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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Union County

J. Michael Baxley, Circuit Court Judge

DOUGLAS HALL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000712

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 5 TH – 6 TH , 2010.....	1
APPLICATION FOR POST-CONVICTION RELIEF	310
RETURN	321
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 21, 2014.....	326
ORDER DENYING POST-CONVICTION RELIEF	379
INDICTMENTS	390

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF UNION } COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA, } TRANSCRIPT
5 PLAINTIFF, } OF
6 VS. } RECORD
7 DOUGLAS HALL, } 2010-GS-44-887, 888
8 DEFENDANT. }

9
10 April 5th and 6th, 2010
Union, South Carolina

11 B E F O R E:

12 THE HONORABLE JOHN C. HAYES, III, Judge.
13

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

15 JOHN ANTHONY
16 ASSISTANT SOLICITOR
Attorney for the State

17 MELINDA BUTLER
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Attorney for the Defendant
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20
21 JANET RICH
22 Circuit Court Reporter

23 Transcribed by Pamela E. Green; Circuit Court Reporter
24
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11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

WITNESSES

PAGE

Jury Selection

7

Batson Motion

21

Motions

29

JOHN SHERFIELD

Direct examination by Sol. Anthony

62

Cross-examination by Mrs. Butler

69

MELVIN DUBOIS

Direct examination by Sol. Anthony

70

Cross-examination by Mrs. Butler

81

BRIAN BAILEY

Direct examination by Sol. Anthony

88

Opening by the Court

102

Opening by Solicitor Anthony

105

Opening by Mrs. Butler

110

JOHN SHERFIELD

Direct examination by Sol. Anthony

118

Cross-examination by Mrs. Butler

126

Redirect examination by Sol. Anthony

134

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	MELVIN DUBOIS	
4	Direct examination by Sol. Anthony	135
5	Cross-examination by Mrs. Butler	156
6	Redirect examination by Sol. Anthony	170
7	BRIAN BAILEY	
8	Direct examination by Sol. Anthony	172
9	Cross-examination by Mrs. Butler	181
10	Redirect examination by Sol. Anthony	186
11	JIMMY JOHNSON	
12	Direct examination by Sol. Anthony	186
13	Cross-examination by Mrs. Butler	200
14	Redirect examination by Sol. Anthony	203
15	MARY BETH BURROUGHS	
16	Direct examination by Sol. Anthony	206
17	Cross-examination by Mrs. Butler	211
18	JIMMY JOHNSON	
19	Direct examination by Sol. Anthony	
20		
21	Motions	217
22		
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	DOUGLAS HALL	
4	Direct examination by Mrs. Butler	222
5	Cross-examination by Sol. Anthony	237
6	Redirect examination by Mrs. Butler	258
7	Recross examination by Sol. Anthony	261
8	JEROME BEATTY	
9	Direct examination by Mrs. Butler	264
10	Cross-examination by Sol. Anthony	265
11		
12	Motions	270
13	Closing by Mrs. Butler	276
14	Closing by Solicitor Anthony	279
15	Charge by the State	290
16	Verdict	307
17	Sentencing	310
18	Certificate	311
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>State's Exhibits</u>		
5	S-1 DVD	78	79, 145
6	S-2 Photograph	178	179
7	S-3 Photograph	178	179
8	S-4 Photograph	178	179
9	S-5 Photograph	178	179
10	S-6 Photograph	178	179
11	S-7 Photograph	178	179
12	S-8 Photograph	178	179
13	S-9 Photograph	178	179
14	S-10 Drugs	192	210
15	S-11 Map	198	199
16	S-12 Photograph	■	216
17	S-13 photograph	■	216

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Court's Exhibits</u>		
1			
2			
3			
4	C-1 Doctor's Note	61	
5	C-2 Jury Charge	274	
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 P R O C E E D I N G S

2
3 (WHEREUPON, the following takes place within the
4 presence of the entire jury panel.)

5 THE COURT: If you'll call the first case.

6 SOLICITOR ANTHONY: Your Honor, the first case is State
7 versus Douglas Hall. He's before the Court on four
8 indictments.

9 2010-44-997 and 888 for possession of crack cocaine
10 with intent to distribute and possession of crack cocaine
11 with intent to distribute within proximity of a school,
12 park, or playground. Then he's also before the Court on
13 2011-44-81 for attempt to distribute crack and 2011-44-411
14 for attempt to distribute crack within proximity of a
15 school, park, or playground. All of these have been true
16 billed by the Grand Jury.

17 MRS. BUTLER: Your Honor, may we approach briefly?

18 (WHEREUPON, a bench conference was held at this time
19 out of the hearing of the jury.)

20 THE COURT: We're going to draw a jury for the first
21 trial this week. It is the State versus Douglas Hall.
22 They're four charges. Possession of crack cocaine with
23 intent to distribute, possession of crack cocaine with
24 intent to distribute within a half mile of a park or school,
25 attempt to distribute crack cocaine, and attempt to

1 distribute crack cocaine within the proximity of a half-mile
2 of a park or school.

3 The State will be represented by Mr. John Anthony. The
4 defense by Melinda Butler.

5 Mr. Hall, would you please stand and let the jurors see
6 who you are?

7 (Defendant complies.)

8 THE COURT: This is Mr. Hall.

9 You may be seated.

10 (Defendant complies.)

11 THE COURT: These events are alleged to have occurred
12 on or about May 18, 2010, here in [REDACTED] County. First, I
13 ask are any of you related by blood or marriage to Mr.
14 Anthony, Mrs. Butler, or Mr. Hall or are you a close
15 personal friend or acquaintance or client of the attorneys,
16 if so, please stand.

17 (Jurors respond.)

18 THE COURT: All right. You have to stand.

19 All right. Just, just one at a time, let's stand.

20 (Jurors comply.)

21 THE COURT: Are you standing or are you standing
22 just -- are you standing?

23 I mean I know you are now, but you got up and then sat
24 back down.

25 THE JUROR: Yeah, I'll stand.

1 THE COURT: All right. Well, tell me your name and
2 number.

3 THE JUROR: Martha Gregory, 197.

4 THE COURT: All right. And why are you standing?

5 THE JUROR: I know him.

6 THE COURT: You know Mr. Hall?

7 THE JUROR: Yes, sir.

8 THE COURT: Would that affect your ability to be fair
9 and impartial in this trial?

10 THE JUROR: No.

11 THE COURT: You said no?

12 THE JUROR: Yes.

13 THE COURT: Okay. You can remain with us. Have a
14 seat.

15 Yes, ma'am, your name and number?

16 THE JUROR: 103, Barbara Hall and that's my brother.

17 THE COURT: That's your brother. All right. You'll be
18 excused. You can have a seat.

19 Yes, sir, your name and number?

20 THE JUROR: Ben Beatty, Juror 8. Close friends.

21 THE COURT: All right. Would you be able to be fair
22 and impartial in this trial?

23 THE JUROR: Yes.

24 THE COURT: You would?

25 THE JUROR: Yes.

1 THE COURT: Okay. You can remain with us. Have a
2 seat.

3 Yes, ma'am, your name and number?

4 THE JUROR: I'm Kathy Robinson. I'm 215. I'm close
5 friends with Melinda Butler.

6 THE COURT: All right. Would that---

7 THE JUROR: Her children play with my grandchildren.

8 THE COURT: Would, would that affect your ability to be
9 fair and impartial in the trial of this case?

10 THE JUROR: No, sir.

11 THE COURT: All right. Thank you. You may be seated.
12 Yes, ma'am.

13 THE JUROR: 287. I know the defendant.

14 THE COURT: All right. Woa, let's start over.

15 Everybody be still. If you move around in the pews, they
16 kind of creak, and it's hard to hear up here.

17 Yes, ma'am, your name and number?

18 THE JUROR: Melinda Walker, Number 287. He is a family
19 friend.

20 THE COURT: Mr. Hall is?

21 THE JUROR: Yes, sir.

22 THE COURT: Would that affect your ability to be fair
23 and impartial in this trial?

24 THE JUROR: Yes, sir.

25 THE COURT: It would. All right. You can be excused.

1 Don't leave. Just have a seat. You will not be impaneled
2 in this trial.

3 All right. Yes, ma'am.

4 THE JUROR: I'm Pat Douglas, Juror 194. I'm related to
5 Mrs. Butler by marriage.

6 THE COURT: All right. Would that -- that's by
7 marriage?

8 THE JUROR: Yes.

9 THE COURT: All right. Well, I'll excuse you. Don't
10 leave. Just have a seat.

11 Yes, sir, your name and number?

12 THE JUROR: William Walker, Number 28. Related by
13 marriage.

14 THE COURT: To who, Mr. Hall?

15 THE JUROR: Mr. Hall.

16 THE COURT: All right. With that, I'll excuse you then
17 also. Just have a seat.

18 THE CLERK: I didn't get his number.

19 THE COURT: All right. Your name and number again?

20 THE JUROR: Me?

21 THE COURT: Yes.

22 THE JUROR: William Walker, Juror 28.

23 THE COURT: Twenty-eight?

24 THE JUROR: Yes, sir.

25 THE COURT: Okay. Thank you.

1 Yes, ma'am, your name and number?

2 THE JUROR: 123. I'm a cousin of Mr. Hall.

3 THE COURT: You are a cousin?

4 THE JUROR: Yes, sir.

5 THE COURT: All right. well, I'll excuse you from
6 sitting. Don't leave, but just have a seat. You won't be
7 involved.

8 Did y'all get that number?

9 (Parties respond affirmatively.)

10 THE COURT: All right. Next question is were any of
11 you members of the Grand Jury which passed on these
12 indictments at an earlier time, if so, please stand.

13 (No response.)

14 THE COURT: No one stands.

15 Do any of you know anything about this case?

16 Have any of you heard about it from any source
17 whatsoever or have any of you formed or expressed any
18 opinion about any matter or issue which would be involved in
19 this case, if so, please stand.

20 (No response.)

21 THE COURT: No one stands.

22 Are any of you or a member of your family members of or
23 contributors to organizations such as Students Against Drunk
24 Drivers, Citizens Against Violence, Mothers Against Drunk
25 Drivers, Troopers Association, Sheriff's Association,

1 Fraternal Order of Police, if so, please stand.

2 (No response.)

3 THE COURT: No one stands.

4 Are any of you members or your immediate family
5 involved in law enforcement at any level or in the
6 prosecution of criminal cases at any level, if so, please
7 stand.

8 (Jurors respond.)

9 THE COURT: All right. Yes, we'll, we'll work our way
10 back.

11 Your name and number?

12 THE JUROR: Thelma Nancy, 190. My husband's a public
13 safety officer.

14 THE COURT: All right. Is this a city case, Mr.
15 Anthony?

16 SOLICITOR ANTHONY: No, sir, it was charged by the
17 county, but there are city officers who are going to be
18 witnesses.

19 THE COURT: All right.

20 SOLICITOR ANTHONY: At least one city officer who will
21 be a witness.

22 THE COURT: All right. There may be a witness in this
23 case who is a city officer.

24 Would that fact affect your ability to be fair and
25 impartial?

1 THE JUROR: No.

2 THE COURT: Okay. You can have a seat. Thank you.
3 Remain with us.

4 Yes, sir.

5 THE JUROR: Benjamin Beatty, Juror Number 8. My
6 brother is an investigator for [REDACTED] County.

7 THE COURT: All right. Your brother is an investigator
8 and this is a [REDACTED] County case. I'll excuse you then.
9 Just have a seat. Don't leave.

10 Yes, ma'am, your name and number?

11 THE JUROR: My husband -- Juror Number 134. My husband
12 is a lieutenant with Chester County. So, it's a different
13 county.

14 THE COURT: All right. Would that affect your ability
15 to be fair in this trial?

16 THE JUROR: No.

17 THE COURT: All right. You can be seated.

18 All right. Yes, sir.

19 THE JUROR: I'm Juror Number 247. My brother works for
20 the county. He's an investigator.

21 THE COURT: All right. Your brother does?

22 THE JUROR: Yes.

23 THE COURT: All right. Well, I'll excuse you from
24 serving on, on this panel also.

25 Yes, ma'am.

1 THE JUROR: Roberta Vinson. My son works. He's a
2 jailor.

3 THE COURT: All right.

4 THE JUROR: Kevin Vinson.

5 THE COURT: Would that affect your ability to be fair
6 and impartial in this trial?

7 THE JUROR: No, sir.

8 THE COURT: That's a no?

9 THE JUROR: Yes, sir, that wouldn't affect it.

10 THE COURT: Okay. Thank you. You can be seated.

11 Are any of you aware of any bias or prejudice that you
12 would have toward the State, bias or prejudice that you
13 would have against Mr. Hall, or any bias or prejudice or
14 preconceived ideas that would affect your ability to be fair
15 and impartial in the trial of Mr. Hall involving drug
16 charges, if so, please stand.

17 (No response.)

18 THE COURT: No one stands.

19 I'm not going to ask you to go into particulars about
20 this next question, but if any of you or a member of your
21 family been affected by what you consider to be illegal
22 drugs. That is, had a problem with them as far as an
23 addiction or something like that or had something happen to
24 you that you relate to someone having a drug problem or any
25 of you or a member of your family been charged with any drug

1 offense, if so; please stand.

2 (Jurors respond.)

3 THE COURT: All right. And, again, I'm not gonna ask
4 you to go into particulars, just give me your name and
5 number and then I'll ask you if you can still be fair and
6 impartial.

7 Yes, ma'am, we'll start over here at this time.

8 THE JUROR: Jessica Sinn, Number 236.

9 THE COURT: Could you be---

10 THE JUROR: My father was charged with distribution of
11 marijuana.

12 THE COURT: Okay. I, I appreciate it. Don't, don't --
13 the rest of you, you don't have to tell me exactly why
14 you're standing cause that's personal. So, I'm not going to
15 inquire.

16 would that affect your ability to be fair and impartial
17 in this trial?

18 THE JUROR: No.

19 THE COURT: Okay. You can be seated. Let's go to the
20 lady with the---

21 THE JUROR: Tara Calder, Number 147.

22 THE COURT: Okay. would you be able to be fair and
23 impartial?

24 THE JUROR: Yes.

25 THE COURT: All right. Thank you.

1 THE COURT: Yes, lady in the hoodie.
2 THE JUROR: Jess Newton, 193.
3 THE COURT: Would you be able, in spite of that, to be
4 fair and impartial?
5 THE JUROR: (Nods negatively.)
6 THE COURT: She indicated -- you got to answer with a
7 word.
8 THE JUROR: No.
9 THE COURT: She's indicated not.
10 All right. You'll be excused. Just have a seat.
11 THE JUROR: Grant Carson. I don't know my number.
12 THE COURT: Would you be able to be fair and impartial?
13 THE JUROR: Yes.
14 THE COURT: All right. You can have a seat.
15 Yes, ma'am, now you---
16 THE JUROR: Alicia Robinson, Number 15.
17 THE COURT: All right. Would you, in spite of the fact
18 that you're standing, would you still be able to be fair and
19 impartial in this trial?
20 THE JUROR: Yes, sir.
21 THE COURT: All right. You can have a seat. Thank
22 you.
23 Lady in the red back here.
24 THE JUROR: Teresa Teague, Number 263.
25 THE COURT: Would you be able, in this trial, to be.

1 fair and impartial?

2 THE JUROR: Yes, sir.

3 THE COURT: All right. Thank you.

4 Yes, ma'am, your name and number?

5 THE JUROR: 241.

6 THE COURT: Would you be able, in this trial, to be
7 fair and impartial?

8 THE JUROR: Yes, sir.

9 THE COURT: She indicated yes.

10 All right. Thank you. I appreciate all of you
11 standing.

12 The following are possible witnesses in this trial. I
13 don't know that all will testify, but if any of you are
14 related by blood or marriage or if you're a close personal
15 friend or acquaintance of any of these individuals, please
16 stand, and, and I'll ask you to identify why you're
17 standing: That is which person you, you know or are related
18 to, and then I'll ask you about being fair and impartial.

19 Melvin DuBois.

20 Then from the [REDACTED] County Sheriff's Office, Jimmy
21 Johnson.

22 John Sherfield.

23 Perry Haney.

24 Robbie McGee.

25 Mickey Parker.

1 Jerome Beatty from [REDACTED] Public Safety.
2 Brian Bailey from the State Law Enforcement Division.
3 Amy Stephens.
4 Patricia Crooks.
5 Mary Beth Burroughs.
6 Any of you related or friend of any of those
7 individuals?
8 (Jurors respond.)
9 THE COURT: Yes, ma'am, your name and number?
10 THE JUROR: Patricia Allers, 282.
11 THE COURT: And who are you a friend or related to?
12 THE JUROR: Jimmy Johnson and Brian Bailey.
13 THE COURT: Would that affect your ability to be fair
14 and impartial?
15 THE JUROR: No, sir.
16 THE COURT: All right. She indicated not. Thank you.
17 I -- did I not -- I think I already excused you, didn't
18 I?
19 THE JUROR: Okay.
20 THE COURT: Yeah, I think you've already been excused.
21 Okay. All right. Do any of you know of any reason
22 whatsoever why you could not and should not serve as a fair
23 and impartial juror in the trial of this particular case, if
24 so, please stand.
25 (No response.)

1 THE COURT: No one stands.

2 Now, the way we draw juries in this type of case is as
3 follows: If you hear your name called, please come forward
4 and the clerk will tell you what to do.

5 Madam Clerk, strikes are five and five.

6 MRS. BUTLER: Your Honor, if I may draw the Court's
7 attention to Number 9, the defendant's request for voir
8 dire.

9 THE COURT: All right. Number 9 we discussed in
10 chambers and I'll let you put more on the record at a later
11 time, before the jury is sworn, your concerns about that.

12 MRS. BUTLER: Thank you, Your Honor.

13 THE COURT: Yes, ma'am, thank you. I'm sorry if I
14 moved passed that. I apologize.

15 All right. Call them.

16 (WHEREUPON, a jury panel was selected at this time.)

17 THE COURT: Strikes will be one and two for the
18 alternate.

19 (WHEREUPON, an alternate juror was seated at this
20 time.)

21 THE COURT: Anything from the State involving striking
22 of the panel?

23 SOLICITOR ANTHONY: No, Your Honor.

24 THE COURT: Anything from the defense involved striking
25 the panel?

1 MRS. BUTLER: Yes, sir, Your Honor. The defendant
2 would like to make a motion.

3 THE COURT: All right. I'm gonna let those of you who
4 have been chosen to go to the jury room. You're not under
5 oath yet. You can't talk about the case, but we have to
6 take up a matter outside of your presence. So, if you'll
7 just go into the jury room.

8 And those of you who are still seated out there, I
9 can't let you go at this time, but I'm gonna have to ask you
10 to step outside the courtroom. Don't go outside. This will
11 be a very minimal amount of time I believe, but I have to
12 take up some matters outside your presence. So, if you'll
13 all just step outside the courtroom and try not -- don't,
14 don't get too loud because we can hear you in here.

15 (WHEREUPON, the following takes place outside the
16 hearing of all jurors.)

17 THE COURT: Yes, ma'am.

18 MRS. BUTLER: Yes, Your Honor.

19 The defendant makes a Batson motion to determine the
20 reason that the state struck two particular jurors. Your
21 Honor, the defendant believes that the jurors were struck --
22 one of the jurors was struck on the basis of race.

23 Would Your Honor like to hear the defendant's position
24 at this time?

25 THE COURT: Well, I think once you've made the motion

1 the State is required to give a racial neutral reason. I
2 guess -- I mean you've got four blacks on there. He did
3 strike -- the State did strike two, but I mean it's your
4 prerogative to make the motion, and Terry Moore and Rakeem
5 Stephens, you objected to him striking both of those or just
6 one?

7 That's the two I've got as being stricken by the State.
8 Terry Moore, Number 184, and Rakeem Stephens, Number 257.

9 MRS. BUTLER: Your Honor, I have that the State --
10 that's correct, that the State struck those particular
11 jurors, 184 and 257, and also 225, but I don't think we're
12 talking about 215 if there's a good reason as to that why---

13 THE COURT: Wait a minute. 215 was a white female.

14 MRS. BUTLER: That's correct.

15 THE COURT: And that's the one whose grandchildren
16 played with your children if I remember correctly.

17 MRS. BUTLER: That's correct. That's why I said
18 there's a good reason as to why they struck 215. The one --
19 the question I have, Your Honor, if it's the appropriate
20 time, if the State, if the State's suppose to go and say --
21 Your Honor, my question is Number 110 and Number 184 if I---

22 THE COURT: Well, let's, let's do it the right way.

23 MRS. BUTLER: Yes, sir.

24 THE COURT: First the State's got to show racial
25 neutral reasons for striking Moore and Stephens.

1 SOLICITOR ANTHONY: Yes, sir.

2 THE COURT: If they have, if you have such.

3 SOLICITOR ANTHONY: Yes, sir. One, 184 has a prior
4 1995 conviction for DUS. Also, during the strikes, we -- I
5 was advised by Investigator Johnson that Officer Smith was
6 indicating to him that he did not believe Mr. Moore would be
7 a good juror. I based the strike partly on that.

8 THE COURT: You, you -- tell us who these people you're
9 talking about.

10 SOLICITOR ANTHONY: Officer Smith over there in the
11 Grand Jury---

12 THE COURT: He's not even sitting with you.

13 SOLICITOR ANTHONY: No, sir, but he, he indicated to
14 Sergeant Johnson that he---

15 THE COURT: How did he indicate to him?

16 Y'all got sign, y'all got sign language over there?

17 SOLICITOR ANTHONY: Yes, sir, I believe so. I believe
18 he nodded to him or Sergeant Johnson advised he was
19 indicating Mr. Moore, he, he thought that Mr. Moore was
20 someone the State should strike. I just asked Officer Smith
21 and he advised me that the Sheriff's Office has had issues
22 with his son. That's why he was signaling that to Sergeant
23 Johnson. So, we---

24 THE COURT: I think that's kind of a bad practice
25 because the ball falls in your lap; but I find that the fact

1 they have a 1995 driving under suspension, that is a prior,
2 a prior criminal record, to be racially neutral. I have
3 some concerns about the other reasons, but you have given me
4 a race neutral.

5 SOLICITOR ANTHONY: As to 257, Mr. Stephens, he has a
6 pending charge right now of assault and battery in the third
7 degree and he also has a conviction last year for simple
8 possession of marijuana, and a conviction in 2009 for
9 disorderly conduct.

10 THE COURT: All right. I find that is racially
11 neutral. I find that both reasons given by the State are
12 racially neutral. Therefore, the burden shifts back to the
13 defense to show me why those are pretextual reasons.

14 MRS. BUTLER: Yes, Your Honor.

15 If I may, on Terry Moore, it is the defendant's
16 position that the, Mr. Anthony, for the State, did not go
17 and talk to Mr. Kevin Smith until after the defendant had
18 made the Batson motion. So, he couldn't have known about
19 the---

20 THE COURT: well, I'm not considering that. I don't
21 think that wink and the nod, I'm finding no fault with the
22 sheriff's deputies, I think the solicitor, in the future,
23 needs to be a little -- I think that's dangerous ground
24 because just what you say may have some merit. But he gave
25 me a -- I'm finding that the DUS was a racially neutral,

1 racially neutral reason. So, the burden is on you to show
2 that that's pretextual. That is usually done by showing
3 that he had, did not strike someone that has a criminal
4 record.

5 MRS. BUTLER: The thing is did the State, did John
6 Anthony know about the DUS before he talked to Officer Smith
7 or after he talked to Officer Smith. If he didn't, then it
8 wasn't racially neutral if he didn't know about the DUI.

9 THE COURT: When did you---

10 SOLICITOR ANTHONY: I knew about the DUS before.

11 THE COURT: All right.

12 MRS. BUTLER: Then, Your Honor, I would like to point
13 the Court's attention to a juror that was very similarly
14 situated, Number 110, who was a white male with the same
15 age, the same education level, and a very long work history
16 that was not struck. I'm not sure if, if Mr. Anthony has
17 word on Mr., Number 110's criminal record or not, but
18 certainly that would be the only difference if, if
19 Mr. Marion Hawkins does not have a criminal record.

20 SOLICITOR ANTHONY: Mr. Hawkins does not have a
21 criminal record.

22 THE COURT: Then I find that -- wait. Don't sit down
23 yet. You got, you got somebody else to [REDACTED].

24 We're stilling talking about Mr. Moore, right?

25 MS. BUTLER: Mr. Moore, yes, sir.

1 THE COURT: All right. Well, I find it is racially
2 neutral. I find it's not pretextual and I find, as to
3 Mr. Moore, there's no basis for the granting of a Batson
4 motion and the seating of a new juror.

5 Now, how about Rakeem Stephens?

6 MRS. BUTLER: Yes, sir, the defendant didn't take any
7 issue with, with Mr. Stephens.

8 THE COURT: Okay. Batson motion is denied.

9 MRS. BUTLER: Thank you, Your Honor.

10 THE COURT: Well, I'm gonna bring this panel back in.
11 We're not gonna swear them. I'm gonna give them a little
12 instructions about not discussing the case. We're gonna
13 excuse them until three o'clock. That's my understanding.
14 Once they're excused, we will deal with some motions I
15 understand, and the record regarding the requested voir
16 dire.

17 I will ask the Clerk of Court to go outside and tell
18 the other jurors that they may leave, that they're to call
19 back tonight. It is very very important that they follow
20 the instructions that I have through you. I'm telling them
21 if they're not here when they're supposed to be, the sheriff
22 will come find them, and he's good at that.

23 All right. Now, anything else before we get the jury
24 back in?

25 SOLICITOR ANTHONY: No, sir.

1 MRS. BUTLER: No, sir.

2 THE COURT: All right. Bring in the jury.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Members of the jury panel, we have some
6 legal matters to take up outside your presence. It will
7 take a little while. So, we're not gonna ask you to sit in
8 the jury room while we do that. We're not gonna administer
9 the oath yet either. So, we will excuse you until three
10 o'clock in just a minute. I will ask you to be back here in
11 the jury room by 3:00. The bailiff will tell you how to get
12 in and out while you're serving as a juror, and it's very
13 important for you to be here by 3:00, and we'll try to start
14 as promptly after 3:00 as we can.

15 You are seated on this jury panel even though you
16 hadn't been sworn in. So, you're not to discuss the case
17 among yourselves or try to make up your own mind on this
18 case until I instruct you to deliberate and return a
19 unanimous verdict. That will be after you've heard the
20 evidence and received any exhibits, heard the arguments of
21 counsel, received my charge on the law. Until you have all
22 of that you're not equipped to make a fair and reasoned
23 decision. So, do not try to.

24 You are not to let anyone outside the courtroom discuss
25 the case with you, to discuss the case with anyone. If

1 anyone tries to discuss this case with you, tell them you
2 cannot as you're serving as a juror, and report back to me
3 if anyone does try to discuss this case with you because
4 I'll have to take action and report anyone who is trying to
5 talk to a seated juror.

6 They'll -- this case will go into tomorrow. Do not,
7 when you're outside the courtroom, let yourself be exposed
8 to any news coverage if there is any of this trial. Don't
9 read anything, watch anything, or listen to anything that
10 could remotely deal with this trial. You have to base your
11 verdict on the law and the evidence that's presented here in
12 the courtroom.

13 Now, in this day and time, we all have access to
14 everything in the world. So, do not access it. Do not go
15 on-line. Do not try to find out anything. Don't research
16 anything about the charges. These are all drug related
17 charges. Do not try to access anything about those. Don't
18 access anything about court procedure or evidence or
19 anything about me or anything about the lawyers or anything
20 about Mr. Hall. Just don't research or do anything or talk
21 to anybody directly or texting or any method. That would
22 not be fair and improper and it would be a violation of your
23 oath to serve as a proper juror.

24 Now, when you come back, Mr. Garner, you will always
25 sit there as an alternate, and, Mr. Guyton, I'm gonna have

1 you serve as the foreman of this jury, and that will be your
2 seat. Those are the only two assigned seating, assigned
3 seats. Everyone else, just when you come in, take the seat
4 that you happen to come to first that's vacant.

5 Now, anything else from the State before I excuse the
6 jury?

7 SOLICITOR ANTHONY: No, sir.

8 MRS. BUTLER: No, sir.

9 THE COURT: All right. I'm gonna -- all right.
10 We'll -- we're going to have jurors badges for you. So,
11 hopefully that will keep people from even trying to speak to
12 you. I don't know if anybody would anyway. Have a pleasant
13 lunch and we'll see you back by three o'clock.

14 Thank you.

15 (WHEREUPON, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Anything from the State now that the jury
18 has been excused?

19 SOLICITOR ANTHONY: I, I have one matter that I can go
20 ahead and [REDACTED]. I think we probably need to deal with it
21 before the trial starts.

22 THE COURT: You have time?

23 SOLICITOR ANTHONY: The informant in this case was
24 working for the Sheriff's Office because, on the, the
25 morning of this incident, this incident took place in the

1 late afternoon, he had been seen with the defendant and
2 stopped and found to be in possession of crack cocaine, and
3 there was an agreement made between he and the Sheriff's
4 deputies for him to make a purchase, make some purchases of
5 crack cocaine after he had been stopped, and, in return, he
6 wouldn't be charged with possession of crack cocaine.

7 The initial stop of the informant was done, he will, he
8 will say, after he had bought cocaine from or bought crack
9 from Mr. Hall, and he made contact with Mr. Hall the very
10 next, the very same day. Just later on in the day he makes
11 contact with Mr. Hall. He picks Mr. Hall up, Mr. Hall
12 directs him to go to a location a short distance from where
13 the informant picked Mr. Hall up.

14 Mr. Hall gets out of the vehicle, and at that point in
15 time Mr. Hall was apprehended because one of the, the
16 officers, they were intending to do what they are refer to
17 as a buy/bust where they do a purchase and then do an
18 immediate arrest. One of the officers thought that the
19 purchase had already occurred. So, there was an arrest made
20 of Mr. Hall at that time.

21 The State intends to introduce the videotape of the
22 interaction between the informant and Mr. Hall that
23 afternoon. When the informant picks him up, they drive to
24 the incident location, and on that tape there is reference
25 to prior sales. Most pronounced is that the CI has \$70 and

1 he's, will testify he wants to buy, he wanted to buy fifty
2 and twenty was to pay Mr. Hall for a prior crack purchase.

3 Mr. Hall, after he got out of the car, when the officer
4 attempted to arrest him, he was found to have a small amount
5 of crack or we will argue he had a small amount, amount of
6 crack on his person. That crack was recovered by, near a
7 house that Mr. Hall ran away from as, as the officer was
8 pursuing him, and that's the possession with intent to
9 distribute is that crack we're arguing was on his person at
10 the time he got out of the car.

11 THE COURT: But they didn't find it, it on him. They
12 found it on the ground?

13 SOLICITOR ANTHONY: That's right. That's right and the
14 CI will testify that he had crack on his person while they
15 were in the vehicle together.

16 THE COURT: You're using pronouns that confuse me.
17 Would you use---

18 SOLICITOR ANTHONY: The informant.

19 THE COURT: I know you said informant will testify
20 that, that he had---

21 SOLICITOR ANTHONY: Yeah, the informant will testify
22 that Mr., Mr. Hall had crack on his person while they were
23 in the vehicle together, but that the amount of crack that
24 Mr. Hall had was not as much as what the informant was
25 saying that he wanted to buy. So, our theory would be that

1 Mr. Hall had to get out to secure some more crack to sell
2 the informant what the informant was asking for.

3 But going, going back to the tape, the State would
4 argue that any references on the tape to prior sales should
5 be admitted in this case under Lyle to show the intent
6 because Mr. Hall is charged with intent to distribute and
7 under State v. Gore, which I have a copy of and can provide
8 the Court, prior distributions can be relevant and are
9 relevant under Lyle to show intent to distribute when intent
10 to distribute is the charge.

11 We also believe that, under the res gestae of this
12 case, given all this occurred within the same day, that
13 references on the tape to the prior incident, because there
14 is some conversation between Mr. Hall and the informant
15 about the informant being stopped by police that same day,
16 we believe that that testimony is admissible as, as part of
17 the res gestae to show the course of dealings between the
18 two of them so the jury understands and doesn't have to take
19 the case in a vacuum. We don't think -- we think the jury
20 should be allowed to; to know why the informant was working
21 in the first place and the informant was working in the
22 first place because he'd been caught buying crack from
23 Mr. Hall and the, the case isn't going to make sense to the
24 jury and the tape's not gonna make sense to the jury if, if
25 that fact isn't allowed to come out.

1 So, I'm willing to advise the Court of our factual
2 situation and that's, that would be our position as far as
3 what we would like to introduce.

4 THE COURT: Well, as to the prior, prior transaction
5 coming under Lyle, that would require, since it was not a
6 conviction, that it be proven by clear and convincing
7 evidence. So, if we have to make a proffer, we have to make
8 a proffer and let the Court decide whether or not the
9 evidence rises to the sufficiency of clear and convincing to
10 even allow it as, as Lyle, and I'm not, I'm not talking
11 about res gestae at this time. I'm just raising that issue
12 under the Lyle aspect of it.

13 SOLICITOR ANTHONY: Yes, sir, and we'd be, we'd be
14 prepared to do that. I can have the informant testify
15 outside the presence of the jury as to what had happened
16 leading up to his being taken into custody that day, and
17 could also call the officers who took him into custody.

18 THE COURT: All right. Tell me again the rule briefly,
19 the res gestae reason.

20 SOLICITOR ANTHONY: Our, our position under res gestae
21 is that basically the jury can't understand---

22 THE COURT: I don't want to know what the jury can't
23 understand. I'm not concerned about what the jury can't
24 understand. I want to find out why, legally, it falls under
25 res gestae.

1 SOLICITOR ANTHONY: All right. Well, it legally falls
2 under res gestae because it's, it's part of the, the
3 transaction, the entirety of the transactions between the
4 two parties that day.

5 THE COURT: All right. So, then I follow -- if I
6 follow you then, the, the \$70 was to pay for fifty for the
7 afternoon transactions and twenty for the morning
8 transaction?

9 SOLICITOR ANTHONY: Well, it's, it's -- he would
10 testify that he owed him \$20 for prior drug sales. I don't
11 know if -- I don't think he'll say it was specifically for
12 that morning, but he owed him \$50 -- he owed him twenty more
13 dollars for drugs he'd been sold in the past by Mr. Hall.

14 THE COURT: All right. Mrs. Butler.

15 MRS. BUTLER: Your Honor, on the -- as to the res
16 gestae, I don't think we're arguing the Lyle motion at this
17 time, is that right, just the res gestae?

18 THE COURT: We're gonna argue both of them, but I asked
19 him to split it up. So, start with Lyle.

20 MRS. BUTLER: Yes, sir, Your Honor.

21 As to Lyle, it's, it's very obvious that Rule 404(b)
22 prohibits evidence of a person's prior bad acts to be
23 admissible to prove action and conformity with their action
24 on a particular occasion and certainly this goes, the State,
25 Mr. Anthony said it himself, that the jury wouldn't

1 understand if they didn't have it all together, and
2 obviously because the State wants the jury to see and
3 convict Mr. Hall based on the fact that the narc's testimony
4 to an earlier sale because there's probably not enough to
5 convict on the, on the supposedly later sale.

6 So, it's -- obviously it's going to prove that Mr. Hall
7 committed this earlier sale, so he would of committed this
8 later sale, and that's the purpose, that's the purpose that
9 the State intends to go with. The clear and convincing
10 evidence is certainly not present because the defendant,
11 the, the narc in the case -- the defendant wasn't no---

12 THE COURT: who, who is the narc?

13 MRS. BUTLER: The narc is Melvin DuBois.

14 THE COURT: No, he's not a narc, is he?

15 I thought he was a confidential informant.

16 MRS. BUTLER: Well, he's the narc -- in the, in the
17 street terms, that's what he is. He goes out and sets up
18 the people in exchange for his getting off.

19 Anyway, the confidential informant, if the, if the
20 Court prefers that better, is the one that was caught with
21 drugs earlier that day. Mr. Hall was not arrested for any
22 drugs earlier that day, and there's no clear and convincing
23 evidence that Mr. Hall sold any drugs to the informant
24 earlier that day. In fact, Mr. Hall wasn't arrested or
25 charged ever with selling any drugs earlier that day. Just

1 the fact that the informant was found with drugs in his
2 possession earlier that day and should of been arrested.

3 Your Honor, the -- certainly even if the Court finds
4 there's clear and convincing evidence; and I'm sure that we
5 can argue this after the presentation on the Lyle motion,
6 but the Court has to still consider the, the substantial
7 prejudice that the defendant will suffer if this comes
8 before the jury because the jury is bound to connect the two
9 and say well, if he did it then, then he was gonna do it
10 then, because he's charged with attempt to distribute and
11 the attempt goes to his, to his intent there, and the jury
12 will connect the two if, if this testimony is allowed.

13 Your Honor, as far as the res gestae, I'll, I'll have
14 to, to admit that I'm not completely familiar with your,
15 with your Latin term of res gestae, but based on the
16 argument that, that Mr. Anthony put forward, it's certainly
17 not an extension of that same transaction with this money
18 that was there. As he states that the confidential --
19 Mr. Anthony states that the confidential informant's
20 testimony will show that it was money owed from prior sales
21 maybe even weeks earlier. It wasn't money owed from the
22 sale, from a sale earlier that day. So, certainly different
23 transactions here that go beyond.

24 THE COURT: Anything else?

25 MRS. BUTLER: Not from the defendant at this time, Your

1 Honor.

2 THE COURT: All right. I'm going to probably have to
3 hear the testimony before I make a ruling.

4 When do you want to do that?

5 SOLICITOR ANTHONY: I will proffer it whenever the
6 Court instructs me to. As I advised the Court, I've been
7 briefly personally this morning---

8 THE COURT: Well, that's why I'm asking you.

9 Do you want to do it at 2:30 or do you want to wait
10 till three o'clock?

11 SOLICITOR ANTHONY: Could we just do it at three
12 o'clock?

13 THE COURT: All right. Well, I'll, I'll reserve ruling
14 on that, on both, on the issue of both Lyle and res gestae.

15 SOLICITOR ANTHONY: All right. Thank you.

16 MRS. BUTLER: Thank you.

17 THE COURT: All right. Mrs. Butler -- anything else
18 from the State?

19 SOLICITOR ANTHONY: I'm gonna hand up the Gore case and
20 the Wilson case. I have a copy for Mrs. Butler. But just
21 for the record, this is State v. Gore, 384 S.E.2d 750, and
22 State v. Wilson, 545 S.E.2d 827.

23 THE COURT: Also, Mrs. Butler, you -- I'll turn it over
24 to you now for your motions.

25 MRS. BUTLER: Is the Court ready to proceed with the

1 defendant's motion in limine, Your Honor?

2 THE COURT: Well, you had -- well, before we get to the
3 motions in limine, I don't think this is a motion in limine,
4 but you had asked that I charge, ask Number 9 of your voir
5 dire, which states has any member of the panel present
6 belonged to or has in the past belonged to or attended
7 meetings of the Klu Klux Klan or other white supremacy
8 groups, and I'm, in my discretion, chose not to ask that.
9 So, I'll be glad to hear from you on that.

10 MRS. BUTLER: Yes, sir, Your Honor.

11 If, if I may, the defendant decided that that was a
12 question that he would like to pose for the defendant are a
13 black male in [REDACTED] County. Your Honor, just about a year
14 and a half ago, the Grand Wizard of the Klu Klux Klan
15 testified, from that stand sitting right beside you to your
16 left-hand, testified that he was the Grand Wizard of the Klu
17 Klux Klan within this area and the surrounding areas. We
18 also had the testimony during that same trial of, of, of one
19 of the members of the Klu Klux Klan.

20 Your Honor, based on the fact that the defendant, that
21 the defendant would like to know a little bit about the, the
22 membership, the organizations that, that potential jurors
23 are belonging to, then the defendant felt that was an
24 appropriate question to put forth especially based on
25 testimony that's here in this very recent past in this very

1 courtroom that we stand in. So, the defendant does, does
2 ask that Your Honor consider renewing that question and
3 asking that question of the jury.

4 THE COURT: All right. Any comment?

5 SOLICITOR ANTHONY: We, we just think that goes beyond
6 what, what's normally asked and it's not particularly
7 relevant to the issues the jury will have to decide in this
8 case.

9 THE COURT: Well, I did not ask it. I exercised my
10 discretion. Not that it is indicative of anything other
11 than it's the first time I've had anyone ask that I ask it,
12 and I've been doing this since 1991. Also, as I pointed out
13 in chambers, the ones I do ask deal, as far as
14 organizations, deal with connections to law enforcement and
15 prosecution of criminal cases, and also I ask some questions
16 about organizations that are concerned with the use of
17 abusive substances. Alcohol is not illegal. But Mother
18 Against Drunk Drivers and Citizens Against Drunk Drivers and
19 I asked about Citizens Against Violence. They -- I haven't
20 even really heard that they are around anymore, but at one
21 time they were a very active organization that one, one
22 could infer from their agenda that they would not be able to
23 be fair and impartial because of their -- I hate to say bias
24 against crime because they're all biased against crime. But
25 their particular advocacy involving criminal offenses and

1 crimes and criminals.

2 So, I've exercised my discretion. I did not ask that
3 and I am not intending to ask it at this time.

4 Anything else?

5 What are your motions in limine?

6 You had something you said about the indictments?

7 MRS. BUTLER: Yes, Your Honor.

8 If, if this is the appropriate time to discuss the
9 indictments, there are four indictments in the case.
10 There's a possession with intent to distribute. There's a
11 possession with intent to distribute within a proximity.
12 Your Honor, there's also an attempted distribution and there
13 was an attempted distribution within proximity of.

14 All four of the indictments are from the very same
15 offense, Your Honor. According to the annotations in the
16 criminal offenses in South Carolina, this is where the
17 possession of drugs with intent to distribute is not a
18 separate act from the distribution or the attempted
19 distribution of the drugs, the defendant may not be charged
20 with both offenses.

21 So, the defendant's position is that he certainly
22 should not be standing trial on the, the crime itself and
23 then the attempt to commit the crime. Either he possessed
24 it with the intent to distribute or he attempted to
25 distribute, but they're both within the same statute here,

1 Your Honor. 44-53-375 are the statutes listed on all of the
2 defendant's indictments for, for the four different crimes,
3 or excuse me, not within the proximity, but the attempt to
4 distribute and the possession with intent to distribute all
5 listed in the same indictment numbers.

6 If Your Honor allows it to go forward in this way, the
7 defendant can actually be convicted of, of with intent to
8 distribute within proximity of a school or park. The
9 defendant can also be convicted of an attempt within that
10 same proximity on the same charges. It just don't flow
11 logically that the defendant can be convicted of those ones
12 within the same act as the, as the annotations say when it
13 arose from the same act there.

14 THE COURT: well, have you got a case on that?
15 Annotations are not cases?

16 MRS. BUTLER: Yes, Your Honor. It's State versus
17 Brown.

18 THE COURT: State versus who?

19 MRS. BUTLER: State versus Brown, B-R-O-W-N. It's a
20 1995 Court of Appeals case, South Carolina.

21 would you like the particular citation?

22 THE COURT: Please.

23 MRS. BUTLER: 319 S.C. 400.

24 THE COURT: All right. Thank you. What are the two
25 separate acts?

1 with that, but not designating the offense, but rather couch
2 it as a felony, which is it a felony?

3 SOLICITOR ANTHONY: I'm sure it is. He received a 100
4 month sentence.

5 THE COURT: Well, I understand that, but I'm just
6 asking you is it a felony?

7 SOLICITOR ANTHONY: I'm -- I'll have to verify that.
8 To say that conclusively I have, but I would certainly---

9 THE COURT: If it is, if it is, in fact, a felony, I'll
10 let you ask whether or not he had, at that time, been
11 convicted of a felony.

12 All right. Is that it?

13 All right. What's your next motion?

14 MRS. BUTLER: Is Your Honor saying that the State can't
15 go into the, the specific crime that it was or just, just
16 that he was convicted of a felony?

17 THE COURT: Yes, ma'am.

18 MRS. BUTLER: Okay. Thank you.

19 The witnesses we've already been provided with. We
20 have the Lyle motion that we're making, and I think Your
21 Honor said we would proffer testimony on that one after
22 lunch. Motion to determine the existence and admissibility
23 of any statements that the defendant may have made that the
24 State would intend to introduce at trial.

25 THE COURT: Any statements?

1 SOLICITOR ANTHONY: We don't have any, any statements
2 that would be subject to Denno or Mirandized type custodial
3 type statements.

4 THE COURT: Do you have any statements?

5 SOLICITOR ANTHONY: We, we have statements made to the
6 CI, but in the course of their dealings.

7 THE COURT: Yeah, I mean to law enforcement.

8 SOLICITOR ANTHONY: I think if I could have one second.

9 (Pause.)

10 SOLICITOR ANTHONY: When he was -- when he stopped
11 after he -- there was a short pursuit, and I think the
12 testimony will be, at the end of that pursuit, he said you
13 got me, I give up.

14 THE COURT: And that was on foot?

15 SOLICITOR ANTHONY: Yes, sir.

16 THE COURT: All right. That's all they've got is they
17 got a statement.

18 MRS. BUTLER: Thank you.

19 THE COURT: This is not as a result -- there wasn't
20 any -- there was no interrogation and it doesn't appear as
21 he's in custody. He's almost in custody, but -- go.

22 All right. Next motion.

23 MRS. BUTLER: Your Honor, we would ask that we
24 determine if there's any out-of-court identification. We
25 don't believe there is.

1 SOLICITOR ANTHONY: No.

2 MRS. BUTLER: Determine if the audio and videotape
3 should be admitted because it does have all of the -- it
4 does make reference to an earlier sale, as Mr. Anthony
5 states, and I think that will have to be determined after
6 the, after the Lyle hearing, and, and certainly to prohibit
7 the confidential informant from testifying as to any
8 statements about the prior bad act if this Court rules that
9 the prior bad act can't be, can't come in.

10 THE COURT: If I rule it can't it can't. But I'll have
11 to see the videos also I guess to determine and listen to
12 the audio to determine whether, whether any of that is
13 inadmissible and needs to be redacted.

14 MRS. BUTLER: Thank you, Your Honor.

15 We would also ask that the, that the Court sequester
16 all the witnesses in this case except for the primary
17 investigator in the case, which this is a [REDACTED] County
18 Sheriff's Office case, as Mr. Anthony stated. James Johnson
19 is the investigating officer in the case. We would ask that
20 all other witnesses be sequestered.

21 THE COURT: All right. I'll grant that.

22 MRS. BUTLER: Thank you, Your Honor.

23 SOLICITOR ANTHONY: I just ask that Sergeant Johnson be
24 allowed to stay.

25 MRS. BUTLER: Thank you, Your Honor. That's all the

1 motions from the defendant.

2 SOLICITOR ANTHONY: I have one more matter.

3 THE COURT: Okay.

4 SOLICITOR ANTHONY: It's our position that his prior
5 conviction, the conspiracy to distribute and the possession
6 with the intent to distribute, it's our position that that
7 should be admissible during our case in chief as evidence of
8 his intent to distribute on this day, and we have a --
9 there's a Federal case I'd like the Court to consider, which
10 is State v. Johnson, or I'm sorry, United States v. Johnson.
11 It's 111 U.S. Ap. It's a -- it's released in January of
12 2011, and I will hand that up to the Court. I would ask
13 that, ask the Court to consider the, the evidence of his
14 prior conviction for possession with intent or conspiracy to
15 possess with intent to distribute and distribution or
16 conspiracy to distribute as, as Lyle evidence that would go
17 to his intent to distribute on this day.

18 THE COURT: So, I don't have to read it till right this
19 moment. I will read it.

20 what are the facts that parallel this case?

21 I will read it.

22 SOLICITOR ANTHONY: I will call the Court's attention
23 to Page 8 of the, the opinion. Basically it appears from
24 the opinion that what happened was that he had prior cocaine
25 distribution, distribution convictions, that the defendant

1 did in this case, and that the Court found that evidence of
2 those, of those prior distribution convictions were relevant
3 to show, going down to the fourth paragraph, that the
4 government asserted and the Court will agree the evidence
5 was relevant to Johnson's intent upon arriving at the
6 parking lot on the morning of November 5th, is not in the
7 drug trade, absence of a mistake, plan, and opportunity.
8 So, we, we just believe that the flaw -- what has been done
9 in the Fourth Circuit prior convictions have been admitted
10 to show intent in a possession with intent to distribute
11 prosecution.

12 THE COURT: If I may, I don't see where the Federal
13 Court's listed, cited Lyle at all, and, of course, the South
14 Carolina Courts consistently go to Lyle on admission of
15 prior bad acts, which is what we're talking about here, and
16 I'm not, of course, I was just given the case, but I don't
17 see any citation of Lyle when they're discussing---

18 THE COURT: well, they cite, they cite Rule 404(b).

19 MRS. BUTLER: Also, Your Honor, under 404, it looks
20 like that this, the State is attempting to admit evidence of
21 the defendant's character without the defendant's character
22 being put into, being put into question first. So, of
23 course, if the defendant takes the stand and testifies, and
24 I think the defendant would concede that the, that the prior
25 convictions should come in. But unless the defendant takes

1 the stand and testifies, I believe it's a pretty sound law
2 that the prior conviction of the defendant should not be
3 admitted and that Your Honor has to consider the substantial
4 prejudice that would come to the defendant if that were
5 admitted. Of course, do the balancing act there in the, in
6 the Court's determination.

7 THE COURT: Well, I've just briefly looked at this,
8 Mr. Anthony, but it looks to me that when you're talking
9 about the analysis under 404(b) and allowing -- this, this
10 sentence gives me some pause. Given the testimony showed
11 that Johnson was distributing heroin and marijuana to many
12 of his co-conspirators during the proposed course of cocaine
13 conspiracy, the evidence was intrinsic, and, therefore, not
14 subject to analysis under 404(b). That reads, to me, just
15 without having read the case, that it was intrinsic to a
16 conspiracy charge, not the charges that we have here.

17 SOLICITOR ANTHONY: Well, I believe what the Court is
18 looking at there is, is -- if you go to that second column
19 on Page 8, that's a new issue. That's talking about the
20 admissibility of testimony he distributed marijuana and
21 heroin as character evidence. The, the analysis that I
22 thought would be relevant to our case is over on the left
23 column on Page 8 --

24 THE COURT: I didn't see that.

25 SOLICITOR ANTHONY -- under number four. That's, that's

1 where we're talking about prior convictions for cocaine
2 distribution. That would be the section of the opinion the
3 State is arguing from.

4 MRS. BUTLER: Looks like they're talking about it being
5 related to a specific change of events. Certainly his
6 conviction from 2002, almost ten years ago, is not related
7 to this chain of events. It says it forms an integral part
8 of an account of a crime or is necessary to complete the
9 story of the crime for the jury. It's absolutely not
10 necessary to, to complete the story of this particular crime
11 that he's charged with to the jury for, for a charge of in
12 2002.

13 THE COURT: Help me find in here, since you've read and
14 I hadn't, the prior crime that they're discussing, the prior
15 conviction that they're discussing.

16 SOLICITOR ANTHONY: Well, the, the only references in
17 the opinion that I, I believe is made to the cocaine
18 distribution convictions comes on Page 8, and it
19 apparently -- what it appears is that he has prior
20 convictions and those were admitted in his trial.

21 THE COURT: well, that's what I'm looking for. Show me
22 that. Okay. Right there. Yeah, I see it says previous
23 cocaine distribution convictions. It doesn't say when they
24 were.

25 SOLICITOR ANTHONY: No, sir, I'm not sure. The opinion

1 does say how old the convictions were.

2 THE COURT: Well---

3 SOLICITOR ANTHONY: If you go to Page 4 and look at the
4 background, it says on January 15, 2005, he was released
5 from Federal prison after being incarcerated for drug and
6 firearm offenses/convictions committed in 1992, and a
7 subsequent conviction for distributing cocaine committed
8 while he was in prison. So, apparently these are
9 convictions that, that occurred before or during 1992.

10 THE COURT: All right. Well, I'll, I'll take a look at
11 this.

12 SOLICITOR ANTHONY: Well, no, I'm sorry. That's,
13 that's not accurate. It was -- there's one, one offense
14 apparently occurred between 1992 and 2005, but it does not
15 say when, and apparently that, the fact that that conviction
16 was admitted in the evidence in the State's case during the
17 trial as 404(b) evidence.

18 THE COURT: I'll, I'll take a look at this. I'm not --
19 I hadn't never had a Federal appeal and it's gonna take me a
20 while to, to digest it because I'm looking at the headnotes,
21 the first one, headnote one. In reviewing the District
22 Court's denial of a pretrial motion to suppress evidence,
23 the United States Court of Appeals for the Fourth Circuit
24 reviews the District Court's factual findings for clear
25 error and its legal conclusions de novo. The evidence is

1 treated in a light most favorable to the government.

2 Don't we usually look at things in the light most
3 favorable to the non-moving party in State Court?

4 MRS. BUTLER: If, if I may point out, I believe this is
5 probably a difference between the Federal and the State and
6 a significant difference. If I can point Your Honor to Page
7 8 under Section B on analysis, it says this Court has held
8 that Rule 404(b) is an inconclusive rule admitting all
9 evidence of other crimes or acts. Now, South Carolina, we
10 go back, as a general rule, a person's prior bad acts is not
11 admissible. So, they're coming at a different view, a
12 different burden.

13 THE COURT: Yeah, I, I think I'm gonna rely more on
14 what I already know. This case is very recent. It's only a
15 month old. That doesn't make it bad law, but it, it does
16 deal in the Federal context, and it does also -- I don't see
17 where -- there's a note here at the very first. Please
18 refer to Federal Rule of Appellate Procedure, Federal Rule
19 32.1 governing the citation to unpublished opinions.

20 In the Federal Court it's my understanding arguments
21 can, that unpublished opinions can be used to argue
22 precedent. In the State Court, unpublished opinions have no
23 precedential value. So, I think that might be a distinction
24 also.

25 SOLICITOR ANTHONY: Well, only -- I would just make a,

1 one comment on this Court's reference. Headnote 1, if you
2 turn over to Page 5 where Headnote 1 is actually located,
3 what, what Page 5 -- what the opinion's discussing at Page 5
4 is apparently a pre-trial suppression motion on another
5 issue. So, that, that reference to the standard of review
6 on Page 5 is not going to the, to the Court's decision to
7 allow the, the convictions in. The standard of review on
8 that actually referred to in Headnote 9 where it says that
9 the determination regarding admissibility of evidence are,
10 are reviewed for abuse of discretion.

11 THE COURT: Well, but then you're going -- then I
12 note -- sounds like you're going into a circle, but we go
13 back to what Mrs. Butler pointed out in the middle of the
14 first paragraph under B. This Court is held that Rule
15 404(b) is an inconclusive rule, and I think she's correct.
16 I think ours is an exclusive rule. It is on -- inconclusive
17 rule admitting all evidence of other crimes or acts except
18 that which tends to prove only criminal disposition.

19 SOLICITOR ANTHONY: Yes, sir.

20 THE COURT: All right. I'll, I'll consider it and
21 we'll reconvene at three o'clock and deal with whatever's
22 on, left on the table at that time, which is the, which is
23 basically everything.

24 All right. Thank you.

25 (WHEREUPON, Court was in recess for the lunch hour.)

1 THE COURT: We're back on the John Hall case. We've
2 got a couple issues.

3 First we've got a note from Juror Dennis Statton,
4 Statton on Dennis Smith I guess it is. Apparently he went
5 to the doctor over the lunch and got a doctor's excuse. So,
6 let me call him in.

7 Would it -- is it Dennis Smith?

8 Have him come in.

9 (WHEREUPON, Juror Smith comes into the courtroom at this
10 time.)

11 THE COURT: Mr. Smith, you weren't sick this morning.
12 What's the problem?

13 THE JUROR: I took some (untranslate) Friday and I
14 couldn't check on them until today. I check on them
15 yesterday, but I worked at Wal-Mart when I got off and the
16 doctor office called.

17 THE COURT: But you worked yesterday. If you could
18 work, why---

19 THE JUROR: See I can't sit longer than -- wherever I
20 sit, I got a, I got to stretch my legs and I got to work,
21 walk around, no matter where I go.

22 THE COURT: I'm going to let you go back in the jury
23 room just a minute.

24 THE JUROR: Okay.

25 (WHEREUPON, the juror leaves the courtroom at this

1 time.)

2 THE COURT: Any comments by the State?

3 SOLICITOR ANTHONY: No, sir.

4 THE COURT: The defense.

5 MRS. BUTLER: Your Honor, we would object to the juror
6 being dismissed based on the motion and the reasons that we
7 discussed in chambers if you'd like me to get into that part
8 now.

9 THE COURT: Well, you need to put on the record in case
10 this looks like this might be headed for an appeal. It
11 seems that we have all kind of wrinkles before we even get
12 out of the gate and sworn the jury.

13 MRS. BUTLER: Yes, sir, Your Honor. Defense objects to
14 the juror being dismissed for, for one reason, Your Honor.
15 The -- it has come to the defendant's attention, during the
16 lunch hour, that there were two jurors and we discussed---

17 THE COURT: If you're going into the alternate, let's
18 take it one at a time. I'll deal with your motion on the
19 alternate. I got to deal with this on its face.

20 MRS. BUTLER: Yes, sir.

21 THE COURT: I can't, I can't keep him because there's
22 some problem with the alternate if that, if there is a
23 problem. We'll get to that in a minute. But I've got to
24 either honor this doctor's excuse, which I feel compelled to
25 do.

1 MRS. BUTLER: Your Honor, may I have a second?

2 THE COURT: Yes, sir.

3 (Pause.)

4 MRS. BUTLER: Your Honor, the defendant and I have
5 spoken and it appears that this is the jury we picked as we
6 went through and what was offered to us, and the defendant
7 objects to the Court excusing the juror on the basis of his
8 medical reason. We believe that it's going to be a short, a
9 short trial with only a few witnesses presented by the State
10 and possibly the defendant's testimony. We would ask that
11 the Court allow, allow maybe more frequent breaks if the, if
12 the defendant is needing to get up and move around.

13 THE COURT: Well, I'm gonna excuse him. He's got a
14 doctor's excuse. Release the juror due to medical
15 condition. I think -- I don't know if this is exercising my
16 discretion. If it is, I am. But I think if the doctor says
17 he's got some problems that prevent him being, from being a
18 juror, he certainly, had he presented this to me this
19 morning, if he had it I'm sure he would have. I would have
20 excused him from jury duty for the week. So, I'm gonna, I'm
21 gonna honor this and I'll excuse him.

22 Now, that means that alternate will be seated and you
23 have some concerns about that.

24 MRS. BUTLER: Yes, sir, Your Honor.

25 The defendant made a Batson motion at the end of the,

1 of the jury pool picking. Apparently there were two jurors
2 that were very similarly situated. The State sat one and
3 struck the other. The one that the State struck was a black
4 male, 56 years old, with a 12th grade education and a
5 substantial employment history with the same job. The one
6 that the State sat was a white male, 56 years old, the same
7 age as the black male, with a GED, which is the equivalent
8 of the 12th grade education that the black male has. So,
9 same education with a substantial employment history with
10 the same job.

11 The only difference we assessed during the Batson
12 motion arguments was that the State put forth that the white
13 male had -- I mean -- I'm sorry. Excuse me. The black male
14 had a previous conviction for driving under suspension.
15 Well, the State failed to strike another juror, which is the
16 alternate juror that we were talking about seating, Number
17 74, his name is David Garner, he's a white male, age fifty,
18 who came forward and told us, Your Honor and the court
19 reporter and us standing there, that he had a prior
20 conviction of a South Carolina gun law, and Mr. Anthony
21 heard the, heard the juror come forward and say that he had
22 a prior conviction.

23 THE COURT: And you, and you heard him too.

24 MRS. BUTLER: Yes, sir, and based on that---

25 THE COURT: well, wait just a minute. Let's go one at

1 a time.

2 MRS. BUTLER: Yes, sir.

3 THE COURT: why didn't you call that -- why didn't you
4 use that as one of your grounds to say that the drawing was
5 pretextual when you had an opportunity and you made the
6 motion?

7 MRS. BUTLER: And that's why I'm asking Your Honor,
8 Your Honor if he will reassess because the---

9 THE COURT: No, I'm not asking -- I'm asking you why
10 did you not raise it?

11 You had as much information as Mr. Anthony did. So,
12 you wanted to tell me, at that time, and the burden was on
13 you; and the law makes it very clear, at that time you are
14 to tell me why you think the strike was pretextual and you
15 had as much as, information as Mr. Anthony and the Court
16 did. I don't even remember it. I do now that we've
17 discussed it, but it wouldn't of been my prerogative to
18 raise it anyway. That's, that's your, your job. But you
19 didn't raise it then.

20 MRS. BUTLER: And that's, that's probably my error and
21 hopefully it won't come to a insufficiency of counsel issue
22 and on a PCR there, but, but it definitely is my error
23 because it was my duty to raise, to raise that at the proper
24 time, and that's why we are asking you to reassess that now
25 based on the, the only difference---

1 THE COURT: well, part of, part of the problem now is
2 we don't have a jury to draw. We already let everybody go
3 home. I mean unless we put it over until tomorrow and start
4 over with a new -- we, we had an opportunity. This jury
5 hadn't been sworn, but we, we, we have an opportunity to
6 redraw a jury at that time and that opportunity is
7 evaporated.

8 MRS. BUTLER: Your Honor, we have substantial pre-trial
9 motions I believe that will be going into the efficiency of
10 the indictments and the Lyle, the Lyle testimony.. We still
11 have to watch all the audio and videotape this afternoon. I
12 would suggest we release the jury, and we're not going to be
13 able to start until in the morning with the stuff that's
14 left anyway, I don't believe, based on all we still have
15 left to do.

16 THE COURT: well, of course, we have to also keep in
17 mind that the jurors have a right to serve and we would be
18 usurping all of those who, the other 11 who have a right to
19 serve, and were we to abrogate their right at this time,
20 then that, that does not appear to be proper.

21 MRS. BUTLER: Your Honor, I believe the defendant's
22 right to have a fair and impartial trial outweighs the
23 jury's right to serve..

24 THE COURT: All right. Mr. Anthony, anything you want
25 to say?

1 SOLICITOR ANTHONY: The State just doesn't see any
2 reason why the alternate shouldn't be seated and we
3 shouldn't proceed forward with the trial.

4 THE COURT: Well, I, I find that the, the proper time
5 to raise it has passed. The proper time to raise it was
6 when the court invited the, the information, the defense to
7 point out any pretextual reason, and, Mrs. Butler, don't,
8 don't take this wrong because I don't mean it because you're
9 as straight up as any lawyer I know, but if that were not
10 the case, then a lawyer with less scruples than you have
11 could, could, in effect, sandbag the Court and sandbag the
12 State by creating a situation, which I don't believe you
13 did. I, I believe you're without error in reaching where we
14 are.

15 But some -- if, if that became the practice or if that
16 was the right way to do it, then a defendant could simply
17 gloss over or not raise to the Court the grounds at the
18 proper time and then later, when we find ourself in a
19 situation we're in, true today we've got the jury out there
20 and we might could wait until in the morning. But if this
21 had happened on, and we the, let the jury go for the week,
22 then the State would of been prejudiced by, by the jury
23 having been dismissed, and then this matter being raised,
24 for lack of a better word, belatedly.

25 All right. So, we're gonna let Mr. Smith go and the

1 alternate will be seated. I'm going let -- bring Mr. Smith
2 back in if you don't mind and make this a Court's Exhibit
3 please.

4 MRS. BUTLER: Thank you, Your Honor.

5 (WHEREUPON, the note from the juror was marked as
6 Court's Exhibit No. 1 for identification purposes only at
7 this time.)

8 (WHEREUPON, Juror Smith comes into the courtroom at
9 this time.)

10 THE COURT: All right. I'm going to excuse you for the
11 rest of week.

12 THE JUROR: Thank you.

13 THE COURT: All right. Thank you. I'm sorry you're
14 having trouble with your knee.

15 THE JUROR: Yes, sir. Thank you.

16 (WHEREUPON, the juror leaves the courtroom at this
17 time.)

18 THE COURT: All right. You ready with the proffer
19 regarding the issues dealing with Lyle?

20 I'll go ahead and tell you I have -- I'm, I'm not going
21 to allow the 2002 conviction in as substantive evidence. I
22 will allow it in for impeachment if the defendant takes the
23 stand and the impeachment will be based on a felony and not
24 on the nature of the offense. So, in spite of the Johnson
25 Federal Court case, I'm not gonna let that be part of this

John Sherfield - Direct examination
by Solicitor Anthony

1 substantive evidence.

2 All right. Now we're down to having a proffer on what
3 may or may not be Lyle evidence and the, and the two
4 indictment evidence.

5 SOLICITOR ANTHONY: Yes, sir, our, our first to proffer
6 is Lieutenant Sherfield.

7 JOHN SHERFIELD, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR ANTHONY:

11 Q Would you state your name please?

12 A My name is Lieutenant John Sherfield.

13 Q Lieutenant Sherfield, how are you employed?

14 A Lieutenant here with the [REDACTED] Sheriff's Office
15 assigned to narcotics investigation.

16 Q How long have you worked for the Sheriff's Office?

17 A I worked with the [REDACTED] Sheriff's Department about 18
18 and a half years.

19 Q And how long have you worked in narcotics?

20 A About ten years.

21 Q All right. I want to take you back to May of 2010.

22 Were you working as a narcotics, as the narcotics
23 lieutenant at that time?

24 A Yes, sir, I was.

25 Q And going to May 18, 2010, did you come into contact

John Sherfield - Direct examination
by Solicitor Anthony

1 that day with Melvin DuBois?

2 A Yes, sir, I did.

3 Q And what time of day did you come into contact with
4 him?

5 A I don't know exactly. I'm thinking shortly before
6 lunchtime.

7 Q How did you come into contact with him?

8 A On May the 18th, shortly before lunchtime I was on
9 patrol in my unmarked vehicle on [REDACTED]. I seen
10 Melvin DuBois walking south on [REDACTED]. I knew
11 Mr. DuBois was addicted to, to using crack cocaine. I
12 thought, since he didn't live in that area, he lived
13 actually on the northern part of the city, that he may
14 possibly be going to attempt to get some crack cocaine. I
15 rode the area and set up surveillance and saw him going to
16 the parking lot of [REDACTED], South Church
17 Street Apartments.

18 Q And did you see him associating with anyone there?

19 A When I came back up the road I seen him and the
20 defendant, Doug Hall, talking and then walk away from each
21 other.

22 Q So, after you saw he and Mr. Hall -- and this is
23 Mr. Hall, the defendant, you're speaking of?

24 A Yes, sir.

25 Q Okay. Once you saw he and Mr. Hall part, what did you

John Sherfield - Direct examination
by Solicitor Anthony

1 do?

2 A Melvin DuBois went back out to the sidewalk and started
3 walking north on [REDACTED]. I pulled up beside
4 him and got out and asked him to stop, told him I needed to
5 speak with him. He did. He complied. He stopped. I asked
6 him had he, what was he doing in that area of town. He said
7 he was just walking. I asked him had he purchased any
8 illegal drugs and he said no. I asked if he mind if I
9 searched him and he said no, go ahead, and then I began to
10 search him and I found a quantity of crack cocaine in his
11 pocket.

12 Q And while you were dealing with Mr. DuBois did you see
13 Mr. Hall?

14 A Yes, sir.

15 Q What did you observe with Mr. Hall doing?

16 A While I was searching Mr. DuBois on the sidewalk I
17 looked back down to where he had just come from at the
18 entrance to South Church Apartment, I seen the defendant,
19 Mr. Hall, come up to the edge of the roadway and when he saw
20 me searching Mr. DuBois he ran back down through the
21 apartment complex.

22 Q So, after you found the crack on Mr. DuBois, what kind
23 of arrangements did you make with him?

24 A He asked me if there was anything he could do to keep
25 from going to jail and his wife finding out, and I told him

John Sherfield - Direct examination
by Solicitor Anthony

1 I didn't know, that I would, we would go back to my office
2 and talk about it. I then placed him in handcuffs and put
3 him in my patrol car and transported him back to my office.

4 Q And what kind of agreement did you make with Mr. DuBois
5 once you got him back to the narcotics office?

6 A Well, Sergeant Johnson interviewed him and talked to
7 him. He stated that he had, in fact, got the crack cocaine
8 from Mr. Hall that I had recovered from his pocket, and it
9 was agreed that he would try to assist us in the arrest of
10 Mr. Hall as well as two other defendants.

11 Q And what was going to happen in regards to the
12 potential charges against Mr. DuBois if he did that?

13 A He would not be charged.

14 Q Okay. All right. And when was -- what, what happened
15 the rest of the, the day or the rest of the late, late
16 morning or early afternoon in regards to your association
17 with Mr. DuBois?

18 A After we interviewed him and talked to him a few
19 minutes I then transported him back to his home here in
20 Union. He didn't have a vehicle. So, I took him home, told
21 him to get in contact with us later on that evening, and
22 then approximately around 15 till 4:00 or 4:00 that evening
23 he called me and told me that he had received a phone call
24 from the defendant, Mr. Hall, asking him what had actually
25 occurred on the roadside and why come he wasn't in jail and

John Sherfield - Direct examination
by Solicitor Anthony

1 asked me to come pick him up. I then drove to his residence
2 and picked him up, drove back to the office, and he made a
3 phone call to Mr. Hall.

4 Q And what was the plan, the plan as far as what you
5 intended for Mr. DuBois to do with Mr. Hall that, that
6 afternoon?

7 A The plan was that we had some city officers also meet
8 with us at the office and that we were going to do what's
9 called a buy/bust. We was gonna send Melvin DuBois, the
10 informant, to meet with Mr. Hall. We figured it would be
11 somewhere there on [REDACTED] since that's where he
12 met him earlier. He said that's where he usually met him,
13 and that after the deal was completed, we was going to
14 arrest Mr. Hall and hopefully recover our buy money.

15 Q All right. And did y'all -- did you and Sergeant
16 Johnson ask anybody to assist in doing this buy/bust
17 operation?

18 A Yes, sir, there were several city police officers. Mr.
19 Bailey, Investigator Beatty, Sergeant Gregory, Investigator
20 Mr. Mickey Parker, a couple of investigators with the city.

21 Q All right. And when -- after, after you contacted
22 them, what process did you go through with Mr. DuBois as far
23 as preparing him to go make the buy?

24 A I observed Sergeant Johnson give him \$70. While we were
25 interviewing Mr. DuBois, it was agreed he would actually buy

John Sherfield - Direct examination
by Solicitor Anthony

1 \$50 worth of crack cocaine from the defendant. But the
2 informant, Mr. DuBois, stated that he owed him \$20 from a
3 previous buy. So, I observed Sergeant Johnson give Mr.
4 DuBois \$70 of recorded Sheriff's Office currency. I observed
5 Sergeant Johnson search him and then wire him with audio and
6 video.

7 Q And what kind of vehicle was he given to go meet with
8 Mr. Hall?

9 A He drove a Sheriff's Office, Sheriff's Office
10 undercover vehicle.

11 Q All right. And what instructions did you give Mr.
12 DuBois as far as what he was supposed to do once the buy had
13 been completed?

14 A The plan was that once the buy had been actually
15 completed and he had the illegal drugs in his hand and had
16 dropped off Mr. Hall that he was either gonna call myself or
17 Sergeant Johnson and tell us that he actually had the deal,
18 the drugs and that the deal was completed and where he had
19 dropped off Mr. Hall, and the informant was to go back to
20 our office and wait for us to come, to arrive back---

21 Q Okay.

22 A ---and take custody of the evidence.

23 Q And did Mr. DuBois leave the narcotics office with that
24 being the general plan?

25 A Yes, sir.

John Sherfield - Direct examination
by Solicitor Anthony

1 Q Okay. Now, where did you go once he left the narcotics
2 office?

3 Once Mr. DuBois left the narcotics office, where did
4 you go?

5 A I went to Grace Church on [REDACTED] here in
6 union.

7 Q And what did you do there?

8 A Just kind of hid and stayed out of the way waiting for
9 Mr. DuBois to call.

10 Q And then, at some point, did you proceed somewhere else
11 from Grace Church?

12 A Yes, while I was at Grace Church we had an undercover
13 channel that we were all operating off of, I heard
14 Mr. Investigator Parker say that he had met the defendant
15 and our operative driving our Sheriff's Office vehicle on
16 McBeth Street. So, I left the parking lot at Grace Church
17 and proceeded to that area.

18 Q Okay. And did you find where Mr. Hall had been
19 apprehended?

20 A Yes, while I was traveling down McBeth Street I heard
21 Investigator Bailey, Brian Bailey with the [REDACTED] Public
22 Safety Department, say that Mr. Hall was running, and before
23 I arrived I heard him say they had him in custody. And when
24 I arrived on the scene over on Hamlet Street they already
25 had him handcuffed and was leading him back to the patrol

John Sherfield - Direct examination
by Solicitor Anthony

1 car.

2 Q All right. Are, are you aware of the, the quantity of
3 crack that was recovered?

4 A Yes, sir.

5 Q And---

6 A Three grams -- .3 grams.

7 Q All right. And what would be the approximate street
8 value of .3 grams?

9 A Approximately \$30.

10 Q All right. And when you got, when you got there to
11 Hamlet Street you said Mr. Hall was already in custody?

12 A Yes, sir.

13 Q Had the, had the crack cocaine already been recovered
14 as well?

15 A I think they were recovering it then.

16 Q Okay. Okay. Thank you.

17 That's everything on direct for the proffer.

18 THE COURT: All right. Cross.

19 CROSS-EXAMINATION

20 BY MRS. BUTLER:

21 Q I have just one question for you, Lieutenant Sherfield.
22 The -- were y'all planning to do the bust/buy instead
23 of the, instead of the set-up?

24 Actually I'm just gonna withdraw that question and save
25 it for the trial. I have no questions for this witness.

Melvin DuBois - Direct examination
by Solicitor Anthony

1 Thank you.

2 THE COURT: You can step down. Thank you.

3 Solicitor, our next witness is Mr. DuBois. He's
4 outside. He's back there, there. If we can get him.

5 MELVIN DUBOIS, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR ANTHONY:

9 Q Melvin, would you state your name please?

10 A Melvin Dubois.

11 Q And, Mr. DuBois, where do you currently reside?

12 where, where do you currently live?

13 A Florida.

14 Q Okay. And I want to take you back to May 18, 2010.

15 Did you come into contact with Lieutenant Sherfield of
16 the Sheriff's Office on that day?

17 A Yes, I did.

18 Q All right. And how did you come in contact with him?

19 A I was walking down [REDACTED] on the way to
20 buying some drugs and he passed me.

21 Q Okay. And after he passed you the first time, who, who
22 did you speak with after he passed you the first time?

23 A I spoke with that man right over there, Doug Hall.

24 Q Okay. And how long -- at that point in time, how long
25 had you known Mr. Hall?

Melvin DuBois - Direct examination
by Solicitor Anthony

1 A About a week, week and a half.

2 Q Okay. And when you talked to Mr. Hall on the morning
3 of May 18th, 2010, what, what kind of interaction did you
4 have with him?

5 A It's -- you mean after I was, I was walking down the
6 sidewalk there?

7 Q Yeah, yeah, that morning.
8 What, what happened?

9 A I went over there and gave him \$20 for, to buy some
10 crack cocaine.

11 Q Now, after you bought the crack from him, what happened
12 after that?

13 A I turned around and walked back up [REDACTED]
14 toward the Piggly Wiggly and then Mr. Johnson --
15 Mr. Sherfield came up behind me and stopped me and asked me
16 did I just purchase drugs from Mr. Doug Hall or I mean --
17 let me back up. He asked me had I, what was I doing. I
18 told him I was out walking, but -- and then he asked to
19 search me.

20 Q And when he searched you, what did he find?

21 A He found drugs in my pocket.

22 Q Okay. And did you -- after he found drugs on you, what
23 did you ask Lieutenant Sherfield about doing?

24 A I asked him -- I didn't need this, is there anyway I
25 could get out, get out of this, and he, at that point, he

Melvin DuBois - Direct examination
by Solicitor Anthony

1 put me in the back of his car and took me to the task force
2 somewhere.

3 Q And when you went to the task force, what did you and
4 Lieutenant Sherfield discuss you doing?

5 A He asked -- he said if I could get him -- if I knew
6 three people I could buy from, bust, that he forgive me for
7 that.

8 Q Okay. All right. So, after, after you were told that,
9 what did you do next?

10 A I went home. They -- John took me home.

11 Q Okay. And did you make contact -- did anybody contact
12 you after you got home?

13 A Yeah.

14 Q who called you?

15 A Doug Hall called me.

16 Q Okay. And what did Mr., Mr. Hall want to know?

17 A wanted to know if I got busted when he sold me that
18 crack over on [REDACTED] earlier that day.

19 Q what did you tell Mr. Hall?

20 A I told him no, that I got searched, but he didn't find
21 it.

22 Q And did you have any other conversation with him about
23 doing anything further in regards to buying drugs?

24 A Yeah, I told him I wanted to buy some more drugs and he
25 wanted me to call him a little later on, and, you know, to

Melvin DuBois - Direct examination
by Solicitor Anthony

1 meet him to buy some more drugs that afternoon.

2 Q Okay. And, so, after you had this conversation with
3 Mr. Hall, who did you get in contact with then?

4 A I called Johnny.

5 Q Okay. And what did Lieutenant Sherfield do?

6 A Came buy and picked me up and took me back to the task
7 force center.

8 Q Once you got back to the task force, what did you do as
9 far as arranging a purchase from Mr. Hall?

10 A I called him up again and made arrangements to meet him
11 at the Piggly Wiggly. I was hoping to meet him at the Piggly
12 Wiggly.

13 Q Okay. All right. This was -- where were you when you
14 made this call?

15 A At the task force center.

16 Q Okay. And then, as far as -- once you told him you
17 wanted to meet him, what was done as far as preparing you to
18 go buy drugs from him?

19 A I wore an audio/video wire and gave me the money for
20 the amount of, to buy drugs.

21 Q How much money did they give you?

22 A They gave me \$70 total.

23 Q Okay. All right.

24 A And at that time I was searched and the vehicle was
25 searched.

Melvin DuBois - Direct examination
by Solicitor Anthony

1 Q And what kind of vehicle were you driving?

2 A Ford Explorer, white.

3 Q All right. Who, who owned -- whose vehicle was it
4 though?

5 A The county.

6 Q Okay. All right. Okay. And at that point after those
7 things had happened, where did you go?

8 A Got in the vehicle, went down [REDACTED], and
9 I called Doug Hall again on my phone and said hey, I'm on
10 the way. He gave me directions to where to meet him at.

11 Q Okay. And where did he tell you to meet him?

12 A Across from the yellow house. I don't know the name of
13 the street. I was suppose to turn right. I thought he had
14 said turn left, but at a yellow house on South Church
15 Street, and you turn right as you're going towards Piggly
16 Wiggly. He'd meet me right there on the corner.

17 Q All right. And when he, when he met you there, what did
18 he do?

19 A Got in my vehicle.

20 Q Okay. And what did you tell Mr. Hall you wanted to do
21 at that time?

22 A I tried to give him the 70 bucks for drugs he had in
23 his hand. I told him 20 of it was for what I owed toward
24 his wife and---

25 THE COURT: I'm sorry. Towards what?

Melvin DuBois - Direct examination
by Solicitor Anthony

1 THE WITNESS: Twenty of it was what I owed his wife or
2 excuse me. There was---

3 THE COURT: Okay. Go ahead. That's what I thought he
4 said.

5 THE WITNESS: Okay. Fifty dollars was for, to buy the
6 dope.

7 Q All right. When you say owed his wife, how was it that
8 you had come to owe or, or to think that you owed \$20 to
9 Mr. Hall's wife?

10 A He advised me \$40 in dope earlier during the week, and
11 I was paying him back a little bit of it.

12 Q Okay.

13 A That's what he asked me for.

14 Q How did his wife come into the picture?

15 A She gave me money to buy it with to, from her supplier
16 to sell it to me.

17 Q Okay. All right. So, that, that \$20 was actually for
18 crack that Mr. Hall had advanced you and you hadn't paid for
19 it yet?

20 A Right, right. Exactly.

21 Q Okay. All right. And, so, once Mr. Hall got in the
22 vehicle, was he -- did he sell you the crack right there
23 then?

24 A No, he hesitated.

25 Q All right. And what did he tell you to do?

Melvin DuBois - Direct examination
by Solicitor Anthony

1 A Told me to drive up the street.

2 Q And while you -- while he was riding with you, what did
3 you -- did you notice anything on his person?

4 A Yeah, I saw the bag of crack in his hand, in a bag with
5 the rocks of crack in it in his right hand.

6 Q Okay. And what happened?

7 Like as you were driving and he was telling you where
8 to go, what did y'all encounter?

9 A I observed two city cars, plain city cars come by, pass
10 us on that street.

11 Q And what -- after, after the two city cars passed, what
12 did Mr. Hall have you do?

13 A He had me to make a left, left hand turn on, on one
14 street and then we went down that street to the end and make
15 another left, go by, and then turn left again at a park.

16 Q Okay. All right.

17 A Then we go up further on the left hand side. I think
18 it's the first house on the left. There's a white house and
19 we went and dropped him off.

20 Q Okay. And, so, is that what you did?

21 A Yes, sir, he wanted me to drop him off, circle the
22 block, come back, and pick him up.

23 Q Okay. And, so, did he get out of the vehicle at that
24 time?

25 A Yes, sir, he did.

Melvin DuBois - Direct examination
by Solicitor Anthony

1 Q And what did you do?

2 A I backed up to turn around and I observed one of the
3 city cars coming by me. I tried to motion for him to, to
4 not come up there, and I was gonna circle the block and come
5 back, but it was a little late for that and---

6 Q Okay. So, when you saw the -- you tried to wave off
7 the city car?

8 A Right.

9 Q After you -- what did the, what did the city, the driver
10 of the city car do, once, you know -- did the driver, the
11 driver of the city car respond to you trying to wave him off?

12 A No.

13 Q And once he did not respond to you trying to wave him
14 off, what, what did you do?

15 A I passed and went back to the same stop at the end of
16 the street where I made that left at, made a right there,
17 and went back to the task force center.

18 Q Okay. And when you got back to the task force, what
19 did you do there?

20 A Waited for J.J. to get there, and when he finally --
21 when he showed up, they searched me again and I gave them
22 the audio equipment, which was still on, and the video
23 equipment.

24 Q Okay. And, and what happened to the money?

25 A I gave them the money back that I had there.

Melvin DuBois - Direct examination
by Solicitor Anthony

- 1 Q All right. And when you say J.J., who are you
2 referring to?
- 3 A The man right there.
- 4 Q Mr. -- Sergeant Johnson?
- 5 A Yeah, Sergeant Johnson.
- 6 Q Okay. Okay. All right. And have you had you an
7 opportunity to, to watch the DVD of the drug buy or the
8 attempted drug buy?
- 9 A Yeah.
- 10 (WHEREUPON, a DVD was marked as State's Exhibit No. 1
11 for identification purposes only at this time.)
- 12 Q Okay. I'm gonna show you what's been marked for
13 identification as State's Exhibit No. 1, and ask you do you
14 recognize that DVD?
- 15 A Yes, sir, I do. That's my signature right there.
- 16 Q Okay. And what, what is -- you said that's your
17 signature on it?
- 18 A Yes, sir.
- 19 Q When did you view the contents of that DVD?
- 20 A On 4/5 of---
- 21 Q Okay. And that's today, right?
- 22 A Yes, sir.
- 23 Q Okay. And what does that, that DVD contain?
- 24 A It contains everything from the time I left the task
25 force, got into the vehicle, the white SUV to go do the buy,

Melvin DuBois - Direct examination
by Solicitor Anthony

1 until I came back to the task force center after the, you
2 know, the bust.

3 Q Okay.

4 All right. Your Honor, we'd ask to have this admitted
5 for the purpose of the proffer and play it for the Court at
6 this time.

7 THE COURT: It's admitted and you can publish it for
8 me.

9 Yes, ma'am.

10 MRS. BUTLER: No objection.

11 THE COURT: Okay. Thank you.

12 (WHEREUPON, State's Exhibit No. 1 was received into
13 evidence for purposes of this hearing only at this time and
14 a portion of the DVD was published for the Court at this
15 time.)

16 Q who are you talking to right now?

17 A Doug Hall.

18 Q No, sir, that's the phone call you're referencing---

19 A Yes, sir.

20 Q ---under your testimony?

21 A Yes, sir.

22 (WHEREUPON, another portion of the DVD was published
23 for the Court at this time.)

24 Q Okay. So, when you're talking about somebody making a
25 mistake, who are you -- what are you referring to?

Melvin DuBois - Direct examination
by Solicitor Anthony

- 1 A To the other plain cop, plain car going up to bust him
2 --
3 Q Okay.
4 A -- to arrest him.
5 Q And you were aware that was -- you were aware that that
6 was an officer in an unmarked car?
7 A Yes, sir.
8 Q Okay.
9 A Yes, sir.
10 Q And like when you were waving in the camera, what were
11 you trying to do?
12 A Trying to stop him.
13 Q Okay. Now, the two, the two cars you encountered there
14 that you reacted to, what, what were those vehicles?
15 A Those were city plain cars. I mean plain---
16 Q Okay.
17 A ---city cars.
18 Q And you were aware that those were cars that were---
19 A Yes, sir.
20 Q ---police to assist in the take-down?
21 All right. Your Honor, that, that's the part of the
22 tape where Mr. Hall and Mr. DuBois were together. If the
23 Court, if the Court wanted to see that again or have any
24 part of it played I'd be happy to do that.
25 THE COURT: No, I'm fine.

Melvin DuBois - Direct examination
by Solicitor Anthony

1 SOLICITOR ANTHONY: If I could have one moment.

2 (Pause.)

3 SOLICITOR ANTHONY: That's, that's my questions for
4 Mr. Hall or for Mr. DuBois at this time in regards to the
5 proffer.

6 THE COURT: You want to turn off the video?

7 SOLICITOR ANTHONY: Oh.

8 THE COURT: Mrs. Butler.

9 MRS. BUTLER: Yes, thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MRS. BUTLER:

12 Q Mr. DuBois, I'm just gonna ask you a few questions. I
13 usually get my stand over here, but I'll stand right here.

14 When you, when you were talking you said that -- was it
15 Officer Sherfield that asked you if you was willing to do a
16 set up?

17 Can you hear me?

18 A Yeah.

19 Q Was is Officer Sherfield -- was it Johnny Sherfield
20 that asked you if you were willing to do a set-up?

21 A I asked him.

22 Q Oh, you, you asked Officer Sherfield?

23 A Yeah, if I could do, do to get out of this. I asked
24 him.

25 Q To get out of the trouble that you were in?

Melvin DuBois - Cross-examination
by Mrs. Butler

- 1 A Yeah.
- 2 Q With the possession, with the charge and the purchase
3 that you had just made?
- 4 A I wasn't charged.
- 5 Q You wasn't, you wasn't charged and arrested --
- 6 A No.
- 7 Q -- right?
- 8 But you had just purchased drugs, right?
- 9 A Yeah. Oh, yeah.
- 10 Q Okay. So, when you purchased the drugs, you had given
11 the money over?
- 12 A To Doug Hall.
- 13 Q Uh-huh.
- 14 And he gave you the drugs over?
- 15 A Doug Hall gave me the crack cocaine.
- 16 Q Okay. And you gave him the money?
- 17 A I gave him \$20.
- 18 Q Okay. And y'all, y'all completed that transactions and
19 you went on about your way, right?
- 20 A I walked about thirty feet from him, forty feet from
21 him and that's when I observed Mr. Sherfield's car coming up
22 behind me.
- 23 Q Okay. And until Mr. Sherfield's car come in behind you
24 you had no -- you didn't have any plans with Mr. Hall to get
25 more drugs later that afternoon, right?

Melvin DuBois - Cross-examination
by Mrs. Butler

1 A I always had plans to get drugs from him that
2 afternoon. It was an everyday thing.

3 Q But you hadn't specifically talked about the plans that
4 afternoon?

5 A I told him I'd call him later.

6 Q Until you -- until Officer Sherfield came in the picture
7 and you called him?

8 A Before Officer Sherfield stopped me I told Doug Hall,
9 when I bought the \$20 rock right then, that I'd call him
10 later on.

11 Q Okay. Do you usually tell him after every transaction
12 I'll call him later on?

13 A No, it's only when I want to buy later on. I mean that
14 was, that was my intention to buy from him later that day.

15 Q But you don't know if he was gonna have something later
16 that day or not though, did you?

17 A Every time I would call him in the past he's always had
18 something, had something. He's even met me at two o'clock
19 in the morning on a skinny, on a, on a night.

20 Q So, when you bought \$20 worth of -- when you paid him
21 \$20, is that street value of the drugs that you purchased
22 that day?

23 A I don't know, ma'am.

24 Q Did you get what you think, as a drug user, what you
25 think \$20 is worth that day?

Melvin DuBois - Cross-examination
by Mrs. Butler

1 A I don't know what the weight was.

2 Q Is that what you normally get for \$20?

3 A Yeah.

4 Q Okay.

5 A It seemed like it was a fair piece for what I paid.

6 Q Okay. So, you, you got what you expected for \$20 at
7 that time, is that right?

8 A Yeah.

9 Q And, Mr. DuBois, had you, had you had some other
10 set-ups going on that day?

11 A No.

12 what do you mean set-ups?

13 Q Did you buy from some other people that day?

14 A No, that's the first thing I did. That was -- no, no,
15 hu huh.

16 Prior to Doug Hall, prior to me buying that \$20 piece
17 from Doug Hall?

18 Q Right.

19 A No.

20 Q What about after?

21 A After was -- after Mr. Sherfield stopped me and then I
22 asked him what I could do -- I mean after he searched me and
23 found that \$20 rock in my pocket, then I asked what I could
24 do to get out of this, and that's when he put me in his car
25 and took me down to the task force center.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 Q And what did he tell you you could do to get out of it?

2 A Told me to think about it. He took me home and he --
3 let me back up. If I could do three crack buys, buy/bust
4 that day, that very day.

5 Q who did you do the other ones from?

6 A Ma'am?

7 Q who did you do the other buy/busts with?

8 A From---

9 SOLICITOR ANTHONY: I object to the relevance of who
10 the identity of the other two.

11 THE COURT: I overrule the objection.

12 Q who did you do the other buy/busts with?

13 A with an individual over there that lives in the project.
14 Two other people.

15 Q who did -- who, who were the two other people that you
16 did them with?

17 A I don't know his name, one of them's name. I know
18 it -- well, it was -- well, it was just two other people
19 that I know, that I know who lived at.

20 Q Did you contact the people -- did Sherfield tell you
21 who to contact or did you pick it?

22 A No, it's people I knew. People I had done this before.

23 Q Did you -- what about the gift cards that you owed
24 money for?

25 A Gift cards?

Melvin DuBois - Cross-examination
by Mrs. Butler

- 1 Q Were there some gift cards that you owed Mr. Hall for?
- 2 A Hu huh. (Negative).
- 3 Q Did you owe Mr. Hall's wife for a gift card?
- 4 A Hu huh. (Negative).
- 5 THE COURT: Try to say no or yes.
- 6 THE WITNESS: No. no.
- 7 Q Had Mr. Hall given you a gift card?
- 8 A No.
- 9 Given me -- me given -- no.
- 10 Q You had given him one?
- 11 A No.
- 12 Q You don't know anything about any gift cards---
- 13 A No.
- 14 Q ---that same day?
- 15 A No, I don't.
- 16 Q After -- when we saw the video, it, it wasn't all the
- 17 way at the end, what were you doing?
- 18 What did you do after the video stopped where we
- 19 stopped at where you were sitting in your car?
- 20 A I went straight back to the task force center, and then
- 21 I waited in the vehicle until Jimmy Johnson got there.
- 22 Q So, were you still sitting in your car at the location
- 23 when the officers pulled up?
- 24 A Yes.
- 25 Q How many, how many cars pulled up before you had left?

Melvin DuBois - Cross-examination
by Mrs. Butler

1 A Jimmy Johnson was the first one, and then I just gave
2 him the audio/video equipment and the money. He searched me
3 and then I went inside.

4 MRS. BUTLER: I beg the Court's indulgence.

5 (Pause.)

6 MRS. BUTLER: That's all the questions, Your Honor.

7 SOLICITOR ANTHONY: I don't, I don't have any redirect
8 as to the proffer.

9 THE COURT: Okay. You can go back to where you, where
10 you were waiting.

11 Call your next witness.

12 SOLICITOR ANTHONY: That would be our proffer at this
13 time.

14 THE COURT: Do you have any witnesses you want to call,
15 Mrs. Butler?

16 MRS. BUTLER: No, sir, Your Honor.

17 THE COURT: All right. I'm still a little in the dark
18 about the two, the two, whether or not there should be two
19 or four indictments based on that evidence. I, I -- but
20 anyway, as far as the -- be glad to hear your arguments real
21 quick on the admissibility under 404(b).

22 SOLICITOR ANTHONY: well, as to 404(b), and I can -- I
23 didn't, I didn't realize the Court was wanting the proffer
24 on the four indictments. I would probably need to call one
25 more witness to, to---

Brian Bailey - Direct examination
by Solicitor Anthony

1 THE COURT: I got to make a decision on it.

2 SOLICITOR ANTHONY: I'm sorry?

3 THE COURT: I got to make a decision on it.

4 SOLICITOR ANTHONY: Okay.

5 THE COURT: I might could do it during the trial, but I
6 think it---

7 SOLICITOR ANTHONY: Well---

8 THE COURT: I think it would be prejudicial to the
9 defendant if we start out the trial with four indictments
10 and then it ends up with only two. So, I think we ought to
11 dispose of it.

12 SOLICITOR ANTHONY: All right. I'll go ahead and
13 proffer Captain Bailey as well.

14 THE COURT: All right.

15 BRIAN BAILEY, being first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR ANTHONY:

19 Q Would you state your name please?

20 A Brian Bailey.

21 Q And, Mr. Bailey, how are you employed?

22 A I'm employed as captain with the Public Safety
23 Department.

24 Q And how long have you worked for Public Safety?

25 A Over 17 years.

Brian Bailey - Direct examination
by Solicitor Anthony

1 Q In what department there are you captain over?

2 A Investigations.

3 Q All right. Were you working on May 18th, 2010?

4 A I was.

5 Q And did you become involved in a narcotics operation
6 that afternoon?

7 A I did.

8 Q How did you get involved in it?

9 A I was called by Investigator Mickey Parker, who works
10 with the City of [REDACTED], but he works along with the Sheriff's
11 Office through the drug task force, and he advised me that
12 they intended on doing a, what we call a buy/bust and that he
13 needed some help from myself and other officers if we were
14 available.

15 Q And what was the plan?

16 How, how did you become involved in the buy/bust?

17 A We just went down to the Sheriff's Office task force
18 office and basically the, the plan was that the informant
19 would purchase at a certain location, and we were just to
20 stay back and converge upon the completion of the deal.

21 Q Okay. All right. And at some point did you think it
22 necessary for you to begin trying to converge somewhere?

23 A Yeah, originally it -- the, the drug deal was suppose
24 to be in another location, and we were sort of sitting back
25 and listening to the radio frequency, frequency that we

Brian Bailey - Direct examination
by Solicitor Anthony

1 used, and I ended up meeting the informant and Mr. Hall in
2 my vehicle.

3 Q And when you saw the informant, the vehicle the
4 informant was in with Mr., Mr. Hall, what did you do?

5 A I was under the impression that maybe the deal had, had
6 been made. I called I think it was Sergeant Johnson and
7 asked him if, if it had been made and do I need to proceed
8 on. As I proceeded on to the road where they were, Mr. Hall
9 got into the vehicle. He began to trot off a little bit. I
10 advised that he was beginning to run, do you want me to go
11 ahead and make the stop, and then I got out of my vehicle and
12 pursued him.

13 Q And when you got out of your vehicle and started
14 pursuing him, where did Mr. Hall go?

15 A Mr. Hall run in -- he, he got out of the vehicle and
16 then he run into the front door of a house on Hamlet Street,
17 but just as he run through that front door, the people on
18 the inside begin to yell at him, ask him what he was doing,
19 and then he run straight back out, and then he run along
20 down to the left side of the house, and he went down this
21 pathway between a house and the car. And as he was running,
22 and as we, I got around to him, he appeared to me the way he
23 was running he had flung out his right hand and I thought
24 maybe he had thrown something, and then shortly after he got
25 clear of the home, he just stopped and then he just flung

Brian Bailey - Direct examination
by Solicitor Anthony

1 his hands and up and said, you know, I give up. And, at
2 that point, Investigator John Beatty come up and handcuffed
3 him and Sergeant Johnson come up and I said I believe he
4 thrown something back here at the house, and I walked back
5 up and there laying in that pathway between the car and the
6 home was a little baggy of crack. I pointed it out to
7 Johnson and that was pretty much my involvement.

8 Q And was a baggy of crack located where you saw him,
9 where it appeared he had been, where it would appear that he
10 was throwing something?

11 A Yeah, it was just me and -- they was nobody else there.

12 Q Okay. And, and the crack was in that area where you saw
13 him make the throwing motion?

14 A Yes, sir.

15 Q Okay. All right. And then that crack was recovered by
16 Sergeant Johnson?

17 A Yes.

18 Q All right. Thank you.

19 That's, that's everything for the proffer for Captain
20 Bailey.

21 MRS. BUTLER: No questions.

22 THE COURT: Thank you.

23 Anything else?

24 SOLICITOR ANTHONY: Your Honor, we have three still
25 frame photos from the, the video that I would call -- if --

1 I would call Sergeant Johnson just to authenticate them. I
2 don't know if there would be any objection for the Court
3 considering them for the purpose of the, the proffer, but if
4 there is no -- if the Court wants to see them, I would
5 recall Sergeant, Sergeant Johnson to authenticate them if
6 there's an objection to them just being considered by the
7 Court for the proffer.

8 MRS. BUTLER: There is no objection to the Court
9 considering them for purposes of the proffer.

10 SOLICITOR ANTHONY: Then I don't have any other, I
11 don't have any other evidence for the proffer.

12 MRS. BUTLER: Can I see the ones that you---

13 SOLICITOR ANTHONY: These -- all right.

14 THE COURT: All right. Mrs. Butler.

15 MRS. BUTLER: Yes, thank you, Your Honor. We would ask
16 the Court to rule on the four indictments. We would prefer
17 that it would be done in that order, to rule on the four
18 indictment so as to know which charges Mr. Hall is going
19 forward on today before going any further if the, if the
20 Court's so inclined.

21 THE COURT: All right. Mr. Anthony, tell me what, why
22 you, the State's entitled to go forward on both sets of
23 indictments.

24 SOLICITOR ANTHONY: Well, as, as is clear from the, the
25 tape, there's a conversation that goes on between the

1 informant and Mr. Hall about Mr. Hall selling crack to the
2 informant and, and that constitutes an attempt to
3 distribute. There's never, there's never a completed
4 distribution, but there is enough activity on Mr. Hall's
5 part that a jury could find, beyond a reasonable doubt, that
6 he is made an overt act and taken substantial steps to
7 consummate a drug deal. So, that's, that's what intent to
8 distribute is.

9 THE COURT: What, what does that concrete, or whatever
10 you said, concrete step to sell the drugs?

11 SOLICITOR ANTHONY: The telling the CI where to go,
12 that he, he -- there was a call made. There was an
13 arrangement made for the CI to pick him up. The CI
14 testified and he's heard on the tape receiving directions
15 from Mr. Hall as to how to pick him up. Once he picks him
16 up, Mr. Hall's telling him where to go. The CI tells him
17 how much money he has available. The CI tells him to let
18 him out and park down there. And, so, certainly the jury
19 could find that that whole course of dealing between the two
20 of them is an attempt on Mr. Hall's part to distribute.

21 THE COURT: Well, I follow that, but wasn't part of
22 that also be, require that he possess the drugs, and isn't
23 there some evidence that he had a bag of something?

24 In fact, I can't tell what these pictures show to be
25 honest with you, but the testimony was that he had a, he,

1 Mr. Hall, had a bag of crack in his hand.

2 SOLICITOR ANTHONY: Well, the, the PWID should be
3 treated as a separate crime because he didn't actually -- he
4 didn't distribute the quantity of drugs he possessed. He
5 just possessed that quantity. So, he could of not, he could
6 of not had drugs on his person at all. There could be,
7 there could be no drugs. There -- the evidence could be
8 that he never had drugs on his person, but he could -- we
9 could still and we should still be able to go forward on
10 this as an intent to distribute. The crime that arises from
11 the drugs being on his person is basically a separate crime.
12 The PWID comes from him having a quantity of dope, having a
13 quantity of crack and our theory would be intending maybe to
14 sell that quantity, but wanting to get some more, getting
15 out of the vehicle to get some more---

16 THE COURT: What evidence is there?

17 You said that several times.

18 What evidence is there he got out and wanted to get
19 more?

20 SOLICITOR ANTHONY: Because he didn't have \$50 worth.
21 I mean the evidence will be that he had about \$30 worth of,
22 about \$30 worth of crack cocaine.

23 THE COURT: That evidence, that evidence is based on
24 the recovery of any particular---

25 SOLICITOR ANTHONY: Yes, sir, based on the recovery of

1 a quantity of about \$30. The jury could find that he
2 intended to distribute the quantity that he had, but that
3 he, he needed to get out and get more so he could make a \$50
4 sale to the informant.

5 THE COURT: Mrs. Butler.

6 MRS. BUTLER: Your Honor, it appears that the State is
7 trying to prove that the, the defendant possessed the drugs
8 by proving that he attempted to sell the drugs. Your Honor,
9 the statute and the case law clearly says when it's a, when
10 it's all from the same act, if it's not a separate act, then
11 it should be counted as one and the same. If not, Your
12 Honor, when we come down and we charge somebody with
13 possession of drugs, and then we charge them with
14 distribution of drugs, they obviously had to possess the
15 drugs in order to distribute the drugs. But we can't go
16 trying them on both charges. We have to decide -- the State
17 has to decide which charges they want to go forward on, and,
18 and that's certainly the case here. The State, I mean,
19 according to, according to the case law---

20 THE COURT: Tell me that -- which case is that again?

21 MRS. BUTLER: State versus Brown. I'm sorry, Your
22 Honor. I didn't have, privy to a computer on, on the lunch
23 break. But it's 319 SC 400.

24 THE COURT: I didn't look at that over lunch. Well,
25 under State versus Brown, I find that this is basically a

1 single act, and, therefore, the state, I find, can only go
2 forward on one set of the indictments. That's their choice.
3 Not mine. But this fact pattern is, is so woven together
4 that I think that really amounts to one continuing event.
5 And, so, I will require the state to elect between the two,
6 either the attempt or possession with intent to distribute.

7 SOLICITOR ANTHONY: Your Honor, I -- obviously I don't
8 want to belabor the argument, but I would just ask the Court
9 to think, to consider the fact that if he hadn't had any
10 drugs at all on his person---

11 THE COURT: But he did. I mean that's the key. I mean
12 I think the key -- I follow what you're saying. If he had
13 not had any drugs on him, and then had gone and picked some
14 up, and the---

15 SOLICITOR ANTHONY: But the, the, dilemma -- and I
16 think the reason we ought to be allowed to go forward is the
17 jury might find that he didn't, but I'm sure their defense
18 is gonna be that we hadn't proved that he did have any crack
19 on him.

20 THE COURT: Well, you can choose the second. I mean
21 I'm not telling you you got to go forward on the attempt.
22 If, if you think there's enough circumstantial evidence for
23 a typical throw down case, if you think you can get a
24 conviction on the throw down, on the, on the possession with
25 intent to distribute, you've got the attempt to distribute I

1 would think, at least arguably, from what happened in the
2 car, and then if you can connect him with the drugs, you've
3 tied those two together. But I find it's just one act. I
4 mean that's a continuous interrelated act, and I find that
5 it constitutes one of -- I'm not asking you to be happy with
6 me or agree with me.

7 SOLICITOR ANTHONY: I understand. I understand. Just
8 so I understand your, your ruling, if you, you're saying
9 that since -- it's, it's not relevant to you whether he had
10 crack or not is what I'm hearing.

11 THE COURT: Well, it is. I think that is very
12 relevant. Your testimony is that, at the time he attempted,
13 he had drugs in his possession. He possessed drugs at that
14 time and you say he possessed it with intent to distribute
15 it, and then, then you're saying he possessed drugs or he
16 intended to distribute them, but that, based on what
17 happened just a few minutes or seconds later, that he could
18 be charged with a second offense for possessing those same
19 drugs, based on your theory they're the same drugs, that he
20 had in the car.

21 Let's go forward with the trial. I made my ruling. I
22 mean the jury hasn't been impaneled. If you want to appeal
23 it, you're -- this may be one of those things you can appeal
24 without a trial if you want to think about appealing it if
25 you feel that strongly about it. I certainly will give you

1 the opportunity to go forward on appeal at this time.

2 SOLICITOR ANTHONY: Yes, sir, the one -- well, I think
3 the only other issue pending would be the Lyle issue.

4 THE COURT: It would---

5 SOLICITOR ANTHONY: But we'll---

6 THE COURT: We have to take care of this one first.

7 SOLICITOR ANTHONY: Yes, sir. Well, I think the State
8 would ask the Court to rule on the Lyle issue before we're
9 required to elect the charge because the charge we go
10 forward on might have some -- the Court's ruling on the Lyle
11 issue might have some bearing on the charge we go forward
12 on.

13 THE COURT: Well---

14 MRS. BUTLER: Your Honor, the defendant has the right
15 to know what he's going to be charged with. In the process,
16 he has the right to know what he's up against. He's not
17 been arraigned on the, on the new indictments as of yet.
18 So, I'm---

19 THE COURT: Well, that might be another problem. He's,
20 he's not, not been arraigned on which of the new
21 indictments?

22 MRS. BUTLER: The attempted to distribute and the
23 attempted to distribute within proximity.

24 SOLICITOR ANTHONY: They never requested arraignment.
25 They got copies of the indictment and I, and I mean I'm

1 gonna tell them -- obviously I'm gonna elect a charge, but I
2 don't think that precludes the Court from ruling on the Lyle
3 issue before I elect.

4 THE COURT: Well, I'll go ahead, I'll go ahead and rule
5 on the Lyle issue because I'm seeing that as one act. So,
6 the Lyle I think applies, either applies or it doesn't. I
7 find, by clear and convincing evidence, that the defendant
8 was involved with Mr. DuBois in a drug transaction on the
9 morning of May 18th, 2010. I find the evidence is -- the
10 transaction is admissible as 404(b) evidence under South
11 Carolina Rules of Evidence as it constitutes a crime of
12 illegal activity crime. That is, illegal activity,
13 distribution of crack cocaine.

14 As the events in the morning show the existence of a
15 common scheme or plan, that is distribution of crack cocaine
16 and intent. I find the probative value of the, in the
17 404(b) analysis, analysis, under that analysis, I find that
18 the probative value outweighs any prejudicial value. I find
19 that the proximity in time is minimal especially in light of
20 the decision in State versus Gore where there were several
21 days between the transactions. This has a matter of hours.

22 So, I will allow the morning transaction in under
23 404(b).

24 SOLICITOR ANTHONY: And that would, that would be in
25 regards to whichever charge the State elects to proceed on?

1 THE COURT: Yes.

2 SOLICITOR ANTHONY: Thank you, Your Honor.

3 THE COURT: Okay. The reason is because each of the
4 charges you -- the morning, what we're talking about is the
5 distribution. The probative value of, of that as to the
6 current offenses are that he was either attempting to
7 distribute or he was possessing to distribute. So, I find
8 that, under the Lyle evidence, is probative as to either.
9 okay.

10 SOLICITOR ANTHONY: Would the Court allow me a brief
11 recess just to decide which charge, and then I'll be ready
12 to go forward?

13 THE COURT: We'll take a, we'll take a short break.
14 we -- it looks like all we're gonna be able to do with the
15 jury today is do opening statement, but that's all right.
16 too.

17 But yeah, we'll take a short break. About ten minutes.

18 SOLICITOR ANTHONY: All right. Thank you, Your Honor.

19 MRS. BUTLER: Thank you, Your Honor.

20 (WHEREUPON, a short recess was taken at this time.)

21 THE COURT: State ready to proceed?

22 SOLICITOR ANTHONY: Yes, sir.

23 THE COURT: All right. You made a decision on the --?

24 SOLICITOR ANTHONY: Yes, sir, we're going to go forward
25 on the PWID and PWID proximity indictments.

1 THE COURT: Which, which numbers are those?

2 SOLICITOR ANTHONY: That is 2010-44-887 and 888.

3 THE COURT: All right. So, you're not proceeding on
4 2011-81 or 411?

5 SOLICITOR ANTHONY: No, sir.

6 THE COURT: Okay. All right. Anything else before we
7 get the jury in?

8 MRS. BUTLER: Just to make sure, Your Honor, there's
9 two that he's not proceeding on.

10 You got both of those that he's not proceeding on?

11 THE COURT: Yeah, 2011-411 and 2011-18.

12 MRS. BUTLER: Yes, sir, thank you.

13 THE COURT: Is that what you got?

14 MRS. BUTLER: I think so, yes, sir.

15 THE COURT: All right. Bring in the jury.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: Mr. Garner, you are not the alternate. You
19 are on the jury. I excused Mr. Smith. If you went to
20 Carowinds, you'd have to buy a ticket to ride one. Here you
21 get to ride one for free.

22 All right. If all of you now will stand. The clerk
23 will administer the oath.

24 (WHEREUPON, the jury was placed under oath at this
25 time.)

1 THE COURT: All right. Thank you. You may be seated.

2 First, I apologize. I -- we, we had some matters I
3 told you we had to take up. It took quite a bit longer than
4 I thought. We have gotten rid of some matters that would of
5 had to chop the trial up had we taken them up here, there,
6 and yonder during the trial. So, we hopefully have got in
7 the position where we can just go forward smoothly.

8 In just a minute the attorneys may, if they wish, they
9 don't have to, come before you to make what are called
10 opening statements. They will outline for you or give you a
11 blueprint of the trial. They're not witnesses. So, they're
12 not testifying. They are not arguing their case. This is
13 not the time to do that.

14 At a later point in the trial they will have an
15 opportunity to present what we call closing arguments. At
16 that time they will, of course, be trying to convince you,
17 based on the facts and the law, the verdict that should be
18 rendered.

19 I remind you that, under our law, anyone charged with
20 an offense is presumed innocent of the charge against them.
21 Mr. Hall has entered a plea of not guilty and he is entitled
22 to that presumption of innocence. He need not prove his
23 innocence. The state must prove his guilt beyond a
24 reasonable doubt before you as the trial jury in this case
25 could convict him.

1 I have several jobs in this case. One is -- I'm the
2 logistical person. I make sure we take breaks. I decide
3 when it's time to quit for the day, make sure you can see
4 and hear. I have the second job, which is rule on questions
5 of evidentiary matters. That is whether certain evidence
6 can be admissible or not and I've spent some time, while you
7 were out, going ahead and ruling on some evidentiary
8 questions so we wouldn't have to break up the trial with
9 them.

10 My third job is I am the sole judge of the law in this
11 case. I'm giving you the legal principles now, and during
12 the trial I may give you legal principles. At the end of
13 the trial I will give you a precise and comprehensive charge
14 on the law that you are to apply to the facts as you
15 determine the facts to be. You cannot and do not infer from
16 anything I say or do during the trial as indicating an
17 opinion of mine on the facts. Our law does not allow a
18 trial judge to formulate or express to a jury any opinion on
19 the facts. That is solely your job.

20 It's solely your job, as trial jury in this case, to
21 examine the evidence and to give to the evidence the weight
22 and the truth you believe it should have. In doing this,
23 you may believe one witness over several witnesses as
24 opposed to one. You may believe all, part, or none of the
25 witness' testimony.

1 In analyzing the evidence, use your common sense, your
2 sense of logic, your sense of reason. Use your experiences
3 in life. As judges of the facts, you must determine the
4 credibility, judge the credibility, the believability of
5 those who testify. In judging credibility, use the things I
6 already talked about. Use the things that you find in your
7 day-to-day life indicating truthfulness in a person, and you
8 can look at witness' demeanor or how they act on the stand.
9 Are they hesitant or straightforward in responding to
10 questions. Consider the opportunity a witness had to know
11 those things to which they testified. You can consider any
12 bias or prejudice a witness may have. Excuse me. Once you
13 determine the true facts, you apply the law and you'll be in
14 a position to return a verdict that speaks the truth.

15 You don't need to take notes. If you can't hear or you
16 can't see, let me know, cup your ear, and I know Mr., excuse
17 me, you have some hearing issue. And, so, I want to make
18 sure and ask that you make sure everybody speaks us. If you
19 can't see, give me a nudging gesture and I'll try to correct
20 that. If you need a break, just raise your right hand, and
21 no questions asked, we'll take a break.

22 I extend that to counsel and Mr. Hall.

23 We'd like to move the case along now that we are
24 getting into the meat of it, but we're not in such a hurry
25 that we won't take a break if someone needs to take a break.

1 THE COURT: Counsel.

2 SOLICITOR ANTHONY: Thank you, Your Honor.

3 Good afternoon.

4 My name is John Anthony. I'm the deputy solicitor here
5 in [REDACTED] and I'm the man that will be representing the State
6 in the trial of this case.

7 You know, one funny thing about people that I'm sure
8 all of y'all have found, people like things that are bad for
9 them. You know, for some people it's, it's eating sweets.
10 For some people it's drinking. There's all kinds of things
11 that people like to do that's just, you know, aren't good
12 for them or at least aren't good for them in excess, and,
13 unfortunately, some people have a, a problem that's bigger
14 than just liking to do things that are more life-style
15 problems.

16 Some, some people like to use illegal drugs, and one
17 thing about illegal drugs, and, and really anything else, is
18 when they're people who want to purchase and use illegal
19 drugs, they'll be people who want to sell illegal drugs.
20 Where there's a buyer there's always a seller.

21 Well, this creates a problem for law enforcement people
22 because drugs are different. Drug crimes are different than
23 most crimes. If somebody gets robbed, they're gonna call
24 the police and tell them they've been robbed or if somebody
25 gets assaulted or somebody gets beat or somebody's house

1 gets broken, broken into, they're gonna call the police and
2 report that because that's a bad thing.

3 But people who want to buy drugs, they're not gonna
4 call the police and report that because that's what they're
5 out trying to do. They want, they want some drugs and
6 they're not gonna report that to law enforcement.

7 So, the way law enforcement goes about enforcing drug
8 laws is they have to find people. They have to find people
9 to go out and buy drugs for them to enforce laws against
10 people who sell drugs, and normally those people are people
11 who like to buy, sometimes like to buy drugs themselves,
12 like to buy drugs for their own personal use, and that's
13 basically what happened in, in this case because on May 18th
14 of last year there was a man named Melvin DuBois who was
15 caught right after he had bought drugs from the defendant in
16 this case, Doug Hall, and Mr. DuBois got stopped by the
17 police. There was some crack found on his person, and he
18 asked the police what he could do to not have to go to, to
19 jail and be arrested for being found with this rock of crack
20 on his person, and the sheriff's deputies that stopped him
21 told him well, what we'd like for you to do is help us catch
22 the guy who sold you the drugs.

23 well, that man was Doug Hall. So, that very same day,
24 just later on that afternoon, there were a couple of
25 conversations between Mr. DuBois and Mr. Hall, and there was

1 an arrangement made between Mr. DuBois and Mr. Hall for Mr.
2 Hall to sell Mr. DuBois \$50 worth of crack cocaine, and the
3 police knew about this, and the intention of the police was
4 to do what they, what they call a buy/bust where they do a
5 buy, and then right after that, the person who makes the
6 sale gets arrested.

7 Now, what happened was, normally narcotic cases in
8 Union County are worked by a couple of deputies who work for
9 the Sheriff's Office and an officer with [REDACTED] Public
10 Safety. Because this was gonna be a situation where
11 somebody might run, other officers might be needed, there
12 were some additional public safety officers who were asked
13 to become involved in this operation.

14 So, Mr. DuBois, went -- he picked up Mr. Hall.
15 Mr. Hall had a small amount of crack on him, but he, he
16 needed some more to fill Mr. DuBois offer, order. So, he
17 told Mr. DuBois, he directed him to Hamlet Street and Mr.
18 DuBois drove to Hamlet Street. He let Mr. Hall out right
19 close to a house on Hamlet Street. Mr. Hall got out. He
20 told Mr. DuBois just basically to park down there. Mr.
21 DuBois was just gonna cut the block, come back, and pick up
22 Mr. Hall and buy the crack.

23 Well, there was an officer with the city police,
24 Captain Brian Bailey, who was part of this group that had
25 been assembled to try and make the, the arrest after the

1 sale was made, and what all -- what Captain Bailey did was
2 he was under the impression, when Mr. Hall got out of the
3 car, that the sale had already been made. So, he pulled on
4 Hamlet Street, and, at that point, Mr. Hall saw him and
5 Mr. Hall started running and Captain Bailey thought the sale
6 had already been accomplished, and he was going to arrest
7 Mr. Hall.

8 Well, he saw Mr. Hall run into the house there on
9 Hamlet Street. Mr. Hall ran in the house real quickly. He
10 ran right back out. He started running down the side of the
11 house and Captain Bailey saw Mr. Hall make a throwing motion
12 with his hand.

13 Well, by this time there were a couple other city
14 officers who had come to the scene. Mr. Hall got into the
15 backyard of that residence and then just gave, just
16 surrendered to the city officers. They took him into
17 custody and Captain Bailey and Sergeant Johnson, with the
18 Sheriff's Office, they started looking where Captain Bailey
19 had seen that throwing motion, and where Captain Bailey had
20 seen the throwing motion, they found a baggy with crack
21 cocaine.

22 So, that's basically the evidence that we're gonna have
23 in this case. Mr. Hall is charged with what's called
24 possession with the intent to distribute crack cocaine.
25 He's charged with having crack cocaine with the intent to

1 distribute the crack cocaine that he possessed and with
2 intending to go secure some more crack cocaine. The
3 evidence will show his intent was to secure some more crack
4 cocaine so he could sell Mr. DuBois the, the full \$50 worth
5 of crack Mr. DuBois was asking for.

6 So, he's also charged with possession of crack cocaine,
7 or I'm sorry, possession with intent to distribute crack
8 cocaine within the vicinity of a park because this occurred
9 right across from the James Moore Ball Field on Hamlet
10 Street in [REDACTED].

11 So, when we start putting up our evidence in this case
12 in the morning you're gonna hear from Mr. DuBois. You're
13 gonna hear from the county deputies that arranged this sale.
14 You're gonna hear from Captain Bailey who saw Mr. Hall
15 running there at the house, and you'll hear from the SLED
16 agent who, who tested the, the substance that was found and
17 determined that it was crack cocaine, and that's, that's
18 essentially gonna be the case we'll present. Mr. DuBois
19 will testify. We'll play a tape of what went on between
20 Mr. Hall and Mr. DuBois in the, in the vehicle where Mr.
21 DuBois picked him up and drove him to Hamlet Street. You'll
22 be able to see that, and we believe that, once you've seen
23 all the evidence in this case, that you will find that
24 Mr. Hall is guilty, that he's committed the crimes of
25 possession with intent to distribute crack cocaine and that

1 he's committed the crime of possession with intent to
2 distribute crack cocaine within the proximity of a park.

3 Thank y'all very much.

4 THE COURT: Mrs. Butler.

5 MRS. BUTLER: May it please the Court.

6 Thank you so much for your service. My name is Melinda
7 Butler. I'm the attorney for Mr. Hall. I represent him in
8 this case, and it's my duty and my honor to represent
9 defendants who are charged with crimes, to stand up before a
10 jury and, and present their case so that they can be heard
11 and their case can be determined in the light that it should
12 be determined in based on the 12 eyes that we have or 12
13 people that we have here.

14 If I can say to you first and foremost, if it weren't
15 for your, for your service here, for your willingness to
16 serve, then we couldn't go through with the trials and, and
17 adjudicate people, whether they're innocent or guilty of a
18 crime that they're charged with, and it would make -- I
19 would say our rights, as citizens, are very much watered
20 down if we couldn't have our right to a jury trial and have
21 folks like you determine the, the innocence or guilt. So,
22 thank you very much for your willingness to serve.

23 I have to, to ask you to, to ask you to think about
24 something for just a minute. You've always heard this
25 phrase tossed around, innocent until proven guilt. Heard

1 that.

2 well, you know, let me just talk to you about that just
3 a minute because that is so much important in our daily
4 life, but it's especially important as you sit in this jury
5 box, the 12 of you. It's your utmost duty to remember that
6 phrase, innocent until proven guilty.

7 Okay. And let me tell you how we, as just as regular
8 people everyday, we sometimes forget that, that people are
9 innocent until proven guilty. You know, if you, if you
10 looked at the news this morning or you read the newspaper
11 yesterday afternoon, and you saw where so and so was
12 arrested for beating, you know, CDV, he's arrested for
13 criminal domestic violence, and you say man, I can't believe
14 he did that, he's such a nice person.

15 well, what you just did, what you violated was that
16 innocent until proven guilty. You stripped it all the way,
17 and we, as normal people, do everyday. When we think that
18 thought after we read it in the paper and see that somebody
19 was arrested, and we automatically think I can't believe
20 they did that, then we've adjudicated them that they've
21 committed that crime just because they were arrested, and
22 that's not true. It's not true.

23 Just because somebody's arrested does not mean that
24 they've committed that crime. There might be lots of other
25 circumstances in that, and in this case you're gonna hear

1 some stuff. Mr. Hall, he's not a perfect person, and, and,
2 and you're gonna hear some stuff come out, and I'm not gonna
3 tell you what you're gonna hear cause I want you to hear it
4 firsthand from this jury box right here cause these people
5 are gonna see it and they're gonna testify and they're gonna
6 tell you what they want you to hear, but I want you, I want
7 you to think about this.

8 When the witness comes on the stand, think about their
9 position in this. Think about their interest in this.
10 What do they have to gain by seeing Mr. Hall convicted
11 of this charge?

12 The, the first one that I want you to think about is
13 that Mr. Melvin DuBois that Mr. Anthony's talked to you
14 about, the supposed confidential informant in this case
15 whose got, I think it was a, 24 pages of a rap sheet.

16 SOLICITOR ANTHONY: Objection. That's irrelevant.

17 THE COURT: Well, I sustain the objection at this
18 point. Don't go into that.

19 MRS. BUTLER: I want you to consider the interest of
20 Mr. DuBois as he testifies from this stand and, and the
21 interest he has in the outcome of this case here, and you
22 will hear that as it comes out. I'll bring it to, bring it
23 to your light at, through the questions that I ask, and I
24 want you to consider something else.

25 The, the words that Mr. Anthony just spoke to y'all

1 about this happened, this happened, this happened, and this
2 happened. Mr. Anthony was not present at any time during
3 this day that anything took place. So, I don't want you --
4 as the judge told you, that was not testimony. You cannot
5 believe anything that he said cause he's not, he's not a
6 witness. He's not testifying.

7 So, don't take what he just told you and believe
8 anything. You have to put it through this jury box first,
9 and you see what happened on this particular occasion after
10 putting it through the jury box. That's, that's pretty much
11 all I ask you in this case is if you'll just wait until the
12 end. You don't decide that Mr. Hall is guilty of anything.
13 until you've heard all the facts of this case come out and
14 there's some things, there's some things that will be
15 brought to your attention in the case that I want you to
16 consider when you, when you want to think that humanly
17 thought that we think when we read the newspaper and see
18 that somebody's arrested. When you want to think that
19 thought about Mr. Hall, I want you to go back and remember
20 what I asked you today.

21 He's innocent until proven guilty, and if you'll just
22 let him be that way until the end of that case. Every time
23 that thought crosses your mind, you say let's wait till the
24 end before we adjudicate this case, and that's exactly what
25 Judge Hayes is gonna tell you that you have to do. You

1 can't adjudicate the case until you've heard all the
2 evidence and that's all Mr. Hall asks. That's all I ask.
3 wait till you hear every bit of the evidence and then you
4 decide, as the 12 people, whether he's innocent or guilty of
5 this charge right here.

6 Okay. Thank you very much.

7 THE COURT: All right. Members of the jury panel, it's
8 been sort of a choppy day. It's five o'clock. So, we won't
9 start taking of testimony. We'll start back at 9:30 in the
10 morning. Please be here ready to go at 9:30 and we'll try
11 to start as promptly at 9:30 as we can.

12 So, have a pleasant evening. Keep in mind what I told
13 you about not discussing the case, not making up your mind.
14 Do not discuss the case with other people or expose yourself
15 to news coverage or doing research.

16 We'll see you back at 9:30. Have a pleasant evening.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Anything else in this trial for the
20 afternoon?

21 SOLICITOR ANTHONY: Well, I have just a couple things
22 that we can probably deal with this afternoon and not have
23 to deal with in the morning.

24 As to Mr. DuBois, I don't believe he has any
25 impeachable convictions.

1 THE COURT: Well, do you -- what impeachable -- well,
2 let me ask you, Mrs. Butler, you're the one that brought it
3 up.

4 MRS. BUTLER: And I apologize for that, Your Honor, in
5 the, in the opening remarks. Mr. DuBois has a very
6 extensive history from several different states.

7 THE COURT: Well, I don't want to know that.

8 MRS. BUTLER: Right.

9 THE COURT: My question was impeachable offenses under
10 the rule.

11 MRS. BUTLER: Your Honor, I think the only one, under
12 the rules, that will come in is the fugitive from justice
13 from 2004, September 24th, 2004, from Georgia unfortunately.

14 THE COURT: What do you have to say about that, Mr.
15 Anthony?

16 SOLICITOR ANTHONY: What page is that on?

17 MRS. BUTLER: Let's see. They are not numbered like --
18 it's easier to go from the back. It's the second page from
19 the back.

20 SOLICITOR ANTHONY: There's nothing -- I don't, I don't
21 even know that that's a crime and there's nothing showing
22 any kind of conviction beside that. So, that wouldn't---

23 THE COURT: Can I see it?

24 SOLICITOR ANTHONY: Yes, sir.

25 THE COURT: Keep in mind it has to be a conviction or a

1 plea. It does say 2004, Fulton County Sheriff's Office, it
2 says charged fugitive from justice felony. Got State
3 offense Code, 4902. That's in Florida it looks like, Fulton
4 County. It looks likes arresting officer was Georgia,
5 Fulton County, Georgia, but the charge was fugitive from
6 justice from Florida. But that's just the charge. It looks
7 like an arrest. September 24, '04, but it doesn't show a
8 disposition.

9 MRS. BUTLER: I think that Your Honor is right. I'm
10 not seeing a disposition.

11 THE COURT: All right. So there would be no
12 impeachable. You can have this back.

13 SOLICITOR ANTHONY: Thank you.

14 THE COURT: What else?

15 SOLICITOR ANTHONY: The only other matter I have is
16 Mr. Hall, I did neglect to mention he has a State level
17 conviction in 2009 for possession of crack cocaine third
18 offense, and I would, would ask, if he testifies, just to be
19 allowed to impeach him in that way, in the way the Court's
20 allowing me to impeach him with the other offense.

21 THE COURT: It sounds like that falls under the rules.

22 MRS. BUTLER: Would that be impeaching if Mr. Hall is
23 asking, if he's been convicted of a felony?

24 THE COURT: Yes, ma'am.

25 MRS. BUTLER: Then it wouldn't be a mention that it was

1 a felony related to drugs?

2 THE COURT: Yes, ma'am.

3 MRS. BUTLER: Okay. That's fine. I'm not fine with
4 it, but I understand the court will have to rule that way.

5 SOLICITOR ANTHONY: That's all I have.

6 THE COURT: Mrs. Butler, anything else this afternoon?

7 MRS. BUTLER: No, sir, we don't have anything else this
8 afternoon.

9 THE COURT: 9:30 in the morning.

10 MRS. BUTLER: Thank you.

11 SOLICITOR ANTHONY: Thank you.

12

13 (WHEREUPON, Court was in recess for the evening.)

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1 Wednesday, April 6th, 2011

2
3 THE COURT: State ready?

4 SOLICITOR ANTHONY: Yes, sir.

5 THE COURT: Defense ready?

6 MRS. BUTLER: Yes, sir.

7 THE COURT: Bring in the jury.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE COURT: Good morning.

11 Call on counsel to proceed.

12 SOLICITOR ANTHONY: Thank you, Your Honor.

13 We'd call Lieutenant Sherfield as the first witness.
14 He's just right outside.

15 JOHN SHERFIELD, being first duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR ANTHONY:

19 Q State your name please.

20 A My name is John Sherfield.

21 Q And, Mr. Sherfield, how are you employed?

22 A I'm a lieutenant employed with the [REDACTED] County
23 Sheriff's Office assigned to narcotics investigation.

24 Q How long have you worked for the Sheriff's office?

25 A About 18 and a half years.

John Sherfield - Direct examination
by Solicitor Anthony

1 Q And how long have you been in the narcotics
2 investigation area of the Sheriff's Office?

3 A A little over ten years.

4 Q Were you working in that capacity back in May of last
5 year?

6 A Yes, sir.

7 Q All right. I want to take you back now to May 18 of
8 last year.

9 Did you come into contact with Melvin DuBois on that
10 day?

11 A Yes, sir.

12 Q Okay. And approximately what time of the day was it,
13 was it when you met Mr. DuBois?

14 A If I recall correctly, it was around maybe eleven
15 o'clock, shortly before noon.

16 Q Where did you see Mr. DuBois?

17 A On [REDACTED] here in the City of [REDACTED].

18 Q And when you saw him, what, what did you do?

19 A I began watching him. The reason I was watching Mr.
20 DuBois, I, I knew him. I worked narcotics. I knew he had a
21 problem with crack cocaine, and I knew that he lived on the
22 northern side here in the City of [REDACTED] up on Catherine
23 Street. And when I seen him walking, he was walking south
24 Church Street down by Grace Church walking south heading
25 back toward Dixie Curb. I thought it was probably unusual

John Sherfield - Direct examination
by Solicitor Anthony

1 for him to be down there. So, I kind of circled the block
2 and just kind of watched him to see where he went and who he
3 met with.

4 Q Did you see Mr. DuBois make contact with anybody else?

5 A Yes, sir, I did.

6 Q Who did you see him make contact with?

7 A The defendant, Doug Hall.

8 Q And what interaction did you observe between the two of
9 them?

10 A I seen Mr. DuBois walk down [REDACTED] and
11 then he turned left walking into the apartments there at [REDACTED]
12 [REDACTED]. When he went into the parking lot, I
13 seen that he had a brief meeting with the defendant,
14 Mr. Hall, and I seen him walking away from each other and
15 Mr. DuBois departed from the parking lot and then begin
16 walking back north towards Piggly Wiggly on South Church
17 Street.

18 Q So, after you saw this conversation between Mr. DuBois
19 and Mr. Hall, what did you do at that point?

20 A I drove up next to Mr. DuBois, got in the car, and
21 asking him to, to stop. I told him I needed to talk to him.

22 Q And what eventually happened as you dealt with Mr.
23 DuBois?

24 A I asked him, I said, well, Melvin, what are you doing
25 down here. He said I'm just walking. I said have you

John Sherfield - Direct examination
by Solicitor Anthony

1 bought any crack. He said no and I asked him, I said, do
2 you mind if I search you. He said no, go ahead, and when I
3 searched him I found a quantity of crack cocaine in his
4 pants pocket.

5 Q And while you were dealing with Mr. DuBois, did you see
6 Mr. Hall again?

7 A Yeah, when I, when I was there talking with Mr. DuBois,
8 I, I was kind of facing back toward Dixie, Dixie Curb when I
9 was talking with him. I seen the defendant, Mr. Hall, walk
10 up to the edge of the road from the apartment complex up to
11 [REDACTED]. And when he saw me, he turned around
12 and ran back down into the apartment complex.

13 Q After you had found the crack on Mr. DuBois, what was
14 the next thing that happened in your dealings with him?

15 A We talked a minute and he said he really didn't want to
16 do a whole lot of talking on the side of the road. Asked me
17 if there was anything he could do to keep from going to jail
18 and his wife finding out. I told him that we would talk, I
19 put him in handcuffs, and put him in my patrol car and took
20 him back to my office and myself and Sergeant Johnson
21 interviewed him.

22 Q And what arrangement did you come to with Mr. Dubois
23 after taking him to the narcotics office?

24 A We'd worked out a deal that we would not charge him for
25 that crack cocaine if he assisted us in the arrest of who he

John Sherfield - Direct examination
by Solicitor Anthony

1 had gotten those drugs from and he said was Mr. Hall, the
2 defendant, as well as two other individuals that he could
3 purchase drugs from.

4 Q Okay. And after that, what, what was the next thing
5 that happened after you had reached this understanding with
6 Mr. DuBois, Mr. DuBois?

7 what happened then?

8 A Well, when we interviewed him for a few minutes and
9 learned how he usually went about making these transactions
10 with the defendant and other individuals that he was talking
11 about, maybe helping, helping us make cases on them, and we
12 took him home. I took him home back to his residence on
13 Catherine Street.

14 Q Okay. And did you hear from Mr. DuBois again later
15 that day?

16 A Yes, around 3:45 or four o'clock Mr. DuBois called me
17 and said that the defendant, Mr. Hall, had called him since
18 between the time I took him home and, and four o'clock and
19 stated that he wanted to know why come he didn't go to jail
20 and did we find the crack that he had bought and that he had
21 arranged to make a purchase from him again and asked me to
22 come pick him up. So, I did. I went to Catherine Street
23 and picked Mr. DuBois up and took him back to our office.

24 Q Yes, sir.

25 Who -- and once you got Mr. Dubois to the narcotics

John Sherfield - Direct examination
by Solicitor Anthony

1 office, did you make contact with anybody from there?

2 A Yes, he called the defendant, Mr. Hall, again.

3 Q So, once Mr. DuBois and Mr. Hall had this second
4 conversation at the narcotics office, what was the plan that
5 was devised as far as trying to do a buy of drugs from
6 Mr. Hall?

7 A Well, the plan was we had some other city officers that
8 were assisting us. We had a little meeting, a little
9 briefing as we call it in our office about how we were going
10 to do this. We decided that what we would do, we would try
11 and make a \$50 purchase from the defendant, Mr. Hall, using
12 recorded Sheriff's Office currency, and then after the deal
13 was done Mr. DuBois was to make a phone call to either
14 myself or Sergeant Johnson and let us know that he had, in
15 fact, completed the transaction, had the drugs in his
16 possession, and that he had dropped Mr. Hall off and where
17 he dropped him off, and we were gonna be stationed in the
18 vicinity around the meeting location, which we figured would
19 be ██████████ Apartments since he said that's where
20 he usually met at, and we was going to arrest the defendant
21 and hopefully recover our buy money and maybe some
22 additional drugs.

23 Q Okay. So, what was done to prepare Mr. DuBois to go do
24 this controlled purchase?

25 A I observed Sergeant Johnson search Mr. DuBois, and the

John Sherfield - Direct examination
by Solicitor Anthony

1 reason we do that is to, to make sure that the people that
2 are using or that we're using, these informants, are not
3 armed with any weapons such as firearms or knives, any other
4 devices, that they only use our money that we give them,
5 that they don't have money of their own, and to ensure that
6 they don't have contraband such as crack or marijuana or any
7 drugs of that nature. We do that before and after every
8 transaction.

9 Q And then what was done as far as providing him with
10 money?

11 A Sergeant Johnson gave him \$70 of recorded Sheriff's
12 office currency and the reason he gave him \$70 was because
13 we were going to make a \$50 purchase of crack cocaine, but
14 the informant, Mr. DuBois, also informed us, during the
15 interview, that he owed Mr. Hall \$20 from a previous
16 purchase.

17 Q And how was Mr. DuBois going, going to get to the
18 meeting with Mr. Hall?

19 A He was going to drive an undercover vehicle that we
20 have at the, at our office that belongs to the Sheriff's
21 office.

22 A And was anything done to make it possible to record the
23 interaction between Mr. DuBois, Mr. DuBois and Mr. Hall?

24 A Yes, he was wired with audio and video to record the
25 transactions.

John Sherfield - Direct examination
by Solicitor Anthony

1 Q All right. And, so, after all this had happened, what
2 did you instruct Mr. DuBois to go do?

3 A To go meet with Mr. Hall and make the transaction.

4 Q And, so, after Mr. DuBois had left the narcotics
5 office, what did you yourself do?

6 A I went to the area of Grace Church and parked for
7 surveillance. Surveillance.

8 Q And as you were waiting there, what, what occurred?

9 A Well, all the, the police officers involved in this,
10 which was myself, Sergeant Johnson, and Investigator Mickey
11 Parker with the [REDACTED] Public Safety Department, Captain
12 Brian Bailey with the City Police Department, Jerome Beatty,
13 Officer Mark Gregory, and maybe some more, that's all I can
14 remember right now, we just was sitting up at various
15 locations in the vicinity and we were all using a tactical
16 channel that we use for, during our narcotics transactions.
17 There's not on peoples' scanner basically where they can't
18 hear us, and I heard Mickey Parker come over the radio and
19 said that he had just passed Melvin and the defendant in our
20 vehicle, and they were driving down McBeth Street.

21 Q And once you heard Investigator Parker with the city
22 say that, what did you do?

23 A I pulled off from my surveillance location and then
24 traveled down [REDACTED] onto McBeth Street.

25 Q And where did you head after you left McBeth Street?

John Sherfield - Direct examination
by Solicitor Anthony

1 A We had officers at different locations and I just kept
2 going down McBeth Street trying to go slow. I didn't want
3 to run up on them and let them see me, and then I heard
4 officer Bailey say that he was running, and, so, I sped up
5 and he said he was on Hamlet Street, and by the time I got
6 there they already had him in custody.

7 Q All right. When you say they, you mean the officers
8 already had Mr. Hall --

9 A Yes, sir.

10 Q -- under custody?

11 Okay. All right. Are you familiar with the amount of
12 crack that was recovered at the scene?

13 A .3 grams, yes, sir.

14 Q .3 grams was recovered at Hamlet Street?

15 A Yes, sir.

16 Q All right. And based on your experience in narcotics,
17 what would the approximate value be of .3 grams of crack?

18 A Approximately \$30.

19 SOLICITOR ANTHONY: If I can have one moment.

20 (Pause.)

21 SOLICITOR ANTHONY: Thank you. That's everything on
22 direct.

23 THE COURT: Mrs. Butler.

24 MRS. BUTLER: May it please the court.

25 CROSS-EXAMINATION

John Sherfield - Cross-examination
by Mrs. Butler

1 BY MRS. BUTLER:

2 Q Officer Sherfield, you say that you've been practicing
3 or been in law enforcement for how many years?

4 A I've worked in [REDACTED] for about 18 and a half. I've
5 been in law enforcement a little over 21.

6 Q So, when you see somebody in, in possession of drugs,
7 you know that's a crime, correct?

8 A Yes.

9 Q It is a crime for somebody to be in possession of
10 drugs?

11 A Unless they have a prescription for it.

12 Q How about crack cocaine?

13 A Absolutely.

14 Q Absolutely it is a crime --

15 A Yes, ma'am.

16 Q -- for them being in possession of it?

17 A Yes, ma'am.

18 Q So, when you came upon Mr. DuBois that day and saw him
19 in possession of crack cocaine, you witnessed him committing
20 a crime, is that correct?

21 A I don't understand your question, ma'am.

22 Q When you came upon Mr. DuBois that day and found him to
23 be in the possession of crack cocaine, you witnessed him to
24 be committing a crime, is that correct?

25 A Yes, ma'am.

John Sherfield - Cross-examination
by Mrs. Butler

1 Q And you say that you know that Mr. Dubois had a problem
2 with crack cocaine?

3 A Yes, ma'am.

4 Q How did you know that?

5 A How do I know that?

6 Q Uh-huh. (Affirmative).

7 A Prior dealings with Mr. DuBois.

8 Q Prior dealings you had?

9 A He's never been charged with that, no. He's never been
10 charged with possession of crack, but I knew that he was
11 pawning equipment that belonged to him and his wife, and
12 after interviewing his wife, I found that he had an
13 addiction to crack cocaine.

14 Q So, you knew that he had that addiction to crack
15 cocaine?

16 A Yes, ma'am.

17 Q And when, when Mr. DuBois and you talked, did you tell
18 Mr. DuBois that you could arrest him right now if you wanted
19 to?

20 A Yes, I did.

21 Q And you actually placed him in handcuffs, is that
22 correct?

23 A I did, but I did not place him under arrest.

24 Q You took him to the task force?

25 A Yes.

John Sherfield - Cross-examination
by Mrs. Butler

1 Q And the reason that you didn't place him under arrest
2 is because you wanted to see if you could use him to get
3 other people that were committing crimes, is that correct?

4 A Well, the reason I didn't place him under arrest cause
5 I wanted to interview him first and see if he had any
6 valuable information that would be worthwhile for us to
7 pursue.

8 Q But you saw him committing a crime, but didn't place
9 him under arrest?

10 A Right.

11 Q And you took him to the task force and y'all talked and
12 you decided that you were not going to place him under
13 arrest, correct?

14 A Not at that time, right.

15 Q Have you, have you issued a warrant for his arrest at
16 this time?

17 A No, I haven't.

18 Q And how long ago was that?

19 A May 18th, 2010.

20 Q So, almost, almost a year now and you still hadn't
21 issued a warrant for his arrest, is that correct?

22 A That's correct. There will not be one.

23 Q There will not be one for his arrest?

24 A No, ma'am, not for that incident.

25 Q And, and Mr. DuBois -- the reason that there wouldn't

John Sherfield - Cross-examination
by Mrs. Butler

1 be a warrant for that arrest is because Mr. DuBois set up
2 people for your office?

3 A He fulfilled his obligation as we agreed upon, yes.

4 Q So, in exchange for the crime that he was clearly
5 guilty of and him going out and committing another crime,
6 because if he openly -- if he went out and purchased drugs
7 from somebody, then he committed another crime, is that
8 correct?

9 A Not if he was doing it for us he was not, no, ma'am.

10 Q So, you're saying it's not illegal when you purchase
11 crack cocaine?

12 A Not when you're doing it with the cooperation of the
13 Sheriff's Office and law enforcement, no, ma'am.

14 Q Does the statute or are you aware of the statute that
15 says that it's not illegal if you're doing it for a
16 Sheriff's Office, Mr., Mr. Sherfield?

17 A No, ma'am, it is not a crime for him to do that is my
18 understanding and all my drugs, years in drug training.

19 Q Mr. DuBois -- Officer Sherfield, if there was another
20 person that went out and bought drugs, bought crack cocaine
21 from another person, would it be a crime?

22 A If he was doing it by himself it would be, but if he's
23 doing it for a law enforcement agency, whether it be [REDACTED],
24 Sheriff's Office, City of [REDACTED], York County, it would not
25 be.

John Sherfield - Cross-examination
by Mrs. Butler

1 Q Officer Sherfield, when we talk about Mr. DuBois, he's
2 the -- and the word that we'll use is confidential
3 informant, correct?

4 A Yes, ma'am.

5 Q And the confidential informant is really just another
6 word for the street name of narc, is that correct?

7 A Yeah, they call him anything.

8 Q Do you hear that word used on the street when you deal
9 with the drug offenses all the time, right?

10 A That's what I hear on the street sometimes. That's not
11 what we call them.

12 Q That's the street term is narc?

13 A Yes, ma'am.

14 Q So, Mr. DuBois decided that he would narc for the
15 Sheriff's Office in exchange for the Sheriff's Office not
16 charging him with this crime that you obviously saw him
17 commit, correct?

18 A Yes, ma'am.

19 Q Thank you.

20 And, Officer Sherfield, was Mr. Hall, the defendant,
21 arrested for that crime that day?

22 A Yes, ma'am. Yes, he was.

23 Q Officer Sherfield, I'm sorry. Maybe I misstated it.
24 was the, was the defendant, Mr. Hall, arrested after
25 you saw Mr. DuBois in possession of the crack cocaine and

John Sherfield - Cross-examination
by Mrs. Butler

- 1 talked to Mr. DuBois?
- 2 A Not for the first offense. He was for the second
3 offense.
- 4 Q And Mr. Dubois told you, according to your words, that
5 Mr. Hall sold him the drugs?
- 6 A Yes.
- 7 Q But you didn't go and arrest Mr. Hall?
- 8 A No, I did not.
- 9 Q Yes or no, did you go and arrest Mr. Hall?
- 10 A No, ma'am, I said no.
- 11 Q Okay. Thank you. And is Mr. Hall on trial today for
12 that particular transaction that we're talking about?
- 13 A No, he's not.
- 14 Q Thank you. I'm sorry. I don't mean to call -- is it
15 not -- is it Lieutenant Sherfield?
- 16 A Yes, ma'am, it is.
- 17 Q Lieutenant Sherfield, you say that y'all have, that Mr.
18 DuBois and Mr. Hall had a conversation at the task force and
19 that you taped that conversation, right?
- 20 A No, ma'am.
- 21 Q So, you don't have that conversation that's supposedly
22 went on between Mr. Hall and Mr. DuBois, correct?
- 23 A We don't have that one, that, that conversation taped,
24 no, ma'am.
- 25 Q Thank you.

John Sherfield - Cross-examination
by Mrs. Butler

1 And Mr. -- Lieutenant Sherfield, you, you set up a
2 criminal transaction supposedly. You authorized Mr. DuBois
3 to go and make a purchase of an illegal drug, crack cocaine,
4 and you authorized him to do that in a county vehicle, is
5 that correct?

6 A No, that's not correct. I did not authorize a criminal
7 transaction. It's not a criminal transaction when he's
8 doing it for us.

9 Q Did you authorize him to go and purchase crack cocaine
10 in a county vehicle?

11 A An undercover vehicle, yes, ma'am.

12 Q And it was a county vehicle?

13 A It's a narcotics vehicle, yes, ma'am.

14 Q Belongs to Union County?

15 A It belongs to [REDACTED] Sheriff's Office.

16 Q And it is insured through the insurer as [REDACTED] County
17 Sheriff's Office?

18 A Fleet vehicle insurance, yes, ma'am.

19 Q And if something were to happen during this time that
20 Mr. DuBois is setting up this crime, then it's gonna come
21 back on the liability of the [REDACTED] County Sheriff's Office
22 since Mr. DuBois is using a county car, is that correct?

23 A If it was -- he was found at fault, yes, ma'am.

24 Q Thank you.

25 And, Officer Sherfield, you were not present when

John Sherfield - Redirect examination
by Solicitor Anthony

1 Mr. Hall was supposedly found with the drugs that evening,
2 is that correct?

3 A No, ma'am.

4 Q Thank you.

5 That's all the questions I have at this time.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY SOLICITOR ANTHONY:

9 Q The interaction y'all had with Mr. Dubois where you
10 agreed not to arrest him that day in return for his
11 providing cooperation, is that a common practice?

12 A Yes, sir, it's used by City, State, Local and Federal
13 Government and drug enforcement agencies across the nation.

14 Q And as far as your ability to enforce the drug laws, if
15 you didn't do things like dealing with people like Mr.
16 DuBois, what -- how would, would that ability be affected?

17 A It would definitely hinder law enforcement a great deal.

18 Q And as far as your decision not to arrest Mr. Hall
19 because of what Mr. DuBois told you that morning, how
20 come---

21 MRS. BUTLER: Objection, Your Honor.

22 THE COURT: What's the objection?

23 MRS. BUTLER: This was not gone into on
24 cross-examination nor direct.

25 THE COURT: I think -- I thought you repeatedly asked

John Sherfield - Redirect examination
by Solicitor Anthony

1 about whether he arrested Mr. Hall that morning. He
2 indicated -- did he not?

3 MRS. BUTLER: Not why he was arrested.

4 THE COURT: I know, but I overrule your objection.

5 MRS. BUTLER: Thank you, Your Honor.

6 Q As to the decision not to arrest Mr. Hall that morning,
7 how common is it for you to make an arrest based on someone
8 just telling you that they received a controlled substance
9 from somebody else?

10 A I never do it.

11 Q Okay. You never that, do it?

12 A Never make an arrest just on word alone.

13 Q Okay. And what is, what is the, the situation that you
14 would employ to make an arrest of somebody for dealing in
15 controlled substance?

16 A The same as we did in this instance. We meet with the
17 people or individuals. We interview them, learn about their
18 knowledge, sometimes have them make a recorded phone call or
19 non-recorded phone call. We'll usually wire them with audio
20 and video, search them, give recorded Sheriff's Office
21 currency, actually then go out and make the transaction,
22 then come back to the office. We search them again,
23 retrieve the drug evidence or the money or the gun, whatever
24 we had them make a purchase of. Then we review the tape and
25 see if there's evidence on that tape that's sufficient

Melvin DuBois - Direct examination
By Solicitor Anthony

1 enough that we feel that we can get a conviction in criminal
2 court.

3 SOLICITOR ANTHONY: All right. That's all we have.

4 MRS. BUTLER: Nothing.

5 THE WITNESS: Thank you.

6 THE COURT: Call your next witness.

7 SOLICITOR ANTHONY: Our next witness is Mr. DuBois.

8 MELVIN DUBOIS, being first duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR ANTHONY:

12 Q Can you state your name please?

13 A Melvin Dubois.

14 Q And, Mr. DuBois, where do you currently live?

15 A Florida.

16 Q Okay. And I'll take you back to May of last year.
17 Where were you living then?

18 A [REDACTED] Catherine Street, [REDACTED].

19 Q And I want to go back now to May 18th of last year.
20 Did you have contact in the late morning of May 18th
21 with Lieutenant Sherfield of the Sheriff's Office?

22 A Yes, I did.

23 Q And how did you come into contact with him?

24 A I was on my way to buy some drugs walking down South
25 Church Street.

Melvin DuBois - Direct examination
By Solicitor Anthony

1 Q And what -- did you observe Mr. Sherfield at that time
2 while you were walking down [REDACTED]?

3 A Yes, I did.

4 Q Okay. And how -- where did -- what did you observe him
5 do while you were walking down [REDACTED]
6 initially?

7 A I was -- I noticed him pass me or that car pass me
8 going down [REDACTED] as I was walking to meet him,
9 Doug Hall.

10 Q All right. And after, after Lieutenant Sherfield
11 passed on by you, what, where did you go and what did you
12 do?

13 A There's a fence over there where these apartments are
14 at and I walked across the sidewalk just about 30 feet off
15 the sidewalk into the grass area where those apartments at
16 to meet Doug Hall.

17 Q And at that time how long had you known Mr. Hall?

18 A About a week and a half.

19 Q All right. And how much -- what, what did you do when
20 you met with Mr. Hall?

21 A I bought \$20 worth of crack cocaine from him.

22 Q And then after you bought crack from Mr. Hall, what
23 happened next after that?

24 A I had turned around and started walking back up the
25 sidewalk about, towards the Piggly wiggly and I was maybe 20

Melvin DuBois - Direct examination
By Solicitor Anthony

1 yards away from where I met Mr. Hall and I looked back and
2 here come Mr., that undercover car came up behind me and
3 asked me to, wanted to know what I was doing.

4 Q Okay. And that was Lieutenant Sherfield you were
5 referring to?

6 A Lieutenant Sherfield, yes, sir.

7 Q Okay. All right. Well, what, what happened between
8 you and Lieutenant Sherfield?

9 A He asked me what I was doing. I told him I was just
10 out for a walk, and then he asked me was I buying drugs and
11 I said no, and then he proceeded to search me and found the
12 drugs in my pocket.

13 Q All right. And after he found the drugs on you, Mr.,
14 Mr. DuBois, what, what did you ask him about doing?

15 A I told him that I didn't need this, that I shouldn't
16 have done it to begin with, and wanted to know if there was
17 any way I can get out it, get out of it, and he, at that
18 time, put me in the back of his car and took me to the drug
19 task force center.

20 Q All right. And when you went to the drug task force,
21 who did you talk to there?

22 A Mr. Sherfield and Jimmy Johnson.

23 Q Okay. And what kind of arrangement did you reach with
24 them about what they expected you to do and what they would
25 do in return for you?

Melvin DuBois - Direct examination
By Solicitor Anthony

1 A They would forgive me for that if I, if I could do
2 three buy/bust, drug buy/busts that very day.

3 Q So, after you had that conversation with them, what did
4 you do, what -- where did you go after that?

5 A Mr. Sherfield took me back home and then I made some
6 phone calls and set some things up for that, later that day.

7 Q All right. And when you got -- when you were back
8 home, did you have any contact with Mr. Hall?

9 A Yes, sir.

10 Q And how, how did, how did -- how was contact made with
11 Mr. Hall?

12 A He called me on my phone.

13 Q All right. And when, when he called you, what did he
14 want to know?

15 A Wanted to know if I, they found the drugs on me, if I
16 got busted for that \$20 rock he sold me and I told him no,
17 that everything was cool, everything was fine, and that I
18 wanted to see him, you know, so I could hook back up and buy
19 some more drugs from him.

20 Q Okay. And after you had that conversation with
21 Mr. Hall, who did you contact after that?

22 A Two other people I knew that I could buy drugs from.

23 Q Okay. And then who did you contact in law enforcement?
24 When was your next contact with law enforcement?

25 A It was Jimmy Johnson -- it was Mr. Sherfield.

Melvin DuBois - Direct examination
By Solicitor Anthony

1 Q Okay. And did you call Lieutenant Sherfield that same
2 afternoon?

3 A Yeah.

4 Q Okay. And once you called him, what did the, what did
5 the, Lieutenant Sherfield do?

6 A He set things up to where he came by and picked me up,
7 came by and picked me up, took me back down to the task
8 force center.

9 Q And when you got back to the narcotics office, did you
10 call anybody from there?

11 A Yes, sir, I called Doug Hall again.

12 Q And what did you call Mr. Hall about doing?

13 A About buying some more crack from him.

14 Q And, so, was an arrangement made for you and, you and
15 Mr. Hall to have that transaction?

16 A Yes, sir. Yes, sir.

17 Q And when -- after y'all came to that agreement or after
18 you had that conversation with Mr. Hall, what was done by
19 the narcotic agents to prepare you to go do the
20 transactions?

21 A They wired me up with video and audio equipment, and
22 gave the ride, a vehicle to drive and then they did their
23 thing, got ready to, to move on it, and it was set up for me
24 to get him to meet me at the Piggly Wiggly.

25 Q Was, was there any search made?

Melvin DuBois - Direct examination
By Solicitor Anthony

1 A Yes, sir, Mr. Jimmy Johnson searched me and the vehicle
2 before I left.

3 Q All right. And then were you provided with any money
4 to deal with Mr. Hall?

5 A Yes, sir.

6 Q How much money were you given?

7 A They gave me \$70.

8 Q Okay. All right. And, so, after you, after this
9 preparation had occurred, what did you do next?

10 A I got in my white Ford Explorer and drove down South
11 Church Street, and on the way down I called Mr. Doug Hall
12 again to let him know I was on the way and he gave
13 directions on how to get there or where he wanted me to meet
14 him at and on what side street.

15 Q And where were you wanting to meet Mr. Hall?

16 A Sir?

17 Q Where were you wanting to meet Mr. Hall?

18 A On -- at the Piggly Wiggly.

19 Q Okay. And where did Mr. Hall eventually tell you to
20 meet him?

21 A It was on a side street just across from a yellow house
22 just off of [REDACTED].

23 Q And when you got to Mr. Hall there at that house, that
24 house, what did he do?

25 A He got out of the vehicle and the first thing he asked

Melvin DuBois - Direct examination
By Solicitor Anthony

1 me was about me being stopped by Mr. Sherfield and whether I
2 got busted and everything. I told him everything was cool,
3 everything was fine.

4 Q Okay. And what, what happened in regards to you trying
5 to make a purchase of crack right then when he got in the
6 vehicle with you?

7 A I had, I had \$70 in my hand and I went to give 70 bucks
8 and I said 20 of this is for money that I owed your wife or
9 I owed you from previous, previous advances of drugs and the
10 fifty was what I -- fifty of it I was supposed to buy the
11 drugs with it that day.

12 Q All right. And how was it that you had come to owing
13 Mr. Hall \$20?

14 A He advanced -- he fronted me twenty, actually \$40 worth
15 of dope from previous, when I met him previously and 20 of
16 it was going toward a bill I owed him for it.

17 Q Okay. And how, how -- why were you thinking that this,
18 in someway, involved his wife?

19 A She gave him, she gave him the money to buy the dope to
20 give to me.

21 Q Okay. All right. And, so, since Mr. Hall couldn't
22 sell you the \$50 worth right then, what did he have you do
23 after he got in the vehicle?

24 A He wanted me to make a left on, on, go down that
25 street. He wanted me to actually drop him off at a house.

Melvin DuBois - Direct examination
By Solicitor Anthony

1 Q Okay.

2 A And so---

3 Q And while, while he was riding with you, did you observe
4 anything on his person?

5 A Yeah, he had, he had crack cocaine in a little baggy.
6 It was in his right hand and -- yes, sir.

7 Q Now, as you were driving with him, did you come across
8 any vehicles that gave you some or that would of given you
9 some concern if you'd been out not working with the police?

10 A Yes, sir, there was two vehicles that passed me and
11 they were unmarked police cars.

12 Q Okay. And after you passed those police cars, what --
13 where did, where did Mr. Hall eventually have you go to?

14 A I -- down near that street in that left hand turn at
15 the stop sign, make another left a block over back up to a
16 white house on the left.

17 Q Okay. And, and when he, when you pulled up to that
18 house, what did Mr. Hall instruct you to do?

19 A He wanted me to go up the street and come back.

20 Q And, so, what was your intention when you let him out,
21 out of the vehicle?

22 A My intention was to let him out when he got out to go
23 up the street, back up, pull out of there and go around the
24 block and come back and pick him up.

25 Q Okay. And as you were making, getting ready to make

Melvin DuBois - Direct examination
By Solicitor Anthony

1 the turn off the street where you let out Mr. Hall, what did
2 you see?

3 A I noticed an undercover police car coming up and I was
4 trying to motion for him not yet cause I hadn't finished
5 with the transaction yet.

6 Q Okay. All right. But did that -- that car did not --
7 what did the driver of that car do?

8 A He proceeded on past me and they went up and arrested
9 Doug Hall.

10 Q All right. And, so, after, after you realized that
11 Mr. Hall was going to be apprehended; where did you go?

12 A I went straight back to the task force center.

13 Q All right. And what did you do once you got back to
14 the task force?

15 A I waited for Mr. Jimmy Johnson to show up to, so I
16 could give him the money back and the glass, the equipment.

17 Q All right. And did, did you give him the money back?

18 A Yes, sir, I did.

19 Q Okay. Now, did you -- well, were you ever arrested for
20 the crack that was found on your possession that morning?

21 A No, sir.

22 Q And why was that?

23 A Because I asked was there anyway I could, anything I
24 could do to not get charged with that.

25 Q Okay. And they -- you did what they asked you to do?

Melvin DuBois - Direct examination
By Solicitor Anthony

1 A Yes, sir, I did.

2 Q All right. I'm handing up what's been marked for
3 identification as State's Exhibit No. 1. I ask if you've
4 seen that DVD before and how do you know if you've seen it
5 before.

6 A Yes, sir, I have seen it before and I have initialed it
7 and dated it.

8 Q Okay. And when, when did you review that DVD and date
9 it?

10 A On 4/5/11.

11 Q And does, does the file on that DVD, does it fairly and
12 accurately depict your interaction with Mr. Hall and, well,
13 basically all your activity from the time you left the task
14 force on May 18th to the time you got back?

15 A Yes, sir.

16 SOLICITOR ANTHONY: All right. We move Exhibit 1 into
17 evidence at this time.

18 THE COURT: Any objection?

19 MRS. BUTLER: No objection.

20 THE COURT: In without objection.

21 (WHEREUPON, State's Exhibit No. 1 was received into
22 evidence at this time.)

23 SOLICITOR ANTHONY: We ask to publish it to the jury.

24 THE COURT: You may.

25 SOLICITOR ANTHONY: If I may have just a moment to set

Melvin DuBois - Direct examination
By Solicitor Anthony

1 this up. I would ask to be allowed to do this, have the
2 witness, give the witness a chair right about here, let him
3 sit this way, so he can hear the tape and so the court
4 reporter can hear him and he can -- I'll have a few
5 questions to ask him while he's in front.

6 THE COURT: If you'll step down and have a seat in that
7 chair.

8 THE WITNESS: Okay.

9 (Witness comes down from the stand.)

10 (WHEREUPON, a portion of State's Exhibit No. 1 was
11 played for the jury at this time.)

12 Q Now, when you start talking here, who are you speaking
13 to?

14 A Doug Hall.

15 Q Okay.

16 (WHEREUPON, another portion of State's Exhibit No. 1
17 was played for the jury at this time.)

18 Q And which way did he tell you to turn?

19 A He told me to turn right, but talking about that yellow
20 house.

21 Q Okay.

22 A I thought left, but he said right.

23 (WHEREUPON, another portion of State's Exhibit No. 1 was
24 played for the jury at this time.)

25 Q Okay. who is the person that just got in the vehicle?

Melvin DuBois - Direct examination
By Solicitor Anthony

1 A Doug Hall.

2 Q All right. And what, what are you trying to do at this
3 point in time?

4 A Give him the money for the, for the dope I was gonna
5 buy.

6 (WHEREUPON, another portion of State's Exhibit No. 1
7 was played for the jury at this time.)

8 Q So, what are y'all discussing now?

9 A About what happened late morning about Mr. Sherfield
10 pulling me over after I made that drug buy this morning and
11 he saw it.

12 (WHEREUPON, another portion of State's Exhibit No. 1
13 was played for the jury at this time.)

14 Q And what is being discussed between the two of you at
15 this point in time?

16 A Talking about, about the crack, the crack I bought that
17 morning that I got it, I took it home, and talking about go
18 ahead and doing our drug buy, my drug buy so he can go his
19 way and I can get my butt back to the house.

20 Q Okay. And who's, who's directing whom at this point?

21 A He's, he's directing, directing me.

22 (WHEREUPON, another portion of State's Exhibit No. 1
23 was played for the jury at this time.)

24 Q And what are you reacting to at that point?

25 A One of the city undercover cars just passed, passed me

Melvin DuBois - Direct examination
By Solicitor Anthony

1 on that street.

2 Q Okay. All right. And what was the, what was the
3 mention of a hundred?

4 A He wanted me to buy a hundred dollars, a hundred
5 dollars worth of dope rather than the fifty.

6 Q Okay. How, how did you respond to that?

7 A I -- that I only had 70, twenty was to go towards what
8 I owed his wife and fifty to buy dope from him.

9 (WHEREUPON, another portion of State's Exhibit No. 1
10 was played for the jury at this time.)

11 Q And what were you just told to do?

12 A Told to go down there and turn around and come back and
13 pick him up.

14 Q All right.

15 (WHEREUPON, another portion of State's Exhibit No. 1
16 was played for the jury at this time.)

17 Q What are you starting to react to now, Mr. DuBois?

18 A One of the city, undercover city cars was coming up
19 passed me on that street and I was trying to wave him off
20 not yet.

21 (WHEREUPON, another portion of State's Exhibit No. 1
22 was played for the jury at this time.)

23 Q So, where are you headed to now?

24 A Back to the task force center.

25 Q Okay.

Melvin DuBois - Direct examination
By Solicitor Anthony

1 (WHEREUPON, another portion of State's Exhibit No. 1
2 was played for the jury at this time.)

3 Q Are you talking to anyone in particular then?

4 A Myself.

5 Q What did you just tell yourself?

6 A Talking about that I didn't do the buy quite yet, that
7 I tried.

8 Q But did you make, just make a reference to him having
9 crack?

10 A Yes, sir.

11 Q Okay.

12 (WHEREUPON, another portion of State's Exhibit No. 1
13 was played for the jury at this time.)

14 Q Did you just see that?

15 A Yes.

16 Q What did you say?

17 A I just said, lord have mercy, he had it on him. I
18 just -- I didn't get it.

19 Q All right. And what's that -- what was that a
20 reference to?

21 A To the crack he had in his hand in a little baggy.

22 (WHEREUPON, another portion of State's Exhibit No. 1
23 was played for the jury at this time.)

24 Q Are you talking to somebody now?

25 A Yes, sir, I'm talking to Mr. Jimmy Johnson there.

Melvin DuBois - Direct examination
By Solicitor Anthony

- 1 Q Okay. And this -- how are you speaking to him?
- 2 A On my phone.
- 3 Q Okay.
- 4 (WHEREUPON, another portion of State's Exhibit No. 1
- 5 was played for the jury at this time.)
- 6 Q What's happened at the end?
- 7 A That's when Mr. Jimmy Johnson got there and he took the
- 8 audio/video equipment and turned it off, to make sure it was
- 9 on and then turned it off.
- 10 Q All right. Thank you.
- 11 A Then I was searched.
- 12 Q All right. Thank you. You can get back on the stand.
- 13 (Witness returns to the stand.)
- 14 Q And once, once you got back to the narcotics office,
- 15 what did the narcotics investigator do in regards to
- 16 finishing up the process?
- 17 A When we got there, I gave him the equipment and then he
- 18 searched me and then I went inside and that was about it.
- 19 Q Okay. All right. And, Mr. DuBois, is the man that
- 20 rode with you and that you talked to about buying crack from
- 21 back on May 18th, 2010, here in the courtroom today?
- 22 A Yes, sir, he is.
- 23 Q And would you point him out please?
- 24 A Mr. Doug Hall right over there.
- 25 Q All right. What, what color shirt's he wearing?

Melvin DuBois - Direct examination
By Solicitor Anthony

1 A White shirt.

2 SOLICITOR ANTHONY: I'd ask the record reflect he's
3 identified the defendant, and that's, that's everything on
4 direct.

5 THE COURT: Before we have cross, we'll take a short
6 refresher break. I'll let you go -- follow the bailiff.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: As soon as the bailiff returns, we'll take
10 a short refresher break.

11 Okay. We'll be at ease for about ten minutes.

12 (WHEREUPON, a short recess was taken at this time.)

13 THE COURT: I believe, before the jury comes, I
14 believe, Mrs. Butler, you want to make a proffer.

15 MRS. BUTLER: Yes, Your Honor. We would like to
16 proffer evidence. Your Honor, according to South Carolina
17 Rule of Evidence Rule 608(b), when there is a witness
18 testifying on the stand, his credibility can be attacked by
19 instances of specific conduct other than conviction of a
20 crime if the instances are probative of the witness'
21 truthfulness or untruthfulness. It says specifically that
22 it can be inquired into on cross-examination of the witness.
23 Your Honor, we're requesting -- the defendant requests
24 that he be allowed to cross-examine the witness, Mr. DuBois,
25 and specifically on the instances of conduct that deal with

1 his truthfulness and untruthfulness. As, as I went through
2 the defendant's record, and understanding, Your Honor, that
3 I'm, I'm proffering something different than impeaching the
4 witness, I understand I cannot impeach the witness with his
5 record, but I'm inquiring into the specific instances of
6 conduct that go to his truthfulness. It appears that he's
7 got a fraudulent sublease of motor vehicle, a dealing in
8 stolen property, trafficking in stolen property, fraudulent
9 check, breach of trust with fraudulent intent.

10 Obviously all of those go to the witness' truthfulness
11 or untruthfulness, and I, and I don't believe that it would
12 be a fishing expedition.

13 THE COURT: Is that Rule 608(a)?

14 MRS. BUTLER: 608(b).

15 THE COURT: Doesn't that apply to A?

16 Don't you have to get over -- doesn't A, 608(a) set
17 forth when you can go into opinion and reputations. B talks
18 about those instances that can be used.

19 MRS. BUTLER: I read A to if you want to call a witness
20 to, to give opinion or reputation evidence about character
21 of the witness.

22 THE COURT: I'm looking at (b)(1). Let's see.

23 What do you have to say about that, Mr. Anthony?

24 SOLICITOR ANTHONY: Here's Subpart Rule 609. The --
25 Rule 609 limits the, the kind of things that can be inquired

1 into on cross-examination when people have been convicted of
2 a crime. She's, she's got these crimes that he wasn't
3 convicted of and she wants to use 608 to subvert 609.

4 THE COURT: I agree. It's clear as to when you can use
5 convictions. That's under 609. So, if these are
6 convictions, then they can't be used on 608. If they're not
7 convictions, then we get back what we discussed a few
8 moments ago in chambers particularly like the fugitive from
9 justice, you keep referring to he hadn't been convicted of
10 then. There is no evidence that he did it. He's innocent,
11 just like you told the jury earlier, until proven guilty.
12 So, that charge of fugitive from justice is -- he's not been
13 proven guilty of that. So, you can't use that.

14 MRS. BUTLER: So, is it the Court's opinion that I
15 can't even ask the witness if he's ever been arrested
16 before?

17 THE COURT: Yes, it is.

18 MRS. BUTLER: It just, it -- I mean when I read 608(b),
19 it appears that the specific instance of conduct, if it's
20 going to the truthfulness or untruthfulness of the witness,
21 allows, allows me to question the witness as to his, his
22 acts of conduct that goes to his truthfulness or
23 untruthfulness.

24 THE COURT: But 609 trumps it. This more specific has
25 to do with convictions for a crime. And, so, that's where

1 you look when you're talking about convictions of a crime.
2 And if you're talking about what you allege to be criminal
3 conduct, which he hadn't been convicted, then he's innocent.

4 MRS. BUTLER: Your Honor, six---

5 THE COURT: Those are the arguments you made to the
6 jury about -- not arguments. But statements you made to the
7 jury. He's either convicted or he's innocent. There's no
8 gray area.

9 MRS. BUTLER: The fact ones I referred to actually are
10 convictions. But, Your Honor, Rule 609 says impeachment.
11 It's says -- that's how you can impeach by evidence of the
12 conviction. So, if he were to deny, when I ask him on the
13 stand that he's been arrested or convicted of this crime,
14 then I can impeach him with the evidence of the crime. I
15 can say now, according to this, you were arrested and
16 convicted on such and such date.

17 Now, on 608(b) it says that I can't do that. If he
18 denies, then I have to let the jury ascertain his
19 credibility of the denial. I can't ask him about -- I can't
20 go any further than that and impeach him with his record.
21 But 609 talks about how you can impeach if it's within this
22 time limit, but it's for impeachment by evidence.

23 THE COURT: But it says, specifically it says for
24 conduct other than convictions for crime. So, it seems to
25 be excluding -- it seems to be, under 608(b), that's

1 throwing crimes into 609. And, so, I'm, I'm gonna find, and
2 you can make a proffer, like I said before, you can go ahead
3 and do that, but I find that 608(b) applies as to instances
4 of conduct that would attack or support a witness'
5 credibility other than convictions of crimes.

6 MRS. BUTLER: Yes, sir.

7 THE COURT: All right.

8 MRS. BUTLER: For that proffer, would you like me to
9 ask the defendant---

10 THE COURT: I don't tell you what to proffer. I'm
11 giving you -- I'm giving you an opportunity to give a
12 proffer. You have the opportunity to do the proffer. But I
13 don't give guidance on that.

14 MRS. BUTLER: I mean in do you -- in proffering, do you
15 mean that I need to offer the evidence up that I would, that
16 I would put forth?

17 THE COURT: Well, a proffer is you making a record so
18 that if it goes up on appeal you'll be protected. You can
19 say to the Court well, here's what I wanted to present, but
20 the judge wouldn't let me. So, present now what you want to
21 present.

22 MRS. BUTLER: That I would have presented if you
23 allowed me to proceed?

24 THE COURT: Yes, ma'am.

25 MRS. BUTLER: And do I do that by asking the victim,

1 the witness the questions I would ask if you were allowed---

2 THE COURT: I don't know any other way to do it.

3 MRS. BUTLER: Okay. Thank you, Your Honor.

4 SOLICITOR ANTHONY: Your Honor, I would, I would ask
5 that this proffer be extremely limited because we don't
6 normally let lawyers get up and just poke around and ask
7 witnesses about bad things they think that the lawyer thinks
8 the witness might have done sometime; you know, 20 or 30
9 years ago. I feel---

10 THE COURT: Well, I know usually we don't. I'm gonna
11 give her the opportunity to make a record so we can
12 determine what we usually do is right or wrong, and if you
13 think she's asked a question for which you are entitled to
14 object, you're entitled to object.

15 SOLICITOR ANTHONY: Yes, sir, thank you.

16 CROSS-EXAMINATION

17 BY MRS. BUTLER:

18 Q Mr. DuBois, have you been arrested for a crime before?

19 A Yes.

20 Q And have you been convicted of a fraudulent sublease of
21 a motor vehicle?

22 SOLICITOR ANTHONY: Well, Your Honor, I'd ask that she
23 make that question more specific. To give him---

24 THE COURT: Yeah, maybe pin it down to a time of the
25 conviction might be helpful.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 Q Mr. DuBois, in 2008 were you arrested by the
2 Jacksonville Sheriff's Office for dealing in stolen
3 property?

4 A I was arrested, but it had to do with my, my own car.

5 Q And, and, in 2006, it appears you were arrested for
6 trafficking in stolen property in Gainesville, Florida?

7 A Would you like for me to elaborate?

8 Q Yes, please.

9 SOLICITOR ANTHONY: Well, I'd, I'd ask that he just
10 answer the question.

11 THE COURT: Well, usually he needs to answer the
12 question, but then he can explain his answer. So, the
13 question was if you were arrested, and if the witness says
14 yes, and then you can explain.

15 THE WITNESS: I was arrested, yes, sir.

16 Q I'm sorry.

17 What was your response?

18 A Yes.

19 Q And, Mr. DuBois, were you also arrested for breach of
20 trust with fraudulent intent in 1989 in Pickens County,
21 South Carolina?

22 A Yes.

23 Q Were you also arrested for unlawful sublet of a motor
24 vehicle in 2003 in Gainesville, Florida?

25 A Yes, I was.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 MRS. BUTLER: I think that would be the extent of the,
2 of the defendant's proffer, Your Honor.

3 THE COURT: All right. Do you have any questions?

4 SOLICITOR ANTHONY: No, sir.

5 THE COURT: All right. Ready for the jury,
6 cross-examination?

7 MRS. BUTLER: Yes, sir, Your Honor.

8 THE COURT: All right. Bring in the jury.

9 I rule that those questions cannot be asked in front of
10 the jury.

11 MRS. BUTLER: Thank you, Your Honor.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE COURT: You may proceed.

15 SOLICITOR ANTHONY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MRS. BUTLER:

18 Q Mr. DuBois, I just have a few questions for you. If
19 you'll answer them as truthfully as you possibly can.

20 Mr. DuBois, you're testifying now of your own free will
21 here today?

22 A Yes, I am.

23 Q Were you -- do you have a wife?

24 A Yes, I do.

25 Q Where do you currently live with your wife?

Melvin DuBois - Cross-examination
by Mrs. Butler

- 1 A I live in Florida.
- 2 Q Did you travel from Florida to South Carolina to come
3 to testify today?
- 4 A Yes, I did.
- 5 Q How did you travel?
- 6 A In my car.
- 7 Q And are you paying your own expenses there?
- 8 A I paid my own expenses.
- 9 Q You -- I'm sorry?
- 10 A Next question.
- 11 Q Were you going to say something else?
- 12 A No.
- 13 Q I didn't want to cut you off before you were finished.
14 Are you going to receive any reimbursement for your
15 travel expenses?
- 16 A Me coming up, yes. My gas.
- 17 Q From who?
- 18 A From the county.
- 19 Q From Union County Sheriff's office?
- 20 A Yeah.
- 21 Would you expect me to come up on my own and pay my own
22 expense to come up from South, from Florida?
- 23 Q Well, that's what I was asking if somebody was paying
24 your way for you.
- 25 A Only my expenses to come up here.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 Q Where are you staying while you are here?

2 A At a motel?

3 Q Whose paying for that?

4 A The county.

5 Q What about the food?

6 A That's part of my expenses, ma'am, yes.

7 Q The county is paying for that too?

8 A Yes.

9 Q Mr. DuBois, is it your understanding that if you don't
10 cooperate during this trial that you will have a warrant for
11 your arrest?

12 A I understand that.

13 Q Thank you.

14 Mr. DuBois, if it wasn't for that, for that, you have a
15 warrant for your arrest, would you put your family in such
16 jeopardy to testify at a trial?

17 A You want to repeat that.

18 Q If it were not for the Sheriff's Office holding the
19 warrant over your head---

20 SOLICITOR ANTHONY: Objection to the characterization.

21 THE COURT: Rephrase it.

22 Q Mr. DuBois, is it your understanding that the Sheriff's
23 office will issue the warrant if there is a warrant issued
24 for your arrest?

25 A I don't know why they would issue a warrant for my

Melvin DuBois - Cross-examination
by Mrs. Butler

1 arrest.

2 Q Would it come from the Sheriff's Office -- the
3 Sheriff's Office is the agency that you dealt with, is that
4 correct?

5 A Yes.

6 Q [REDACTED] County Sheriff's Office. Thank you.

7 Mr. DuBois, you were not present when Officer Sherfield
8 testified, but he told the jury---

9 SOLICITOR ANTHONY: Objection. That's hearsay.

10 THE COURT: Well, it's pitting witnesses, but I sustain
11 the objection. He didn't even hear it. So, it can't be
12 hearsay, but it's pitting witnesses. He can't be held for
13 something that he didn't even hear.

14 Q Mr., Mr. DuBois, do you have a problem with crack
15 cocaine?

16 A Not anymore.

17 Q You did have at one time?

18 A Yes, sir.

19 Q How recently did you get over that problem?

20 A About, about six or eight months ago.

21 Q So right after you did the crack cocaine on May 18th
22 you got over your crack cocaine addiction?

23 A A little while after that, yes.

24 Q Had you had a pretty expensive past with---

25 SOLICITOR ANTHONY: Objection.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 THE COURT: I sustain the objection. That's too
2 general a question.

3 Q How long have you, had you been addicted to crack
4 cocaine before you stopped using crack cocaine?

5 A Off and on since 1999.

6 Q So for about twelve, about ten to eleven years you had
7 that addiction?

8 A Twelve, yes.

9 Q And you quit it in the past six months?

10 A Yes, only -- be more specific. Yes, I don't do those
11 things anymore.

12 Q Congratulations to you --

13 A Yes, ma'am.

14 Q -- if you, if you have an addiction for that long and
15 quit like that.

16 A I had a lot of help.

17 Q Okay. And you currently -- you stated that you
18 currently reside in Florida, is that correct?

19 A Yes.

20 Q And who do you live there with?

21 A I live with my wife.

22 Q When you lived here in [REDACTED] -- how long has it been
23 since you lived in [REDACTED]?

24 A How long has it been since I lived in [REDACTED]?

25 Q Yes.

Melvin DuBois - Cross-examination
by Mrs. Butler

1 A Since about the first of September of 2010.

2 Q When you lived here in [REDACTED], did you work?

3 A I had some part-time work. It was hard finding a job
4 around here.

5 Q So, your wife's Wal-Mart pay supported y'all?

6 SOLICITOR ANTHONY: Objection to the relevance of that.

7 THE COURT: I sustain the objection.

8 MRS. BUTLER: Your Honor, if I may, I'm leading up to
9 somewhere with---

10 THE COURT: I'll let you go ahead and ask a few
11 questions, but---

12 MRS. BUTLER: Thank you.

13 Your wife's Wal-Mart employment sustained?

14 A My wife what now?

15 Q Your wife's Wal-Mart employment contributed to your
16 finances?

17 A She drew employment and then I worked some part-time
18 work to help supplement our income so, so we could survive.

19 Q To supplement her income at Wal-Mart?

20 A She didn't work for Wal-Mart.

21 Q Mr. DuBois, maybe I was, misunderstood. I was
22 thinking -- was Wal-Mart before they worked, before they
23 were drawing unemployment?

24 A No.

25 Q Okay. Now, she worked before she started drawing

Melvin DuBois - Cross-examination
by Mrs. Butler

1 unemployment?

2 A No.

3 Q There is a time, there was a time when you had, on the
4 tape, when you mentioned that you had to pay \$20 to
5 Mr. Hall's wife, is that correct?

6 A Yes.

7 Q And what---

8 A Not to his wife. I paid him.

9 Q Now, on the tape you said you had to pay \$20 to his
10 wife, is that correct?

11 A It was \$70 to go to his wife for what was owed to his
12 wife. He kept telling me that his wife was on, was on his
13 case about the 40 bucks that I owed him for the crack he
14 advanced me and twenty of it was to go toward that. I said
15 here's \$20 you can give back, give it to your wife for your
16 wife because she kept bugging him about him paying me back
17 for that crack advance he gave me earlier.

18 Q You're saying that you owed his wife \$20 for crack
19 advanced from him?

20 A Yeah, he, he fronted me some crack---

21 Q Thank you.

22 A ---about a week before that.

23 Q That's all. If you'll just answer the questions.
24 When you were met on the, on the particular day that
25 we've been talking about, the day that, the transactions

Melvin DuBois - Cross-examination
by Mrs. Butler

1 that Mr. Hall's not on trial for before lunch time that day,
2 were you arrested for a crime?

3 A For what crime?

4 Q For any crime.

5 A That day?

6 Q Right.

7 A I was not arrested.

8 Q When the officer -- and the, and the officer came to
9 you and he told you that he wanted to search you, is that
10 correct?

11 A Yes.

12 Q And you allowed him to search you?

13 A Yes.

14 Q Now, if you had told him that you had purchased drugs,
15 he wouldn't have needed to search you, is that correct?

16 A If you say so.

17 Q You would have handed them over if you just said you
18 purchased drugs?

19 A Not necessarily.

20 Q But you did tell him that you had just purchased drugs?

21 A No, I did not.

22 Q Did you tell him that you had not purchased drugs?

23 A I told him that, that I was out walking and that he
24 asked me had I, had I purchased drugs. I told him no.

25 Q So, you lied to the officer when he asked you?

Melvin DuBois - Cross-examination
by Mrs. Butler

1 If you told him no---

2 A No, you know, I don't actually remember, but I remember
3 that he asked me about can I search you, do you mind if I
4 search you, and I said no. He asked me what was in my
5 pockets.

6 Q And it wasn't until he searched you that you had, that
7 he knew you had the drugs on you, correct?

8 A Ma'am?

9 Q It wasn't until he searched you that he knew you had
10 the drugs in your possession?

11 A When he searched me he found the drugs in my pocket.

12 Q So, you didn't just volunteer the information to him?

13 A No.

14 Q And you say that you called Mr. Hall from the narcotics
15 office, is that correct?

16 A Yes.

17 Q And we saw a recording from where obviously you were
18 wired.

19 And, so, were you wired at the time you made the phone
20 call?

21 A No. No, I was not.

22 Q But you had, you had the ability to be wired because
23 you were at the narcotics office, right?

24 A Yes.

25 Q And that's where they wired you for what you were set

Melvin DuBois - Cross-examination
by Mrs. Butler

1 up for---

2 A They---

3 Q ---at that particular office?

4 A They wired me -- they put the video audio equipment on
5 me after I made my phone call, I mean after I made that
6 phone call.

7 Q At the same location you made the phone call?

8 A I made the phone call at the task force center on my
9 personal phone before they wired me up and turned the unit
10 on.

11 Q And they wired you at the task force center?

12 A Yes.

13 Q So, they could have wired you before you made the phone
14 call and we could of heard that phone call, correct?

15 A No.

16 Q But you were at the task force center?

17 A Yes.

18 Q And actually they didn't wire you before you made that
19 phone call because when you made that phone call you were
20 telling Mr. Hall you were meeting him for another reason, is
21 that correct?

22 SOLICITOR ANTHONY: Objection.

23 THE COURT: Well, rephrase your question. I didn't
24 understand your question.

25 Q When you made that phone call, you were not wired

Melvin DuBois - Cross-examination
by Mrs. Butler

1 because you were making the phone call and leading Mr. Hall
2 to believe that you were meeting him for another reason?

3 SOLICITOR ANTHONY: Is -- that's asking for speculation
4 on the witness about why ---

5 THE COURT: Well, he may, he may -- he ought to know
6 why he was making the call. Overrule the objection.

7 A Mr. Hall knew why I had made the call. As soon as I
8 made the call, I took it on, on, upon myself to make that
9 phone call before I was wired up, and he knew why I was
10 calling is to buy some more crack.

11 Q But when you made the phone call, you were not wired
12 and you very much had the ability to be wired, is that
13 correct?

14 You were wired -- excuse me: You were wired
15 immediately there after that phone call, correct?

16 A A little bit after, but I don't know exactly when.

17 Q In the same, in the same location that you made the
18 phone call, the same task force office, correct?

19 A Yes.

20 Q Thank you.

21 Mr. Dubois had actually driven to your own home in the
22 office, officer's police car, correct?

23 A Yes.

24 Q So, he caught you in the commission of a crime and then
25 he drove you home and let you out, correct?

Melvin DuBois - Cross-examination
by Mrs. Butler

1 A After I left the task force and after---

2 Q So, he took you home to your residence and then you
3 were there with your wife---

4 A Yes.

5 Q ---correct?

6 You were not in jail, you were at home with freedom, is
7 that correct?

8 A Yes.

9 Q And did you smoke drugs from that time you were with
10 your wife at home?

11 A No, I did not.

12 Q But you still had the crack addiction at that time,
13 right?

14 A Yes. Yes.

15 Q And as with the crack addiction, you would smoke drugs
16 any time you had drugs, correct?

17 A Yes.

18 Q And did you smoke your drugs that Sherfield left in
19 your possession when he searched you that day?

20 A He didn't leave any drugs in my possession that day.

21 Q He didn't arrest you though, did he?

22 A No, he didn't.

23 Q He found you in the commission of a crime.
24 He gave, he gave you money later on?

25 THE COURT: Hold on. One question at a time.

Melvin DuBois - Redirect examination
by Solicitor Anthony

1 Q He found you in the commission of a crime?

2 A I don't understand. All I know is that---

3 Q Did he find you committing a crime?

4 A He found me, he found the crack in my pocket when he
5 searched me and then he---

6 Q Thank you, Mr. DuBois. That's all the questions I
7 have.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY SOLICITOR ANTHONY:

11 Q Just so you can finish, what did he do after -- what did
12 Lieutenant Sherfield do after he found the crack?

13 A He, he -- I asked him is there anyway I can get out of
14 this.

15 Q Well, I'm not -- I'm just asking you about in regards
16 to the crack itself.

17 What did he do with the crack?

18 THE COURT: Just ask where did the crack go. Just ask
19 through the chase.

20 THE WITNESS: He put it in a bag and put me in the back
21 of his car.

22 Q Okay. Did you get to keep it?

23 A No, sir, I did not.

24 SOLICITOR ANTHONY: All right. If I could have one
25 moment.

Melvin DuBois - Redirect examination
by Solicitor Anthony

1 (Pause.)

2 Q All right. Mr. DuBois, do you have a job now?

3 A Yes, sir, I do.

4 Q Okay. And what are you doing?

5 A I, I work for a temp service. I'm working any kind of
6 job I can get.

7 MRS. BUTLER: Objection, Your Honor.

8 A Working seven days a week.

9 MRS. BUTLER: This is exceeding the scope of
10 cross-examination.

11 THE COURT: Don't, don't interrupt him. But you were
12 asking -- you went into his financial situation, why he's up
13 here, and who's paying and all of those things and giving of
14 his wife. And, so, I think this is proper redirect.

15 MRS. BUTLER: Thank you, Your Honor.

16 SOLICITOR ANTHONY: I'm sorry.

17 Q What are you doing for a living?

18 A I'm working through a temp service taking any kind of,
19 doing any kind of work I can do to make a living. I work
20 seven days a week last week. Seven straight days.

21 Q So, is it fair to say you are missing work being here
22 this week?

23 A Yes, sir, I am. I get up at four o'clock every morning.
24 I go to bed late and I get up and then I come up here. I
25 missed work and income coming up here to do this.

Melvin DuBois - Redirect examination
by Solicitor Anthony

1 Q All right. And other than having your hotel, your
2 meals, and your gas, are you receiving anything above and
3 beyond just expenses for coming up here?

4 A No, sir, I'm not.

5 Q Okay. Did you get a subpoena telling you to come up
6 here?

7 A No, sir, I did not.

8 Q All right. And who told -- did anyone tell you that
9 you would be charged or in any trouble with the law if you
10 didn't come up here?

11 A No, sir.

12 Q Okay. So, no one has, has threatened you or made you
13 come back to Union?

14 A No, sir.

15 THE COURT: Any recross?

16 MRS. BUTLER: No, sir.

17 THE COURT: You can step down and be excused. We
18 appreciate your time.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Thank you.

21 Call your next witness, Mr. Anthony.

22 SOLICITOR ANTHONY: We call Captain Bailey, who is back
23 there.

24 BRIAN BAILEY, being first duly
25 sworn, testified as follows:

Brian Bailey - Direct examination
by Solicitor Anthony

1 DIRECT EXAMINATION

2 BY SOLICITOR ANTHONY:

3 Q would you state your name please?

4 A Brian Bailey.

5 Q And, Mr. Bailey, how are you employed?

6 A I'm Captain with the Public Safety Department.

7 Q And how long have you worked for the Public Safety?

8 A Over 17 years.

9 Q And you said you are captain.

10 what are you a captain over?

11 A Investigations.

12 Q All right. I want to take you now to May 18 of last
13 year.

14 Were you working that day?

15 A I was.

16 Q And did you receive a request to become involved in a
17 narcotics operation?

18 A I did.

19 Q And who made that request to you?

20 A Investigator Mickey Parker.

21 Q And what did Investigator Parker do?

22 A Investigate Parker is the narcotics officer for the
23 Public Safety Department, but he is primarily assigned to
24 the task force with the [REDACTED] Sheriff's Office, and that's
25 what they do is they do narcotics investigations.

Brian Bailey - Direct examination
by Solicitor Anthony

1 Q And what was -- what did Investigator Parker ask your
2 assistance with?

3 Q Investigator Parker called me that day and stated to me
4 that they were preparing to do a undercover buy and that
5 this would be a buy/bust, and because it was a buy/bust they
6 needed additional assistance for myself and the other
7 investigators just in case the subject was to run.

8 Q And, so, what was, what was the thinking as far as why
9 more people were needed?

10 A Well, the thinking is that normally a lot of them are
11 what we call walks. You simply make the buys and you let it
12 go and you, you build a further case. But in this instance,
13 the person or the informant, which is Mr. DuBois, would
14 purchase the crack cocaine, and then after the purchase, the
15 person that sold the drugs would be arrested immediately.

16 Q And how many people from [REDACTED] Public Safety responded
17 to this request?

18 A I believe it was myself and I believe two others.

19 Q Okay. And once the plan was devised for Mr. DuBois to
20 buy the crack from Mr. Hall, where did you and the other
21 investigators disburse?

22 A I was primarily on the Pearson Avenue/Foster Street.
23 The other officers were sort of squared off. The, the deal
24 or the initial deal was to actually go down near South
25 Church Street and [REDACTED] Apartments, and then,

Brian Bailey - Direct examination
by Solicitor Anthony

1 after that deal, we were to slowly converge or during that
2 deal we were to slowly converge on that area, and then after
3 it was sold, apprehend the subject, which was Mr. Hall.

4 Q All right. And, so, you said you were stationed on
5 Pearson Avenue.

6 After you got to Pearson Avenue, what did you eventually
7 do?

8 A Well, I was close to Pearson, Foster Street actually and
9 then I heard some radio traffic from Investigator Parker
10 that DuBois and the subject had actually passed him, which
11 meant they were coming in a completely opposite direction in
12 which was intended. So, they actually were coming towards
13 me, and as I made my turn onto Foster Street, I saw DuBois
14 in the vehicle or the vehicle that he was driving directly
15 across from me, and I called back on the radio and advised
16 that---

17 Q What, what street did Mr. DuBois turned on to?

18 A They were Hamlet Street.

19 Q And once, once you saw Mr. DuBois make the turn, what
20 did you do?

21 A I called and asked, you know, is it over, do I need to,
22 to apprehend, and as I approached, Mr. DuBois had parked and
23 Mr. Hall had got out. And when he got out, they saw me and
24 Mr. Hall started to run a little bit, started to trot, and I
25 called and said that he's running, do I need to proceed, and

Brian Bailey - Direct examination
by Solicitor Anthony

1 I was advised to proceed.

2 Q And, so, once you were -- what did that mean as far as
3 proceeding?

4 What would be proceeding?

5 A Do I need to get out and make the arrest.

6 Q Okay. And, so, what did you do at that time?

7 A At that time I exited my vehicle and I told Mr. Hall to
8 stop, and when I did, he started running and I pursued him.

9 Q All right. Now, do you know -- do you and Mr. Hall
10 know each other?

11 A Yes.

12 Q Without saying how, are you familiar with him and he
13 would be familiar with you?

14 A Correct. He knows me and I know him.

15 Q Okay. And, so, when you told Mr. Hall to stop, what
16 did he do?

17 A Mr. Hall run into a house on Hamlet Street through the
18 front door, and, and just as he went through the front door,
19 I could hear the people in there telling him to get out, and
20 it's almost immediately, as, as he run through that door, he
21 come out, and when he come out, he went down the porch and I
22 pursued him and we went between the house and a car. And as
23 he was running, it appeared to me that he made a throwing
24 motion with his right hand.

25 Q All right. Now, was there anybody else on the, on the

Brian Bailey - Direct examination
by Solicitor Anthony

1 outside of the house, on the porch area of the house?

2 A . Not that I recall, no.

3 Q Okay. And would you just show the jury, if you need to
4 stand up to do it that's fine, when you say he made a
5 throwing motion with his hand, just show the jury the
6 motion.

7 A Just normally you see people trotting, their hands are
8 up, you know, to keep a balance and I just seen his hand
9 come out as throwing down.

10 Q All right. And where did he go?

11 A We run between the house and, and just directly behind
12 the house, and it wasn't long and he, he stopped. He just
13 threw his hands up and said, you know, you got me.

14 Q And by the time he did that, did anybody else come to
15 the scene?

16 A Investigator Jerome Beatty and Lieutenant Robbie McGee.

17 Q And once -- when you say he threw his hands up, what
18 did he do after that?

19 What did Mr. Hall do after that?

20 A I mean that was it. He just -- Mr. -- Investigator
21 Beatty come up and handcuffed him.

22 Q Okay. And after Mr. Hall was apprehended, did anybody
23 from the county arrive at the scene?

24 A Sergeant Johnson arrived at the scene, and I advised
25 him that I thought that he had, I, he had thrown something

Brian Bailey - Direct examination
by Solicitor Anthony

1 down, but I wasn't sure. And I went back to the area to
2 where we run through between the house and the car and there
3 laying on the ground was a baggy of crack cocaine.

4 Q And where was the baggy of crack cocaine located in
5 relation to where you had seen the throwing motion made by
6 the, Mr. Hall?

7 A In the approximate area.

8 Q And what was done with the, the baggy of crack cocaine?

9 A I just pointed it out to Sergeant Johnson and he
10 collected it.

11 Q And where was, where was the baggy lying in, in
12 relation to -- well, did you have to sift through anything
13 to get it to?

14 A No, it was just laying there on the ground.

15 (WHEREUPON, five photographs were marked as State's
16 Exhibit Nos. 5 through 9 for identification purposes only at
17 this time.)

18 Q I'm going to show you some photographs that have been
19 marked for identification as Exhibits 5 through 9. I'd ask
20 that you take a look of those pictures and just see if you
21 recognize what they're of.

22 A It's the house that Mr. Hall run into and where we
23 pursued, the side of the house, the back of the yard, a ball
24 field across the street from the house, and Hamlet Street at
25 Axle Street.

Brian Bailey - Direct examination
by Solicitor Anthony

1 Q Okay. And are those, those pictures fair and accurate
2 representations of the house on Hamlet Street and the
3 surrounding area?

4 A Yes.

5 SOLICITOR ANTHONY: All right. We'd move those
6 exhibits into evidence.

7 THE COURT: Any objection?

8 MRS. BUTLER: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON, State's Exhibit Nos. 5 through 9 were
11 received into evidence at this time.)

12 SOLICITOR ANTHONY: Ask to publish them.

13 Q Captain, I'm going to give you this pointer and ask you
14 to use it to respond to a few questions. I'm going to show
15 you, first of all, Exhibit No. 5. I'd ask if you can
16 identify what's that a picture of.

17 A That's Hamlet Street, that's the ball park across, and
18 that's the house.

19 Q Okay. And when you say the house, you mean the house
20 Mr. Hall, where he was apprehended?

21 A Yes.

22 Q Okay. Well, now, when you turned onto Hamlet Street,
23 where, approximately, was Mr. Hall?

24 A Mr. DuBois had parked across at the ball field and
25 Mr. Hall was just walking across the street towards the

Brian Bailey - Direct examination
by Solicitor Anthony

1 house.

2 Q Okay. And when, when you saw -- where, where did you
3 stop, if you can point out to the jury, where did you stop
4 the vehicle?

5 A Just beyond the house in the road.

6 Q Okay. All right. And I'm gonna show you now Exhibit
7 9.

8 what is that a picture of?

9 A That's the house on Hamlet Street, the front door of
10 the house, and down through here is where we run.

11 Q Okay. And where was Mr. Hall, if you can show it on
12 that picture, where was Mr. Hall when you stopped the car
13 and called for him.

14 A Mr. Hall was in front of the house, and when I called
15 for him he started to run and then he run into the house.

16 Q Okay. And I'm going to show you now Exhibit 6:
17 what is that a photo of?

18 A That's the front of the house.

19 Q Okay. And show the, the jury, using that photo, if you
20 would, where Mr. Hall ran.

21 A He run into the front door of the house here and then
22 down the side. He come out down the side and then we run
23 down through the side of the house.

24 Q Okay. And was there -- of course, this was -- these
25 pictures were not made the day of the, the incident?

Brian Bailey - Direct examination
by Solicitor Anthony

1 A No.

2 Q Was, was there a car there on that day?

3 A There was a vehicle there, but I don't know if that's
4 the same vehicle.

5 Q All right. Was the car in approximately the same
6 place?

7 A Approximately.

8 Q Okay. All right. And where, if you can use that
9 picture, where, where was the crack located?

10 A Just in-between the house and the car.

11 Q And I'm gonna show you now Exhibit 8, and what, what is
12 that a photo of?

13 A That's the back of the house and then there's a shed
14 there and then we just run just a little, a little past that
15 shed and that's where he just stopped.

16 Q And you say, you say -- who, who ran just a little past
17 the shed?

18 A Mr., Mr. Hall. There's a, I don't know, there's just a
19 little area back here behind this shed is where he stopped.

20 Q And I'm gonna show you now Exhibit No. 7, and what is,
21 what is that a photo of?

22 A That's the ball field across the street from the house.

23 Q And just for the record, is the ball field less than a
24 half mile from the house?

25 A The ball field's directly across the street.

Brian Bailey - Direct examination
by Solicitor Anthony

1 Q Okay. And is that ball field a public ball park or
2 playground?

3 A It is. They, they play Little League and Dixie League
4 and so forth.

5 Q And the, the Hamlet Street location where the, where
6 the arrest was actually made, is that in the City of [REDACTED]?

7 A It is.

8 Q And in [REDACTED] County?

9 A Yes, sir.

10 SOLICITOR ANTHONY: All right. If I could have one
11 moment.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q And did you have -- after, after Mr. Hall was
15 apprehended that day and the, the crack was recovered, did
16 you have any other involvement in this situation?

17 A No.

18 Q In this case?

19 A No.

20 Q Okay. Thank you. That's everything on direct.

21 THE COURT: Mrs. Butler.

22 MRS. BUTLER: Can we get the lights?

23 THE COURT: They are.

24 MRS. BUTLER: Thank you.

25 CROSS-EXAMINATION

Brian Bailey - Cross-examination
by Mrs. Butler

1 BY MRS. BUTLER:

2 Q Officer Bailey, you've been with the City Police
3 Department for how many years?

4 A Over 17.

5 Q About 17 years?

6 A Seventeen and a half.

7 Q Have you had dealings with the Hamlet Street property
8 that we just saw on the video?

9 A I've never had any dealings with it other than a
10 break-in that occurred there.

11 Q A break-in that occurred there.

12 okay. Do you work narcotics with the city?

13 A No.

14 Q No.

15 A I am Investigator Parker's supervisor. I very seldom
16 get involved in the, in any operation that he does other
17 than to, to know what he's doing.

18 Q But you get involved with this narcotics?

19 A I did in this one, yes.

20 Q Okay. Thank you.

21 Were the pictures that the State just presented, you
22 testified they are fair and accurate representations of that
23 premises, correct?

24 A Correct.

25 Q But it's not a fair and accurate representation of the

Brian Bailey - Cross-examination
by Mrs. Butler

1 premises on that particular day because you didn't take those
2 pictures on that particular day?

3 A No.

4 Q So, it could have been there a different car in the
5 paved driveway?

6 A Could of been.

7 Q Could of been.

8 There was cars parked on the street?

9 A I don't remember any cars parked in the street.

10 Q And on that particular day -- because we were just
11 seeing pictures just for the understanding they are seeing
12 pictures taken at a later day, right?

13 A Yes.

14 Q On that particular day, there was actually lots of
15 commotion at that house, correct?

16 A When he run through the front door of it, yes.

17 Q Okay. And there were actually people standing around
18 out in the yard, correct?

19 A I don't recall.

20 MRS. BUTLER: I beg the Court's indulgence.

21 (Pause.)

22 Q This is not my lap top. So, I will ask the solicitor
23 for help rather than have the jury have to watch me again. I
24 would like to direct a couple particular points. That's what
25 I'm trying to find. Let me phrase it for a minute.

Brian Bailey - Cross-examination
by Mrs. Butler

1 Officer Bailey, do you recognize this area right here?

2 A I'm not sure. There's a glare there. It appears to
3 be. Well, I'm not sure.

4 SOLICITOR ANTHONY: I can adjust it.

5 Q I can back it up and tell us a little bit. That's
6 fine.

7 SOLICITOR ANTHONY: He should be able to see it now.

8 Q Okay. Do you recognize this area, Officer Bailey?

9 A Yeah, it looks like Foster Street.

10 Q Did it appear that they just turned down the street---

11 A That's Hamlet Street.

12 Q ---that this house was located on?

13 A Yes.

14 Q Is that correct?

15 A Correct.

16 A Yes.

17 Q Officer Bailer, do you see folks standing out in the
18 yard there?

19 A I see somebody standing out in the road.

20 Q Do you see a few people there?

21 A Yes.

22 Q Yes. Thank you.

23 You can get the lights. That's all the questions I
24 have on that line of questioning.

25 THE COURT: All right.

Brian Bailey - Cross-examination
by Mrs. Butler

1 MRS. BUTLER: Beg the Court's indulgence.

2 (Pause.)

3 MRS. BUTLER: That's all the questions I have.

4 REDIRECT EXAMINATION

5 BY SOLICITOR ANTHONY:

6 Q Did the people out on the road get involved in any way
7 with your interaction and apprehension of Mr. Hall?

8 A No.

9 Q Okay. Did you, did you notice them during the chase?

10 A I don't even think I was present at that point in time.
11 He had just pulled up at that time.

12 Q Thank you.

13 THE COURT: You can step down. Thank you.

14 SOLICITOR ANTHONY: Thank you.

15 THE COURT: Call your next witness.

16 SOLICITOR ANTHONY: The next witness is Sergeant
17 Johnson.

18 Can Captain Bailey be excused?

19 THE COURT: He can.

20 SOLICITOR ANTHONY: Thank you, Your Honor.

21 JIMMY JOHNSON, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR ANTHONY:

25 Q Would you state your name please?

Jimmy Johnson - Direct examination
by Solicitor Anthony

- 1 A Jimmy Johnson.
- 2 Q And, Mr. Johnson, how are you employed?
- 3 A I'm a sergeant with the [REDACTED] County Sheriff's Office,
- 4 investigator in narcotics.
- 5 Q And how long have you worked for the Sheriff's Office?
- 6 A Thirteen years.
- 7 Q And how long have you worked in the narcotics area of
- 8 the Sheriff's Office?
- 9 A Over two years.
- 10 Q Were you working in that capacity back on May 18th of
- 11 last year?
- 12 A Yes, sir.
- 13 Q And did you have contact that day with Melvin DuBois?
- 14 A Yes, sir, I did.
- 15 Q When did you first meet Mr. DuBois?
- 16 A I was actually at our task force when Lieutenant
- 17 Sherfield came in with Mr. DuBois.
- 18 Q And were you involved in the conversation with Mr.
- 19 DuBois that morning?
- 20 A Yes, sir, I was.
- 21 Q And what was -- what did you discuss with Mr. DuBois
- 22 that morning?
- 23 A At that point Lieutenant Sherfield advised me the
- 24 situation that had just taken place on [REDACTED]
- 25 and what he had located on Mr. DuBois. Melvin was

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 explaining to us that he wanted some help, that he was not
2 wanting to go to jail at that time, and that he could help
3 us, that he was made aware that, you know, in order to get
4 help, you have to get us the suppliers.

5 Q All right. And did he indicate a willingness to do
6 that?

7 A Yes, he did.

8 Q And did you see Mr. DuBois later on that day?

9 A Yes, I did.

10 Q Okay. And where was that?

11 A Lieutenant Sherfield had -- we'd received a call from
12 Melvin and Lieutenant Sherfield went and picked him up at
13 his residence on Catherine Street and brought him back to
14 the task force.

15 Q And what was the -- when, when Mr. DuBois was brought
16 back to the task force, what was -- what kind of operation
17 was discussed with him?

18 A At that time we were discussing the fact that he had
19 advised us that he could, that Melvin, I mean that the
20 defendant, Douglas Hall, had called him back and he talked
21 to him in reference to purchasing more crack cocaine from
22 Mr. Hall and we were advising him, at that point, you know,
23 we allowed him to make a phone call, talk to Mr. Hall again,
24 let him know that he was coming, and at that time we wired
25 him with video and camera. I issued him \$70 recorded U.S.

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 currency. He advised us that he owed Mr. Hall \$20 from a
2 previous buy. So, we were gonna allow him to, in order to
3 get Mr., make sure Mr. Hall was gonna be able to sell to him
4 to pay him the money that he owed him, plus buy \$50 worth of
5 crack cocaine. Once that---

6 Q Did he -- go ahead.

7 A I'm sorry. He was also advised that -- I advised him
8 that, due to the location, try to get Mr. Hall to meet him
9 at the Piggly Wiggly, some central location where we could
10 get around, and in case Mr. Hall decided to run, that we'd
11 have surveillance up to try to apprehend him.

12 Q And in preparing Mr. DuBois to do this crack buy, what,
13 what did you do?

14 A First I searched his person to make sure he didn't
15 have, bring anything with him, you know, no contraband,
16 drugs, weapons, extra money besides so he wouldn't have
17 anything on him, make sure of that before we sent him to do
18 what he needed to do.

19 Q And in dealing with Mr. DuBois that day, did you have
20 any kind of concerns that afternoon that he was under the
21 influence of any type of impairing substance?

22 A No.

23 Q Okay.

24 A Not at that time.

25 Q All right. Did you do anything to record what would be

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 going on between Mr. DuBois and Mr. Hall?

2 A Yes, I placed a video surveillance, a camera,
3 undercover camera on his person to be able to record the
4 transaction when it took place.

5 Q And then you stated you gave him \$70, is that correct?

6 A Yes, sir.

7 Q All right. Now, after -- what was the plan as far as
8 what y'all intended to do after Mr. DuBois made this
9 purchase?

10 A Mr. DuBois was to call me and let me know, once the
11 transaction took place and once that he was able to leave
12 the area away from Mr. Hall, we were going to stop Mr. Hall
13 and detain him and take him into, into custody.

14 Q So, what -- after, after these plans were made and Mr.
15 DuBois was searched and, and wired, what did you do after,
16 after you sent Mr. DuBois out to do this?

17 Where did you go?

18 A I was in, not my, my undercover car, but in another
19 vehicle just like the one Mr. DuBois was driving. I had
20 went to the area around Grace Church and I think I was
21 actually in the lobby or the parking lot just down the
22 street where I could be close and kind of monitor the radio,
23 you know, what was taking place, and then I was also the one
24 that was, Mr. DuBois was gonna call so he would know and I
25 would let everybody know when to move in.

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 At that point, unfortunately, I didn't make it to the
2 Piggly Wiggly. Mr. DuBois had received information from
3 Mr. Hall to go somewhere else.

4 Q Okay. And what was the first words you received about
5 the people in law enforcement converging on the scene?

6 A Well, Investigator Parker advised us that they were
7 traveling along McBeth Street at that time. He was the
8 first vehicle to actually come across the undercover unit, I
9 mean Mr. Dubois and Mr. Hall. He called us on the radio,
10 let us know that they were on McBeth Street. The second
11 thing that I heard and received by radio was Captain Bailey,
12 and he advised me that they had turned on to Hamlet Street,
13 and they were stopped, and at that time Hall had, was
14 getting out. Very short -- a few seconds later he advised
15 me that he was running and wanted to know what to do.

16 Q And what did you advise him to do?

17 A I advised him to go ahead and detain him if at all
18 possible.

19 Q And, so, what was the next -- what did you do once you
20 heard that Captain Bailey was going to try and apprehend
21 Mr. Hall?

22 A At that point, once he, he advised that, that they were
23 on Hamlet Street and especially when he stated that they
24 were running, I went to that location. But, of course, he
25 was -- they had him detained when I arrived.

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 Q I'm sorry?

2 A They already had him detained by the time I arrived.

3 Q And, so, when you got there, what, what did you do?

4 A Once I arrived they had him detained. Mr., Mr. --

5 Captain Bailey advised me that he saw him throw something

6 down. He showed me where, he went to the corner of the

7 house, the house area where he pointed at earlier, and at

8 that time he located a plastic bag with a white rock like

9 substance that was the crack cocaine.

10 Q And then what did you do in regards to the baggy that
11 was there on the ground?

12 A At that point, when he advised me where it was at, he
13 was actually standing pointing at it, and instead of him
14 actually picking up and being part of the chain of custody,
15 I went over and took, took him into custody, seized it at
16 that point myself.

17 Q All right.

18 (WHEREUPON, a package of drugs was marked as State's
19 Exhibit No. 10 for identification purposes only at this
20 time.)

21 Q I'll hand you what's been marked for identification
22 State's Exhibit No. 10. I'd ask if you would take a look at
23 that bag that's inside the sealed bag and see if you've ever
24 seen it before.

25 A Yes, sir.

Jimmy Johnson - Direct examination
by Solicitor Anthony

- 1 Q And what is that?
- 2 A That is the crack cocaine that we located that day.
- 3 Q Okay. And when you located the crack, what did you do
- 4 with it?
- 5 A I seized it. Then it is placed into a SLED B.E.S.T.
- 6 kit, which is the plastic bag here, and then I, we take it
- 7 to SLED for analysis. But, of course, now in-between that
- 8 time from the day that we recovered it and it's sealed in
- 9 there, we keep it under lock and key at the task force in a
- 10 safe so until we can take it, until I can take it to SLED.
- 11 Q Okay. Well, as far as sealing it up in that interior
- 12 SLED bag, when was that done?
- 13 A The day that I confiscated it.
- 14 Q On May 18?
- 15 A Yes, sir.
- 16 Q Okay. And are there any markings on the bag to
- 17 indicate that?
- 18 A Yes, sir, the actual date, date being sealed is right
- 19 at the top --
- 20 Q Okay.
- 21 A -- at the right-hand corner.
- 22 Q And then once you put the crack that you recovered from
- 23 Hamlet Street in that interior bag, what did you do with the
- 24 interior bag?
- 25 A I'm sorry?

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 Q Well, that day---

2 A Oh, that day.

3 Q ---after you put, after you put the crack in the SLED
4 bag on May 18th, what did you do with the SLED bag in
5 regards to securing it?

6 A That was locked in the safe in the task force until we
7 can transport it to SLED.

8 Q Okay. And then when did you, when did you transport it
9 to SLED?

10 A I don't know if it's on the outside package. I don't
11 have the chain. I don't recall right off, but it would of
12 been---

13 Q Would it---

14 A But it was---

15 Q Looking at the lab request, would it refresh your
16 recollection on that?

17 A Yes, sir.

18 Q All right. I'm gonna show you the documents that are
19 identified as a SLED lab request.

20 Does that refresh your recollection as to when you took
21 it to SLED?

22 A December the 18th. Oh, nope, I'm sorry. That's my
23 sergeant's birthday. May 28.

24 Q Okay. Of, of 2010?

25 A Yes, sir.

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 Q And who did you give the -- who did you give the bag to
2 at SLED?

3 A Amy Stephens.

4 Q All right. And what is the procedure that y'all follow
5 at the Sheriff's office when you take drugs to SLED for
6 testing?

7 A We actually take, Lieutenant Sherfield and our
8 Investigator Smith and myself, we are -- we are responsible
9 for doing the, taking our own evidence to SLED. We'll see,
10 keep it in the safe under lock and key until a day that we
11 can make a trip to go down there, and what we usually do is
12 we'll wait until we have a few cases, you know, together so
13 we don't waste gas and having to take one at a time. Then,
14 on a particular day, we'll go to SLED. Once you get there
15 you have to submit each piece, each article separately and
16 Mrs. Amy Stephens was actually the lady at the intake. I
17 don't know what her title exactly is, but she's the one I
18 turned it over to that day.

19 Q Okay. But you yourself transported that bag---

20 A Yes sir.

21 Q ---to SLED?

22 A Yes, sir.

23 Q Okay. And going back now to May 18, did you charge Mr.
24 Hall with any crimes that day?

25 A Yes, I did. Once I picked up the contraband and took

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 it, I went back around to where they had Mr. Hall. Officer
2 Beatty, Investigator Beatty had him detained. I placed him
3 under arrest, told him he was being charged with possession
4 with intent to distribute, and he was also charged with
5 possession with intent to distribute within a half mile of a
6 park.

7 Q All right. And then have you reviewed the DVD of the
8 buy?

9 A Yes, sir.

10 Q All right. And did you, in, in making your review of
11 the DVD of the buy, did you generate any photos?

12 A Yes, sir, I did.

13 Q And how did you go about doing that?

14 A While reviewing the DVD I noticed that Mr. Hall, from
15 the time he got in the vehicle and the entire time he was in
16 the vehicle, he kept his right hand clinched. Mr. DuBois
17 had already advised me that that's where he had the crack
18 cocaine, he had it in his right hand. I think you noticed
19 at the later part of the video when Mr. DuBois called me and
20 said, yes, he had a bag of crack on him and it's in his
21 right-hand and I kept looking, and you can actually, if you
22 look close on, and I made some still photos from the video,
23 you can actually see a white, what appears to be a white
24 baggy in Mr. Hall's right hand.

25 Q All right. And are those still photos fair and

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 accurate, fair and accurate representations of what is
2 actually on the individual videotape?

3 A Yes, those come straight from the video. That was just
4 pausing---

5 THE COURT: Wait, wait.

6 THE WITNESS: I'm sorry.

7 MRS. BUTLER: Your Honor, I would have to object based
8 on the fact that Mr. Johnson was not present in the car with
9 Mr. Hall. I think that, that these pictures would, should
10 of came in through the witness that was actually present in
11 the car.

12 THE COURT: Objection overruled. In over objection.

13 (WHEREUPON, State's Exhibits 2 through 4 were received
14 into evidence at this time.)

15 Q I'm going to show you Exhibit No. 2; first of all, and
16 just ask you to do you -- what is this photo?

17 A That is a photo of Mr. Hall's right hand on the, the
18 armrest of the vehicle that they were riding in.

19 Q All right. Then I'll show you Exhibit No. 3, and what
20 is that, that a photo of?

21 A That's the -- basically it's the same picture, but in
22 both of them it's kind of hard to tell there without
23 actually holding the picture in your hand, but you can
24 actually see. But if you look closely right here where he's
25 got his fingers clinched, he doesn't have his index finger

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 clinched, but he has his back, back three fingers clinched
2 from his middle finger to his pinky and you can see a small
3 white object that appears to be the white, the bag in his
4 hand.

5 Q And these were taken at -- I'm sorry. Withdraw that.

6 Then I'll show you Exhibit No. 4, and ask you what,
7 what that is a photo of.

8 A Once again, you have to get it in your hand so you can
9 see it, but you can also see the part of the same bag, which
10 is, with this lighting, it's hard to do from the overhead
11 projector, but it's right in this area. If you look, you
12 can see the same bag.

13 Q All right.

14 (WHEREUPON, a map was marked as State's Exhibit No. 11
15 for identification purposes only at this time.)

16 Q I now hand up what's been marked for identification
17 State's Exhibit No. 11. I'd ask if you recognize that.

18 A Yes, sir, it's a map of the Hamlet Street, South Church
19 Street area.

20 Q Okay. And does that map -- well, how is that map
21 generated?

22 A This is a -- it is generated, it's a -- we have it on a
23 computer for the county, the county, and it allows us to be
24 able to pull up [REDACTED] es and be able to see generally, you
25 know, where they're at and a lot of times, as in narcotics,

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 we use it to -- it has the tool on it that allows us to be
2 able to measure distance from one area to the next so we can
3 map it out and just see, a lot of times within proximity of
4 a school or park, we can also do that and it tells us how
5 far from something he is.

6 Q Based on your knowledge of the [REDACTED] area, is that map
7 an accurate representation of Hamlet Street, MCBeth Street,
8 [REDACTED] area?

9 A Yes, sir.

10 SOLICITOR ANTHONY: All right. We move that exhibit
11 into evidence.

12 MRS. BUTLER: No objection.

13 THE COURT: In without objection.

14 SOLICITOR ANTHONY: No. 11.

15 (WHEREUPON, State's Exhibit No. 11 was received into
16 evidence at this time.)

17 Q Can you see that from the stand?

18 A Yes, sir.

19 Q I'd ask -- I'm going to just widen it out a little bit
20 here. If you would, just take the pointer and point out the
21 South Church -- first of all, the [REDACTED] area.

22 A This hard line here is [REDACTED].

23 Q Okay. All right. This right here?

24 A Yes.

25 Q Okay. All right. And then where is the Hamlet Street

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 location where this happened, the crack was recovered?

2 A This is Hamlet Street here.

3 Q Okay.

4 A And this would be Main, of course, and Pearson Avenue.

5 This is Hamlet.

6 Q That's Hamlet.

7 Okay. And then just to orient the jury a little bit.

8 Show them again where Main Street is.

9 A This big line here is Main. This is South Church
10 Street. Hamlet is here. And McBeth Street that we keep
11 talking about, it comes through here. You have to take a
12 left to come up and then take a left on Hamlet.

13 Q Okay. So, if you -- if someone was picked up on McBeth
14 Street and went straight on McBeth Street and, and came to
15 that residence on Hamlet Street, show, show the jury with
16 the pointer exactly where they get it picked up and what
17 route they take.

18 A McBeth runs this route to Foster Street. You have to
19 take a left and that would bring it up. I think the ball
20 field is here and this is Hamlet Street and the house sits
21 in this general area right there.

22 Q All right. Thank you. That's everything on direct.

23 MRS. BUTLER: Very briefly.

24 CROSS-EXAMINATION

25 BY MRS. BUTLER:

Jimmy Johnson - Cross-examination
by Mrs. Butler

1 Q Sergeant Johnson, you say that you were not present
2 when, when the, supposedly the drugs were found, is that
3 right?

4 A I arrived very shortly right after.

5 Q So, you never saw Mr. Hall with drugs in his
6 possession?

7 A No, ma'am.

8 Q And you never saw Mr. Hall attempt to, to supposedly
9 fling anything?

10 A No, ma'am.

11 Q You just arrived and somebody pointed to you and said
12 some drugs are over there?

13 A Yes, ma'am.

14 Q And you saw the folks standing outside the house on the
15 video, didn't you?

16 A Yes, ma'am.

17 Q And---

18 A Well, I seen some folks standing in the yard. I don't
19 know if they were -- I couldn't tell from that angle if they
20 were at that house or not, past that house down the street.

21 Q Standing outside where we saw the video though?

22 A Right. They was someone standing in the road, but,
23 like I said, I can't tell it from that angle if they were
24 standing at the house or if they were past that street or
25 where.

Jimmy Johnson - Cross-examination
by Mrs. Butler

1 Q And -- okay. And now you did hear Officer Bailey
2 testify, when I showed him that, that that was the house?

3 A Yes, that was definitely the house. But what I was
4 saying, from that angle, I cannot sit here and tell you that
5 those people were standing at that house or they were
6 standing down the street past that house. I'm sorry. I
7 can't help you with that one. I don't know.

8 Q But we definitely have the people standing out there?
9 You don't deny?

10 A No.

11 Q Okay. And you -- you know that there's a history of
12 drug dealing in this house, correct?

13 A I do not know that. I've never actually arrested
14 anybody out of that house.

15 Q Is that correct?

16 A I've never arrested anybody out of that house. I've
17 never been to that house and arrested someone except for Mr.
18 Hall.

19 Q Not out of that house, but you've arrested someone that
20 lives in that house?

21 A In the past, yes.

22 Q So, you hadn't arrested them physically and taken them
23 out of the house, but they actually were a resident of that
24 house?

25 A Right, I've never actually bought dope or anything or

Jimmy Johnson - Cross-examination
by Mrs. Butler

1 had an informant buy dope from that house.

2 Q I'm sorry. So that we don't confuse the jury, would
3 you just answer yes or no.

4 Did you, did you arrest somebody that lived in that
5 residence?

6 A Yes, ma'am, I have in the past.

7 Q Okay. Were they arrested for drugs?

8 A Yes.

9 Q Thank you.

10 Was it more than one people, one person that you've
11 arrested from that house for drugs?

12 A I don't recall anybody else that I know for a fact that
13 lives or that has lived or lives at that residence.

14 MRS. BUTLER: I beg the Court's indulgence.

15 (Pause.)

16 MRS. BUTLER: That's all the questions I have.

17 REDIRECT EXAMINATION

18 BY SOLICITOR ANTHONY:

19 Q When the drugs were located, where, where did you first
20 see the drugs?

21 A On the ground---

22 Q Okay.

23 A ---next to the house. If you are actually between the
24 car and the house, they were actually up next to the house
25 right just not too far past the front corner.

Jimmy Johnson - Redirect examination
by Solicitor Anthony

1 Q And it wasn't like they weren't just handed to you by
2 another person?

3 You saw them on the ground?

4 A Yes, sir.

5 Q You picked them up off the ground?

6 A Correct.

7 Q All right. Was there anything on top of them?

8 A No, sir.

9 Q All right. Was the -- was it hard to see?

10 A No, sir.

11 Q Okay. And you said, you said you had never actually
12 had a person go into that residence and buy controlled
13 substances?

14 A No, sir.

15 Q Thank you. That's all on redirect.

16 THE COURT: Recross.

17 MRS. BUTLER: No, sir, Your Honor.

18 THE COURT: You can step down and be excused. You can
19 stay.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 Members of the jury panel, it's 12:30. We'll break
23 till 1:45 for lunch. Have a pleasant lunch. We'll see you
24 back at 1:45.

25 (WHEREUPON, Court was in recess for the lunch hour

1 jury.)

2 SOLICITOR ANTHONY: Captain Johnson is on his way to
3 get back. Would the Court allow me to wait before we get
4 started?

5 THE COURT: Well, if we can, just to be very blunt, I
6 saw him coming down the steps as I was coming back from
7 lunch.

8 SOLICITOR ANTHONY: Yes, sir.

9 THE COURT: If he had an errand, why didn't he do it in
10 the hour and forty-five, hour and fifteen minutes we allowed
11 for lunch?

12 SOLICITOR ANTHONY: Well, it was something related to
13 the case that I didn't realize needed to be done till when
14 he was coming back. He was coming back to see me, and I
15 can, I can start back if you want me to.

16 THE COURT: Well, yeah, let's do. We'll just -- this
17 case seems to be, have a rather sluggish pace a bit.

18 SOLICITOR ANTHONY: Okay.

19 THE COURT: Bring in the jury.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: Call your next witness.

23 SOLICITOR ANTHONY: The next witness is Agent
24 Burroughs. She's right back there.

25 MARY BURROUGHS, being first duly

Mary Burroughs - Direct examination
by Solicitor Anthony

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR ANTHONY:

4 Q State your full name.

5 A Mary Beth Burroughs.

6 Q Okay. And, Agent Burroughs, how are you employed?

7 A I am employed with the South Carolina Law Enforcement
8 Division also known as SLED as a forensic chemist in the
9 drug analysis department.

10 Q How long have you worked for SLED in that capacity?

11 A For three years.

12 Q And what do you do as a forensic chemist?

13 what, what does your job involve?

14 A I test non-biological evidence for the presence of
15 controlled substances.

16 Q And would you tell the jury and the Court what your
17 education and training are in the field of drug analysis?

18 A Yes, I have a Bachelor of Science Degree in Chemistry
19 and also a Master of Teaching Secondary Science both from
20 the University of South Carolina. I have completed drug
21 analysis training at SLED and also legal training at the
22 South Carolina Criminal Justice Academy.

23 Q And have you testified before concerning drug analysis
24 that you have performed?

25 A Yes, sir.

Mary Burroughs - Direct examination
by Solicitor Anthony

1 Q And have you been qualified as an expert witness in the
2 past?

3 A Yes.

4 Q Approximately how many times have you been qualified as
5 an expert?

6 A Six times.

7 SOLICITOR ANTHONY: Your Honor, at this time we would
8 submit Agent Burroughs to the Court as an expert in the
9 field of drug analysis.

10 MRS. BUTLER: No objection.

11 THE COURT: I find she's qualified.

12 Q I'm going to hand up what's been marked for
13 identification as State's Exhibit No. 10. I would ask you
14 just to look at that exhibit and see if you've seen it
15 before.

16 A Yes, sir, I have.

17 Q Okay. And when did you come into possession of that?

18 A May I refer to my notes please?

19 I came into possession June 1st, 2010.

20 Q And how did you come into possession of it?

21 A I went down to the evidence log-in department and
22 retrieved it from the log-in technician.

23 Q And when drugs are submitted at SLED, what is the
24 procedure for, for their in-take and were, how are they kept
25 until drug analysis, drug analysis is actually performed on

Mary Burroughs - Direct examination
by Solicitor Anthony

1 them.

2 A Well, I would, as I said, go down to evidence log-in
3 and every, every chemist and technician has their own bar
4 code, and it's electrically scanned. So, it was scanned
5 into my custody. You can see the bar code here. And, so,
6 the electric chain of custody is produced that way.

7 Q And how are the drugs eventually transferred from
8 evidence in-take up to your department?

9 A I will just send in a list of the cases that I would
10 like to get, go down and pick it up, and then I'll bring it
11 up to our lab and place it in what we call the drug vault
12 until I'm ready to analyze it.

13 Q And for that particular bag, how did it come into your
14 possession or who did you, who did you get it from?

15 A Patricia Crooks who is a forensic technician.

16 Q Okay. And did you receive those drugs in the usual
17 manner of asking them to get them ready for you and you came
18 down and picked them up?

19 A Yes, sir.

20 Q And when did you retrieve the drugs that or the bag
21 that is State's Exhibit No. 10?

22 A On June 1st, 2010.

23 Q Okay. And then what did you do with them after you got
24 them on June 1st?

25 A In this particular case I placed it into the drug vault

Mary Burroughs - Direct examination
by Solicitor Anthony

1 until June 15th and that's when I began my analysis.

2 Q Okay. And what did you do in performing the analysis?

3 A Well, the first thing that I do is I make sure that the
4 bag that was submitted was sealed, and I know that it was
5 sealed because I wrote okay and the date I opened it and my
6 initials. Then I take the evidence out, I would weigh it,
7 and then I would perform a chemical test as well as a
8 confirmatory test.

9 Q And when you opened up the bag State's Exhibit No. 10
10 and went to weigh those drugs, what did you find?

11 A I have a weight of 0.3 grams.

12 Q And then as far as actually making the determination as
13 to the nature of those drugs, how did you go about that?

14 A I performed a chemical test, which kind of just gives
15 me an idea of what direction to go into. It's, it's not an
16 all inclusive and it's just a preliminary test to kind of
17 give me an idea of what, what I'm dealing with, and then I
18 perform a confirmatory test for which is gas chromatography
19 mass spectroscopy, and I did determine that there was
20 cocaine base, also known as crack, present.

21 Q All right. And after you have performed those tests on
22 the, the item that's Exhibit No. 10, what did you do with
23 the, the remainder of the drugs?

24 A After I retrieved the amount of sample that I needed, I
25 placed everything back into this heat sealed pouch. I heat

Mary Burroughs - Direct examination
by Solicitor Anthony

1 sealed it, initialed, dated, and placed it back into the
2 drug vault until I was ready to return it, which was on June
3 the 28th.

4 Q And you say that you sealed up the SLED bag into your
5 bag back into an exterior bag, is that correct?

6 A Yes, sir.

7 Q And then you dated and sealed the exterior bag?

8 A Yes.

9 Q And the drugs appear to you today to be in the same
10 condition as they were when you sealed the bag back up on
11 June, June -- what was the date you sealed it back up?

12 A June 15th.

13 Q June 15th.

14 Does that item appear to be in the same condition?

15 A It does. The only thing that was added, I added the
16 Ziplock bag just so it was contained better.

17 SOLICITOR ANTHONY: Your Honor, we move Exhibit 10 into
18 evidence.

19 MRS. BUTLER: No objection.

20 THE COURT: In without objection.

21 (WHEREUPON, State's Exhibit No. 10 was received into
22 evidence at this time.)

23 SOLICITOR ANTHONY: All right. Then that would be all
24 my questions on direct.

25 THE COURT: Cross.

Mary Beth Burroughs - Cross-examination
by Mrs. Butler

1 MRS. BUTLER: Very briefly.

2 CROSS-EXAMINATION

3 BY MRS. BUTLER:

4 Q Agent Burroughs, Agent Burroughs, have you ever saw the
5 defendant that's present here today before today?

6 A No, ma'am.

7 Q And as you heard, just so that the jury understands,
8 your only role in this situation in this case is to
9 determine what the officers handed over to you and what,
10 what kind of substances it is?

11 A Correct.

12 Q Is that correct?

13 A Yes.

14 Q So, you, you, you're not here -- you can't say whether
15 the defendant actually possessed these drugs or not, can
16 you?

17 A Correct.

18 Q And, Agent Burroughs, the, the -- it's possible that
19 these drugs could of come from anywhere, anyplace, but it is
20 crack cocaine; what it is?

21 A It is.

22 Q But it is possible that it came from anywhere, any
23 defendant?

24 A I have no knowledge of where it come from, just what it
25 is.

Mary Beth Burroughs - Cross-examination
by Mrs. Butler

1 Q And the, the only, the only reason that you're here
2 testifying is just because, to, to say what the drug is that
3 the officer gave to you, is that correct?

4 A Yes, ma'am.

5 MRS. BUTLER: Okay. And that's all the questions I
6 have.

7 SOLICITOR ANTHONY: No redirect.

8 THE COURT: Thank you. We appreciate your time. You
9 can be excused.

10 Call your next witness.

11 SOLICITOR ANTHONY: Your Honor, we would, at this time,
12 briefly recall Sergeant Johnson.

13 THE COURT: You are still under oath.

14 (WHEREUPON, two photographs were marked as State's
15 Exhibits Nos. 12 and 13 for identification purposes only at
16 this time.)

17 JIMMY JOHNSON, having been previously
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR ANTHONY:

21 Q Sergeant Johnson, when you testified earlier, we showed
22 you some photographs that were made from the DVD, is that
23 correct?

24 A Yes, sir.

25 Q And I'm gonna hand you Exhibits 12 and 13 for

Jimmy Johnson - Direct examination
by Solicitor Anthony

1. identification.

2. could you identify those photos please?

3. A Yes, sir, like the other photos, these are the
4. defendant's hand, Mr. Douglas Hall, while he was in the
5. vehicle with the informant, Mr. DuBois, and it appears that
6. he does have a small white object, appears to be a small
7. plastic bag with white, white contraband inside in his hand.

8. Q All right. And those are fair and accurate depictions
9. that were, from which still frame photos were generated by
10. you from videotape?

11. A Yes, sir.

12. SOLICITOR ANTHONY: All right. We move 13 and 14 into
13. evidence?

14. MRS. BUTLER: Your Honor, the defendant objects. The
15. pictures were not shown to the defendant before right now
16. and at the pretrial motions the State stated that all
17. discovery had been completed.

18. THE COURT: I'm going to let the jury go to the jury
19. room for just a minute. Take the jury to the jury room just
20. a minute.

21. (WHEREUPON, the following takes place outside the
22. presence of the jury.)

23. THE COURT: Mrs. Butler, you weren't provided these
24. photographs in discovery?

25. MRS. BUTLER: I was provided photographs, the ones that

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 have been entered into evidence. We were provided all
2 those, but not these two that I was just shown.

3 SOLICITOR ANTHONY: But, but she was provided the DVD
4 that all these are just pictures that are derived from the
5 DVD. So, when we gave her the DVD we complied with
6 discovery as to any still frames we might care to show from.

7 MRS. BUTLER: Your Honor, he -- the State provided me
8 with copies of all the pictures that they planned to
9 introduce through discovery and that was the defendant's --
10 we, we didn't get any other pictures and that's what he's
11 intending to introduce now is pictures. He's already gotten
12 the tape into evidence. So, that's where -- if that's what
13 he wants the jury to see, that's what he gave us in
14 discovery, but he's attempting to introduce pictures that he
15 did not give us in discovery.

16 SOLICITOR ANTHONY: Well, once again, those, those
17 pictures---

18 THE COURT: I understand. I understand. You, you
19 understand what he's saying is they just -- you've, you've
20 seen them because they're on the video. So, they're just
21 still out of the video. So, it's really nothing new.
22 That's sort of what he's saying.

23 You understand that?

24 MRS. BUTLER: I understand, I understand what he's
25 saying, right. But we've not saw it in that context prior

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 to this. Obviously it's something that, that Sergeant James
2 Johnson and himself concocted or I'm not gonna say
3 concocted, put together over lunch and that was the purpose
4 for Mrs., Sergeant Johnson being late coming back to the
5 trial.

6 THE COURT: Well, Rule 5 says that documents and
7 tangible objects which were requested include the right for
8 the defendant to, to inspect and copy books, papers,
9 documents, photographs, and other things which are intended
10 for use by the prosecution as evidence at the trial. These
11 are photographs that are not intended to be used, they are
12 now offered into evidence. Rule 5 seems to pretty directly
13 state that photographs to be used are to be provided.

14 SOLICITOR ANTHONY: I, I just would state that our --
15 we complied because all the visual material that comprises
16 those pictures was turned over. She -- obviously has the,
17 the images depicted. She had the images depicted in those
18 pictures long before the trial because all it is, is images
19 off a videotape. So, the fact that we didn't turn the still
20 frames over is, is not, is not a violation of Rule 5 because
21 we turned the DVD over and that, that incorporates any still
22 frame we might want to make.

23 THE COURT: Anything else, Mrs. Butler?

24 MRS. BUTLER: Your Honor, the rule clearly states
25 photographs and the video's already in evidence if that

Jimmy Johnson - Direct examination
by Solicitor Anthony

1 wasn't -- that's what the State plans to rely on. And the
2 rule seems to be clear that he's supposed, the State is
3 supposed to turn over all evidence that they plan to
4 introduce in their case at trial and we clearly did not
5 receive those. I think that the State does not dispute that
6 I didn't, that the defendant did not receive those prior to
7 right now or have an opportunity to view it.

8 THE COURT: Well, I'll overrule your objection. I'll
9 allow them in because the, they are taken from the video.
10 So, the images were provided although in a different format.
11 But I think, in the future, I would suggest that if still
12 photographs are to be used, they ought to be supplied prior,
13 prior to trial.

14 SOLICITOR ANTHONY: Yes, sir.

15 THE COURT: Bring in the jury.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: Over objection, those are admitted in the
19 trial.

20 SOLICITOR ANTHONY: Thank you, Your Honor.

21 THE COURT: Into the record.

22 (WHEREUPON, State's Exhibit Nos. 12 and 13 were
23 received into evidence at this time.)

24 SOLICITOR ANTHONY: That's everything on direct.

25 THE COURT: All right.

1 MRS. BUTLER: Your Honor, I have no questions.

2 THE COURT: You may step down. Call your next witness.

3 SOLICITOR ANTHONY: That's, that's the State evidence.

4 THE COURT: All right. I got to let you go back out
5 again while we take up matters of law. I didn't know that
6 we were at this posture yet.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE COURT: Anything from the State?

10 SOLICITOR ANTHONY: No, sir.

11 THE COURT: Mrs. Butler.

12 MRS. BUTLER: Yes, sir, Your Honor.

13 The defendant makes a motion for a directed verdict on
14 the charge of possession of crack cocaine with intent to
15 distribute within proximity of a school, public park, or
16 public playground. Your Honor, the defendant's motion is
17 based on the fact that the State has presented testimony
18 that this is a ball field. This is not a public park or a
19 school that falls within the statute. The statute
20 specifically reads, it's 44-53-445, that it must be a public
21 or private elementary, middle, or secondary school, a public
22 playground or park, a public vocational or trade school or
23 technical education center, or a public or private college
24 or university.

25 Your Honor, the indictment states this is, that the

1 defendant did possess, with intent to distribute, within
2 James Moore Ball Field. The case law -- there's the case,
3 Brown versus State, from 2000---

4 THE COURT: Hand me a copy if you're going to talk
5 about it.

6 MRS. BUTLER: I'm sorry?

7 THE COURT: If you're going to talk about a case, you
8 need to -- I need to see the language.

9 MRS. BUTLER: Yes, sir, I'll have to give you my copy.
10 It's got my writing on it. Turn that down. That case has
11 to do with a day care. The, the defendant was charged with
12 possession within proximity of a school under this same
13 statute and the, the school/park/playground that the State
14 tried, tried to make it fall under was a day care, and the
15 state presented evidence that the day care had a playground
16 on the premises, and the Court found that just the fact that
17 they had a playground on the premises did not make it a
18 public park, school, or playground within the, within this
19 particular statute.

20 MRS. BUTLER: Your Honor, if there's a picture -- if I
21 may, there's a picture.

22 THE COURT: I'm sorry. No, go ahead.

23 MRS. BUTLER: There's a picture introduced into
24 evidence, the State's Exhibit, I'm not sure which number it
25 is, but it clearly shows that this is the James F. Moore

1 Ball Field. There was also testimony by the State's officer
2 that Little League games and Dixie Youth are played here.

3 SOLICITOR ANTHONY: We just argue that I guess two
4 things. One, is I think the, the term and idea of a park
5 encompass a ball field and Exhibit 7, we actually put in a
6 picture of the, of the ball field, and there's, there's
7 playground equipment over to the right. I can show the
8 Court that. There was testimony that this is a park that's
9 used for, for public use, and I don't -- I mean it seems, it
10 seems as if, if our presentation on that would meet the
11 requirements of the statute.

12 THE COURT: Mrs. Butler, do you know the last words
13 that are said before the first pitch in a game?

14 MRS. BUTLER: I don't know.

15 THE COURT: Play ball. This is a playground and it
16 does appear to be a park also from the pictures. So, I deny
17 the motion.

18 MRS. BUTLER: If I may, the case that I handed up, it
19 specifically says the Legislature---

20 THE COURT: I've looked at the case and I deny the
21 motion for directed verdict.

22 MRS. BUTLER: Thank you, Your Honor.

23 THE COURT: I find this falls within the definition.
24 Is that it?

25 MRS. BUTLER: Yes, sir, Your Honor.

1 THE COURT: All right. Mr. Hall, we've reached the
2 point in the trial where you have the right to present a
3 defense if you wish. You do not have to present any
4 evidence because you are, as your attorney's already stated
5 to the jury, you're presumed innocent of the charges and
6 need not prove your innocence. The State has to prove your
7 guilt beyond a reasonable doubt. So, you don't have to
8 present any evidence, but you can.

9 If you present evidence, then -- if you do not present
10 evidence, your attorney will have the right to make the last
11 closing argument to the jury. If you present evidence, the
12 State would have the right to make the last closing argument
13 to the jury.

14 You have a right to testify if you wish. If you do,
15 the State would be able to cross-examine you and you'll be
16 under oath, and also the State would be able to ask you
17 questions about your prior record that we discussed earlier.

18 Do you remember that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I will tell the jury that the
21 State is allowed to ask you about your prior record solely
22 on the issue of whether or not you're telling the truth.
23 That is on your credibility. Not on whether or not you
24 committed this particular set of offenses.

25 If you exercise your Constitutional right to remain

1 silent, I will tell the jury that is, in fact, what you've
2 done. That you have a Constitutional right to remain
3 silent, that they cannot use that against you in any way
4 whatsoever, or even discuss or take into their own
5 consideration in their deliberations the fact that you have
6 exercised your constitutional right to remain silent. I
7 will remind them that you are presumed innocent. You need
8 not prove your innocence and the State must prove your guilt
9 beyond a reasonable doubt.

10 Do you understand all that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions about that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Now, the decision to testify or not is
15 yours. It's not your attorney's or anyone else's. It's
16 ultimately up to you.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Have you decided whether you
20 want to testify or not or you want to have a few minutes
21 with your attorney?

22 (Pause.)

23 THE DEFENDANT: Yes.

24 THE COURT: You are going to testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. well, let's bring the jury back
2 in.

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Members of the jury panel, before you went
6 out the State indicated that it ended its evidence. That is
7 you've heard the State's presentation of evidence. We'll
8 now turn to the defense and they have a right, but, again,
9 as I stated earlier, no obligation to present a defense, but
10 they have a right to.

11 So, I'll turn it over to Mrs. Butler at this time.

12 MRS. BUTLER: Thank you, Your Honor.

13 Call Douglas Hall to the stand.

14 THE COURT: Please come up and be sworn.

15 DOUGLAS HALL, Being first duly
16 sworn, testified as follows:

17 MRS. BUTLER: Please the Court?

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MRS. BUTLER:

21 Q Mr. Hall, can you hear me?

22 A Yes.

23 Q Can you please state your full name for the record?

24 A Douglas Hall.

25 Q And how old are you?

Douglas Hall - Direct examination
by Mrs. Butler

1 A Forty-nine.

2 Q And, Mr. Hall, when did you first meet Melvin DuBois?

3 A I met him maybe probably about a week and a half ago, a
4 week and a half before I caught the charge, before May the
5 18th. So, probably around the first week in May.

6 Q And, and how did you come to Melvin got to owe you some
7 money?

8 A It was about -- well, he, he had some, some -- what
9 they -- like credit, like cards you get from Wal-Mart, the
10 gift cards, and he was coming -- I met him over there at
11 Waffle House at the yellow house and he used to come by. We
12 used to get high together. When I first met him, we got
13 high a couple times, and then after that he came through one
14 day and he said he had a gift card, and I told him I know
15 somebody who would take it if he got money on it. It was a
16 \$30 Wal-Mart gift card. And, so, he traded to the female
17 that I used to be with, I was kicking with, he traded it to
18 her. She gave him \$15 and she checked the card and it had
19 29, \$29 and like 80 something cents, whatever the tax was,
20 and, so, he left then.

21 Q So, let me stop one minute.

22 Did he sell the card for her for less than what's on
23 it?

24 A He sold it for half price.

25 Q Okay.

Douglas Hall - Direct examination
by Mrs. Butler

1 A And, so, so, like a couple weeks later -- no, no, a
2 couple days later he come with two, two gift cards and he
3 said that if, if you give me \$30, give me \$30 I'll give you
4 these two good gift cards. I said man, I ain't really got
5 no money, you know, because the female that I was, you know,
6 a friend of mine, she had the money, but, you know, she
7 ain't gonna trust me with no money anyway, I'll mess it up.
8 But she gave him the \$30 for the two cards, and it was at
9 night. It was kind of late. So, she didn't think about it
10 to check the cards. So, he left.

11 The next day she went to Family Dollars to purchase
12 something with the card, with one of the cards, and the lady
13 said it had zero---

14 SOLICITOR ANTHONY: Objection to hearsay.

15 THE COURT: You can't tell you what the lady said.
16 That would be hearsay.

17 THE WITNESS: About the---

18 THE COURT: No, you can't say what the lady said.

19 THE WITNESS: Oh, okay.

20 Q When she, she tried to purchase something with the
21 card, was there money on the card?

22 A No.

23 Q But when Melvin DuBois called you on this particular
24 day that we've been talking about, May 18th, 2010, what
25 happened then when he called you on the phone?

Douglas Hall - Direct examination
by Mrs. Butler

1 A He called me about I think it was early. It was
2 probably about 9:00, 9:30 or something. It was early in the
3 morning. I think, you know, about 10:00 maybe, and he
4 called. He said he had \$20 cause he know I know where to get
5 the hook up. And, so, he came.

6 When he came with the \$20, he didn't have \$20. He had
7 like \$13 and like 89 cents or something. So, I told the man
8 I can't deal like this, you know. It said it ain't mines. I
9 got to give the money what it's worth, you know. I broke it
10 in half and he took it and he left and he walk off. I seen
11 the black Charger ride by. I thought he was setting me up.
12 I said man, this man done got me selling crack to him. I got
13 a crack charge.

14 So, he ride by and turned and Melvin over. I peaked
15 around the corner and I said dog, and I made eye contact with
16 the guy in the black Charger, and he looked at me. So, I
17 just took off and ran.

18 Q Do you know who owned the black Charger?

19 A Most definitely.

20 Q Who was it?

21 A I think Lieutenant Sherfield. So, I ran in the first
22 apartment, run inside. I knocked on the door real quick and
23 they let me in, Joanna Graves. So, I went in and I talked
24 to her and minute and bla bla. She said they got you --
25 they got the white guy who you be with held up right there.

Douglas Hall - Direct examination
by Mrs. Butler

1 So, we looked out the window. I didn't see him actually get
2 the drugs off him, but I just seen when I came in he was
3 handcuffing him and he was walking him toward the car. So,
4 I'm like, gah, man.

5 Q So, you saw Melvin DuBois get put into the police car?

6 A Yes.

7 Q And then when was the next time you heard from Mr.
8 DuBois?

9 A I called him. I called him and asked him, I said, I
10 asked him, I say what happened with you in there and the
11 police over there. He said no, ain't nothing happen. I
12 said they got the drugs off you, didn't he. He was like no,
13 they ain't find no drugs off me. Oh, I said oh, I need my
14 \$30 man cause, you know, this girl is getting on me about
15 the money. He was like my, my wife, about one or two
16 o'clock, I'm gonna have a hundred dollars. He say I'm gonna
17 come through and I'm gonna pay and you and we'll get high.
18 I said okay.

19 Q And did Mr. DuBois, in fact, call later?

20 A He called me, but this what his exact words was. He
21 called me he said I got your money. I said you do. He
22 said, yeah. He say where you at. I said you know where I'm
23 at. He said okay.

24 Q When he said I got your money, what money were you
25 assuming he's talking about?

Douglas Hall - Direct examination
by Mrs. Butler

1 A He was talking about the \$30 that he owed my lady
2 friend.

3 Q From what?

4 A From the gift cards.

5 Q Those were gift cards that didn't have a balance on
6 them?

7 A That didn't have a balance, didn't have nothing on
8 them.

9 Q I'm going to ask the solicitor to start the machine up
10 please. I'm going to ask you a few questions about the
11 video and I'm going to get it started and stop it as I need
12 to ask you, Mr. Hall.

13 (WHEREUPON, a portion of State's Exhibit No. 1 was
14 played for the jury at this time.)

15 Mr. Hall, right now is it you on the phone with
16 Mr. Melvin DuBois?

17 A Yes.

18 Q Were you planning to meet him somewhere?

19 A On, on South Church Apartment.

20 Q And why were you planning to meet him?

21 A He say he was going -- he had my \$30.

22 Q Thank you.

23 (WHEREUPON, a portion of State's Exhibit No. 1 was
24 played for the jury at this time.)

25 Q Mr. Hall, was that you that just got into the car?

Douglas Hall - Direct examination
by Mrs. Butler

- 1 A Yes.
- 2 Q And what did you have in your hand?
- 3 A When I first got in the car?
- 4 Q Yeah, in your left-hand.
- 5 A I had a marijuana stick.
- 6 Q And, Mr. Hall, what did you have in your other hand?
- 7 A Nothing.
- 8 Q Okay. And, and you said that you did have something in
- 9 which hand?
- 10 A In my right.
- 11 Q Okay.
- 12 (WHEREUPON, a portion of State's Exhibit No. 1 was
- 13 played for the jury at this time.)
- 14 Q Mr. Hall, where were you thinking that you were going
- 15 with Mr. DuBois right now?
- 16 A When I got in the car I was really trying to get my
- 17 money and I was trying to figure him out because I knew that
- 18 the police had put him in the car and my first thought was
- 19 he's wearing a wire. That was my first thought when I got
- 20 in that car. I wasn't going no where in that particular
- 21 time, but later on I changed my plan to say I was going to
- 22 Piggly Wiggly. I, I never told them to go to no certain
- 23 spot.
- 24 Q Why, why did you change your plan?
- 25 A When I seen that the green car rode by and he hollered,

Douglas Hall - Direct examination
by Mrs. Butler

1 he made a thing like, oh, oh, who is that. Man, I was like,
2 oh, that's nobody. I said, man. Then I called, I called
3 him. I said, man, this guy, he's wired. I said --
4 basically I thought that he had me on a cell from early that
5 day. So, I said I done messed up because I gave him crack
6 earlier today for \$13.

7 Q So, you were -- were you concerned with that earlier
8 transaction might reflect---

9 A Yeah, cause he told me during that time that the
10 police -- he actually said that they seen the crack, but
11 they gave it back. I said gave it. How you give it back.
12 I looked, I said to the man --.

13 (WHEREUPON, a portion of State's Exhibit No. 1 was
14 played for the jury at this time.)

15 Q What did you just tell Mr. DuBois to do?

16 A I told him to go to the Piggly Wiggly. I told him to
17 drop me off at Piggly Wiggly and let me pass the car. He
18 asked where we was going. I said, man, no where, just take
19 me to Piggly Wiggly. You can't really hear my voice, but I
20 told him to take me to Piggly Wiggly to get some canned
21 goods and stuff for my baby daughter, you know. That's what
22 I asked him.

23 (WHEREUPON, a portion of State's Exhibit No. 1 was
24 played for the jury at this time.)

25 Q What were y'all talking about just then, Mr. Hall?

Douglas Hall - Direct examination
by Mrs. Butler

- 1 A He was -- like before I got out the car he was saying
2 like -- when we first pulled up, he was like who is all
3 those people. He was talking about those peoples in the
4 yard and he was like who is them. I said, oh, man, don't
5 worry about it. You heard the door open. I was ready to
6 jump and out run then, but he was still in the middle of the
7 road. I said pull over here. So, when he pulled over I
8 just jumped out the car and I run towards that, down that
9 street down there.
- 10 Q Let me stop you for one minute.
11 Did Mr., did Mr. DuBois ask you a question?
- 12 A Oh, he something -- go back. I can -- I know he asked
13 me. He said something like I'll get you---
- 14 Q Did he ask you how long, how long?
- 15 A Yeah, that's what he. He asked me how long it was gone
16 be. I was like what gone be.
- 17 Q Did you answer Mr. DuBois when he asked you a question?
- 18 A Nope.
- 19 Q If you'll get the lights please.
20 Mr. Hall, did you have crack cocaine in your possession
21 at that time?
- 22 A No, ma'am.
- 23 Q And what -- where did you go when you got out of the
24 car?
- 25 A I knocked on my cousin door on that, where all; where

Douglas Hall - Direct examination
by Mrs. Butler

1 them peoples was. I knocked on the door, did like that, and
2 my cousin, Shea, there said come in. So, I stand at the
3 door and I seen Brian Bailey -- before I went in the house
4 he was like Doug Hall, stop right there, and I just looked
5 back at him and I shut the door and I was standing in the
6 screen door. He ran on the side of the house, the opposite
7 side where the cars -- not where the cars, where he claim
8 that me and him was chasing. That never happened. But he
9 ran on the other side, and I went in there, I told Shea and
10 them, it's like -- Shea like what's up, cuz. I said not
11 nothing. I said it's gonna be a lot of polices down here in
12 a minute and she said like what you did. I said I ain't did
13 nothing no, and I went back out the house.

14 Q Mr. Hall, did you get, did you get into the car with
15 Mr. DuBois intending to sell him any drugs?

16 A No, ma'am.

17 Q I'm looking for the picture. I think it's marked
18 State's Exhibit 2 or 3.

19 SOLICITOR ANTHONY: Is this it?

20 Q Mr. Hall, do you recognize these photos?

21 A Yes.

22 Q And let me lead right here with them and let me ask you
23 a couple questions about them.

24 Mr. Hall, do you recognize those photos as the same
25 ones that the State testified that it showed something in

Douglas Hall - Direct examination
by Mrs. Butler

1 your hand?

2 A Yes, ma'am.

3 Q And what---

4 A Yes, ma'am.

5 Q And what, what do you have in your hand?

6 A It's clear. You can see it if you look. I had a
7 joint. It was rolled. I had a crunch and munch as they
8 call, the terminology of this when you grab, when you get
9 crack and you get a rolling paper and you put cigarette in
10 there or the weed and you crunch up your, your crack and you
11 mix it in the joint and you smoke it.

12 Q So, were you smoking that during your ride?

13 A No, I smoked it -- before, before I got in the car I
14 had put it out when I went through the hole in the fence.
15 So, I put it out and I put it in my hand. I say I ain't
16 gonna let him see this neither. If he see that, he'll be --
17 I didn't want him to see I had a joint neither.

18 Q And, Mr. Hall, that's all the questions on the
19 pictures. You can just lay them up here.

20 When you pulled up, did you see people standing around
21 that yard?

22 A Yes.

23 Q About how many people would you say?

24 A I think I seen like, like three or four males and I
25 think there was a couple a females.

Douglas Hall - Direct examination
by Mrs. Butler

1 Q And is that the same yard people were standing in that
2 the drugs were supposedly found?

3 A Yes.

4 Q Do you, do you know of anybody that have been arrested
5 out that same house that you were at?

6 A Yes.

7 Q And what were they arrested for?

8 A Well, one of them gone to prison, Jessie Pop. He's for
9 trafficking in crack cocaine.

10 Q Is it, to your knowledge, you were living in, in this
11 neighborhood, is it your understanding that drugs are
12 normally at this house?

13 A I got out -- yeah, I got high there before on inside of
14 the house though. It was with the daddy. Jessie Pop and my
15 cousin who let me in, Shea Girl. So, I'm familiar with the
16 that, with the house and the area.

17 Q And at what point were you apprehended?

18 A I was apprehended after I went in the house for like
19 two or three minutes. It wasn't like he said they pushed me
20 back out the door. They never demand me back out. When I
21 went in there, I said the police -- she asked me what you
22 did and I said I ain't did nothing. I said y'all was trying
23 to set me up. She said, man, you better, you better, you
24 know, that's the way she talked. And, so, I said I'm gone.
25 I went back out the door.

Douglas Hall - Direct examination
by Mrs. Butler

1 where he said I ran to, he's right. I ran on that
2 side. I went there. But he wasn't no where near me. When
3 I got at the corner of that house, him and what's his name,
4 Jerome Beatty, Investigator Beatty, Beatty, and Brian Bailey
5 was standing facing me. And when I ran by, he said Doug
6 Hall, stop, and he ran like this way, kind of run this way
7 towards me, and I said man, I ain't did nothing. I start
8 running back and throwed my hands up. I ain't did nothing,
9 man, and I fell down, and he said you know you done messed
10 up this time. That's what he told. That's what he was for.

11 Q So, who told you that?

12 A Brian Bailey.

13 Q Did you see the drugs laying on the ground at that
14 time?

15 A No, ma'am.

16 Q When was the first that you heard about the drugs'
17 laying on the ground?

18 A When we -- well, after he, after he put the handcuffs
19 on me, Jerome Beatty, they put their hands on me, Brian
20 Bailey and Jerome Beatty. They walked me back to the car.
21 We stand by the car for like I'd say two or three minutes or
22 something waiting on I think his name is Sergeant Johnson in
23 the brown car. So, we was waiting on him to come cause I
24 was asking them, I said what is y'all charging me with.
25 Brian Bailey kept saying that you know what you did with

Douglas Hall - Direct examination
by Mrs. Butler

1 that guy in that jeep. I said, man, I ain't been in no
2 jeep. He said I seen you jumped out, Doug, and ran in the
3 house. I said, man, I ain't did nothing there.

4 Q Did, did they ever secure, put yellow tape around the
5 area---

6 A No.

7 Q ---where the drugs supposedly were?

8 A Me, me, Jerome Beatty -- me, Jerome Beatty and Brian
9 Bailey sat there and he came up later on, he pulled up, and
10 the first question---

11 Q Let me stop you.

12 When you say you sat there, where did you sit?

13 A We was standing there against, on the other side of the
14 house. We stand there. I stand like -- I had my hands
15 cuffed and I stand up against the car. Jerome, Investigator
16 Beatty here and Captain Brian Bailey was here and, and they
17 was say, you know, they was saying you got to wait, we got
18 to wait.

19 Q Were you at the area where the drugs were allegedly
20 found at this time?

21 A No.

22 Q Was anybody at the area where the drugs were alleged
23 found?

24 A No.

25 Q No officers?

Douglas Hall - Direct examination
by Mrs. Butler

1 A No officer.

2 Q At this time who were the only officers present on
3 scene?

4 A It was -- I seen the guy, I think he drive the green,
5 the one I was talking about, the green Crown Vic. He
6 just -- whatever.

7 Q It's okay.

8 A Well, he drive the green Crown Vic. He pulled up. He
9 went into the house because I guess he was thinking that I
10 was still in the house. But the whole time I was, they was
11 walking me back and the, and the father, Jessie Pop, was,
12 was telling him to get out my house. You ain't got no
13 warrant chase -- you ain't got no, no cars chasing somebody
14 out in my house and all kind of other stuff.

15 Q And who were the officers on the scene, the one in the
16 green car and who else?

17 A I seen Jerome Beatty, Beatty, and Brian Bailey.

18 Q And were there any officers standing near where the
19 drugs were supposedly located?

20 A No where near it.

21 Q Had you saw any officers pick up any drugs at this
22 time?

23 A Really I, I never, from where Brian Bailey and them was
24 standing and, and him and Jerome Beatty was standing, when I
25 came in the view with them, it was at the end of the house

Douglas Hall - Direct examination
by Mrs. Butler

1 and they ran me down, but he said he, something about some
2 drugs. First Jimmy Johnson come. He asked them about, he
3 asked them did you get my money, and Brian Bailey said no.
4 He said did you get the dope. He was like no. He said you
5 searched him. He said yeah. He said search him again.

6 So, Jimmy Johnson left. He left from the scene right
7 there where we was on the side of the house, on the other
8 side of the house opposite where the drugs were supposed
9 have been found. And, so, he left and went searching or
10 doing something. Then he came back and he had attitude. He
11 came back, you know, I don't know if I could use those type
12 of words that he used.

13 Q Jimmy who?

14 A Jimmy Johnson.

15 Q And, and, Mr. Hall, the people that were standing in
16 the yard when you were pulled up, do you know them to use
17 drugs?

18 A I know them necessarily.

19 SOLICITOR ANTHONY: objection to the relevance of that.

20 THE COURT: I sustain the objection.

21 Q Thank you, Mr. Hall. That's all the questions I have.
22 would you please answer any questions that Mr. Anthony has
23 for you?

24 A Thank you.

25 CROSS-EXAMINATION

Douglas Hall - Cross-examination
by Solicitor Anthony

1 BY SOLICITOR ANTHONY:

2 Q Now, Mr. Hall, your testimony was when Mr. DuBois came
3 to pick you up that afternoon you thought he was bringing
4 you money?

5 A I knew he was.

6 Q Okay. Because he told you that?

7 A Yeah.

8 Q And he owed you \$30?

9 A \$30.

10 Q And it's your testimony is basically, as far as, as far
11 as you were concerned, all you cared about was just getting
12 your \$30?

13 A Yes.

14 Q And there wasn't any prearranged drug deal being---

15 A No, he never.

16 Q ---being contemplated by you?

17 A No.

18 Q Okay. Okay. It was just about getting the money that
19 he owed you?

20 A Yes.

21 Q And then once you got that money, you were done?

22 A What?

23 Say that again.

24 Q Once you got the money you were done?

25 A Maybe. I really can't say because if I'd of got the

Douglas Hall - Cross-examination
by Solicitor Anthony

1 money right then he might of, would of, you know, we might
2 of would of went back to the apartment, but I knew he wasn't
3 right from the start. So, yeah, it was gonna be done with.

4 Q Okay. So, when he gets there, you get in the vehicle
5 with him, is that correct?

6 A Yes.

7 Q Okay. And the first thing you do, he does in the
8 vehicle is offer, is offer you \$70, right?

9 A I really didn't know what it was because when I first
10 got in the vehicle he just put the money in my face. Later
11 on he said it was \$70 and it was 20 that what he owed me, 20
12 of it what he owed me, and the other fifty he asked for
13 product, and I told him I didn't have no product.

14 Q So, it's not true that the very first thing he said
15 when you get in the car is there's \$70?

16 A He didn't say nothing. He just hold it up.

17 Q Okay. He never, he never, like as soon as you get in,
18 says there's 70?

19 A No.

20 Q Okay. Because if he had 70 and had just offered you
21 70, you could of just taken the money and got out of there,
22 right?

23 A Say that again.

24 Q Well, if he'd just offered you the money right off the
25 bat and paid this debt he owed you, you could of taken 30 of

Douglas Hall - Cross-examination
by Solicitor Anthony

1 that and just gotten out of his vehicle and gone on?

2 A Most definitely, but I wanted to know about the charge,
3 the crack that he got caught with though.

4 Q Okay. So, you have some other things you wanted to
5 talk to him about?

6 A I wanted to see if he a police or not.

7 Q Okay. You wanted to see if he was a police or not.

8 All right. And, so, you -- is it -- well, why did you,
9 why did you ride with him then?

10 A Why did I what?

11 Q Why did you ride with him a ways?

12 A I didn't, I didn't want to get the money because when I
13 first came, when he first pulled up, I said, first thought
14 in my mind, I'm gonna have to see what's going on with this
15 guy. I'm gonna have to see about this drug situation so
16 that if me and him gonna have dealings, you know, or be
17 mutual friends or smoke partners or, or whatever, I had to
18 know what happened then. I wanted to hear him, see him in
19 his face.

20 Q Okay. So, you wanted to talk to him about what had
21 happened that morning?

22 A Yes.

23 Q And that morning, you had, just so we're clear, that
24 morning you had given him crack?

25 A Yes.

Douglas Hall - Cross-examination
by Solicitor Anthony

1 Q Okay. And you knew that he'd been stopped by the
2 police that morning?

3 A Yes.

4 Q Okay. And you, and you talked to him about that?

5 A Yes.

6 Q When you ride, you talked to him about that?

7 A Yes.

8 Q Okay. All right. Well, if, if you knew he -- well,
9 strike that.

10 So, your testimony is that he never offered you \$70
11 when you got in the car?

12 A No, not to my knowledge.

13 Q Okay. All right. So, you decided to ride with him
14 always?

15 A Yeah.

16 Q Because you wanted to see if they was working with the
17 police.

18 Okay. And you, you're -- as far as deciding whether
19 they, you two would go, who, who decided which direction
20 he'd go?

21 A He kind of throwed me when we got at the bottom of the
22 hill. He wanted to make a quick right and the way he was
23 telling me a week or something before, he said only place he
24 know how to get to is from Langlontown to on Church Street.
25 He didn't know all around [REDACTED]. That's what his statement

Douglas Hall - Cross-examination
by Solicitor Anthony

1 was. But when I seen him turning, really turn on Congress
2 Street, I was like no, no, go this way, go this way cause I
3 wanted -- it seemed like something was odd, him telling me to
4 go that a way and he had never been in that area.

5 Q Okay. All right. So, you, you had an idea of where
6 you wanted him, him to go?

7 A No, I was just free-styling. I never knew what
8 destination I was going at until I seen Brian Bailey on
9 Henrietta Street. That's when I told him to turn on Hamlet
10 Street. I said oh, man, he's trying to set me up. Oh, man,
11 I got a crack charge. So, I told him to turn on Hamlet
12 Street and I was ready to jump out from the start, but I
13 said pull over right here, and he pulled over and he asked
14 me how long you gonna be, and I slammed the door and
15 running.

16 Q Okay. And, so, so, your -- the -- you told him to turn
17 on to Hamlet Street?

18 A Yes.

19 Q You agree with?

20 A I agree.

21 Q You told him to stop at that house on Hamlet Street?

22 A No, I ain't tell him to stop at the house. I told him
23 to stop. I was trying to get out way before the house
24 because I didn't want them peoples there, first thing they
25 saying, oh, man, he's trying to set us up.

Douglas Hall - Cross-examination
by Solicitor Anthony

1 Q Okay. And you told -- but you told him to stop and let
2 you out there in that area there at the park?

3 A Yeah.

4 Q Right?

5 A Yes.

6 Q Before you get to the house?

7 A Before you get to the house.

8 Q A little ways.

9 Okay. And you told him to stop there and that house,
10 you just testified, is a house where, if you, if you want
11 some crack, you can probably go to that house and buy crack,
12 is that correct?

13 A Most definitely.

14 Q Okay. And you knew that?

15 A Yes.

16 Q Okay. And your testimony is you got out of the car and
17 you went in the house?

18 A Yes, I knocked first.

19 Q Knocked on the door, just walked up, no, no hurry,
20 right?

21 A When?

22 Q When you walk up to the house.

23 A Yeah, right. Man, I was moving. I wasn't running full
24 speed, but I was, you know, I started out at a brisk walk,
25 but then I -- by the time I got close to the guys, I said,

Douglas Hall - Cross-examination
by Solicitor Anthony

1 man, shoot.

2 Q Okay. And that's, that's because you knew the police
3 were willing?

4 A Most definitely. I seen Brian Bailey. He -- he's the
5 police.

6 Q Okay. All right. And what was -- why were you
7 apprehensive about the police coming at that point?

8 A I thought that Melvin Dubois had wore a wire earlier
9 that day after I seen -- the first when I seen the Crown
10 vic, I said oh, man, he got me from a buy earlier. When I,
11 when I actually did, he purchased crack from me earlier that
12 day, and I said golly, and God, again, I see Brian Bailey.
13 I said oh, man, there go another police.

14 Q Okay.

15 A So, I, I bailed.

16 Q Okay. And what, what did you have on you at that time?

17 A I had a joint stick they call a crunch and munch.

18 Q All right. And you say it's basically a cigarette?

19 A It's, it's like a 1.5. You take a cigarette or either
20 weed, but I had a cigarette and you crunch it, you break it
21 up in rolling paper, you crunch the crack up, and you put it
22 in there and you smoke.

23 Q Okay. Okay. So, so, you had -- and I apologize. I
24 was just trying to make sure I understand this, you know,
25 this kind of formulation here. I mean it's kind of a

Douglas Hall - Cross-examination
by Solicitor Anthony

- 1 combination of marijuana and crack?
- 2 A well, cigarette and crack.
- 3 Q sort of like a, sort of like a cigarette with marijuana
- 4 and crack together?
- 5 A well, either way, yeah, you can have marijuana or
- 6 cigarettes.
- 7 Q All right. Kind of like it's a crack -- the crack's
- 8 the crunch and the marijuana's the munch, is that the idea?
- 9 A well, yeah, you can say it like that.
- 10 Q Okay. Okay. So, at the time that you get out of the
- 11 car, you had some, some amount of crack cocaine in a
- 12 cigarette form?
- 13 A Most definitely.
- 14 Q Okay. Okay. And, so, you, your testimony was you just
- 15 walked up to the house, is that correct?
- 16 A Walked up a brisk, a brisk walk.
- 17 Q Walked up to the house, knocked on the door?
- 18 A Yeah.
- 19 Q They let you in?
- 20 A Yes, she said, Shea Girl said come in.
- 21 Q Okay. And, and then you stayed -- you said you stayed
- 22 in the house two or three minutes?
- 23 A Maybe.
- 24 Q Okay. And nobody -- no police officer came to the door
- 25 at that time---

Douglas Hall - Cross-examination
by Solicitor Anthony

1 A No.

2 Q ---during that time?

3 A Wasn't nobody there but Brian Beatty, and he ran
4 around -- I guess he was running around back, back corner of
5 the house thinking that I was running through the house and
6 coming out the back door. So, he had the back making sure if
7 I come out through the back he'll see me cause obviously he
8 thought I had sold the man crack.

9 Q All right. So, so, your -- so, my question was nobody
10 from -- no police officers came to the, to the door of that
11 house while you were in there?

12 A No.

13 Q Okay. And nobody was in covering the front of it?

14 A No.

15 Q Okay.

16 A When I came out the door, no.

17 Q Okay. And you stayed there for two or three minutes?

18 A Yeah.

19 Q And nobody bothered you?

20 A No.

21 Q Okay.

22 A What you mean, like the people on the inside?

23 Q Well, no, I mean the police.

24 A Oh, no.

25 Q The police came to the door?

Douglas Hall - Cross-examination
by Solicitor Anthony

1 A No.

2 Q Nobody tried to get in on you or anything like that for
3 two or three minutes?

4 A Yeah.

5 Q All right. And then you decided to leave the house?

6 A Yup, I told them I was gone.

7 Q All right. And why -- what was the point of leaving
8 the house?

9 why did you leave?

10 A why, why stay in there?

11 you know, once Shea Girl found that I told her, I said
12 I done messed up, she said what you done did now, boy. I
13 said I think I done sold some drugs to the police earlier
14 that day, and she said boy, you done messed up. I say I'm
15 gone because it was kids in there. So, I told her that I'm
16 gone. So, I left back out the door.

17 Q All right. And at that point in time you go -- you
18 said you left running?

19 when you go out the house, do you start running?

20 A well, a little jog cause I wanted -- it was, it was too
21 late to even try to get away.

22 why run when I know that he, if I made the sale, I done
23 already sold the drugs. He know who I am. They gonna
24 arrest me anyway. So, I actually -- if I wanted to try to
25 run, they'd never caught me. I didn't try to run. I just

Douglas Hall - Cross-examination
by Solicitor Anthony

1 jogged off and said hey, man, I ain't did nothing, I ain't
2 did nothing.

3 Q All right. And when you, when you got to the back of
4 the house, that's where the city police officers were?

5 A That's when I spotted Brian Bailey and, and Jerome --
6 Brian Bailey and Jerome Beatty.

7 Q Okay. When you walked out the front of the house,
8 there wasn't anybody covering the front?

9 A There wasn't nobody. I didn't see nobody.

10 Q Okay. But you didn't walk -- you didn't keep walking
11 away, like back down Hamlet or out towards Pearson?

12 You headed towards the back?

13 A Yes.

14 Q And that's where you thought the police were?

15 A That's what now?

16 Q That's where you said you thought Captain Bailey had
17 gone, right?

18 A Yeah, yeah, at the back door. He at the back door, why
19 try to run?

20 Q All right.

21 A It's over with.

22 Q So, your testimony is you left the house --

23 A Yes.

24 Q -- like you were, you were troubled enough about
25 getting away from the police that you went into the house,

Douglas Hall - Cross-examination
by Solicitor Anthony

1 is that right?

2 A Yes.

3 Q But then when you left the house, you walked into the
4 direction where you thought the police were staking you out?

5 A Yes.

6 Q Is that right?

7 A Yes.

8 Q Okay. And your testimony is going back to the ride
9 over there that at some point you, you told Mr. DuBois you
10 wanted to go to Piggly Wiggly, is that correct?

11 A Yes.

12 Q Okay. And at what point did you make that decision?

13 A After I seen the, the green, green car and he was
14 coming out -- he was coming down and we passed him and he,
15 and he -- Melvin DuBois said, oh, oh, who is that with the
16 dark windows. Then I knew then. I said oh, man, I said
17 that ain't nobody, man. I say will you take me by Piggly
18 wiggly, man, for I can get something for my kid.

19 Q Okay. All right.

20 A And he's like---

21 Q And as far as the money goes, at some point in time
22 didn't, did you make a reference to Mr. DuBois about buying a
23 hundred?

24 A Earlier when I called him about what happened. I
25 called him earlier, I said, man, what happened, man. He

Douglas Hall - Cross-examination
by Solicitor Anthony

1 said ah, nah, nah, nothing, man. He was -- they thought I
2 was Ralph, man. They let me go up there at Piggly Wiggly.
3 I said, oh, they did. I said yeah, I'm coming through. I'm
4 gonna bring you a hundred -- I'm gonna bring your \$30 and I
5 have a hundred dollars. I said okay then.

6 Q All right. Well, during the ride, did you say
7 something to him about a hundred?

8 A I asked him that. I said, oh, I thought you said a
9 hundred dollars.

10 Q Okay. All right. And -- but he didn't owe you a
11 hundred dollars?

12 A No, he said he was gonna have a hundred dollars.

13 Q Okay. And that hundred dollars is gonna be to go buy
14 drugs?

15 A Yeah, we probably gonna get high with it.

16 Q I'm sorry? Pardon me?

17 A I guess we was going to get high with it. Usually when
18 he come through he buys and he always give me some and we
19 smoke some and he take some with him. He don't just come --
20 I just met him a week and a half.

21 Q Okay. And he gives you, he gives you some kind of a
22 finders fee?

23 A Yeah, because he, he gets flexed up there by the curb
24 market and he don't like to go up there, and I met him over
25 Ralph house at the crack house and Ralph said that he was

Douglas Hall - Cross-examination
by Solicitor Anthony

1 straight, and I started dealing with him. He start -- you
2 know, we got a high a couple of times, but, you know, I
3 still was kind of fishy, but he didn't never really have no
4 money anyway. He always have \$18 and 19 and 25.

5 Q And you like -- y'all like the multiples of 20?

6 A Huh?

7 Q The crack, buying crack, you normally buy crack in
8 multiples of 20, right?

9 A Oh, you talking about if I'm buying it?

10 Q Yes.

11 A Oh, if I'm buying it, I really like, you know, before I
12 came to jail, to be honest, if I'm gonna buy it, I wish I
13 could buy a million dollars worth to be honest, yeah.

14 Q Sure. Sure. Well, sure.

15 A I'm just saying that.

16 Q You want to buy as much as you can?

17 A Yeah, to get high.

18 Q But it normally retails---

19 A You talking just messing around?

20 Q Yeah, it normally retails in multiples of 20?

21 A I don't normally buy 20's because, you know, I, I don't
22 have the money like that. So, I just come up off other
23 peoples, you know.

24 Q Okay. Okay. Other people tell you they need some and
25 you go get it for them?

Douglas Hall - Cross-examination
by Solicitor Anthony

- 1 A Yup, I make arrangements at the apartment mostly.
- 2 Q Okay. Okay. And, and that's a pretty common thing.
- 3 I mean for you, that was a pretty common thing, is that
- 4 correct?
- 5 A Yes.
- 6 Q All right. And it was pretty common for you with Mr.
- 7 DuBois, is that correct?
- 8 A Yes.
- 9 Q Okay. So, when you and Mr. DuBois had conversations,
- 10 it was normally about trying to figure out what, where, what
- 11 he wanted and how you could get it for him?
- 12 A I'm gonna be honest with you, when this guy, he come
- 13 around, he might have a power drill. He might come
- 14 around---
- 15 Q The question was just---
- 16 A Oh.
- 17 Q ---when you had conversations---
- 18 A About?
- 19 Q ---it was normally---
- 20 A It's all about crack.
- 21 Q It's normally about what you, what he wanted and how
- 22 you were gonna get it?
- 23 A That's all.
- 24 Q And that's what you two talked about?
- 25 A That's what we talked about all the time. We don't

Douglas Hall - Cross-examination
by Solicitor Anthony

1 have no other common interest.

2 Q It just happened. It was kind of like going to the dry
3 cleaners or something, you know, your relationship with your
4 dry cleaner is --?

5 A Get the clothes dry cleaned.

6 Q ---taking care of your clothes?

7 A Yes.

8 Q And your relationship with Melvin DuBois was that you
9 provided him crack cocaine?

10 A Well, you could say it like that.

11 Q Okay. Okay. And, so, on this, on this day, you and
12 Mr., Mr. -- Mr. DuBois picks you up, correct?

13 A Yes.

14 Q You get in the vehicle with him voluntarily?

15 A Yes.

16 Q And you wind up going to a place where, by your own
17 testimony, you can get crack cocaine?

18 A Yes.

19 Q And he let you out there?

20 A I jumped out.

21 Q Okay. Well, he -- you got out of the car?

22 A Yes.

23 Q Okay. And he told you he had 70, right?

24 A Yes.

25 Q You mentioned to him that you'd like to get a hundred,

Douglas Hall - Cross-examination
by Solicitor Anthony

1 correct?

2 A No, I mentioned to him that I thought he said he was
3 going to have a hundred dollars when his wife get off. He
4 told me his wife get off 2:00 or 3:00 and he'd come through
5 and said yeah, I'd have a hundred to spend. So, we was
6 going go -- I was looking for him to come to the apartment
7 and he get high there. He'd have a place to get high.

8 Q Okay. Okay.

9 A Cause his drug dealer at the apartment.

10 Q Okay. All right. Then you were gonna, you were gonna
11 secure -- whatever amount of money he brought you, you were
12 going to secure that much amount of crack?

13 A Not at -- not then. Not then. No, I wanted to see
14 what it was about.

15 Q I'm sorry.

16 A Not then when he told me that I was questioning him
17 about the crack, and he said that the police give him back
18 the crack or they said something, he said something. I said
19 they gave you the crack back. He said man, they ain't feel
20 it right there in my pocket. I said, man, I knew it then
21 that he was lying. I was looking for a place to get high.

22 Q Okay. And you -- the way you were gonna get high is
23 take some of his money and buy crack and then split it with
24 him?

25 A Nope, I was gonna take all his money and keep his

Douglas Hall - Cross-examination
by Solicitor Anthony

1 money. He wasn't getting no crack.

2 Q Okay. Okay. How were you gonna manage that?

3 A If he put -- I started to get the money from the start,
4 but I got skeptical. I said nah, I ain't going to do that
5 to him. He a pretty cool guy. He come and pay me at least,
6 let me listen to what he got to say, but as we went down
7 through, down through there where he tried to turn, I was
8 like no, no, no, something ain't right. I said I need to --
9 the first thought was in my mind, I said he's the police. I
10 need to jerk his money and run through the woods.

11 Q All right. And you think that would of been a good
12 tactic to employ with somebody working with the police?

13 A Who cares?

14 I'm just saying what they was gonna charge me with?

15 He was reaching me the money. If I got the money when
16 he first reached me and run out, I just didn't get to run
17 back to the apartments. If he had gotten it -- if I'd of
18 never seen that green car, and when we, when he drove up
19 through there by Woodlow Street, I was gonna get him to make
20 right, I was gonna get the, get the money from him and just
21 get out the car and leave.

22 Q Okay. All right. And that was, that was a decision
23 you made when he gave you the story about dealing with the
24 police that morning, is that right?

25 A No, I said, I said---

Douglas Hall - Cross-examination
by Solicitor Anthony

1 Q He talked to you about dealing with the police that
2 morning, and you didn't find that convincing, and that's
3 when you decided you'd just steal it?

4 A Yeah, kind of in a way. I had the thought that came in
5 my mind.

6 Q Okay. And---

7 A I wasn't gonna buy no crack.

8 Q But before, before he told you that, your intention was
9 to go get the, get the crack and get high with him?

10 A Well, not---

11 Q Before he told you---

12 A To be, to be honest, when he first came, when he first
13 came, my intention I said yeah, he, he got in, he hand me
14 the money in my face. I said oh, yeah, we rolling. I said,
15 damn, we probably -- I didn't know how much money he had
16 cause he -- when he pulled down the window, he said we
17 talked about the police first, and then when he pulled the
18 money, I said nah, nah, get that back. You know, I was
19 telling him to get it back out my face. Then we pulled on.
20 I told him about the police. He gave me a story. He was
21 like -- I said it's kind of like -- then he say I got 20 of
22 what I owe you, I want fifty in product. He said do you
23 have it. I said, no, I ain't got none. He said you sure.
24 I said no, I ain't got no product.

25 Q All right. But, but my question was when he got in the

Douglas Hall - Cross-examination
by Solicitor Anthony

1 car, when you got in the car with him, your intention, at
2 that time, was to, was to go get high with him?

3 A Yes.

4 Q Okay. Go get some crack, get some crack and split it
5 with him?

6 A Yes.

7 Q And at that point in time you admittedly had on, on
8 your person the crunch and munch?

9 A Yeah, the joint.

10 Q Okay. And the thing about the gift cards, that was,
11 that was something that he -- you said he had got that from,
12 from your wife or your girlfriend, is that what---

13 A It was a girl that I was dating. Well, you know, he
14 came -- he was -- he came -- he stayed at the apartment.
15 So, he came there and he asked about man, I got this, this
16 gift card, man. I just need \$15 from it because he didn't
17 want to buy the crack from the young guys that was there at
18 the apartment. He said, man, I ain't dealing with them,
19 man, because the last time he came through he said he got
20 flexed at the apartment. I say, man, you should of called.
21 He said I called you and you ain't had no minutes on your
22 phone.

23 Q All right. When you talked -- just so I understand,
24 when you use the word getting flexed, you mean getting sold
25 something that's fake?

Douglas Hall - Cross-examination
by Solicitor Anthony

1 A Yeah, he been sold a lot of fake drugs.

2 Q Okay. And that's why, that's why he needed somebody
3 like you --

4 A Yes.

5 Q -- to get him real stuff?

6 A Yeah.

7 Q Okay. And that's actually what you had done for him
8 that morning?

9 A Yes, at the apartment, yeah.

10 SOLICITOR ANTHONY: If I can just one moment please.

11 (Pause.)

12 Q Mr. Hall, you were convicted of a crime that carries
13 more than a year in 2009, is that correct?

14 A Yes.

15 Q And you were also convicted of a crime carrying more
16 than a year in 2002, is that correct?

17 A Yes.

18 Q All right. Thank you. That's everything on cross.

19 THE COURT: Redirect.

20 MRS. BUTLER: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MRS. BUTLER:

23 Q Mr. Hall, did you take any money from Mr. DuBois during
24 that car ride or after that?

25 A No, I kept moving it back.

Douglas Hall - Redirect examination
by Mrs. Butler

1 Q And, Mr. Hall, if you were actually going into that
2 house, the house that we've showed here, to buy drugs, would
3 you have needed money to buy them with?

4 A No, what you mean like if I was going in there to buy
5 it?

6 Q If you were going to buying---

7 A Yeah, cause I---

8 Q would you have to have money to go in to buy drugs?

9 A Oh, yes, ma'am.

10 Q And had you already seen Officer Bailey before you
11 jumped out of the car?

12 A I seen him on Pearson Avenue when he turned. I was like
13 oh, that's Brian Bailey.

14 Q And, and do you remember, on the video, saying that you
15 see Officer Bailey?

16 A Yeah.

17 Q And having seen Officer Bailey, if you were going into
18 the house to buy drugs and you've already seen Officer
19 Bailey, would you have bought drugs when you went in there?

20 A No.

21 Q And having seen Officer Bailey jumping out of the car
22 and knowing that he's gonna be coming in behind you, if you
23 had drugs on your person at that time, what would you have
24 done with them?

25 A I -- just like I did with the crunch and munch, I ate

Douglas Hall - Redirect examination
by Mrs. Butler

1 it because Jerome Beatty, he was asking -- I think, one of
2 them, he was asking did he eat anything, and, and the
3 Investigator Bailey stated that yeah, he was chewing on
4 something, you know. Yeah, I put the, put the joint in my
5 mouth. I was going to try to keep it.

6 Q So, Mr. Hall, with the, with the experience that I've
7 explained to this jury truthfully today that you have with
8 drugs --

9 A Yes.

10 Q -- would you have really, knowing the police were right
11 on your trail, walked into this house and stayed for at
12 least a minute, maybe three, and then come back out of the
13 house with the drugs still in your possession?

14 A No, I had access to going into the bathroom. Those are
15 my cousins. I could of went in the bathroom, flushed it,
16 but the joint I said it wasn't nothing. So, I put it in my
17 mouth and I went back outside with it.

18 Q And had you had the drugs that they say that you had
19 that, that's put in evidence right here, this, this little
20 bit of drugs right here, had you had this, would this have
21 been put in your mouth?

22 A It's not---

23 Q Had you had that in your possession, knowing the
24 officer was trailing you right behind you, what would you
25 have done with it?

Douglas Hall - Recross examination
by Solicitor Anthony

1 A I'd of ate it. I wouldn't have thrown no drugs.

2 MRS. BUTLER: That's all the questions I have.

3 THE COURT: Recross.

4 SOLICITOR ANTHONY: Yes, sir.

5 RECROSS EXAMINATION

6 BY SOLICITOR ANTHONY:

7 Q Mr. Hall, it's not unheard of to, to go buy dope and
8 get the money, get the, get the dope, and then sell the dope
9 to somebody, get the money from the person you sold it to,
10 and take it back to the person who gave it to you?

11 MRS. BUTLER: I object, Your Honor. That calls for
12 speculation.

13 THE COURT: No, this man testifies---

14 THE WITNESS: I want to explain, yeah.

15 THE COURT: No, he's asked you a question. I overrule
16 the objection. Answer the question.

17 THE WITNESS: Oh, okay. No.

18 You asked me is it unusual---

19 Q It's not unheard of to do---

20 A Oh, no, it is not unheard of, no.

21 Q So, it wouldn't have been the, the most unusual thing
22 in the world for, for somebody to go -- not -- certainly not
23 you because you weren't doing that that afternoon.

24 A Oh.

25 Q But it wouldn't have been the most unusual thing in the

Douglas Hall - Recross examination
by Solicitor Anthony

1 world for somebody to go in that house and think well, I'll
2 get the crack, bring the crack out to the guy I'm gonna sell
3 it to, get the money and then take it back in there?

4 I mean that's not -- that kind of thing happens, doesn't
5 it?

6 A It happens.

7 Q Okay. Have you done stuff like that before?

8 A Now, who going to trust me with drugs without the
9 money?

10 Q well---

11 A To be honest; no. I never did it. Never.

12 Q Okay. Okay. But it's, it's possible if---

13 A Somebody, yeah.

14 Q It's possible that would happen?

15 A It's possible.

16 Q Okay. And you, you said you ate the crunch and munch?

17 A I had it in my mouth all the way until, until I was,
18 until I approached towards Beatty, Kojak, and he was saying
19 well, we got close to the car and he was saying something
20 like search me. Brian Bailey -- so, they frisked me down.
21 So, I started chewing. I said, man, look at this, chewing
22 all this stuff up, you know, with the nicotine and tobacco
23 and stuff and I was like---

24 Q And crack?

25 A Yeah, that hurt. Yeah.

Douglas Hall - Recross examination
by Solicitor Anthony

1 Q Because it wasn't meant to go down that way, was it?

2 A No.

3 Q Yeah.

4 And, and you said that these people that live in that
5 house, they're your cousins?

6 A Yes.

7 Q Okay. And you know -- I mean you know who they are,
8 right?

9 A Yes.

10 Q Okay. And there's no reason that, if you been in that
11 house for two or three minutes, that they couldn't come tell
12 the jury about it?

13 A Could they -- I'm gonna tell you -- can I explain why?

14 Q Yeah, the answer to the question is there's just no
15 reason why they couldn't tell the jury that, is there?

16 A I couldn't answer that. It might be a reason.

17 SOLICITOR ANTHONY: Okay. If I can have one minute.
18 Well, I wouldn't need it. I wouldn't need a minute. Just
19 one moment.

20 (Pause.)

21 SOLICITOR ANTHONY: All right. Thank you. That's,
22 that's everything on recross.

23 THE COURT: You can step down and have a seat with your
24 attorney.

25 Call your next witness.

Jerome Beatty - Direct examination
by Mrs. Butler

1 MRS. BUTLER: I'm not sure if the next witness is
2 present, Your Honor. I'll step outside and make sure.

3 THE COURT: All right.

4 MRS. BUTLER: We call Officer Jerome Beatty to the
5 stand.

6 THE COURT: Come up and be sworn.

7 JEROME BEATTY, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MRS. BUTLER:

11 Q Would you please state your name for the record?

12 A Jerome Beatty.

13 Q And in what capacity are you employed?

14 A I'm employed by the City of [REDACTED] as a detective.

15 Q And how long have you been employed in that capacity?

16 A I've been a law enforcement officer for 13 years.

17 Q And, Officer Beatty, were you involved in an incident
18 on May 18 of 2010?

19 A Yes.

20 Q And can you tell us how you became involved in that
21 incident?

22 A I was in the car with another officer that responded to
23 Axle Street.

24 Q Who was the other officer?

25 A Lieutenant Robbie McGee.

Jerome Beatty - Direct examination
by Mrs. Butler

1 Q And what did you do after y'all responded to the call?

2 A Upon driving up on the scene, I exited the vehicle at
3 which time Captain Brian Bailey was in pursuit of Mr. Hall.

4 Q And where were you when Mr. Hall was apprehended?

5 A I was standing, standing near the car.

6 Q Near who's car?

7 A The car that I arrived in.

8 Q Where was Captain Bailey and, and Mr. Hall in relation
9 to where you were standing?

10 A The yard that we pulled in, into, Captain Bailey was
11 pursuing Mr. Hall through that yard.

12 Q And where were you when you apprehended him?

13 A I was standing near the, near the car.

14 Q So, did you actually see the apprehension?

15 A Captain called Mr. Hall by name and asked him to stop
16 and he stopped running.

17 Q And then what happened?

18 A Mr. Hall turned around and we start walking back
19 towards, towards the car.

20 Q And did you ever see Mr. Hall throw anything?

21 A I didn't.

22 Q And did you ever see any drugs?

23 A I didn't.

24 Q Thank you, officer Beatty.

25 CROSS-EXAMINATION

Jerome Beatty - Cross-examination
by Solicitor Anthony

1 BY SOLICITOR ANTHONY:

2 Q You said you were riding with Lieutenant McGee, is that
3 right?

4 A Yes, sir.

5 Q Okay. And when you came up on Hamlet Street, which
6 direction or which street did you come from?

7 A We come from MCBeth.

8 Q You -- I'm sorry?

9 A We come from MCBeth Street.

10 Q MCBeth Street.

11 A Off Axle Street.

12 Q Okay. And the street that runs up to the side of that
13 residence where Mr. Hall was apprehended, what, what street
14 is it?

15 A Axle Street.

16 Q And what -- was that the street y'all were on---

17 A Yes.

18 Q ---when you pulled up?

19 A Yes, sir.

20 Q When you pulled, you pulled up from Axle Street?

21 A Yes, sir.

22 Q Okay. All right. And I'm gonna show you -- I'm gonna
23 show you Exhibit 5. There's a pointer up there.

24 Could you use that pointer and just show the jury --
25 there we go. Show, show the jury, if you, if that picture

Jerome Beatty - Cross-examination
by Solicitor Anthony

1 shows it, show the jury where Axle Street is.

2 A (Witness points.)

3 Q That's Axle Street?

4 A Yes, sir.

5 Q All right. And I'm showing you now Exhibit 8.

6 Is, is that also a view of that house from Axle Street?

7 A Yes, sir, that's the house on the corner.

8 Q Okay. And, so, if you, if you pulled up Axle Street

9 going in this direction here---

10 A Correct. Correct.

11 Q ---going towards that stop sign, you would go by the
12 yard of the house and see that, right?

13 See what you see on Exhibit 8?

14 A Correct.

15 Q Okay. And, so, when, when you and Lieutenant McGee
16 pulled up, is, is -- would Mr. Hall be in that picture when
17 y'all pulled up?

18 A When we drove up Mr. Hall and Captain Bailey was
19 running that a way on the, from the other side of the house.

20 Q Okay. Okay. And, so, as far as what goes on on the
21 front side of the house, which is depicted there in Exhibit
22 6, you wouldn't of seen any of that?

23 A No, sir.

24 Q Is that correct?

25 A No, sir.

Jerome Beatty - Cross-examination
by Solicitor Anthony

1 Q Okay. And, and when Mr. Hall comes running out from
2 behind or from the side of that house, how far did he run
3 before he stopped?

4 A Between, between that house and the house that's behind
5 it, there are some light wooded area, and he had just began
6 to go into that area when Brian called him by name and he
7 stopped running.

8 Q Okay. Okay. And then, at that point, he was brought
9 over to your car?

10 A Yes, sir.

11 Q And you apprehended him, right?

12 A Yes, sir.

13 Q Okay. Okay. And did you, your coming up there to that
14 house, did you get there pretty quick?

15 A Yes; we was -- Lieutenant McGee and myself, we was on
16 McBeth Street.

17 Q Okay. So, you were just one, like one block down?

18 A Yes, sir.

19 Q Correct?

20 A Yes.

21 Q And, so, actually you just hit Axle, hit Axle and go
22 straight up to Hamlet?

23 A Yes, sir.

24 Q And did y'all start heading towards Hamlet as soon as
25 you heard on the radio that Captain Bailey was gonna try and

Jerome Beatty - Cross-examination
by Solicitor Anthony

1 arrest Mr. Hall?

2 A Yes.

3 Q Okay. Okay. So, so, I take it it was just a matter of
4 seconds before you got there?

5 A Correct.

6 SOLICITOR ANTHONY: All right. If I could have one
7 moment.

8 (Pause.)

9 SOLICITOR ANTHONY: That's everything on cross.

10 THE COURT: Any redirect?

11 MRS. BUTLER: No redirect, Your Honor.

12 THE COURT: All right. You can step down. You're
13 excused. We appreciate your time.

14 Call your next witness.

15 MRS. BUTLER: The defense rests.

16 THE COURT: Anything in reply?

17 SOLICITOR ANTHONY: If I could just have one moment.

18 (Pause.)

19 SOLICITOR ANTHONY: No. No, sir.

20 THE COURT: Members of the jury panel, you've now
21 received all of the evidence from both the State and the
22 defendant. The next part of the trial would be the State's
23 arguments, and then I will charge you the law. We have some
24 legal matters to take up. So, we'll take those up, let you
25 go to the jury room, we'll take up those outside your

1 presence, and then, when you come back, the attorneys will
2 make their closing arguments. So, you may go to the jury
3 room at this time.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Anything from the State?

7 SOLICITOR ANTHONY: Nothing as to --.

8 THE COURT: We'll get to the charges.

9 Anything from the defense?

10 MRS. BUTLER: Your Honor, the defendant renews his
11 motion for a directed verdict on the possession of crack
12 cocaine with the intent to distribute within proximity.

13 THE COURT: That motion is denied for the same reasons
14 we discussed earlier.

15 Now, as to request to charge, any from the State?

16 SOLICITOR ANTHONY: Well, we would, we would request
17 two lessers. We would request a simple possession lesser
18 because they may believe he -- a jury could believe that he
19 possessed crack, but not believe he possessed it with the
20 intent to distribute it. We would also request an attempt
21 to possess with the intent to distribute, lesser, because
22 the jury could believe possibly that he did not have the
23 substance or that it's not been proven that he had a
24 substance that would amount to crack cocaine, but that he
25 had intent to possess crack cocaine and he made an attempt

1 to possess that crack cocaine with intent to distribute it.

2 THE COURT: Anything from the defense?

3 MRS. BUTLER: Your Honor, the defendant does have a
4 request to charge.

5 THE COURT: First, first respond to the request of the
6 State.

7 MRS. BUTLER: Your Honor, there's no, there's -- as far
8 as the attempt to intent, I'm not sure. I think that would
9 be very confusing.

10 THE COURT: I agree with you. I'm not gonna charge
11 that. I'm going charge the lesser included of simple
12 possession.

13 MRS. BUTLER: The lesser included defense, there's
14 obviously not any crack introduced into evidence to, to test
15 it to see if there was anything on his person that day. I'm
16 not sure if that's what he's going---

17 THE COURT: Yeah, we've already -- we've taken care of
18 that.

19 MRS. BUTLER: Now, as to the possession---

20 THE COURT: Well, I was asking if you had any request
21 to charge. I told him I would charge the lesser included,
22 which I presume you would also want, simple possession.

23 MRS. BUTLER: Yes, sir, Your Honor.

24 THE COURT: All right. I'm gonna charge that, but I'm
25 not gonna charge the attempt he requested.

1 MRS. BUTLER: Okay. Thank you.

2 THE COURT: So, now my question is do you have any
3 request to charge?

4 MRS. BUTLER: I do. I have written request to charge.

5 THE COURT: If you'll hand them up.

6 SOLICITOR ANTHONY: Can I see those?

7 MRS. BUTLER: Yeah, I have Mr. Anthony a copy, but I've
8 added a couple but that might not be complete on his.

9 THE COURT: You don't have any citations for any of
10 this. I'm not sure I understand the first one. The State
11 must prove the defendant had the actual presentability to
12 complete the crime.

13 MRS. BUTLER: I'm sorry. That was one when we had,
14 when we thought we were going forward on the attempt. So, I
15 would ask the Court to scratch that one.

16 THE COURT: Okay. The jury may not consider the
17 earlier incident as evidence.

18 MRS. BUTLER: The Court -- the defendant requests that
19 the jury be instructed that they can't consider the
20 defendant's admission of the earlier transaction as a, as a
21 admission of this transaction because they were totally
22 straight transactions, that they can't convict him, if
23 that's to say, Your Honor, on the basis of his admission of
24 the earlier transaction because that's not what he's been
25 being tried on.

1 THE COURT: What do you have to say about that?

2 SOLICITOR ANTHONY: Well, I think the, the -- I'm sure
3 the Court has a Lyle charge that would probably be
4 appropriate in this case. It seems as how those prior
5 incidents were admitted as Lyle evidence of proof of intent.
6 I mean they can, they can consider the earlier incident. I
7 think it's just the question of what can they consider it
8 for, and they, they can't consider the earlier incident of,
9 of, as evidence that he had the intent to distribute at the
10 time in question.

11 THE COURT: Well, I actually -- I don't know that. I
12 have what I would call a Lyle charge, but I'd like to take a
13 look at your request in light of what we find as far as any
14 charge if there is one. It may be that the charge I
15 envision would be something to the effect that the prior
16 offenses can only be considered regarding motive -- not
17 motive. But I ruled it in on was intent and common scheme
18 and plan. So, that would, that would tell the jury that
19 they can only consider the prior incident as Lyle type
20 evidence. So, that would cover that.

21 MRS. BUTLER: And, and that the jury that's being tried
22 on this, on this charge from the afternoon, that he's not on
23 trial for the earlier charge.

24 THE COURT: I'll do my best. I can tell you I'm going
25 to tell them indicted for what the indictment that contains

1 the charge that he's on trial for. That's what I intend to
2 do.

3 Now what about number four?

4 SOLICITOR ANTHONY: I don't have number four

5 MRS. BUTLER: I'm sorry. That's one I added on. The
6 defendant asks that the jury be instructed on the---

7 THE COURT: We'll take a short break and we'll look at
8 the Lyle and let me know what you think about four when we
9 get back. In the future, we, we need to have those for both
10 sides because it's not very helpful this, this way.

11 (WHEREUPON, a short break was taken at this time.)

12 THE COURT: Is the State ready?

13 SOLICITOR ANTHONY: Yes, sir.

14 THE COURT: Mrs. Butler, you ready?

15 MRS. BUTLER: Yes, sir.

16 THE COURT: Have you, you looked -- have both of you
17 looked at the charge on Lyle?

18 MRS. BUTLER: We did, Your Honor, and we agree -- I
19 agree with the Lyle charge.

20 THE COURT: All right. Let's follow up on that number
21 four, and why don't you make that a Court's Exhibit so
22 somebody who reads this record will know what we're talking
23 about when we talk about number four.

24 MRS. BUTLER: Yes, sir, Your Honor.

25 (WHEREUPON, the jury charge was marked as Court's

1 Exhibit No. 2 for identification purposes only at this
2 time.)

3 THE COURT: I believe that my charge tells the jury
4 what the State has to prove, and I'm gonna stick to the
5 charge that I've given in the past---

6 MRS. BUTLER: Yes, sir, Your Honor.

7 THE COURT: ---many, many times.

8 So, anything else before we get the jury in?

9 SOLICITOR ANTHONY: I'll not open on the law unless
10 required to.

11 THE COURT: The State is going to open and close.

12 MRS. BUTLER: Yes, sir, Your Honor.

13 THE COURT: All right. Bring in the jury.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: The State will open, open and close
17 remarks, and then Mrs. Butler, on behalf of Mr. Hall, will
18 make remarks and then you'll hear the last arguments of the
19 State, and then I'll give you the charge.

20 SOLICITOR ANTHONY: Your Honor, I'm sorry. We'll waive
21 the opening on the law.

22 THE COURT: I thought you said you will open.

23 SOLICITOR ANTHONY: No, I said I will not. I
24 apologize.

25 THE COURT: Okay. I need to have my hearing checked.

1 All right. Go ahead, Mrs. Butler. Sorry.

2 MRS. BUTLER: Thank you, Your Honor.

3 Ladies and gentlemen of the jury, thank you very much
4 for your patience. I know it's been a long day since we got
5 here at 9:30 or ten o'clock this morning. But we appreciate
6 your patience, your listening to everything that the, the
7 witnesses have put forth to you. I know that you, you've
8 thoroughly examined the evidence that's been put forth and I
9 appreciate that. As I ask you to do when I first [REDACTED] ed
10 you yesterday morning, maybe it was yesterday afternoon, and
11 asked you to consider not deliberating, not making or
12 forming any kind of opinion in your mind until you've heard
13 all the evidence as to what was presented in this case.

14 You've heard all the evidence now. You've heard
15 everything that was presented by the State and you've heard
16 everything that was presented by the, the witnesses. You
17 also heard Mr. Hall speak as to what actually took place
18 this day especially at this transaction in the evening time
19 that was, that was set up by these officers here.

20 Judge Hayes is gonna instruct you on the law in a few
21 minutes, and this, this is briefly what he's gonna tell you.
22 He has to go into a lot of different grounds to instruct you
23 as to how, as to how you can decide the case. He will tell
24 you that just because Mr. Hall was involved in a transaction
25 earlier that day that that's not what Mr. Hall's on trial

1 for here today.

2 Mr. Hall is on trial for possession with intent to
3 distribute at this particular time that we've talked about
4 that the video has talked about and that the witnesses have
5 talked about and not the, the prior transaction that,
6 earlier that day. That's not what he's on trial for here.

7 You heard Mr. DuBois, the confidential informant, from
8 the stand up here and you heard him when he said, when he,
9 when he was waving at the officer on the videotape and he
10 said no, he screwed up. He didn't use that word, but I'll
11 use that word, you screwed up, you screwed up.

12 You heard as well Officer Bailey who took the stand and
13 he told you that I, I screwed up. He said I screwed up. He
14 told you from the stand, he said I thought that the deal was
15 done and I was wrong. However, Officer Bailey did not
16 realize that he screwed up until he searched Mr. Hall and
17 didn't find the marked money that he expected to find.

18 So, once he searched him, and as Mr. Hall testified to,
19 they searched him once and they searched him twice and they
20 still didn't find any marked money that was supposedly gone
21 on as a result of this alleged transaction, the transaction
22 that was suppose to take place, that they said was suppose
23 to take place, and if, and if you'll just think back to
24 Mr. Hall's testimony.

25 Mr. Hall was very very truthful with you-all, the jury,

1 as to his relationship with Mr. DuBois, as to his
2 relationship with drugs, as to his background with drugs.
3 You heard the testimony of the officer that Mr. Hall jumped
4 out of the car running, and you heard Mr. Hall also testify
5 that he jumped out of the car running. You heard Mr. Hall
6 tell you that he saw Officer Bailey approaching and he
7 jumped out of the car and ran into the house. He stayed in
8 the, in the house for about one to three minutes and he
9 testified, knowing that Officer Bailey was, was in pursuit
10 of him, that had he had drugs on his possession, there's no
11 way he would of kept drugs on his possession. He would have
12 done something with the drugs, whether he flushed them,
13 whether he ate them, or whether he just dropped them in the
14 floor for somebody else in that house to find. But he
15 wouldn't have kept the drugs on his possession.

16 So, I charge you, the jury, you're the fact finders.
17 You can only speculate, as we can, how the drugs got outside
18 the house that day, the drugs that, that the officers have
19 put forth here today, that the State has put forth.

20 How did these drugs get outside that house?

21 You heard Officer Beatty. He was on the scene. He
22 just testified, our last witness here, and he said I didn't
23 see any drugs. I saw when Mr. Hall was apprehended, but I
24 didn't see any drugs.

25 You heard Officer Bailey. He was the one that was the

1 only one who saw the drugs there until Officer Johnson came,
2 and you heard the testimony that they, they never secured an
3 area where the drugs were supposedly at, and they never had
4 an officer standing by there over there where these drugs
5 were supposedly sitting on the ground. Just left the drugs
6 sitting there, stood over here with the defendant, no
7 officer, no security, no nothing over there where the drugs
8 are, supposed drugs are.

9 I leave it to you, the jury, to find where did the
10 drugs come from because if Mr., if Mr. Hall did not have the
11 drugs in his possession with the intent to distribute, then
12 you have to find that he's not guilty and Judge Hayes will
13 tell you that you have to resolve any doubt that you have in
14 favor of Mr. Hall. So, if there's any, any reasonable doubt
15 that you have as to his guilt, then you have to resolve it
16 in his favor and find him not guilty, and we, we thank you
17 very much for your patience and your cooperation and in your
18 deliberations.

19 SOLICITOR ANTHONY: Your Honor.

20 Really what the decision you have to make is an
21 important decision, but what you've got to decide back in
22 the jury room is not particularly complicated.

23 He's charged, Mr. Hall is charged with possession with
24 the intent to distribute. Well, that, that requires two
25 things. It requires some possession. It requires intent to

1 distribute.

2 What I want to do is I'm gonna start at the end. I'm
3 gonna talk about the intent to distribute part first. Then
4 I'll talk about the possession for a few minutes and that,
5 that will be it.

6 Really the intent to distribute, what you know about
7 the intent to distribute in this case, it comes partly from
8 what Mr. Hall said cause Mr. Hall basically admitted that,
9 that's what he does is he, he lives his life with intent to
10 distribute. You know, he's always basically got an intent
11 to distribute crack. So, you can tell, from just what he
12 said, that's, that's -- when Melvin Dubois called him,
13 Melvin Dubois was looking to buy crack, and he was looking
14 to go find him some crack so he could, he could get high
15 with it.

16 So, you get that part from just what Mr. Hall said, but
17 you also get it, in, in particular, from what went on in
18 that car and I'm not, I'm not gonna play that whole tape,
19 but I want to just take you through the time that they're
20 together and point out a few things and let you know that
21 what was going on in that car is, is indicative and shows
22 that Mr. Hall had an intent to distribute crack when he was
23 in that car with Melvin Dubois.

24 (WHEREUPON, a portion of State's Exhibit No. 1 was
25 played for the jury at this time.)

1 SOLICITOR ANTHONY: Okay. Right there, very first thing
2 that happens when he gets in that car is he gets offered \$70.
3 Now, if all he wanted to, to do is get the money for a gift
4 card, he could have taken that money and been out of there,
5 but he didn't do that. We'll see what happens.

6 He's got, he's got a plan about what -- Mr. Hall's got a
7 plan about what he wants to happen, and you, and you can see
8 that the way all this goes down. Mr. Hall is the one that
9 has got the plan and it's not just this situation where all
10 he wants to do is get his money and go. No, if he, if he
11 just wanted to get his money and go, he'd be out of there
12 right now. But it's just, it's just like Mr. DuBois said,
13 they, they had this all worked out, Mr. Hall getting Mr.
14 DuBois some crack.

15 (WHEREUPON, a portion of State's Exhibit No. 1 was
16 played for the jury at this time.)

17 SOLICITOR ANTHONY: All right. And they don't go that
18 way.

19 Who's in charge here?

20 (WHEREUPON, a portion of State's Exhibit No. 1 was
21 played for the jury at this time.)

22 SOLICITOR ANTHONY: I'm gonna show you where to go.
23 That's because he's the one who knows where to go just like
24 what he testified to.

25 (WHEREUPON, a portion of State's Exhibit No. 1 was

1 played for the jury at this time.)

2 SOLICITOR ANTHONY: He wants to go buy a hundred.

3 (WHEREUPON, a portion of State's Exhibit No. 1 was
4 played for the jury at this time.)

5 SOLICITOR ANTHONY: He wants to go buy a hundred.

6 (WHEREUPON, a portion of State's Exhibit No. 1 was
7 played for the jury at this time.)

8 SOLICITOR ANTHONY: He just told him again to turn.
9 Mr. Hall just told Mr. DuBois again to turn.

10 (WHEREUPON, a portion of State's Exhibit No. 1 was
11 played for the jury at this time.)

12 SOLICITOR ANTHONY: There he is taking him to, right to
13 Hamlet Street.

14 (WHEREUPON, a portion of State's Exhibit No. 1 was
15 played for the jury at this time.)

16 SOLICITOR ANTHONY: See he tells him you can pull down
17 there.

18 (WHEREUPON, a portion of State's Exhibit No. 1 was
19 played for the jury at this time.)

20 SOLICITOR ANTHONY: So, you can take --, you know, that,
21 that tape shows you that what Mr. DuBois told about what was
22 going on that day. You know, Mr. DuBois told you the truth.
23 They had an arrangement to meet and for Mr. Hall to find some
24 crack for Mr. DuBois and sell it to him and that's what
25 Mr. Hall was trying to do, and, you know, when you think

1 about it, when you think about Mr. Hall's testimony about
2 well, that's where my cousins live. You know, you can go to
3 that house and get crack.

4 well, where, where would you expect Mr. Hall to be going
5 with Mr. DuBois if, if Mr., Mr. Hall wanted to hook Mr.
6 DuBois up with some crack?

7 He'd be going to a crack house.

8 well, guess what?

9 Guess where Mr. Hall told Mr. DuBois to drive?

10 He told him to drive to a crack house, and that's where
11 Mr. Hall got out.

12 So, that means that he had an intent to distribute.
13 Mr. Hall was out looking to find crack. And even by his own
14 admission, when Mr. Hall testified, he said, you know, when
15 he got to talking about the police, I got a little suspicious
16 of him.

17 But I asked him, I said, what did you, what did you
18 intend to do before you got to talking to the police?

19 He said, oh, I intended to go buy some crack and we'd
20 get high.

21 So, even by, by what he said, he had an intent to
22 distribute.

23 So, the second thing -- I want to go back now to the,
24 the other thing you have to find. It's just that he
25 possessed crack, and you know that for a couple reasons.

1 One thing, they found crack right where Mr. Hall was
2 running. Captain Bailey testified that Mr. Hall took off
3 running right down the side of the house and he got -- he
4 stopped as soon, as soon as he got past the side of the
5 house. Right after, after he got to the back yard he
6 stopped.

7 Well, why do you think he stopped?

8 He stopped because he got rid of the crack. So, he just
9 gives himself up. Stops, gives himself up. They go back
10 where Captain Bailey saw him make that throwing motion. Once
11 Sergeant Johnson gets there, they go back and start looking.
12 Sure enough there's a bag of crack just sitting, you know, on
13 top of the leaves, top of the grass. No trouble finding it
14 because it's just been thrown down a few minutes before, and
15 that's what, that's what they find is that bag of crack.

16 So, that's, that's possession. That's crack being in
17 his hand.

18 Now, there's also some evidence from the videotape of,
19 of the possession of crack, and you see that when you start
20 looking at these photos we put into evidence.

21 Can you cut off the lights please?

22 Okay. Take a look at this right here.

23 See what he's got in his hand right there?

24 Now, is that a cigarette or is that a baggy?

25 What do you think?

1 Does that look like a cigarette to you?

2 No.

3 That is what they found out there in the yard, which is
4 this right here, right here. Not the little plastic baggy
5 the crack's in now, but the little baggy right outside.
6 There it is right there on the, on the videotape in his hand
7 there is. There's a couple other shots of it.

8 He -- see right there. See how, how that little white
9 baggy there, how it contrasts with his fingers?

10 Does that look like a cigarette?

11 No, that's crack cocaine.

12 what happened here is pretty, pretty easy to figure out.
13 You know, Mr. Hall got an order. He only had three-tenths of
14 a gram, which you heard is about \$30 worth of crack. That's
15 all he had. He had an order for fifty. He was wanting a
16 hundred, but he got an order for fifty. He was, had his
17 customer drop him off at a refill spot and he got caught
18 while he was trying to service a client, you know.

19 Now, he says well; why in the world would I have done
20 something that stupid if he, if he got caught by the police
21 that morning?

22 why in the world would I be missing with him that
23 afternoon?

24 well, you know, in hindsight it's stupid. But people do
25 stupid things all the time. You know, this is, this is how

1 he generates income. So, maybe it was stupid in hindsight,
2 but that's what he did that day. He met back up with Mr.
3 DuBois and he decided to arrange to help him make a crack
4 purchase, and that is possession with the intent to
5 distribute. He had crack on his person and he had an intent
6 to distribute crack. That's, that's PWID.

7 Now, the judge will charge you, and when you receive
8 your instructions, the judge will charge you that there's two
9 crimes that you can convict Mr. Hall of. You can convict him
10 of possession with intent to distribute or you can convict
11 him of what's called simple possession, which is basically
12 just means well, we, we're gonna convict him, we're gonna
13 find he's guilty of possession, but we're not gonna find that
14 he had the intent to distribute.

15 I'd argue to you it's pretty clear that's what, that's
16 what he was wanting to go do. It's clearly beyond a
17 reasonable doubt he was going to sell that crack, and he's
18 gonna find some more crack to put with it, and he's gonna
19 sell it. But if, if you don't find that, then you can still
20 convict him of simple possession. And, at the very least,
21 he's guilty of simple possession because, by his own
22 testimony, he had crack on his person. You know, he had his
23 little crunch and munch. That's what he says he had. That's
24 not really what the evidence shows he had.

25 what the evidence shows he had is that baggy with crack

1 in it, but he says that he had a cigarette that consisted of
2 crack. Well, that's, that's possession of crack. So, by his
3 own admission, he is at least guilty -- you know, if you just
4 set aside everything you heard during the state's case and
5 just judge him based on what he told you today, which is less
6 than credible, but if, if you wanted to do that, then he's at
7 least guilty of simple possession of crack cocaine, and, of
8 course, he, he was out trying to find this crack right across
9 from a ball field, from a park.

10 And, so, if you find that he's guilty of possession with
11 intent to distribute crack, then he's also guilty of
12 possession with the intent to distribute crack in proximity
13 of a park.

14 Just a couple other things I want to mention to you.
15 The judge will tell you that you can only consider the
16 testimony that you heard. So, what you hear, heard in
17 opening statement, that's not evidence you can -- it's not
18 evidence for you to consider when you make your ruling.

19 What you -- what is evidence is what people testify to.
20 So, like yesterday when Mr. Hall's attorney got up and made a
21 reference to the informant having a, having a criminal
22 record, well that's -- nothing about that's in evidence. But
23 Mr. Hall, when he testified, and he had to admit that he had
24 two prior convictions, well, that is in evidence. So, when
25 you assess Mr. Hall, when you assess whether to believe him,

1 whether he's a credible witness, you can consider the fact
2 that he's got two convictions for crimes that carry over a
3 year and that can, that can affect your decision about
4 whether you decide to believe him or not.

5 So, to conclude, you know, there's -- the judgment that
6 you're getting ready to make in this case is called a
7 verdict, and the word verdict means to speak the truth. It
8 comes from this Latin word that means to speak the truth, and
9 that's what we're gonna be asking you to do. We're gonna be
10 asking you to render a verdict and tell us the truth about
11 this case, and there's a, there's a song about the truth that
12 I really like. Some of you may of heard it. It's out --
13 it's an old song out about ten or fifteen years ago called
14 The Trouble With The Truth, and there's a line from that song
15 that says the trouble with the truth is it's just what I need
16 to hear it. It reames so right deep down inside my ear, and,
17 you know, everybody needs to hear the truth.

18 People in law enforcement like Sergeant Johnson and
19 Captain Bailey, they need to know that a jury will hear
20 evidence and that a jury will convict somebody if they've
21 been proven guilty. People in [REDACTED] County need to know that
22 there's a jury out there that will hear evidence in a drug
23 case. You'll hear about these people that are spreading dope
24 all over our community, and if that person is proven guilty
25 in that drug case, if there's 12 people that will convict him

1 of it, but the person who needs to hear the truth most in
2 this courtroom is Doug Hall.

3 Doug Hall needs to know the truth. He needs to hear the
4 truth because, you know, Mr. Hall may just see what he was
5 doing as a way to make a little extra money. He may think
6 that this is just harmless, this is just how he goes about
7 making some money. But, you know, there's a right way to
8 make money and there's a wrong way to make money, and selling
9 crack is the wrong way to make money and somebody needs to
10 give Doug Hall a little tap on the shoulder and say Doug, you
11 can't go out and hook people up with crack cocaine. That's,
12 that's against the law. You can't make money that way. You
13 can't get crack for yourself that way. That's just wrong and
14 you're not gonna be able to do it, and, you know, there's
15 only 12 people, only 12 people that can, can tell Doug Hall
16 and [REDACTED] County the truth about what happened in this case.

17 I'd ask you to go back to the jury room and consider the
18 evidence that you've heard, and your verdict in this case has
19 got to be unanimous. So, what that means is that all 12 of
20 you have to agree to which crime he's guilty of.

21 Now, what it doesn't mean is that if some of you think
22 he's guilty of one crime and some of you think he's guilty of
23 another crime, that he's just found not guilty. That's not
24 the way it works. If you can't agree unanimously on a crime,
25 then you just, you just need to send a note out to the judge

1 and ask for instructions on that. But your jury -- your
2 verdict has to be unanimous, and what Doug Hall needs to hear
3 and [REDACTED] County needs to hear is that a jury knows the truth
4 about what he was doing on May 18th, 2010. That twelve
5 people know that he was out possessing crack cocaine with the
6 intent to distribute it, and doing it within the proximity of
7 a, of a ball park.

8 So, I'd ask you to go back to the jury room and consider
9 the evidence. You can come out and watch the tape again if
10 you need to. You can review the evidence back there. I'd
11 ask that after you considered all the evidence that you come
12 back out here and find Doug Hall guilty of possession with
13 intent to distribute crack cocaine and possession with intent
14 to distribute crack cocaine within proximity of a park.

15 Thank y'all.

16 THE COURT: Members of the jury panel, I appreciate the
17 attention you've given to the attorneys and the witnesses.
18 I'm now going to charge you the law which you are to apply to
19 the facts in this case.

20 I remind you that Mr. Hall is charged with possession of
21 crack cocaine with intent to distribute, and having possessed
22 that within proximity of a school, public park, or
23 playground. It's alleged this occurred on May 18th, 2010,
24 here in [REDACTED] County, South Carolina, and that, that violates
25 the laws of this State.

1 The fact that Mr. Hall has been arrested, and charged,
2 indicted, and the fact that he's on trial is not evidence.
3 That's the way our system works. So, the fact that he is on
4 trial is not considered in any way regarding his guilt. It
5 does not create any presumption of guilt. The document and
6 the indictment -- the indictment is simply the document, the
7 paperwork, by way of which this case was processed through
8 our court testimony. It is a record of the charge and
9 ultimately the record of the jury's unanimous decision.

10 There are two charges. Each is to be examined on its
11 own merit. That is, the State must prove, beyond a
12 reasonable doubt, I'm going to talk to you more about that in
13 a minute, that Mr. Hall committed an offense. The finding on
14 one does not necessarily affect the finding on the other
15 except for in instances that you can not find him guilty of
16 possession of crack cocaine with intent to distribute within
17 the proximity of a park or school unless you find him guilty
18 of possession of crack cocaine with intent to distribute
19 because if you can unanimously find that he did possess crack
20 cocaine with intent to distribute, then you couldn't find
21 that he did it in the proximity of a park. There is a lesser
22 included offense on the possession of crack cocaine with
23 intent to distribute which is called simple possession of
24 crack, and I'll talk to you more about that in just a moment.

25 As I told you yesterday, I am the sole judge of the law

1 and you must take, accept, and apply the law as I charge it.
2 This is true even if you think I charge the law in error or
3 even if you think the law should be different. Your oath
4 requires you to take, accept, and apply the law as I charge
5 it.

6 You are not to infer, from anything I have said or done
7 or anything I say or do at any time, as indicating an opinion
8 of mine on the facts of this case. It's solely up to you, as
9 the trial jury in this case, to examine the evidence and to
10 give the evidence the effect, the value, and the truth that
11 you believe the evidence should be.

12 In doing this, you may believe one witness over several
13 or several witnesses as opposed to one. You may believe all,
14 part, or none of a witness' testimony. Use your common
15 sense, your sense of logic, your sense of reason. Use your
16 experiences in life as you analyze the evidence.

17 As judges of the facts, you, of necessity, must judge
18 the credibility, that is the believability of the witnesses
19 who have testified. In assessing believability, use those
20 things I've just talked about. Use those things that I find
21 in your day to day life as being indicative of truthfulness,
22 and you can use certain evaluators. That is how a witness
23 acts on the stand. That is their demeanor. Are they
24 hesitant or straightforward. Is the testimony consistent or
25 inconsistent. Consider the opportunity a witness had to know

1 those things about which the witness testified. Consider any
2 bias or prejudice. That is whether a witness has any reason
3 to help or hurt one side or the another.

4 As to the witnesses in this case that had a criminal
5 record, you can consider that to Mr. DuBois. You can
6 consider his criminal record in determining whether or not to
7 believe him or not. That is his credibility. There's also
8 evidence produced regarding a past criminal record of Mr.
9 Hall. His criminal record can be used only in your
10 determination as to what degree of believability to give him.
11 That is as to his credibility.

12 You cannot use any prior offense, the fact that he is
13 committed a crime, prior offense, as any evidence that he
14 committed this offense. Again, prior criminal convictions
15 are allowed into evidence solely on the issue of
16 believability. That is whether or not you would believe the
17 testimony of the witness.

18 In this case we've had testimony of an expert. Normally
19 an individual can only give testimony as to something they
20 would have observed by one of their five senses. However,
21 where a witness has certain training, skill, knowledge, and
22 experience in an area, that witness can give testimony of an
23 opinion. We have a witness who gave an opinion that the
24 substance at issue here was crack cocaine.

25 Now, the evidence and the testimony presented by an

1 expert is allowed into evidence to assist you. It is not
2 binding on you. You look at that testimony in terms of the
3 expert the same way you look at the testimony of any witness.
4 In addition, as to an expert, you can examine the
5 qualifications. That is you can determine whether that
6 person would be qualified even though I found that she was
7 qualified to testify. It's up to you to examine her
8 qualification and decide whether or not you believe she was
9 qualified to give the opinion that she gave, and you also can
10 examine and look at the reasons she gave for reaching the
11 opinion she reached.

12 The opinion of experts are allowed in evidence to assist
13 you. They are not binding opinions. You may accept or
14 reject in whole or in part the testimony of the expert
15 witness.

16 To the charge, Mr. Hall, or to the charges, Mr. Hall has
17 entered pleas of not guilty. His pleas of not guilty place
18 on the State the burden of proving his guilt beyond a
19 reasonable doubt. He is, by law, like anyone charged with
20 any offense in our system, presumed innocent of the charge
21 and need not prove his innocence. The State must prove his
22 guilt beyond a reasonable doubt.

23 This presumption of innocence is a substantial right.
24 It's not mere legal theory or mere legal phrase. It's a
25 substantial right which attached to and insured to the

1 benefit of Mr. Hall at the time of his arrest, arrest,
2 remains with him as he is, his case is processed through our
3 court system, remains with him at this very moment. In fact,
4 the presumption, the presumption of innocence of Mr. Hall's
5 favor remains even as you deliberate. The presumption of in,
6 his innocence is removed if and when, and only if and when,
7 you determine that the State has convinced you beyond a
8 reasonable doubt of his guilt on one or more of, one or both
9 of these offenses.

10 Now, the State is not required to prove Mr. Hall guilt
11 beyond all doubt or beyond every doubt, but beyond a
12 reasonable doubt. A reasonable doubt has been defined by
13 Courts as that kind of doubt that would cause a reasonable
14 person to hesitate to act. Proof beyond a reasonable doubt
15 is proof that leaves you firmly convinced of someone's guilt.

16 If, based on your consideration of the evidence, you are
17 firmly convinced of Mr. Hall's guilt, you would find him so.
18 If, on the other hand, you think there's a real possibility
19 that he is not guilty, you would give him the benefit of that
20 reasonable doubt and find him not guilty. He is entitled to
21 the benefit of any reasonable doubt you have as to any issue
22 in this case.

23 Now, in cases such as this, there are certainly two
24 types of evidence presented, direct and circumstantial.
25 Direct evidence is the testimony of someone who claims to

1 have actual knowledge of a fact such as an eye witness.

2 Direct evidence is evidence which immediately establishes
3 that fact that is sought to be proven.

4 Circumstantial evidence is proof of a chain of facts and
5 circumstances which indicate the existence of a fact.

6 Circumstantial evidence is evidence that immediately
7 establishes collateral facts from which the main fact sought
8 to be proven can be inferred. Circumstantial evidence is
9 based on inference, not on personal knowledge or observation.

10 Our law makes absolutely no distinction between the
11 weight or value to be given either direct or circumstantial
12 evidence. Our law does not require a greater degree of
13 certainty for circumstantial evidence as opposed to direct
14 evidence. What you should do in this case is weigh all of
15 the evidence. After weighing all of the evidence, if you are
16 not convinced of the guilt of Mr. Hall beyond a reasonable
17 doubt, you would find him not guilty.

18 You have heard evidence in this case, and I've already
19 talked to you about the record of Mr. Hall. That is that you
20 can use that only regarding his credibility and not as any
21 evidence for the charges against him today.

22 You've also heard evidence that Mr. Hall may have been
23 involved in what may be called bad acts for which he is not
24 on trial and for which he has not been convicted. This
25 testimony, if you conclude it is true, may be considered only

1 by you in considering the question of intent or common scheme
2 or plan and for no other reason and for no other purpose.
3 You may give this weight, that is the weight of other alleged
4 bad acts that were not convictions, you may give that
5 evidence the weight and value, if any, that you find it
6 should have solely on the evidence of the intent of Mr. Hall
7 or the evidence of common scheme or plan. You must not and
8 may not consider the evidence of the commission of a prior
9 bad act as proof of his guilt on the charge we're trying
10 today, but only on the issue of intent or common plan or
11 scheme.

12 Now, Mr. Hall is charged with possession of crack
13 cocaine with intent to distribute. This is a statutory
14 offense enacted by our Legislature. The State must prove
15 first that the substance at issue was, in fact, crack
16 cocaine. To convict Mr. Hall of possession of crack cocaine
17 with intent to distribute, the State must prove beyond a
18 reasonable doubt that Mr. Hall possessed the crack cocaine
19 with that intent. That is the intent to distribute.

20 To prove possession, the State must prove, beyond a
21 reasonable doubt, that Mr. Hall had both the power and the
22 intent to control the disposition or use of crack cocaine.

23 Possession of controlled substance or crack cocaine may
24 be actual possession or constructive possession. Actual
25 possession means that the crack cocaine was in his actual

1 physical custody at the time alleged in the, of the alleged
2 offense. Constructive possession means that the defendant
3 had dominion and control or the right to exercise dominion
4 and control over either the crack cocaine itself or the
5 property in which it was located. Mere presence at the scene
6 where drugs, crack cocaine, were found is not enough to prove
7 possession. Actual knowledge of the possession -- actual
8 knowledge of the presence of crack cocaine is strong evidence
9 of one's intent to control its deposition or use.

10 A defendant's knowledge and possession may be inferred
11 when a substance is found on the property under that
12 individual's control. However, this inference is simply an
13 evidentiary fact to be taken into consideration by you along
14 with the other evidence in this case and to be given the
15 weight you decide it should have.

16 The State must also prove not only that Mr. Hall
17 possessed crack cocaine, but he possessed it with intent to
18 distribute. Distribute means to deliver a controlled
19 substance, here the crack cocaine, to another person either
20 with or without receiving anything in exchange. That is, it
21 does not have to be exchange of money or anything else, but
22 simply has to be delivery. Intent may be shown by acts and
23 circumstances of Mr. Hall or a defendant which may naturally
24 and reasonably cause you to infer intent.

25 In determining whether a defendant, first, you have to,

1 of course, prove he possessed crack cocaine. Then determine
2 whether he intended to distribute it. You may consider
3 circumstances surrounding the alleged possession. You may
4 consider the amount of the substance alleged to have been
5 possessed, the amount in which that was alleged to be
6 possessed, the place where it was allegedly possessed, and
7 other factors which you consider to be important. You must
8 find that Mr. Hall possessed crack cocaine and did not intend
9 to have it solely for his own use. The State must prove
10 possession of crack cocaine with intent to distribute beyond
11 a reasonable doubt.

12 Now, if the State fails to prove Mr. Hall guilty of
13 possession of crack cocaine with intent to distribute, you
14 may consider whether or not he possessed the crack cocaine
15 for his own use. That is, he possessed it, but that he did
16 not intend to distribute it. It's against the law not only
17 to possess crack cocaine with intent to distribute, but it is
18 what we call a lesser offense. It's also an offense to
19 possess it even without the intent to distribute.

20 So, if you determine that the State has not proven
21 Mr. Hall guilty of possession of crack cocaine with intent to
22 distribute, you may consider whether he possessed it simply
23 for his sole use. That would be simple possession.

24 Mr. Hall is also charged with possession with intent to
25 distribute crack cocaine within the proximity of a park or

1 playground. The State must prove, beyond a reasonable doubt,
2 that Mr. Hall possessed crack cocaine with intent to
3 distribute while in or within one half mile of the grounds of
4 a public park or playground.

5 Now, your verdicts must be unanimous. All 12 of you
6 must agree on whatever your verdicts are. You cannot base
7 your verdict on passion, prejudice, sympathy, or any matters
8 outside the record, or public opinion. You must base your
9 verdicts solely on the law and evidence presented in this
10 trial.

11 As you deliberate, if you have any questions, send them
12 out by way of the bailiff, write them down. The bailiff will
13 bring them to me, and after I confer with the attorneys, I
14 will respond. It may be that I'll write an answer on the
15 note itself and send it back. If I do that, keep the note
16 and return it to the exhibits because it has to be part of
17 the record. It may be that I have to bring you back into the
18 court and recharge you or try to answer your questions here
19 in the courtroom.

20 If you want testimony replayed we can do that. In South
21 Carolina we do not send in to the jury a written charge on
22 the law. If you wish me to go over any part or all of the
23 law, please let me know and I will bring you back out and
24 recharge you.

25 When you first go into the jury room, do not start

1 discussing the case and do not get too comfortable because I
2 have to confer with the attorneys. If I have made an error I
3 will bring you back and that will be fairly promptly and
4 correct any error. So, you can't start deliberating until
5 I'm assured that I have not made an error, and you will know
6 that I'm assured to that degree when the bailiff and only
7 when the bailiff brings in the exhibits and these indictments
8 and the verdict forms that I'm gonna talk to you about in a
9 moment. So, don't start deliberating or get too comfortable
10 until the bailiff tells you to start deliberating.

11 Now, there are two verdict forms. The first has to do
12 with 2010-GS-44-887. The other is 888. Those numbers are
13 just record keeping. They are not anything you have to
14 dissect.

15 The first one, and they're not really in any particular
16 order other than what I said earlier, you can't find Mr. Hall
17 guilty of possession with intent to distribute within a
18 proximity of a park unless you found him guilty of possession
19 with intent to distribute crack cocaine. The first verdict
20 form has three choices on it. The order they're in is of no
21 importance. I have to put them in some order. I always put
22 verdicts in this order.

23 The first one says we find the defendant guilty of
24 possession of crack cocaine with intent to distribute.
25 That's what he's charged with. If you find the State has

1 proven that beyond a reasonable doubt, put a mark or check on
2 the line in front of that sentence. If you find the State
3 has failed to prove that, it has been proven that Mr. Hall
4 possessed crack cocaine, just possessed it without the intent
5 to distribute it, you would use the second line we find the
6 defendant guilty of the lesser included offense, simple
7 possession of crack cocaine. If you find that the State has
8 proved that; put a mark in front of that line if that's what
9 you unanimously find. The third line says we find the
10 defendant not guilty and you would use that line if you find
11 that the State has failed to carry its burden of proof and
12 failed to prove Mr. Hall guilty of either of the charges or
13 the lesser included. There's a place for you to sign and
14 date. Today's the 6th.

15 The second verdict form I have a little sticky note on
16 it. It says do not consider this charge unless you have
17 found Mr. Hall guilty of possession of crack cocaine with
18 intent to distribute. We've already discussed that. They're
19 only two forms on this. The first is we find the defendant
20 guilty of possession of crack cocaine with intent to
21 distribute within proximity of a school, public park, or
22 public playground. If you find the State has proved the
23 defendant guilty of that beyond a reasonable doubt, you would
24 put an X or check on that line. If you find that the State
25 has failed to prove Mr. Hall guilty of that offense or if you

1 have found him not guilty of the possession with intent to
2 distribute, you would use the second line that says we find
3 the defendant not guilty and you would sign and today's the
4 6th. There's a place for you to date it.

5 I'm now going to let you go in the jury room, but please
6 do not start deliberating yet.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Anything from the State?

10 SOLICITOR ANTHONY: Yes, sir. Your Honor, when you
11 were talking about consideration of criminal records, I
12 believe you told them that they could consider prior
13 convictions of Mr. DuBois as to his credibility and Mr.
14 DuBois didn't have any prior convictions.

15 THE COURT: All right. Anything else?

16 SOLICITOR ANTHONY: No, sir.

17 MRS. BUTLER: Yes, sir, Your Honor. I believe in this
18 case that there's gonna be some clarifications needed
19 because Mr. Hall has admitted from the witness stand that he
20 had some crack in his possession that day, but it's not the
21 crack that the State has presented as evidence that has, in
22 fact, been tested and proven to be crack cocaine. So, I
23 think there needs to be some clarifications there.

24 THE COURT: Well, I think I added language that added
25 some language that, added this language that it's part of my

1 standard charge to cover. Actual possession means that the
2 crack within the actual physical custody of the defendant at
3 the time of the alleged offense.

4 MRS. BUTLER: Then I think that it's got to be actual
5 cocaine that, that is in evidence today. That's, that's
6 what I believe has got to be put forth.

7 THE COURT: I think it's clear, but you're on the
8 record.

9 MRS. BUTLER: Yes.

10 THE COURT: Anything else?

11 MRS. BUTLER: No, sir, thank you.

12 THE COURT: All right. Well, I'll bring them back and
13 correct my mistake.

14 SOLICITOR ANTHONY: All right. Thank you very much,
15 Your Honor.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: With one correction and one additional. I
19 forget to tell you, Mr. Foreman, when you have reached a
20 unanimous verdict, again, all 12 jurors must agree, simply
21 knock on the door, tell the bailiff and the bailiff will
22 come and tell me. We're not starting any work this
23 afternoon. So, we should be able to send for you promptly.

24 The error I made is I mentioned that you could consider
25 the record of the witness, that is Mr. DuBois, as to his

1 credibility. There is no evidence that he had any record.
2 That was my mistake. So, as I told you, you can consider
3 Mr. Hall's record only as to his credibility and his
4 credibility alone and not as to any evidence he committed
5 this offense and only evidence of anyone's record in this
6 record is that Mr. Hall's and not Mr. DuBois. So, that was
7 my error and I'm going to let you go back, but don't start
8 deliberating quite yet.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Anything from the State?

12 SOLICITOR ANTHONY: Yes, sir, thank you.

13 THE COURT: Anything else?

14 SOLICITOR ANTHONY: No, sir.

15 THE COURT: Defense.

16 MRS. BUTLER: Your Honor, if this is the appropriate
17 time, we renew the motion for directed verdict of the
18 defendant. I'm not sure if this is the appropriate time or
19 if it's after the jury comes back.

20 THE COURT: Well, you made it at the end of the case as
21 I recollect and this is not.

22 MRS. BUTLER: Thank you.

23 THE COURT: This is not, procedurally, this is not the
24 stage where that motion could be entertained by the Court.

25 MRS. BUTLER: And we, we just reserve our request that

1 we made just a few minutes ago on charging the jury as to
2 the clarifications there.

3 THE COURT: You're on record.

4 MRS. BUTLER: Yes, sir.

5 THE COURT: All right. Check the exhibits and verdict
6 form and see if you have any problem and just -- I, on my
7 own without asking, I did put that sticky note on there
8 because I do think it helps clarify they're not to consider
9 the proximity unless they find the distribution. I've never
10 done that before. It just dawned on me that that might be a
11 way to be a little help. So, I hope neither one of you has
12 any problem with that.

13 SOLICITOR ANTHONY: No, sir, I don't.

14 MRS. BUTLER: I don't either.

15 (WHEREUPON, the jury began deliberations at 04:54PM and
16 returned with a verdict at 05:39PM.)

17 THE COURT: I understand we have a verdict in
18 Mr. Hall's case.

19 Is the State ready?

20 SOLICITOR ANTHONY: Yes, sir.

21 THE COURT: Is the defense ready?

22 MRS. BUTLER: Yes, sir.

23 THE COURT: Bring in the jury.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: I understand the jury has reached a
2 verdict.

3 FOREMAN: Yes, sir, we have.

4 THE COURT: If you'll hand them up by the bailiff.

5 THE CLERK: In the case of the State of South Carolina
6 versus Doug Hall, verdict, we find the defendant guilty of
7 the lesser included offense of simple possession of crack
8 cocaine.

9 THE COURT: Anything from the State?

10 The -- according to my instructions, they did not
11 consider, as they should not have, the proximity, but I'm
12 going to just mark not guilty.

13 Anybody object to that?

14 SOLICITOR ANTHONY: No, sir, I have no objection, Your
15 Honor.

16 MRS. BUTLER: No, sir.

17 THE COURT: Anything before the jury is dismissed from
18 the State?

19 SOLICITOR ANTHONY: No, not from the State.

20 THE COURT: Mrs. Butler, anything?

21 MRS. BUTLER: No, sir.

22 (WHEREUPON, the jury panel was released from the
23 courtroom at this time.

24 THE COURT: I've got the sentence sheet.

25 Anything, anything -- let's bring -- else before we get

1 into sentencing?

2 Anything from the State?

3 well, let's, let's do it like this.

4 Mrs. Butler, do you have any motions, post-trial
5 motion?

6 The jury's been dismissed.

7 MRS. BUTLER: No, sir, Your Honor, we've already
8 renewed our motion for directed verdict and we have no
9 further motion.

10 THE COURT: All right. Bring the defendant around for
11 sentencing.

12 (Parties comply.)

13 THE COURT: Yes, sir.

14 SOLICITOR ANTHONY: Your Honor, this would be
15 Mr. Hall's fourth crack related drug offense. He had a 2002
16 conspiracy to possess with intent to distribute and
17 distribute crack in the Federal system. He received a
18 hundred month sentence on that. Apparently in 2005 that
19 sentence was reduced to 64 months. He also has a 1995
20 conspiracy to possession with intent to distribute crack in
21 the Federal system.

22 Then in the State system, in 2009, he had a simple
23 possession of crack. He received a two year sentence in the
24 State system for that. He has a disorderly conduct from
25 1995. He has accessory after the fact to grand larceny from

1 1994, and assault and battery from '93, a disorderly conduct
2 from '92 along with a resisting arrest. He has a burglary
3 conviction from 1988, another burglary from 1982, a simple
4 assault from 1981 and possession of marijuana from 1980.

5 It would be the position, position of the State the
6 Court heard the case. Obviously we respect the jury's
7 verdict, but we, we believe the Court is aware of exactly
8 what was going on with Mr. Hall that day, and he's basically
9 shown a complete un, inability to stay away from dealing
10 crack cocaine, and we would ask the Court to impose a
11 lengthy SCDC sentence in this case.

12 THE COURT: All right. Mrs. Butler, I'll be glad to
13 hear from you and then from your client.

14 MRS. BUTLER: Yes, thank you, Your Honor.

15 Mr. Hall is 49 years old. He has two children. He has
16 several brothers and sisters that live in the area.
17 Mr. Hall has been incarcerated in the Union County Jail
18 since May 18th of 2010, and we ask that the Court give
19 Mr. Hall credit for time served as to, to any sentence that
20 the Court considers.

21 We ask the Court to consider that Mr. Hall is found
22 guilty by a jury of 12 people that deliberated and found him
23 guilty of only a simple possession and we would ask the
24 Court to consider Mr. Hall's age of 49 years old in imposing
25 that sentence, and anything that Mr. Hall would have to say.

STATE OF SOUTH CAROLINA)

County of Union)

Full name and prison number (if any) of Applicant)

Douglas Hall #144917)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

WILLIAM F. COLETT
CLERK OF COURT
UNION, SC

2013 MAR 22 AM 9:08

FILE FOR RECORD

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 Allendale Correctional Institution
2. Name and location of Court which imposed sentence General Session Union S.C.
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) 2010-GS-44-0887

(b)

A TRUE COPY

MAR 22 2013

W. D. Colett
CLERK OF COURT

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 6, 2011 10 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Drop my Appeal
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 1-8-13
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Remittitur
- ii. Order of Dismissal
- iii. _____
9. If you answered "no" 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) INEffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
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. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

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) Had file Direct Appeal & ineffect assistance of Counsel
 (b) DON'T Apply in my case on
 (c) Direct Appeal

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?

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. Melinda Butler, Butler Law Firm
P.O. Box 248 UNION, S.C. 29379
 ii. Dayne C. Phillips, S.C. Commission on
Inigent Defense, Division of Appellate Defense
P.O. Box 11589, Columbia, S.C. 29211-1589
 iii. _____

- (b) the proceedings at which each such attorney represented you:

i. Melinda Butler = Trial & Sentencing
 ii. Dayne C. Phillips = Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

Charges Dismiss or New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Union)

VERIFICATION

I, ~~George~~ Douglas Hall, 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.

Douglas Hall

SWORN to and subscribed before me this 19
day of March, 2013.

Virginia Shults (L.S.)
Notary Public

My Commission Expires: 12-12-22

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Douglas Hall, 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.

Douglas Hall
Applicant

SWORN or affirmed to and subscribed before me this
19 day of March, 2013.

Virginia Drub
Notary Public

My Commission Expires: 12-12-22

State of South Carolina
County of Union RECORD

Douglas Hall

Applicant

VS.

The State of South Carolina
Respondent

2013 MAR 22 AM 9:09

WILLIAM F. GAULT
CLERK OF COURT
UNION, SC

Court of Common Plea
16th Judicial Circuit

C/A #

2013 -CP-44- 95

Memorandum of Law
in Support of the
Post Conviction Relief
Application

Come now the applicant, above named, now present the memorandum of law in support of the Application for Post Conviction Relief And to show unto the court as follow:

I Statement of the case

The Applicant Douglas Hall S.C.D.C#144917 had a JURY trial for Possession of CRACK Cocaine with Intent to Distribute And Possession of CRACK with Intent to Distribute within proximity of a school, Public PARK OR Public Playground. "Indictment# 2010-GS-44-887, 888" In the April 5, 2011 term of General Session court for Union County before the Honorable John C. Hayes III Presiding Judge. The Judge sentenced Applicant to 10 YEARS for a lesser included offence of simple Possession of crack.

II Statement of Facts

On May 18, 2010 Union County Sheriff responded to an UNDERCOVER OPERATIVE of the Union County Sheriff Office.

Based on Affidavit one Douglas Hall allegedly committed the crimes P.W.I.D CRACK COCAINE / P.W.I.D CRACK COCAINE within a 1/2 mile of school, PARK OR Playground with intent to sell the contraband to a UNDERCOVER OPERATIVE for the Union County Sheriff Office:

On the above date an undercover OPERATIVE for the Union County Sheriff Office went to 219 S. Church St to allegedly to purchase an amount of CRACK COCAINE from Applicant Douglas Hall in return for RECORDED U.S. CURRENCY. Upon the OPERATIVE arrival Applicant Douglas Hall got into the OPERATIVE vehicle and advised the OPERATIVE to drive to Hamlett St. Allegedly when Applicant noticed UNDERCOVER unit in the area he attempted to run from them and allegedly threw down a plastic bag containing an amount of a white like substance, believed to be CRACK COCAINE, in the yard of 101 Hamlett St. The contraband

II. statement of facts continued

was recovered and Applicant Douglas Hall was taken for PWID crack cocaine and D.W.I.D crack cocaine within 1/2 mile of a Park, The James Mauer Ball Field is within a 1/2 mile of 107 Hamlett St. where several people were standing in the yard of 107 Hamlett St, who actual witness what really happen. Applicant advised counsel to investigate an subpoena these witnesses

III. Arguments

The Petitioner received Ineffective Assistance of Counsel during Trial in Violation of the Sixth Amendment to the United States Constitution when counsel failed to conduct proper Pre-Trial Investigation and to object to improper Prosecutorial Conduct

The Petitioner submits that he received ineffective Assistance of counsel prior to and during his Jury Trial. The Sixth Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the Assistance of counsel in presenting their defense. See also 6th Const. Art. I § 14. The Supreme Court has stated that the right to counsel is a fundamental right of Criminal Defendants; it assures the fairness and thus the legitimacy of our adversary process. Kimmelman v. Morrison, 477 U.S. 365, 374 (1986). Furthermore, the Supreme Court has recognized that "the right to counsel is the right to the effective Assistance of counsel" McMann v. Richardson, 397 U.S. 759, 777 (1970).

To see whether counsel's has fallen below the minimum standard needed for effective Assistance of counsel under the Sixth Amendment to the Constitution a two prong test must be met. In Strickland v. Washington 466 U.S. 668 (1984) the Supreme Court held that a determination of ineffective Assistance of counsel could be conditioned on two factors:

1. Counsel Performance must have fallen below an objective standard of Reasonableness AND:
2. There must be a reasonable probability that, but for counsel's errors, the results would probably have been different.

South Carolina has adopted the Strickland standard see E.G. Cherry v. State 300 S.C. 115, 386 S.E. 2d 624 (1989) the right to effective Assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carrier 478 U.S. 478 (1986).

"It is the client's right to expect that his lawyer will use every skill, expand every energy and every legitimate resource in the exercise of independent professional judgment on behalf of the client and in under taking representation of the client's interest." Frazier v. United States 12 F.3d 778, 785 (9th Cir 1994)

1.(A) Counsel was Ineffective for failing to conduct an Adequate PRE-TRIAL Investigation

As the SUPREME Court also recognized in Strickland, counsel bears a duty to make a "reasonable" investigation of the law and facts in his/her clients case: Strickland 466 US At 691 additionally the ABA standards relating to the administration of criminal Justice provides:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should always include efforts to secure information on the possession of the prosecution and law enforcements authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty

A defendants right to effective assistance of counsel confers a duty on counsel to conduct an adequate PRE-TRIAL investigation. When a lawyer fails to conduct a substantial investigation into any of his clients plausible lines of defense, the lawyer has failed to render effective assistance of counsel Cobb v. State 360 S.E.2d 299 408 SE 2d 223 (1991) PRE-TRIAL PREPARATION, principally because it provides a basis upon which most of the defense case must rest is perhaps the most critical stage of a lawyers preparation. Id failure to investigate evidence that would be helpful for the defense is also an indication of ineffective assistance of counsel. Id

2.(B) In determining ineffective assistance of counsel's failure to challenge the admissibility of evidence the court in Mitchell v. State 379 SE 2d 123 (1989) held that any defense, objection or request which is capable or sufficient capable of determining the general issue without a trial should be raised (by counsel) prior to trial. Therefore the failure of counsel to advise and/or file a motion to suppress all PRE-TRIAL evidence constitute ineffective assistance of counsel.

IV Applicant was denied effective assistance of counsel due to counsel failure to interview and subpoena all witnesses in applicant's behalf:

Applicant contends that he informed of several witnesses for his defense who resides in Union County at the address where the alleged crime was committed and could produce statements to what they seen and that I was never chased by Capt. Bailey where the alleged drugs were found. Consequently counsel failed to interview or subpoena these witnesses: Martinez v. State 403 S.E.2d 13 (S.C. 1991) the court found counsel ineffective for failure to subpoena all witnesses Also Grier v. State 384 S.E.2d 722 S.C. (1989) the court found defendants counsel ineffective for failure to call several of his witnesses who could've testified on his behalf.

V Applicant is entitled to a new Trial due to counsel failure to raise that the Drawing of the Alternate Juror was Pretextual

Applicant contends that he is entitled to a new TRIAL due to his counsel not objecting to the drawing of the alternate juror. In *Strickland v. Washington* 466 U.S. 688, 690 (1984) A single error may in some circumstances render counsel performance ineffective. In *Murray v. Carrier* 477 U.S. 478, 496 (1986) ineffective assistance of counsel may in particular cases be violated by even an isolated error is sufficiently egregious and prejudicial. In *U.S. v. Cronis* 466 U.S. 648 665 (1995) Pointing out thru specific error counsel admitted to omission At Virgin Island v. *Weatherway* 77 F.3d 1425, 3633 (A) Counsel breached a duty when counsel fail to take steps necessary to secure a Voir Dire inquiry directed to the issue of him being a convicted felon and will that effect his ability to be impartial (B) failure to consult with Applicant after finding out of the strategic matter and not immediately asking for a mistrial. (C) If counsel would have brought it to the attention of the court that the alternate juror was a convicted felon the court would of have had an affirmative obligation to conduct Voir Dire and would of had discretion, the court could of have excused the juror or either asked for a mistrial. *U.S. v. Reed* 790 F.2d 208, 210, 2nd Cir Defendant waived objection to Alternate Juror and verdict when counsel failed to raise timely objection.

EXECUTED this ____ day
of ____ 2013
Fairfax S.C. 29827

Douglas Hall

Respectfully submitted
Douglas Hall

Douglas Hall #149917 F18-14
Allendale Corr. Inst.
P.O. Box 1151
Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA
COUNTY OF UNION

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Douglas Hall, #144917,

2013-CP-44-0095

Applicant,

V.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 22, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2010 term of the Union County Grand Jury for possession of crack cocaine with intent to distribute (2010-GS-44-0887). The Applicant was represented by Melinda Butler, Esquire. On April 6, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable John C. Hayes, III sentenced the Applicant to confinement for ten (10) years for possession of crack, 3rd offense. Applicant appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed pursuant to Applicant withdrawing his appeal.

Attached herewith and incorporated herein are the records of the Union County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

I. "Ineffective Assistance of Counsel"

- a. "Counsel failed to conduct proper pre-trial investigation"
- b. "Counsel failed to object to improper prosecutorial misconduct"
- c. "Applicant was denied effective assistance of counsel due to counsel failure to interview and subpoena all witnesses"
- d. "Applicant was entitled to a new trial due to counsel failure to raise that the drawing of the alternate juror was pre-textual"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, Id. 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 upon as having produced a just result."

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland 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, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

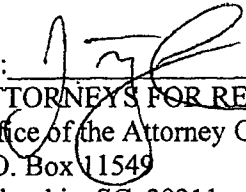
Respectfully submitted,

ALAN WILSON
Attorney General

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By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
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June 26, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF UNION)

IN THE COURT OF COMMON PLEAS

2013-CP-44-0095

DOUGLAS HALL, 144917)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

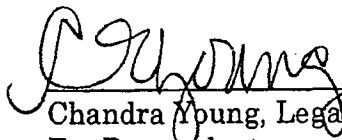
STATE OF SOUTH CAROLINA,)

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(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 235 East Main Street; Suite 100
 Rock Hill, SC 29730

DATED this 26TH day of June, 2013.


 Chandra Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 DOUGLAS HALL,

4 Applicant,

5 Case No.

6 -against-

2014-000712

7 STATE,

8 Respondent.

9 -----x

10 January 21, 2014

11 Union, S.C.

12

13 B E F O R E:

14 HONORABLE J. Michael Baxley

15

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

17 LEAH B. MOODY, Esquire,

18 Attorney for the Applicant

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for the Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

1			<u>I N D E X</u>		
2	<u>WITNESS</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Douglas Hall				
4	Ms. Moody	6			
5	Mr. Johnson			28	
6	Melinda Butler				
7	Ms. Moody	32			
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
1			
2			
3			
4			
5			
6	No exhibits marked.		
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1 THE COURT: All right, Mr. Hall, we are here today
2 because you filed a post conviction relief claim. We
3 are going to begin this proceeding by allowing the
4 Attorney General to give you a procedural history of
5 your case and then we will come back to your counsel
6 because you go first.

7 MS. MOODY: Your Honor, if I may, I was trying to
8 find it here. I beg the Court'S indulgence.

9 MS. MOODY: Your Honor, there is an issue that my
10 client has asked that I ask for a continuance. There is
11 a witness whose number has changed and I was unable to
12 get in contact with that witness. I completely forgot
13 about the witness to be honest with the Court. He gave
14 me the number in the letter from September however that
15 number has changed. We were trying to locate that
16 witness who said they would freely come down here to
17 testify on his behalf and we with were trying to locate
18 him through his brother and I did not receive a call
19 back from his brother with regard to whether he found
20 this individual.

21 THE COURT: All right. First of all, is Miss
22 Melinda Butler present

23 MS. BUTLER: I am.

24 THE COURT: All right, Miss Butler is here. Thank
25 you.

1 Counsel, as an officer of the court what is
2 centrality of that witness to the applicant's case.

3 MS. MOODY: Your Honor, this witness was there the
4 night of the incident, which I have explained to my
5 client that the witness would not -- I mean, he can come
6 and tell the Court what he saw or what happened, but it
7 wouldn't be a retrial of his case at this time. It
8 would be whether his lawyer was in effective assistance
9 of counsel. He feels like he needs to have that
10 witness, that particular witness to carry his burden.
11 I'm not necessarily certain that that witness would help
12 him carry his burden. I think that if I called his
13 attorney she would be able to confirm whether or not she
14 did certain things within the course of her
15 representation for the client.

16 THE COURT: All right. Very good. Let's here
17 from the State on this issue and we will be back to you
18 in a moment.

19 MR. JOHNSON: Yes, sir. If I may give a brief
20 procedural history then I will respond to her motion.

21 THE COURT: Go ahead.

22 MR. JOHNSON: This is case of Douglas Hall versus
23 the State of South Carolina, case number
24 2013-CP-44-0095.

25 Mr. Hall was indicted at the August 2010 term of

1 the Union County Grand Jury for possession of crack
2 cocaine with intent to distribute and accompanying
3 proximity charge.

4 On April 6, 2011 he proceeded to a jury trial,
5 pursuant to which he was found guilty of only simple
6 possession of marijuana (sic,) as a lesser included
7 offense. The Honorable John C. Hayes III sentenced him
8 to confinement for ten years for possession of crack
9 cocaine, third offense. He appealed his conviction
10 sentence but the South Carolina Court of Appeals
11 dismissed his appeal as Mr. Hall asked to withdraw his
12 appeal. He filed a timely PCR action on March 22, 2013
13 and the State filed its return June 26, 2013.

14 The reason that we would oppose the motion for
15 continuance is that he was convicted of simple
16 possession of crack cocaine. In his review of the
17 transcript in his own testimony he admitted that he had
18 a certain amount of crack cocaine on his person when he
19 was stopped by the police. That he had a joint that
20 contained crack cocaine.

21 The State would assert that, that in and of itself
22 is the basis for simple possession' charge. No other
23 witness can come in here and say, oh, he didn't have it
24 on him. He has admitted he had the crack cocaine on
25 him.

1 So we would ask to go forward. We have Miss Butler
2 here today. All the other witnesses here. We are ready
3 to go forward and proceed.

4 THE COURT: And so our record will be clear on
5 this, Miss Moody.

6 MS. MOODY: ~I'm sorry.

7 THE COURT: So our record will be clear on this,
8 just in a perfect world if you wish to say if that
9 witness was here please tell us what is it that the
10 applicant is saying that witness will testify to on the
11 facts of this case.

12 MS. MOODY: Beg the Court's indulgence.

13 Your Honor, what he is saying to me, it is correct
14 what the State has said in terms of admitting to having
15 something on his person. He is talking about the actual
16 charges that he was charged with which was the PWID
17 crack cocaine and the prox charge. He is saying that
18 his witness would have testified that he was not dealing
19 at that time. That he didn't have any kind of drug
20 transaction going on.

21 THE COURT: I will respectfully deny the motion to
22 continue this matter and at the end of this proceeding
23 after all the testimony is in then I will you hear from
24 you again as to whether you believe we need to leave the
25 record open for perhaps a deposition or some other way

1 the testimony may be admitted in this matter. Again,
2 that will be discretionary whether we consider it based
3 in light of what the testimony today shows.

4 MS. MOODY: Okay. Thank you, Your Honor.

5 THE COURT: Very good.

6 MS. MOODY: If I may have a moment to explain to
7 him.

8 THE COURT: You may, certainly.

9 All right, Miss Moody is there an objection now to
10 the history, procedural history given by the State.

11 MS. MOODY: No, sir, Your Honor.

12 THE COURT: All right. Are you ready to proceed?

13 MS. MOODY: Yes, sir, Your Honor.

14 THE COURT: Please call your first witness.

15 MS. MOODY: Your Honor, at this time I would call
16 Mr. Douglas Hall.

17 THE COURT: Please come forward and take the oath
18 as a witness.

19 THE DEFENDANT: Yes.

20 DOUGLAS HALL, called as a witness, having been duly
21 sworn by The Clerk, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY MS. MOODY:

25 Q Mr. Hall, would you please state your full name for the

1 record?

2 A Douglas Hall.

3 Q And where are you currently residing?

4 A Allendale Correction Institution.

5 Q And you are at Allendale for what charge?

6 A Possession of crack, third.

7 Q Was that your original charge that you were arrested
8 on?

9 A No.

10 Q Can you please state the original charges?

11 A Possession of crack within a half mile of a school
12 zone, possession of crack with intent to distribute.

13 Q Did you have any other warrants?

14 A Later I think came in attempted to distribute within
15 the proximity of a park or a school.

16 Q So basically you had two similar charges but they were
17 attempt level charges?

18 A Yes.

19 Q And so when you went to trial. Who were you
20 represented by?

21 A Melinda Butler.

22 Q Okay. And had you met Melinda Butler before you went
23 to trial?

24 A No.

25 Q So, when you were arrested on the possession with the

1 intent to distribute crack cocaine who was your attorney?

2 A Let me see a public defender, or something. Some
3 public defender. I ain't really get to know her name.

4 Q And why is that?

5 A She wasn't -- wasn't even talking about nothing.
6 Talking about pleading guilty so ---

7 Q So you fired her?

8 A Well, the courts did. She stepped down.

9 Q Did she move to be relieved of counsel is that what you
10 are saying?

11 A Yeah, she moved to be relieved.

12 Q And how far did she represent you in this particular
13 case?

14 A She represent me in the preliminary hearing. That was
15 about it.

16 Q And how long after the preliminary hearing was your
17 trial?

18 A Probably eight months.

19 Q The charges that you had occurred on May 18, 2010?

20 A Yes.

21 Q And the date that you went to trial was -- excuse me,
22 April 5th 2010?

23 A Yeah, 2011.

24 Q 2011. Okay. So, at what point did you get appointed
25 Melinda Butler?

1 A I think I was December or either November.

2 Q Of you 2010?

3 A 2010.

4 Q And when you were appointed Miss Butler when did you
5 met with her to discuss your case?

6 A I think I went to see her during the December 2010
7 court term. I was going to try and get a bond reduction.

8 Q Okay, so you were being held?

9 A Yeah.

10 Q And they transported you to the jail?

11 A Yeah, to the courthouse.

12 Q To the courthouse, and that was the first time you met
13 Miss Butler?

14 A Yes.

15 Q And what if anything did you all discuss on that
16 particular day?

17 A Basically that day she, you know, explained the format
18 about trying to get a bond and, you know, what probably is going
19 to happen anyway. That they will probably deny and basically
20 she talked about the plea; the zero to three that the solicitor
21 had offered. Zero to three.

22 Q Zero to three on the PWID?

23 A Yeah.

24 Q Crack, the PWID crack proximity charge and at that time
25 did you have the attempted distribution --

1 A No.

2 Q -- and the attempted proximity charge?

3 A No, I ain't have them.

4 Q So, at what point did you get the attempted set of
5 charges?

6 A I really -- I really don't know. I didn't know about
7 them. Probably I knew about them some time a month before I
8 went to trial.

9 Q So, did Miss Butler present that information to you?

10 A Well, she came up there and said they was thinking
11 about something about it and they probably going to indict me.
12 From the December term she said that he had said he probably
13 going to indict me on some more charges, but then when she came
14 in March I think right before we went for speedy trial and she
15 had told me then.

16 Q So when you say he, you are talking about the
17 solicitor, John Anthony?

18 A Yeah the solicitor.

19 Q And so between December to March did you have any kind
20 of correspondence with Miss Butler?

21 A Between December and March?

22 Q Yes.

23 A Let me see. I got a letter about the motion. I got a
24 letter and she said she they was going to bring me to the
25 courthouse in March, March term, for the motion about the speedy

1 trial.

2 Q And so did you discuss that hearing with Miss Butler?

3 A No.

4 Q All right. So in March what happened when you got to
5 the courthouse?

6 A The judge gave the solicitor -- gave the State I guess
7 like ultimatum to have it ready for the April court term.

8 Q And from there what, if any, discussions did you have
9 with Miss Butler about preparing for your trial in April?

10 A Only thing we had when we was going into the trial her
11 theory was that it wasn't going to be a trial.

12 Q What do you mean by that?

13 A She had stated that there probably come with another
14 agreement or either they were going to dismiss the charges.

15 Q When you say agreement you mean offer?

16 A Yeah, another offer because I had told her I am not
17 going to prison. I just take time served. They will probably
18 come up with an offer before then. I said, well, I am not
19 taking no zero to three, you know, and I had told her that and
20 she came back and to see me like three -- I think that Saturday
21 before trial. Trial started Monday and she came back there and
22 seen me that Saturday and I asked her what was the certain
23 policeman going to say. You think he is going to tell the truth
24 or whatever. Oh, she just said this ain't probably going to be
25 a trial.

1 Q So, outside of that discussion, what discussion did you
2 have with her about your case? Did you communicate anything
3 with her about your case?

4 A The only thing I told her about, I asked her about the
5 witness at that house. Did she talk to anybody or contact
6 anybody, or anything and she said I got it. Like that. I don't
7 think there is going to be a trial. That is what her exact
8 words. That's her story.

9 Q So, when she made those comments to you you said these
10 witnesses. How many witnesses did you provide her with?

11 A It was two and also the lady that was inside the house,
12 but she actually didn't see the whole thing transpire cause she
13 was on the inside, but the statement that the police gave, the
14 captain gave, by her -- getting her as a witness she would have
15 been able to say -- dispute what the captain said. The captain
16 said when I entered the house there was a whole lot of commotion
17 and people pushed me back out the house and that didn't happen.
18 When I went in the house I talked to her and said there is going
19 to be a lot police out there in a minute. I think I might have
20 done something earlier that morning with the confidential
21 informant. And I said I think they have got a warrant on me.
22 Well, you got to go out. So I walked back out and went along on
23 the side of the house and throw my hands in the air. That was
24 it.

25 Q But now -- okay. So as far as that lady you gave her

1 her name?

2 A Yeah.

3 Q And what was the lady's name?

4 A What was it -- ah, I called her Shay girl. I think her
5 real name is Sharon -- Sharon Young.

6 Q So you gave her her name, did you give her phone number
7 or address or anything?

8 A At that same address. All those people.

9 Q Were there any other witnesses?

10 A Besides the two witness that was on the outside.

11 Q Who were they?

12 A That was Deon Thompson and they called this guy B.G.,
13 but I think his original name is Brian Gift. So they actually
14 came to jail while I was in jail waiting to go to trial.

15 Q What do you mean they came to jail?

16 A They came to jail for a trespassing.

17 Q They got arrested and they were brought to the jail?

18 A They was brought to the jail and when they came and I
19 was talking about it and they was saying, man, why didn't you
20 run the other way and the police wouldn't have caught you and I
21 told them, but I didn't do nothing. I didn't have nothing. I
22 know, but they'll arrest you. So, he thought I came to jail for
23 selling drugs to an uncover agent, but I didn't. I ran because
24 when I ran and jumped out the vehicle I said said, ah, man, they
25 got me. I ran in the house and I came back out and they was

1 standing in the yard and they was like -- they was pointing at
2 Captain Bailey who was at the back of the house telling me he is
3 right there. So I just walked around the other side of the
4 house and throw my hands up.

5 Q Okay, so let me make sure this is clear. Deon Thompson
6 and Mr. Gift they were out there that night that you were
7 arrested and when they came to the jail you are saying they
8 thought you were arrested for something that was dealing with an
9 outstanding warrant?

10 A Yeah, that's what they thought. They ain't never know
11 because see this was the whole case would revolve around one
12 police officer chose to tell a lie then the truth. So that's
13 why I kept asking my lawyer what do you think he's going to say.
14 Is he going to tell the truth or is he going to tell a lie
15 because he said I ran back out of the house. People push me out
16 of the house and I ran around the house and he was on high
17 pursuit right behind me and all sudden I just stop and threw my
18 drugs down and said I gave up and that didn't happen and they
19 could have testified what actually happened. That he didn't
20 even chase me around there.

21 Q Okay. So when you discussed your case with Miss Butler
22 you indicated these individuals who were possible witnesses that
23 could testify on your behalf?

24 A Yes.

25 Q And you gave her their locations?

1 A Yes.

2 Q Two of them had come to the jail?

3 A Yeah.

4 Q And when you talked to her were they in jail then?

5 A No, they weren't in then.

6 Q But they are from Union?

7 A They from -- one of them actually stayed there at that
8 residence. Stayed there.

9 Q All right. So, then after you discussed it with her
10 and I guess this discussion took place on that Saturday?

11 A Yes. Are you talking about the day before trial?

12 Q Right, the witnesses?

13 A Yeah.

14 Q So you had given her -- when did you give her their
15 information?

16 A I had -- that was on -- that was before then. I had
17 talked to her before then about peoples there, being there. I
18 had told her.

19 Q But when?

20 A That was in March.

21 Q Okay. So you gave her that information in March?

22 A Yeah.

23 Q And then you reminded her of that information in April?

24 A Yeah, that Saturday, I said I need those witnesses.

25 Q Okay. So then that Monday you went to trial?

1 A Yes.

2 Q Okay. And what happened on that Monday with regard to
3 your witnesses?

4 A They was a no show because Monday morning when we got
5 there we discussed a few things. She told me about how we
6 select the jury and we just can't strike anybody on the jury
7 just because of the way they look or I might not even like them
8 or something. So I said, okay, and then she said -- I asked her
9 again, I said what is he going to testify. I asked her about
10 that. She said, shoot, I don't think there is going to be a
11 trial. I think they will offer something before we pick this
12 jury.

13 Q Well, did that happen? Was there an offer made?

14 A No.

15 Q Did you ever indicate that you wanted to continue with
16 the trial?

17 A Oh, yes, I always, yeah, I wanted to continue with the
18 trial.

19 Q And so at that point what else did your attorney not do
20 that you feel was ineffective assistance of counsel?

21 A My attorney didn't let me know about the -- the a --
22 one of the jurors, because during the course of the trial when
23 we was making jury selection the prosecutor he was bringing all
24 the blacks up that either had felonies, or most of them that had
25 felonies and he was bringing them up and telling them that --

1 telling the judge that we couldn't have them on the stand. We
2 couldn't have them on the jury because they were convicted.
3 They was convicted felon and so he said -- brought all of them
4 up and so during the course of the jury when the jury trial
5 started when we started picking the jury, it was a jury I think
6 74 or 40 something, that was a convicted felon or convicted of a
7 crime, a violation of the gun law, that I didn't know about. I
8 didn't know he was convicted felon or whatever and so she did
9 never explain to me that until it was the last minute, she
10 explained to me that -- to the judge and say oh, no, we can't
11 continue with the trial because the alternate juror had a
12 previous criminal record and we can't use him.

13 Q So you are saying that she made a motion on your behalf
14 regarding a juror being substituted -- an alternate juror being
15 substituted for another juror who needed to be excused?

16 A Yes.

17 MS. MOODY: May approach the witness?

18 THE COURT: Go ahead.

19 Q Can you identify this?

20 A That's the transcript from the trial.

21 Q And on the top of page 56, about line five, can you
22 familiarize yourself with the page and tell me if that is what
23 you are speaking of?

24 THE COURT: What page?

25 MS. MOODY: Page 56, Your Honor.

1 A From line five or keep going or just that line?

2 Q Just look at it, is that the issue that you are talking
3 about?

4 A Okay.

5 Q Is that the issue?

6 A Yes.

7 Q Can you read from line four?

8 A Line four?

9 Q Yes.

10 A This is Miss Butler speaking. "Your Honor the
11 defendant and I have spoken and it appeared that this the jury
12 we pick as we went through what was offered to us and the
13 defendant object to the Court excusing the juror on the basis of
14 his medical reason." Keep going?

15 Q Yes.

16 A "We believe that it is going to be a short -- a short
17 trial, with only a few witnesses presented by the State and
18 possibly the defendant testimony. We would ask that the Court
19 allow may be more frequent breaks if the defendant is needed to
20 get up and move around." Then the Court, "Well, I am going to
21 excuse him. He's got a doctor's excuse. Release the juror due
22 to a medical condition."

23 THE COURT: That's fine sir. I have that. I
24 read that.

25 Q Is there another point on page 57 where Miss Butler

1 acknowledges that she did not object to that juror being -- or
2 challenged the juror being placed as an alternate juror?

3 A Yes. It starts like paragraph 11.

4 Q And what does she say to the Court?

5 A This was the Court right here I think. Oh, okay. I'm
6 sorry. "The only difference we access during the Baston motion
7 argument was that the State put forth that the white -- I mean,
8 I'm sorry. Excuse me. The black male had a previous conviction
9 of driving under suspension where the State failed to strike
10 another juror which is the alternate juror that we're talking
11 about seating, number 74. His name is David Gunner, he's a
12 white male, age fifty, who came forward and told us, Your Honor,
13 and the court reporter and us standing there that he had a prior
14 conviction of South Carolina gun law and Mr. Anthony heard the
15 juror come forward and say that he had a prior conviction.

16 Q Okay. Now, how did the Court rule on that matter, do
17 you recall?

18 A Oh, yeah, the Court stated that the time had elapsed,
19 you know.

20 Q So he denied her motion?

21 A So he denied it.

22 Q All right. So were there any other issues that you
23 found your attorney was ineffective on?

24 A Yeah, because, if I would have knew -- if I had knew
25 that he had a record I could have -- we could of went with 11

1 jurors because, you know, we could have at least had a chance to
2 state before that when we was picking the jury. I didn't know
3 none of this now. The only time I knew this was when the motion
4 was brought up in front of the judge when he was dismissing a
5 juror and when he was dismissing the juror and, you know, I am
6 thinking, oh well, I guess we'll put the alternate in. But I
7 didn't know that the alternate had a record, violation of the
8 gun law, until -- until after Miss Butler brought it up to the
9 Court because she said that it wouldn't be right for the Court
10 to to neglect my rights and override the courts when they can
11 just bring the jury back and pick another juror and I didn't
12 even know he was convicted fellow. She didn't give me a chance
13 to say seat him or not to seat him or carry on with 11. She
14 just took it upon herself.

15 Q Okay. So your two issues that you have is that she did
16 not subpoena your witnesses, that would have testified favorably
17 on on your behalf and as then far as like seating the jury. Is
18 there anything else that you found your counsel was ineffective
19 assistance on?

20 A Well, I want to bring this up for the record too. That
21 the -- the a -- the joint than was stated that was that's the
22 reason why the judge denied me an extension. The joint that the
23 attorney general was talking about that wasn't even a part of
24 the case because that was -- I had even before when I went in
25 the house I had already disposed of that before I came back out

1 of the house. That didn't come along until the trial.

2 Q So let's clarify that for the Court. You are saying
3 that you were picked up, charged for having dealt drugs or
4 distributed drugs to a confidential informant?

5 A I was picked up to try -- they was trying to get me to
6 sell drugs to the confidential informant, but I was only going
7 to met him to get my money from him. He kept asking me
8 repeatedly, that's the reason why I didn't plead guilty, because
9 he kept asking me repeatedly about selling him drugs and even
10 though I knew early that morning -- I even told my attorney
11 early that morning I witnessed him go to jail. To get
12 handcuffed and the drugs -- and the police had the drugs like
13 this and take him off and then he comes back and asked me to
14 sell him drugs. I wasn't going to be around him with no drugs.
15 I wasn't going to sell him drugs if I had it. I was meeting him
16 to get the money and I only ran in the house and ran back out
17 because I was thinking that ---

18 Q So, you are saying a lot here. Let's break this up.
19 There was a transaction that you were charged with which was the
20 attempted?

21 A No, I didn't never get charged with.

22 Q Hear me out. In your trial, the solicitor stated in
23 the transcript that there were four charges that you were before
24 the court on, correct?

25 A Yes.

1 Q And of those four, two were attempted charges, which
2 was the attempted distribution to a C.I., and they had great
3 deal of discussion on that issue, correct?

4 A Yes.

5 Q And in that discussion they talked about how those
6 charges fit in to your actual charges of PWID crack cocaine?

7 A Yes.

8 Q So, the attempted charges were from the early morning
9 where were you trying to --

10 A No. They was actually the reason they was dismissed is
11 because they were the same charges.

12 Q I understand that.

13 A He was saying that when I entered the vehicle that I
14 was taking him to another location to get more drugs. That is
15 where the attempt come in.

16 Q So, what I am saying to you based on the transcript
17 what the solicitor conveyed to the Court was that it was
18 attempted because you were taking the defendant -- I mean the
19 C.I. to purchase other drugs?

20 A Yes.

21 Q You're saying that wasn't the early morning where he
22 owed you money?

23 A Yeah.

24 Q Okay. So, the C.I. owed you some money and then there
25 was the attempt, and the solicitor was trying to compile all

1 that together?

2 A Well, the C.I. -- see early that morning the C.I. came
3 and bought and got some product and then --

4 Q When you say product what do you mean?

5 A Drugs.. He came in the neighborhood, got some drugs and
6 after he got his drugs he left and say I am going to hit you up
7 later on and as soon as he walk out the driveway the police zoom
8 in. The task force zoom in on him and I see it and I'm like
9 golly, he is trying to set me up. So I run in an apartment,
10 somebody's else's apartment and I say how you all doing. They
11 like you see all those police out there. I said, yeah, so we're
12 watching from the window about from here to where the judge
13 standing at watching the police get the drugs and handcuff him
14 and put him in the car and takes him back down to the task
15 force and so I go out the house and maybe two hours later he is
16 calling me. Maybe three. And he wanted -- he said, yeah, I got
17 your money and he's like, where do you want it? I am down on
18 South Church so he comes and picks me up. I gets into the
19 vehicle. He tried to hand me money. I said man, I don't want
20 that money. I heard about you went to jail, drugs and he give
21 me some story. Nah, that's the wrong person and all this. He's
22 asking me to buy drugs. You can hear him on the tape. I'm
23 like, no man, I don't know what you are talking about. No.

24 Q So those are the charges that you were before the Court
25 on?

1 A Yeah, all four of them.

2 Q Okay. And when it came down to it, what did you
3 actually get tried on?

4 A I got tried for possession with intent to distribute
5 crack cocaine and possession with intent with a half mile of a
6 school zone.

7 Q So in your trial you only faced two charges?

8 A Yes.

9 Q Okay. And you went through the trial. In that time
10 did your attorney do anything else that you felt that she should
11 not have done or should have done?

12 A Yeah. She could have the witness -- when she asked
13 Captain Bailey, the one whose testimony who was the one that
14 really got me convicted for, you know. She asked him did he see
15 some people on the tape, on the film --

16 MR. JOHNSON: Objection, Your Honor. This is
17 outside the scope of his application. He said nothing
18 about failure to properly cross examine any witnesses in
19 his application.

20 MS. MOODY: I think he alleged ineffective
21 assistant of counsel as a whole.

22 THE COURT: I will over rule the objection. Go
23 ahead sir.

24 A Oh, and the guy that I was talking about, the Captain
25 Bailey he was the one that actually concocted the story up and

1 so --

2 MR. JOHNSON: Objection, speculation.

3 A Okay, okay.

4 Q Okay, let me ask you --

5 THE COURT: Excuse me one moment. Let me rule on
6 the objection so the record will be clear.

7 I will sustain the objection, but please ask your
8 question and then respond to the question.

9 Q Detective Bailey is the person that you were concerned
10 about with regard to what his testimony would be?

11 A Yes.

12 Q Okay. And what did he testify to at the trial that you
13 disagreed with?

14 A He testified that I ran out the house and I threw the
15 drugs down and he chased me and I threw them down right in front
16 of him and turned around and gave up, and he testified that he
17 didn't see anybody in the yard at first until we rewind the tape
18 back because he said that people were down the street, but it
19 was actually I ran right between those people.

20 Q And you say that your attorney didn't do what with
21 regard to that testimony?

22 A After my attorney asked him rewind the film back and
23 show that it was people in the yard. Instead of her asking him
24 so could these people have seen what happened or you may be
25 think she asked him. She said, well, hit the lights, your know,

1 because the tape we were looking at the video. So she said hit
2 the lights and no further questions and he was the State's key
3 witness, not the C.I., he was. And she really didn't question
4 him.

5 Q So, let me make sure I am understanding and conveying
6 currently. Your saying that she was in effective because she
7 did not develop that testimony with that detective?

8 A All the defense -- it was like we just went in to the
9 trial just whatever. It wasn't that from my standpoint that she
10 had everything she needed to work with to get me found innocent
11 during that time because if she would have -- all the stuff that
12 I asked for -- she gave me one witness, but that was right after
13 we picked the jury and I asked her about, I said what about the
14 other witnesses and she said, well, what you think the
15 investigator -- what's his name? One of the investigators from
16 the Union police department, she asked me what do I think he'll
17 say. I say pretty much he will probably tell the truth what
18 really happened and he actually did, but that was the only
19 witness that she presented.

20 Q And are you speaking of Mr. Jerome Baity?

21 A Yes.

22 Q And he testified on your behalf?

23 A Yes.

24 Q What -- how do you feel like you were prejudiced other
25 then you got jail time?

1 A Explain that to me?

2 Q So you are alleging to the Court that your counsel was
3 ineffective assistance to you in your trial?

4 A Yes.

5 Q Do you realize you have to prove that you were
6 prejudiced in some kind of way. Are you stating to the Court
7 because you got jail time, that were you found guilty, that that
8 was the prejudice?

9 A Yeah, part of it and I was prejudiced by my attorney
10 not subpoenaing these witnesses. If she would have actually
11 subpoenaed these witnesses the jury would have seen both sides
12 of the story because each story have two sides.

13 Q And so you are saying you would have been found
14 innocent?

15 A Yes.

16 Q Or not guilty. So what relief are you seeking from the
17 Court today?

18 A I am seeking a have my conviction overturned.

19 Q Your conviction overturned and what?

20 A A retrial.

21 Q Okay. And what was the reason why you withdrew your
22 appeal?

23 A Because during the -- I had appellant, appellant
24 lawyer and to be honest he was ineffective.

25 MR. JOHNSON: Objection, Your Honor, that is

1 outside the scope of this application. I would ask to
2 strike that.

3 THE COURT: I am going to sustain that objection.
4 I don't believe he raises that as a ground of PCR, but
5 the Court will sustain it insofar as it is offered as
6 new ground for PCR here at trial.

7 MS. MOODY: No, I just wanted to address why he
8 withdrew his appeal and not as a ground against that
9 appellant attorney.

10 THE COURT: All right, any further questions.

11 MS. MOODY: No further questions.

12 THE COURT: All, right, cross examination please
13 answer any questions Mr. Johnson.

14 MR. JOHNSON: Just briefly.

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q You stated that the only charge you went forward on
18 PWID crack and the proximity?

19 A Yes.

20 Q Ant that's because your attorney, Miss Butler, actually
21 asked for the attempt to be dismissed, is that correct?

22 A Yes.

23 Q And that was ultimately successful, correct?

24 A Yes.

25 Q You also discussed that the officer was the State's key

1 witness in this case?

2 A Yes.

3 Q Who saw you -- who testified that he saw you through
4 the crack cocaine?

5 A Yes.

6 Q Actually the State's key witness was the C.I., wasn't
7 he?

8 A No.

9 Q Mr. Dubois didn't testify that he saw you with the
10 crack cocaine in the car?

11 A Yeah.

12 Q And he said that he had bought crack cocaine from you
13 earlier that day?

14 A Yes.

15 Q And that's when he was arrested and that's what you
16 testified that you saw?

17 A Yes.

18 Q And then his testimony is that he was wired for audio
19 and video?

20 A Yes.

21 Q And he gets in the car and he gives you \$70 dollars in
22 cash, correct?

23 A He never gave me anything.

24 Q That was his testimony. He was to provide you for one,
25 a gift card and some crack cocaine?

1 A Yeah -- nah, he didn't give me nothing.

2 Q He was trying -- his testimony at trial was that he was
3 trying to buy -- attempting to buy crack cocaine from you,
4 correct?

5 A Yes.

6 Q Okay. And that he saw you with a baggy of crack
7 cocaine in your hand?

8 A Yes.

9 Q And then it is the other testimony by Mr. Bailey that
10 he saw you throw the bag of crack cocaine?

11 A Yes.

12 Q And there was a bag of crack cocaine in the found in
13 vicinity where he saw you throw it?

14 A Yes.

15 Q And that turned out to be .3 grams of crack cocaine,
16 correct?

17 A Yes.

18 Q And you have admitted you sold Mr. Dubois crack cocaine
19 in the past?

20 A Yes.

21 Q And that was your testimony at trial?

22 A Yes.

23 Q And that he had been sold fake drugs so you wanted to
24 give him real drugs?

25 A Yes.

1 Q And you have multiple prior convictions for possession
2 of crack cocaine, don't you.

3 A Yes. Not -- not possession. I only have one beside
4 the one that I am convicted of.

5 Q But you have two other conspiracy?

6 A Conspiracy.

7 Q Possession with intent to distribute crack cocaine?

8 A Yeah, that doesn't mean I possessed it.

9 Q So this is not your first rodeo with crack cocaine, is
10 it?

11 MS. MOODY: Objection, Your Honor.

12 THE COURT: I will sustain the form. Please
13 rephrase.

14 Q You are familiar with crack cocaine are you not?

15 A Yes.

16 MS. MOODY: No further questions, Your Honor.

17 THE COURT: Is there redirect only on new issues
18 brought up during cross.

19 MS. MOODY: No further questions.

20 THE COURT: Very good, sir. Please watch your
21 step. You may step down and return to your seat.

22 Are there further witnesses for the applicant.

23 MS. MOODY: Your Honor, I would call Miss Butler
24 to the stand.

25 THE COURT: All right, ma'am, please come forward

1 and take the oath of a witness.

2 MELINDA BUTLER, called as a witness, having been
3 duly sworn by the clerk, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. MOODY:

7 Q Miss Butler, could you please state your full name for
8 the record?

9 A Melinda Edmond Butler.

10 Q And where are you currently employed?

11 A Butler Law Firm in Union.

12 Q How long have you been practicing law?

13 A I was admitted to the bar in November of 2008, so over
14 five years.

15 Q And you are familiar with Mr. Hall?

16 A Yes.

17 Q You represented him in this trial that occurred in
18 2011?

19 A That's correct.

20 Q And how did you come to represent Mr. Hall?

21 A I was appointed to Mr. Hall's case.

22 Q Do you recall when you were appointed?

23 A November 8, 2010.

24 Q And when you were appointed did you have opportunity to
25 meet with Mr. Butler -- Mr. Hall?

1 A Yes, I actually sent him out a notice of appointment
2 the day of the appointment and went to meet with him at the jail
3 the next week which was November the 17th.

4 Q And at that time did he provide you with any
5 information?

6 A We discussed his case, yes.

7 Q And what kind of information did he provide you?

8 A Well, I don't make notes of what information that he is
9 providing at the particular meeting, but we did discuss what he
10 had learned from his public defender prior, what was on the
11 video.

12 Q Okay. What, if anything in terms of the witness did he
13 provide to you?

14 A He didn't provide anything about the witnesses.

15 Q Okay. Well, how did you all discuss the witnesses?

16 A I don't think we discussed -- at that particular time
17 we didn't discuss any witnesses. We came later to discuss Mr.
18 Jerome Baity as a witness to be called to testify.

19 Q And what was the substance of that discussion?

20 A That Mr. Baity was an officer of the City Public Safety
21 Department and that Mr. Baity -- Mr. Hall thought that Mr. Baity
22 would testify that -- well, he is Officer Baity -- Mr. Hall
23 thought that Officer Baity would testify that Officer Baity did
24 not see any drugs thrown on the ground.

25 Q And where was Officer Baity during that time?

1 A During the time of the incident Officer Baity was on
2 scene.

3 Q And I am saying as far as the side of the house where
4 Mr. Hall ran to where was Officer Baity?

5 A I don't recall.

6 Q So, after you met with him on that occasion did you all
7 have another occasion to meet before the speedy trial?

8 A We actually met -- I filed a motion after that meeting
9 to have a bond hearing reduction. So we met again in court
10 December the 9th. I went back to the jail to visit with him
11 January 3rd. I went back to the jail to visit with him February
12 the 9th. I filed another motion after that for a speedy trial
13 and met with him in court during that time.

14 Q So, what if anything did you all discuss about his case
15 at that time?

16 A Well, every time we discussed that Mr. Hall insisted he
17 wasn't pleading guilty to the charges. So that was always
18 known. He was always adamant that he would not plead guilty.
19 In every discussion we prepared through the discovery and what
20 we had with the tape.

21 Q And at what point did you become aware of the witnesses
22 that he indicated, a Mr. Thompson and Mr. Gift?

23 A He never indicated to me about any witnesses. The only
24 witnesses that we discussed was the officer.

25 Q Officer Bailey?

1 A Uh-huh.

2 Q Was there a lady that you all discussed?

3 A No.

4 Q So, when preparing for the trial what was your theory
5 of this case?

6 A That Mr. Hall did not intend to distribute any drugs to
7 the C.I.. That the C.I. wanted to buy some drugs from Mr. Hall
8 but that Mr. Hall had better sense because he saw the C.I. being
9 shook down earlier by law enforcement and put in handcuffs.
10 That he wasn't going to sell him anything. It was a pretty good
11 theory until Mr. Hall got on the stand and said that he had
12 actually crack in his possession at the time that the officers
13 chanced him, or even if they didn't chance him,, but found him.
14 He said at the trial that he had a crunch and munch.

15 Q I am sorry, he said at the trial --

16 A That he had a crunch and much and then he explained
17 that a crunch and munch was a combination of crack and
18 marijuana.

19 Q So, in terms of the charges that he was being tried on,
20 the PWID crack and the proximity charge, what drugs were used to
21 prove that case?

22 A Well, they tried to prove it through the .3 grams that
23 they allegedly found on the ground and obviously they were not
24 -- I don't think they were successful of proving that because
25 the jury didn't find him guilty of that. They only found him

1 guilty of simple possession of crack cocaine.

2 Q And was that based on those drugs that were on the
3 ground or his testimony about the crunch and munch?

4 A That was the argument that I went through with the
5 Court towards the end of the transcript, to ask the Court to
6 please clarify that the drugs that he admitted to having on the
7 stand to ask the Court to clarify to the jury that is not what
8 he was on trial for, those drugs. However, I don't think the
9 Court clarified it good enough.

10 Q So, the drugs that he was charged for was the drugs
11 that were found on the ground. What, if anything, did you do or
12 how did you deal with those drugs that were thrown on the
13 ground?

14 A With the drugs that were found on the ground?

15 Q Yes.

16 A Well, our theory was that Mr. Hall when he went through
17 the house if he would have had any drugs in his possession at
18 that time would have disposed of the drugs while he was in the
19 house. So the theory was -- that is why we called Officer Baity
20 to the stand because Officer Baity testified that he didn't see
21 any drugs right there. Although the other officer did, but that
22 was kind of the theory was that possibly those drugs showed up
23 after the fact. After one of the other officers arrived.

24 Q Okay, so, as to the -- I am working backwards here. I
25 am sorry. But the four indictments you asked for those charges

1 to be dismissed? Two of the charges to be dismissed?

2 A That's correct. I argued to the Court he couldn't be
3 tried on both the attempted distribution and the possession with
4 intent to distribute because they were one thing and so the
5 Court finally agreed after a lengthy argument there with the
6 solicitor, and I believe the Court even told the solicitor he
7 didn't have to be happy with him or agree with him, that was the
8 ruling. But he did dismiss the other two charges and we went
9 forward only on the possession with intent to distribute and the
10 proximity.

11 Q Now, as to the charges you went forward on the
12 witnesses that you needed, you did not have their names as --
13 excuse me, you had Mr. Baity. That's the only witness that you
14 had on that charge?

15 A That is it, yes.

16 Q Now, there was a jury issue where you all discussed a
17 Batson motion that had been made earlier in the case?

18 A That's correct.

19 Q And you all went forward and qualified -- well,
20 selected a jury, seated a jury, correct?

21 A That's correct.

22 Q And then it was after you were getting ready to start
23 the trial that one of the jurors presented some information to
24 the judge or doctor's excuse to the judge to be relieved?

25 A After we went forward with the trial, yes. After the

1 jury was selected and seated that he presented the doctor's
2 excuse.

3 Q Okay. And you made an argument regarding that juror
4 being released from jury duty and appointing the alternate,
5 correct?

6 A Yeah, I made a argument against releasing the juror and
7 appointing the alternate, because earlier I had made a Batson
8 motion based on that alternate.

9 Q Okay, and in that the judge ruled against you, correct?

10 A He did.

11 Q He denied your motion is what I should say?

12 A That's correct.

13 Q And when he denied your motion, or when you were going
14 through that motion with the judge what, if anything, what was
15 your purpose of bringing it up then at the time?

16 A Well, because the -- my argument at the Batson motion
17 had been that the State struck a similarly situated juror,
18 similarly situated white male, but didn't strike a similarly
19 situated black male and so I argued how they were similarly
20 situated. But then over the lunch break when I read back
21 through my notes I realized that the juror that we argued about
22 come to find out they were more similarly situated then I
23 thought. I argued they were similarly situation, but come to
24 find out that both of them actually had a prior misdemeanor
25 charge and the solicitor was aware of the prior misdemeanor

1 charge and seated the one, the white male, but didn't seat the
2 black male.

3 Q And when you made that argument to the judge and he
4 denied it, wasn't it your position that you didn't want to be
5 perceived as insufficiency of counsel?

6 A Well, I told the judge. Because the judge says, well,
7 now is not the time to raise it and so it has come to my
8 attention at this time. That is why I am raising it at this
9 time. And if Your Honor is not going to rule on it then, yeah,
10 maybe there will be an insufficiency of counsel raised later.

11 Q And so you were stating to the Court that you felt that
12 was something that you can be brought up on a PCR for?

13 A Well, that's what I stated, yeah.

14 Q And maybe you want to explain this, your statement was
15 "And that's probably my error and hopefully it wouldn't come to
16 insufficiency of counsel issue and a PCR there, but it's
17 definitely my error?

18 A What page are you on?

19 Q I am sorry, page 58. It's line 20?

20 A Yeah, I was just very frank with the Court that over
21 the lunch break I had saw that the jurors were even more
22 similarly situated then I thought. At the Batson motion I had
23 argued they were the same age, they had the same education
24 level, they had substantially the same employment history and
25 then over the lunch break I found out they were even more

1 similarly situated because of their prior criminal record.

2 Q So when you made the Batson motion you addressed those
3 two gentlemen?

4 A This is my understanding. That's what I believe
5 happened, yes.

6 Q So, if you will turn back to page 56, and I believe the
7 way you presented it to the Court, you presented it as Mr.
8 Anthony should have brought that up to the court's attention, is
9 that correct?

10 A Are you at a certain --

11 Q I am sorry, I am summarizing. You are on line 24, page
12 56 where you start to speak to the judge and you tell him that
13 the defendant made a Batson motion at the end of the jury pool
14 picking. Apparently there were two jurors that were very
15 similarly situated and you go on to state, you know, the
16 differences or the similar situations of these two gentlemen,
17 correct?

18 A That's correct.

19 Q And then later on you go into just a little bit more
20 information about the jurors, but the Court addresses you and
21 says that you heard them too. Heard their information as well
22 on line 23?

23 A That's correct.

24 Q So basically what the Court was saying it was on you to
25 make that call or present that information and challenge those

1 jurors or that particular jury being seated?

2 A That's correct.

3 Q And that's where that statement comes from. Your
4 response to that was you wanted to bring it up at the time
5 because you thought it might have been insufficiency PCR?

6 A Well, I wanted to bring it up at that time because I
7 wanted the judge to be aware that I thought we had even stronger
8 grounds for our Batson motion then was previously raised.

9 Q But he denied that?

10 A That is correct.

11 Q Okay, and he seated that juror?

12 A He did.

13 Q Now, as to the testimony of Mr. Baity, you indicated
14 that you called him because he testified that he did not see Mr.
15 Hall throw the drugs, correct?

16 A Yeah, Mr. Baity, as a police officer who was with that
17 force his testimony was pretty strong that he didn't see any
18 drugs anywhere on the ground.

19 Q So, was there any kind of theory of how you would
20 approach questioning him to convey that to the jury?

21 A I am sorry.

22 Q Was there any kind of theory in your cross -- not your
23 cross examination, in your direct examination of that witness to
24 convey to the jurors?

25 MR. JOHNSON: And Your Honor, just to renew my

1 objection to this issue has not been raised in the
2 application.

3 THE COURT: So noted.

4 MS. MOODY: Okay, and I believe your ruling was
5 sustained.

6 THE COURT: Yes, I overruled an objection. You
7 may ask the question.

8 Q So, I was asking you about your theory on your direct
9 of Mr. Baity?

10 A I am sorry.

11 Q As to what he could convey to the jurors about Mr. Hall
12 throwing drugs or on drugs being found?

13 A So in closing argument I was able to tie that in, that
14 the officer that found the drugs -- that the drugs were not saw
15 by another officer who was there on the scene too. That officer
16 testified he didn't see the drugs. That the drugs didn't
17 actually appear until a few minutes after the incident was our
18 theory and that well -- well, that was the theory. That the
19 drugs didn't appear until a few minutes later and then Officer
20 Baity testified that he did not see the drugs in the beginning.

21 MS. MOODY: Beg the Court'S indulgence.

22 Q Miss Butler, going back to the juror and the second
23 Batson motion -- well, not the second Baston motion, but the
24 revisit to the Baston motion, in the first Batson motion you
25 talked about one set of individuals, is that not correct?

1 A I don't remember. If you want me to take me there.

2 THE COURT: Let me ask you, if I may. Excuse me
3 for breaking in, but of course Batson typically in a
4 felony issue you are looking for prejudice in addition
5 that there is some deviation of standard. You still
6 got to have prejudice. What evidence do we have of one
7 juror that was seated would vote one way as opposed to
8 the juror that was struck.

9 So how do meet the prejudice prong in that
10 evidence, may I ask?

11 Well, put it another way, what evidence will there
12 be about prejudice on that issue?

13 MS. MOODY: Well, I was going to ask her about
14 that. I am just asking this question based on the issue
15 that was presented.

16 THE COURT: All right. Well, I have an
17 understanding of the issue, so let me ask you if you
18 would focus with the witness on the prejudice prong of
19 that issue. I think it would be helpful to the Court.

20 MS. MOODY: Okay. Thank you, Your Honor.

21 Q Miss Butler, you indicated earlier in the testimony on
22 page 58, where you thought it might be insufficiency of counsel.
23 At that time you obviously felt it was going to be a prejudice
24 to Mr. Hall and I believe you stated that within the transcript
25 in the argument that you made to the judge?

1 A I don't think that I stated the prejudice part. I just
2 stated that I thought that my Batson motion was more founded
3 based on knowing that both the jurors also had a criminal
4 history.

5 Q But wasn't there a point where you you and the Court
6 went back on whether it was going to be prejudicial to Mr. Hall
7 to have this person be seated on the jury?

8 A I don't recall that.

9 Q If you will turn over to page 60, and the Court is
10 addressing your motion. He rules on your motion and he starts
11 at line four and he is talking about -- well, he addresses if he
12 did this in this situation allowed the juror, the alternate
13 juror to be conceded, that it would open basically the door for
14 a defendant to sandbag the jury selection process?

15 A That is what the Court is stating.

16 Q And you suggested that on page -- I am sorry, on page
17 59, "Your Honor, I believe that the defendant's right to have
18 have a fair and impartial trial outweighs the jurors right to
19 serve?"

20 A That's correct.

21 Q So what was your line of thinking, or do you recall,
22 what you were thinking in terms of how it would be prejudicial
23 to Mr. Hall?

24 A Well, based on my arguments there that I thought the
25 defendant's right to have a fair and impartial trial outweighed

1 the jurors right to serve.

2 Q But how, if the judge seated the alternate juror on the
3 jury panel how would that have prejudiced Mr. Hall?

4 A Because he didn't get the jury of his choosing. That
5 is what I was arguing. That he didn't get to have have a fair
6 and impartial jury because the State dismissed the other juror.

7 Q And at that point the judge had already dismissed the
8 panel for that day.

9 A I don't think he had. I think he goes on to say that
10 the jury was out in the hallway, but I am not sure if I am
11 remembering at that particular time.

12 THE COURT: Actually counsel, I reviewed the
13 transcript. I see that the jury has gone. The Court is
14 familiar with that that issue.

15 Any further issues for this witness?

16 MS. MOODY: Nothing further, Your Honor.

17 THE COURT: Okay. Thank you. Cross examination.

18 MR. JOHNSON: The State has no questions, Your
19 Honor.

20 THE COURT: All right. Then ma'am, you may step
21 down.

22 MS. BUTLER: Thank you.

23 THE COURT: Are there further witnesses for
24 applicant?

25 MS. MOODY: No, sir, Your Honor.

1 THE COURT: And there are witnesses for the State?

2 MR. JOHNSON: None for the State.

3 THE COURT: All right. Just one moment please.

4 MS. MOODY: I am sorry, Your Honor.

5 THE COURT: I said, let me review my notes and the
6 testimony that we have in the record here please.

7 I am prepared to rule on this matter and I am going
8 to ask the Attorney General to prepare an Order. I
9 would you ask you do so within thirty days of today's
10 date and to send it to my officer electronically after
11 you afforded Miss Moody an opportunity to review it for
12 the misstatement of her position, her client's position,
13 and this is the ruling: Mr. Hall, to be successful at
14 PCR you have to prove two things. Number one, that your
15 lawyer as was said earlier today, your lawyer's
16 performance was below the standard that we require
17 lawyers practicing criminal law in South Carolina. So
18 in other words that her performance was deficient, and
19 not or, and number two, that by that poor performance
20 you were prejudiced. And prejudice has been define by
21 our Supreme Court to mean that but for your lawyer's
22 poor performance the outcome of the trial would have
23 been different. That's the standard that you have to
24 meet and I will say to you, Mr. Hall, respectfully I
25 find that you failed to meet either prong of proof. I

1 will say you there is some question about whether or not
2 your lawyer made a timely Batson motion and the Court
3 does accept the fact that the judge, Judge Hayes
4 perceived that the the motion came too late. But the
5 Court finds there has been absolutely no showing of
6 prejudice on that specific point because there is no
7 evidence before this Court that one juror would have
8 supported you versus another juror that would have
9 opposed you. That is speculation at best. There is no
10 on evidence in the record to support prejudice on that
11 point and so, while I find that there generally is not a
12 deficient performance the Court realizes there may be an
13 exception on that one point, but that there is no
14 prejudice to it.

15 You take the position that your lawyer did not met
16 with you sufficiently, but I find that she testified
17 that she met with you on December 19th, January 3rd,
18 February 9th, again after that, and then of course met
19 with you prior to the trial in this matter. I don't
20 find that there is any showing of deficient performance
21 there.

22 What I find here is that you had an offer that
23 would have capped your exposure at three years. You made
24 the choice, sir, a choice was yours to make not to
25 accept it. You went to trial. At the trial, and this

1 is in the record on page 244, in an effort I think
2 perhaps to beat the greater charge of distribution and
3 proximity you admitted at line 17 that you had a joint
4 stick with you called a crunch and munch and explained
5 that would have had crack cocaine in it, and also on page
6 245 at line 13 when asked if you had crack cocaine you
7 said -- in cigarette form, you said, and I quote "Most
8 definitely." This evidence could have been used by the
9 jury. I realize your lawyer says, well, I tried to get
10 the judge to understand that this was not the cocaine
11 that you were being prosecuted for. It was allegedly
12 some that were thrown down or in your proximity at the
13 point you were apprehended. But again the jury may have
14 made that determination that perhaps this was the same
15 drugs or part of the same drugs. I don't know that is a
16 factual determination for them to make, but I certainly
17 don't find any deficient performance on your lawyer with
18 regard that issue.

19 You took the calculated decision to go forward with
20 trial. You got a beneficial result because two charges
21 were dismissed. Your greater charges were found in your
22 favor and then you were convicted on a lesser charge and
23 then the judge sentenced you within the statutory
24 framework. So for all those reasons I will deny your
25 PCR.

1 Now please understand, you can appeal this
2 decision. This decision is not over today. I told you
3 what the basis of the decision is, but I've asked the
4 Attorney General to prepare an Order. This will take
5 probably 30 to 60 days. He will send me that Order. I
6 will sign it, return it to the Attorney General. He
7 will file it and then it will be served on you and at
8 that date you have 30 days from that date of service in
9 Order to appeal. That actually may be -- tell me
10 counsel, do you serve it on the attorney or do you serve
11 it on the applicant?

12 MR. JOHNSON: On the attorney.

13 THE COURT: All right, so then the Order will be
14 served on your attorney here this circuit. From that
15 day you have 30 days to appeal this decision.

16 Do you understand your appellant rights?

17 THE DEFENDANT: Yes.

18 THE COURT: All right, sir, then Mr. Hall I will
19 return you at this point back to the detention center.
20 Good luck to you sir.

21 (END OF TRANSCRIPT).

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the Seventh 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 in the captioned case, in the Circuit Court for Union County, South Carolina, on the 21st of January, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 26, 2014

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF UNION	)	
	)	C/A NO. 2013-CP-44-0095
Douglas Hall, #144917,	)	
	)	ORDER DENYING
Applicant,	)	POST-CONVICTION RELIEF
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	


 This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR"), filed March 22, 2013. The Respondent made its Return on June 26, 2013. An evidentiary hearing into the matter was convened on January 21, 2014, at the Moss Justice Center in York, South Carolina. Leah B. Moody, Esquire, represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, appeared on behalf of the Respondent. At the beginning of the hearing, the Court denied Applicant's motion for a continuance, which was based on the alleged unavailability of witnesses Applicant intended to call during the PCR trial. The denial was based upon the fact that all necessary parties were present for the proceeding, further delay was not in the interests of judicial economy, and any additional witnesses that could be called by Applicant were unlikely to be able to successfully contradict evidence already established through the direct testimony of Applicant at the previous trial.

At the hearing, Applicant testified on his own behalf. Melinda I. Butler, Esquire, Applicant's trial counsel, also testified. The Court had before it a copy of the records of the Union County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

Applicant is presently confined at the South Carolina Department of Corrections pursuant to orders of commitment from the Union County Clerk of Court. Applicant was indicted at the August 2010 term of the Union County Grand Jury for Possession of Crack Cocaine with Intent to Distribute ("PWID") (2010-GS-44-0887). He was represented on this charge by Melinda I. Butler, Esquire. On April 6, 2011, Applicant proceeded to a jury trial, and at the conclusion, he was found guilty of Simple Possession of Crack Cocaine as a lesser included offense. The Honorable John C. Hayes, III sentenced Applicant to confinement for ten (10) years for Possession of Crack Cocaine, third offense. Applicant appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed pursuant to the withdrawal of the appeal by Applicant.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

- JLB*
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1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to conduct proper pre-trial investigation"
 - b. "Counsel failed to object to improper prosecutorial misconduct"
 - c. "Applicant was denied effective assistance of counsel due to counsel [sic] failure to interview and subpoena all witnesses"
 - d. "Applicant was entitled to a new trial due to counsel [sic] failure to raise that the drawing of the alternate juror was pre-textual"

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel.

SUMMARY OF TESTIMONY

Applicant testified his trial occurred approximately eight months after his preliminary hearing, which was conducted in May of 2010. He stated counsel was appointed to represent him in December 2010 after he had a public defender relieved as counsel. Applicant testified he

met with counsel in December 2010 during a bond reduction hearing. He stated counsel explained the bond reduction process and offered a plea agreement of three to five years on PWID crack cocaine and an accompanying proximity charge, and that trial counsel wanted him to plead guilty, as opposed to defending him vigorously. He stated he was also charged with attempting PWID crack cocaine about one month prior to trial. Applicant also testified that during the time between his bond reduction hearing and trial, he received a letter from counsel concerning a speedy trial motion, but did not get to discuss this motion with counsel before the hearing. At the hearing, the presiding judge gave the State an ultimatum: try the case by April of that year or dismiss it.

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Additionally, Applicant testified the only discussion concerning his trial was whether to accept an offer from the State or a dismissal of the charges. He stated he was willing to accept a plea for time served but not a plea for zero to three years. Applicant then testified he wanted counsel to call witnesses on his behalf who were at the scene prior to Applicant's arrest; namely, Sharon Young, Deon Thompson, and Brian Gist. Applicant claimed that these witnesses would have told the jury "what really happened" and that Applicant did not possess crack cocaine. Applicant stated he gave counsel these witnesses' information in March of 2011.

Applicant testified he thought counsel was ineffective for not striking Juror #74, as Juror #74 was similarly situated to a juror who was struck for cause because of his prior criminal record. Applicant stated counsel acknowledged on the record that she did not challenge the juror being placed as an alternate. Applicant also stated the trial court denied the Batson¹ motion and that trial counsel had let the time for challenging Juror #74 lapse.

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

Applicant then testified he was tried for PWID crack cocaine, but was only convicted of possession of crack cocaine, and that he was concerned about the officer's testimony. He claimed counsel did not challenge the officer's testimony and that such testimony was the only evidence the State presented against Applicant. Applicant lastly testified that through the witnesses counsel failed to call, the jury would have seen both sides of the story.

On cross-examination, Applicant admitted that counsel successfully challenged two of the charges and was able to get both the attempted PWID crack cocaine and the accompanying proximity charges dismissed. Applicant also admitted he has had substantial prior experience with crack cocaine and has a prior conviction for conspiracy to commit PWID crack cocaine. Additionally, Applicant admitted that there was a confidential informant ("CI") who testified that he saw Applicant possessing and trying to sell crack cocaine, thus undermining Applicant's claim that the testifying officer was the only evidence the State presented against him at trial. Moreover, Applicant admitted that in his own testimony at trial, he admitted to possessing crack cocaine (an item he referred to as a "crunch and munch") and selling crack cocaine to the CI earlier that same day. Lastly, Applicant admitted law enforcement found a bag containing .3 grams of crack cocaine near the location where Applicant was arrested.

Counsel testified she has been practicing law for five years and was appointed to Applicant's case in November 2010. She stated that, according to her notes, she met with Applicant on November 17, 2010 to discuss the case and review the video in the discovery materials. Counsel testified at that time, Applicant did not provide the names of any witnesses. She stated she called Jerome Beatty, a law enforcement officer who was present during Applicant's arrest, at trial as a witness to testify that he did not see Applicant discard any type of plastic bag containing crack cocaine. Counsel then testified she filed a motion for bond

reduction on December 9, 2010, and met with Applicant on January 3, 2011, February 9, 2011, and filed a motion for speedy trial on March 11, 2011. Counsel also stated Applicant always wanted a trial, but never indicated he wanted any other witnesses called on his behalf other than Officer Beatty.

Concerning the defense theory of the case, counsel testified the theory was that Applicant did not intend to distribute crack cocaine. She stated the CI wanted to buy some crack cocaine, but Applicant was not going to sell him crack cocaine. Counsel articulated that, in her opinion, this theory was effective until Applicant took the stand in his own defense and admitted that he had possessed a "crunch and munch"² when he exited the vehicle driven by the CI during the attempted buy. Counsel then testified that the .3 grams of crack cocaine found at the scene were the drugs Applicant was on trial for and she requested that the Court instruct the jury as such; thus, Applicant was not on trial for possession of the "crunch and munch." Counsel stated Applicant's theory was that he would have disposed of any drugs he possessed while he was in the house prior to his arrest. Counsel expressed that she tried to illustrate that the drugs found might have already been on ground before Applicant was near the scene.

Further, counsel testified that after the jury was seated, one of the jurors gave the judge a doctor's note as to why he was unable to sit on the jury. Counsel stated she made an argument on the record as to why the juror should not be excused from jury duty. Counsel then testified she brought up the Batson challenge again because a Caucasian juror was seated but not an African-American when both of the jurors had prior convictions. Counsel stated this only came to her attention when the juror with the doctor's note was excused; so she brought it to the trial

² A "crunch and munch" is a marijuana joint laced with crack cocaine.

judge's attention only when the issue arose. The Court denied this motion because, in its words, the "proper time to raise [the Batson challenge] has passed."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony of the various witnesses at the PCR hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. The Court finds the testimony of counsel to be credible. This Court finds the Applicant's testimony concerning ineffectiveness of trial counsel is not credible.

Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required of counsel practicing criminal law in this state. Courts presume that counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. 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.

Failure to Interview/Call Witnesses on the Applicant's Behalf

Applicant alleges counsel was ineffective for failing to interview and call witnesses on his behalf at trial.

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At the PCR hearing, Applicant testified counsel failed to interview witnesses from the scene of his arrest. Conversely, counsel testified Applicant never asked her or provided her names of witnesses to interview other than Officer Beatty, whom she called as a witness on Applicant's behalf at the trial.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with

the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

The Court finds counsel was not ineffective in failing to interview or subpoena witnesses on Applicant's behalf. The Applicant failed to produce any testimony or evidence at the PCR hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Additionally, the Applicant has failed to prove any resulting prejudice from counsel's alleged shortcoming. As a result, this allegation is denied.

Failure to Challenge/Strike Juror

Applicant contends counsel was ineffective for failing to timely strike Juror #74. At the PCR hearing, Applicant testified counsel was ineffective for failing to timely challenge Juror #74 from being seated on the jury as he had a prior criminal record; the same as an African-American juror who was struck from the jury. Counsel testified that it wasn't until one of the jurors was excused from this case due to medical issues that she brought it to the Court's attention that Juror #74 was similarly situated as another juror who was struck during jury selection and the only difference between the two was race.

"[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). At PCR, the Petitioner must provide credible evidence that counsel's failure to strike a juror prejudiced the defense. Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). Additionally, jurors are presumed to follow the instructions of the trial court. State v. Queen, 264 S.C. 515, 521 216 S.E.2d 182, 185 (1975).

In this case, counsel made a Batson motion during jury selection and the trial judge denied it. Later, when a juror was excused due to medical reasons, counsel challenged the

alternate being seated on the jury as, in her opinion, a similarly situated juror had been struck during the selection process. The trial judge denied this challenge as untimely. This Court finds that Applicant has failed to meet either prong of the Strickland test as to this allegation. Although counsel was arguably ineffective for not challenging Juror #74 during the selection process, Applicant provided no evidence whatsoever that he was prejudiced by the seating of Juror #74. It was not until the medically-excused juror was dismissed from the trial that Juror #74 was even going to be part of the jury. As such, counsel had no initial reason to strike him. Only until the prior juror was excused did counsel bring this challenge to the Court's attention. Nevertheless, Applicant presented no testimony or other evidence showing but for Juror #74 being seated on the jury, the outcome of Applicant's trial would have been different.

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9 Applicant is entitled to a fair and impartial jury, not a perfect one. Applicant provided no evidence that these jurors were anything but fair and impartial. Additionally, all twelve jurors agreed that Applicant was guilty of possessing crack cocaine. As jurors are presumed to follow the law as given by the judge, Applicant has failed to meet his burden of proving resulting prejudice. Accordingly, this allegation is denied.

Overwhelming Evidence

The Court also finds there exists overwhelming evidence of Applicant's guilt in this case. First, the CI testified he bought crack cocaine from Applicant earlier on the day of the incident. (Tr. p. 137 lines 17-21). Second, the CI testified he saw Applicant with a baggie of crack cocaine on his person while Applicant was riding in the car with the CI during the attempted buy. (Tr. p. 143 lines 3-6). Third, Officer Brian Bailey testified that while in pursuit of Applicant, he saw Applicant make a throwing motion with his right hand. (Tr. p. 176 lines 17-24). Fourth, a bag containing .3 grams of crack cocaine was found in the vicinity where Officer Bailey saw

Applicant make the throwing motion. (Tr. p. 178 lines 4-7). Fifth, Applicant admitted that he sold crack cocaine to the CI earlier that same day. (Tr. p. 244 lines 8-13 ("I said oh, man, [Officer Bailey] got me from a buy earlier. When I, when I actually did, [CI] purchased crack from me earlier that day...)). Last, and most importantly, Applicant, through his own testimony, admitted that he possessed crack cocaine when he exited the vehicle being driven by the CI during the attempted buy of crack cocaine.

Solicitor: Okay. Okay. So, at the time that you get out of the car, you had some, some amount of crack cocaine in a cigarette form?

Applicant: Most definitely.

(Tr. p. 245 lines 10-13 emphasis added).

Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001); Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). Clearly through the testimony at trial, Applicant was guilty of possessing crack cocaine. Applicant even admitted that not only had he sold the CI crack cocaine earlier in the day, but that he also possessed crack cocaine in some form when he exited the vehicle during the attempted buy set up by law enforcement. This Court finds Applicant can prove no prejudice from counsel's alleged errors because there is overwhelming evidence of his guilt and no reasonable juror could have come to any other conclusion regarding Applicant's guilt.

CONCLUSION

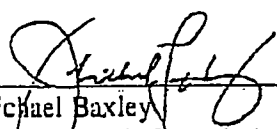
Based on all the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his PCR application. Therefore, this PCR application must be denied and dismissed, with prejudice.

The Court hereby notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for the appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed, with prejudice; and
2. Applicant must remain in the custody of Respondent for completion of his sentence.

IT IS SO ORDERED.



J. Michael Baxley
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

March 6, 2014

Hartsville, South Carolina

DOCKET NO. 2010-GS-44-0887

WITNESSES

J. Johnson/UCSO

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

The State of South Carolina

County of Union

COURT OF GENERAL SESSIONS

AUGUST 09, TERM 2010

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

K393801

Defendant

THE STATE

vs.

Witness:

DOUGLAS HALL

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Melvin W. Vix

Foreperson of Grand Jury
Date: AUG - 5 2010

VERDICT

Guilty of Simple Possession

Indictment for

**POSSESSION OF CRACK COCAINE
WITH INTENT TO DISTRIBUTE**

Michael H. A. [Signature]

Foreperson of Petit Jury
Date:

SC Code: 44-53-375

CDR Code: 3015

STATE OF SOUTH CAROLINA)
COUNTY OF UNION)

INDICTMENT

At a Court of General Sessions, convened on August 05, 2010, the Grand Jurors of Union County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE

That in Union County, South Carolina, on or about May 18, 2010, Douglas Hall did possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et.seq., Code of Laws of South Carolina (1976, as amended), such possession with intent to distribute not having been authorized by law, all in violation of Section 44-53-375 of the Code of Laws of South Carolina (1976, as amended).

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


DEPUTY SOLICITOR