's home to discuss developments in the case. Counsel recalled the prosecuting solicitor, Howard, making a favorable plea offer in this case. Counsel conveyed the offer to Applicant. Counsel testified to his general practice in advising a client of an available plea offer. Counsel explained he discusses the constitutional implications through the requisite waiver of rights in entering a plea with his clients. Counsel further explained he apprises the client of the benefits and detriments of accepting a particular offer. Counsel was adamant that he rarely advises a client not to accept a plea offer. Counsel recalled his discussions with Applicant regarding the State's offer. Counsel apprised Applicant of the full sentencing exposure. He did not recall the details of the offer, but noted that it was for less prison time than necessitated on the indicted offense of distribution, third or subsequent offense. Counsel testified that Applicant unequivocally rejected the State's plea offer because he did not feel like he was capable of serving an active prison sentence in the Department of Corrections. As part of counsel's trial preparations, he conducted in-home consultations with Applicant. Counsel independently reviewed the State's evidence and discussed it with Applicant. Counsel's defense theory of the case was to show reasonable doubt through the use of an



unreliable informant. Applicant was arrested as a result of a controlled buy interdiction procedure. Counsel postulated that a suppression defense was not relevant to the facts in the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony credible where counsel detailed his conduct during the representation. Counsel independently investigated and apprised Applicant of all aspects of the State's evidence. Due to Applicant's medical conditions, counsel took the additional step of conducting in-home consultations with Applicant. Counsel properly advised Applicant of the State's plea offer. Simply, Applicant rejected it because he did not want to serve active jail time. Applicant's allegation that counsel was ineffective for failing to make a motion to suppress as the result of an alleged unreasonable search and seizure is wholly without merit. Last, Applicant's allegation that counsel was ineffective for failing to move for a continuance after the first mistrial is without merit where the objection was properly preserved and raised by Appellate counsel.

A.

Applicant failed to meet his burden to prove counsel was deficient for failing to apprise him of the State's evidence. "From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution." Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). This Court finds counsel's testimony credible and Applicant's testimony not credible here. Counsel has a plethora of experience as a criminal defense attorney. He explained his general practices and procedures in handling a case at the outset of representation. This Court finds the manner of representation here more than competent within the standard professional norms. Counsel met with Applicant to discuss the case more than a sufficient numbers of times. Counsel's conducted quality consultations with Applicant that resulted from his independent investigation of the State's evidence, Applicant's version of the facts that led to his arrest, and diligent trial preparations. Counsel notified Applicant of developments in his case as they arose. This Court finds Applicant's allegation here relies on the common misconception that a criminal defense attorney must provide his client with a copy of the discovery. Strickland does not require such a mandate. Instead, the scope of review concerns a criminal defense attorney's conduct in communicating all relevant and significant matters to the client during the course of representation. Here, this Court is convinced counsel met his duty to communicate with Applicant. Regardless, Applicant failed to specifically outline the alleged discovery disclosure materials obtained from the State that counsel allegedly failed to communicate the existence of to Applicant. Therefore, this allegation is denied and dismissed.

B.



Applicant failed to meet his burden to prove counsel failed to properly advise him on the State's guilty plea offer. "Where a defendant shows ineffective assistance has caused the rejection of a plea leading to a more severe sentence at trial, the remedy must "neutralize the taint" of a constitutional violation, United States v. Morrison, 449 U.S. 361, 365, 101 S.Ct. 665, but must not grant a windfall to the defendant or needlessly squander the resources the State properly invested in the criminal prosecution." Lafler v. Cooper, 132 S. Ct. 1376, 1381, (2012). During plea negotiations defendants are "entitled to the effective assistance of competent counsel." Lafler, 132 S. Ct. at 1384 (citing McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441 (1970)). "Before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving. In addition to the requirements of Boykin, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). This Court finds counsel's testimony credible and Applicant's testimony here not credible. As a result of plea negotiations, the State conveyed a favorable guilty plea offer to Applicant. Counsel apprised Applicant of the offer and the benefits and detriments inherent in a guilty plea disposition. Counsel conducted consultations on the matter with Applicant and his family. Simply, Applicant made a knowing, intelligent, and voluntarily decision to proceed to trial because he steadfastly held the belief that he could not survive a prison term due to his physical disability. This Court finds counsel's testimony compelling that he never *per se* advises a client to reject a guilty plea offer. Counsel met his duty to thoroughly review the strength of the State's case with Applicant prior to Applicant's decision to reject the offer. Applicant's sullen disposition of buyer's remorse



on the matter and had no bearing on the quality of counsel's representation. Therefore, this allegation is denied and dismissed.

C.

This Court finds Applicant's allegation that counsel was ineffective for failing to make a motion to suppress fruits from an allegedly unreasonable search and seizure is without merit. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.... U.S. Const. amend. IV. The South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Weaver, 374 S.C. 313, 321, 649 S.E.2d 479, 483 (2007). To claim protection under the Fourth Amendment of the U.S. Constitution, defendants must show that they have a legitimate expectation of privacy in the place searched. Rakas v. Illinois, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). Upon review of the trial transcript, this Court finds Applicant had no reasonable expectation of privacy in the wire worn by the informant's person. The record clearly shows that the Applicant invited the informant into his home for the narcotics transaction. Applicant's arrest and conviction were supported by a standard controlled buy procedure utilized by law enforcement. Furthermore, relevant observations made by trial witnesses were reasonable. A criminal defense attorney is under no duty to make frivolous objections just for the sake of protecting himself from a subsequent PCR action. This Court also notes that Applicant's conviction was supported by overwhelming evidence of his guilt. Therefore, this allegation is denied and dismissed.

D.



Last, this Court summarily dismisses Applicant's allegation that counsel was ineffective for failing to make a motion for continuance after the first trial. The merits of the issue were addressed in Applicant's direct appeal. See Bozeman v. State, 307 S.C. 172, 176, 414 S.E.2d 144, 146 (1992) ("[P]etitioner's allegations regarding the jury instructions were issues that could or should have been raised at trial or on appeal and, thus, were not proper for PCR."). Regardless, the record shows a motion for continuance was not warranted at any phase of the trial. Therefore, this allegation is denied and dismissed.

E.

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within