

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

LLOYD WRIGHT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001380

APPENDIX

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STATE OF SOUTH CAROLINA
VS.
LLOYD WRIGHT,
DEFENDANT.

VOLUME 1 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, May 18, 2009, Commencing at 1:03 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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EXHIBITS

[None]

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PROCEEDINGS

1
2 THE COURT: You are Lloyd Wright; is that
3 correct?

4 MR. WRIGHT: Yes, Your Honor.

5 THE COURT: All right. And Mr. Smiley is your
6 counsel; is that correct?

7 MR. WRIGHT: Yes, Your Honor.

8 THE COURT: Mr. Smiley has advised the Court
9 that you are prepared to go forward with your jury
10 trial here today.

11 MR. WRIGHT: Yes, Your Honor.

12 THE COURT: And you are first up. Do you
13 understand that, sir?

14 MR. SMILEY: He just now found that out. We
15 were down the list.

16 THE COURT: You were. I believe when we started
17 this morning you were number four, and now you are
18 number one.

19 The three other cases before you have resolved
20 themselves in a variety of different ways, and so we
21 have now reached the time that we were going to be
22 calling your case. We are going to begin jury
23 selection at 2:30 this afternoon. Do you understand
24 that, sir?

25 MR. WRIGHT: Yes, Your Honor.

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1 THE COURT: I understand the State has made an
2 offer to you and you have rejected it; is that correct?

3 MR. WRIGHT: Yes, Your Honor.

4 THE COURT: Ms. Linder, what was the offer to
5 Mr. Wright?

6 MS. LINDER: The offer was a negotiated twenty-
7 five years on all his charges, which are distribution
8 thirds and proximities.

9 THE COURT: Ms. Linder, if I were -- I don't
10 have my sheet in front of me. If I were to run all of
11 the time consecutively, how much time is Mr. Wright
12 facing?

13 MS. LINDER: Your Honor, there are --

14 MR. SMILEY: 160 years, Your Honor.

15 THE COURT: All right. And you have actually
16 filed the notice seeking life without parole; is that
17 correct?

18 MS. LINDER: Yes, Your Honor.

19 THE COURT: Mr. Wright, do you understand that
20 once we call the jury here today, then Ms. Linder is
21 going to revoke her offer to you of a negotiated
22 twenty-five. Do you understand that, sir?

23 MR. WRIGHT: Yes, ma'am.

24 THE COURT: And knowing that, you reject her
25 offer here today, and we are going to go forward at

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1 2:30 selecting a jury?

2 MR. WRIGHT: Yes, Your Honor.

3 THE COURT: And you have had sufficient time to
4 meet with Mr. Smiley to discuss that offer?

5 MR. WRIGHT: Yes, Your Honor.

6 THE COURT: Anything further, Mr. Smiley?

7 MR. SMILEY: No, ma'am.

8 THE COURT: All right. Mr. Wright, I will see
9 you back here at 2:30 to select your jury in this
10 matter. Okay?

11 MR. WRIGHT: Yes, Your Honor.

12 THE COURT: Thank you.

13 [Whereupon, a recess is taken from 1:14 p.m. to
14 4:52 p.m.]

15 THE COURT: All right. Anything, Ms. Linder,
16 before we bring in the jury panel for Mr. Wright?

17 MS. LINDER: No, Your Honor.

18 THE COURT: Mr. Smiley?

19 MR. SMILEY: No, Your Honor.

20 THE COURT: And does your client request formal
21 arraignment --

22 MR. SMILEY: No, ma'am.

23 THE COURT: -- Mr. Smiley?

24 MR. SMILEY: No, ma'am.

25 THE COURT: Please bring in the jury panel.

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1 [Whereupon, the jury panel enters the courtroom
2 at 4:52 p.m.]

3 - - - - -

4 JURY VOIR DIRE

5 FOR JURY NUMBER ONE

6 THE COURT: All right. Ms. Linder, please call
7 your case.

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

10 This is The State vs. Lloyd Wright.

11 THE COURT: Mr. Smiley, if you would please
12 introduce your client, yourself, and any persons that
13 will be seated at your table.

14 MR. SMILEY: I'm Jim Smiley. I'm with the
15 private bar here in Charleston, and I practice
16 exclusively in the criminal defense arena.

17 This is Ms. Laree Hensley. She is also a sole
18 practitioner. She does both criminal and civil stuff.
19 I've been doing that about seventeen years. You've
20 been doing that about ten?

21 MS. HENSLEY: [Indicates affirmatively]

22 MR. SMILEY: This is Lloyd Wright, my client,
23 who I have the pleasure of representing him. He is
24 from North Charleston.

25 THE COURT: Ladies and gentlemen of the jury

MIA PERRON, CCR, CVR-CM

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1 panel, is there any member of the jury panel that is
2 related by blood, connected by marriage, have any
3 social, business or professional relationship with the
4 defendant in this case, Lloyd Wright? If so, please
5 stand.

6 [Whereupon, there is no response]

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel related
9 by blood, marriage, close personal friend, have any
10 social, business, professional relationships, or ever
11 been represented by Mr. Smiley or Ms. Hensley? If so,
12 please stand.

13 [Whereupon, there is no response]

14 THE COURT: Thank you. There are none.

15 Ms. Linder, please stand, introduce yourself,
16 the office for which you work, and any persons that
17 will be seated at your table with you during this
18 trial.

19 MS. LINDER: Thank you, Your Honor.

20 My name is Stephanie Linder. I'm an assistant
21 solicitor here in the Ninth Judicial Circuit. Bryan
22 Byrd will be assisting me in this case. He is another
23 assistant solicitor. And you will probably see my
24 investigator, Ryan Kelly, coming in and out of the
25 courtroom during this.

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1 THE COURT: Is there any member of the jury
2 panel related by blood, marriage, close personal
3 friends, ever been represented by or had any matters
4 handled by Ms. Linder or Mr. Byrd? If so, please
5 stand.

6 [Whereupon, there is no response]

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel related by
9 blood, marriage, close personal friends, ever had any
10 business dealings or any matters handled by the
11 solicitor's office here in Berkeley or Charleston
12 County, which is the Ninth Judicial Circuit? If so,
13 please stand.

14 Yes, ma'am. Your jury number and name.

15 MS. RUTHERFORD: Lucia Rutherford, and it's 193.

16 THE COURT: All right. And you have had matters
17 handled by the solicitor's office; is that correct?

18 MS. RUTHERFORD: Kind of sort of.

19 THE COURT: Is that something you wish to
20 address with the Court privately?

21 MS. RUTHERFORD: Yes.

22 THE COURT: All right. Just remember, ma'am,
23 that you will need to come forward at that time. Thank
24 you.

25 Is there anyone else?

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1 [Whereupon, there is no response]

2 THE COURT: Thank you. There are none.

3 I am now going to call a list of potential
4 witnesses in this case. If any member of the jury
5 panel is related by blood, marriage, close personal
6 friends, have any social, business, professional
7 dealings with any of these individuals, please stand.
8 Corporal Todd Hurteau, with the Charleston Police
9 Department; Investigator Karen Springmeyer, with the
10 Charleston Police Department; Damian Seabrook, with the
11 Charleston Police Department; Elizabeth Wiggins-
12 Mitchell, with the Charleston Police Department; Brian
13 Hinton, with the Charleston Police Department; Susan
14 Moody, with the Charleston Police Department; Ed Klimas
15 [phonetic], with the Federal Bureau of Investigation.

16 Any member of the jury panel related by blood,
17 marriage, close personal friend, to any of those
18 individuals that I just listed? If so, please stand.

19 [Whereupon, there is no response]

20 THE COURT: Thank you. There are none.

21 THE COURT: Is there any member of the jury
22 panel that is a former law enforcement employee? If
23 so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: Is there any member -- thank you.

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1 There are none.

2 Is there any member of the jury panel that has
3 previously been a witness in a civil or a criminal
4 case? If so, please stand.

5 Yes, ma'am. Your jury number and name.

6 MS. STIRLING: Ann Stirling, 277. I've actually
7 been an expert witness in a civil case.

8 THE COURT: Is there anything about you being an
9 expert witness in a civil case that will affect your
10 ability to be fair and impartial in this trial?

11 MS. STIRLING: No.

12 THE COURT: Thank you.

13 All right. Ladies and gentlemen, I am going to
14 again ask you a series of questions. And I know that
15 most of you were in my panel for the previous case, but
16 I must caution you and remind you that we are here in a
17 separate case so there are different attorneys and this
18 is a different individual that we are trying. It is
19 very important that you -- if I ask the same questions
20 again, that you may need to come forward and address
21 the same issues, even though you may feel that I
22 already know them and you've already told them to me.

23 I am going to ask a series of questions. And
24 these are some, as I indicated to you in the last voir
25 dire, that I think they are a little personal and you

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1 do not wish to stand up and answer these in front of
2 your fellow jury members, so please remember to come
3 forward.

4 I am also going to ask you again if there is any
5 reason whatsoever, based upon the -- what you have
6 heard so far concerning this case, which has not been
7 much, or there's just something that has been brought
8 to your attention -- I know, again, perhaps you did get
9 that phone call, it's getting late and you really need
10 to get home and start packing for that Bahamas trip.
11 Feel free to come forward and let's talk about that at
12 this time.

13 Again, have you been, or a member of your
14 family, a very close family member, been a victim
15 of a crime in the last five years?

16 Have you already formed an opinion concerning
17 the guilt or innocence of Mr. Wright?

18 Have you or a member of your family, very close
19 member of your family, ever been accused of a crime?

20 Has any of your family members ever been
21 incarcerated for a crime?

22 Has any member of your family or a close
23 personal friend ever been arrested by the Charleston
24 Police Department?

25 And do you have a belief that illegal drugs

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1 should be legalized?

2 If any of those questions apply to you and you
3 feel that you must answer those, or there is some other
4 issue that you wish to address with the Court, please
5 feel free to come forward at this time.

6 THE BAILIFF: 193, Your Honor.

7 MS. RUTHERFORD: Hello. My fourteen-year-old
8 son had two charges against him: one for possession of
9 marijuana; one for possession of Aderol. I dealt with
10 the solicitor's office to get him deferred, so he could
11 end up at a boarding school, as we spoke before.

12 THE COURT: And, also, I believe you indicated
13 previously that you started him in rehabilitation?

14 MS. RUTHERFORD: We did. We started the Low
15 Country Chapter of Families Anonymous, which is a
16 support group --

17 THE COURT: And the charges against your son,
18 were they here in Charleston County?

19 MS. RUTHERFORD: They were.

20 THE COURT: And did you deal with the
21 solicitor's office --

22 MS. RUTHERFORD: -- from the solicitor's office.

23 THE COURT: And is there anything about that,
24 the charges with the solicitor's office -- that will
25 affect your ability to be fair and impartial in this

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1 case?

2 MS. RUTHERFORD: No.

3 MR. SMILEY: If I could, Your Honor?

4 THE COURT: Yes.

5 MR. SMILEY: We have not told them the charges
6 my client is standing trial for.

7 Would the fact that it's a distribution of crack
8 cocaine charge affect your ability to be fair and
9 impartial in this case?

10 MS. RUTHERFORD: No.

11 THE COURT: Thank you.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE BAILIFF: Juror number 154, Your Honor.

15 MR. MILLER: It's me again.

16 THE COURT: Yes, sir? Your sister --

17 MR. MILLER: -- my girlfriend's sister is
18 getting married Saturday..

19 THE COURT: And, again, we begin the trial of
20 this case in the morning, so we should be done with it
21 tomorrow.

22 MR. MILLER: And also I'm a proponent, an
23 advocate, for the legalization of marijuana.

24 THE COURT: Is there anything about you being an
25 advocate for the legalization of marijuana that would

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1 affect your ability to be fair and impartial in this
2 case?

3 MR. MILLER: [No response]

4 THE COURT: Mr. Smiley --

5 MR. SMILEY: If I could? My client has been
6 charged with distribution of crack cocaine and
7 distribution within proximity of a school. Would those
8 facts change his ability to be impartial in this trial?

9 THE COURT: Would the fact that Mr. Smiley's
10 client, the defendant, has been charged with those two
11 crimes, would that affect your ability to be fair and
12 impartial in this case?

13 MR. MILLER: No.

14 THE COURT: Yes, ma'am?

15 THE BAILIFF: 120, Your Honor.

16 MS. JENKINS: My cousin has committed a crime,
17 but he's serving his time for it now.

18 THE COURT: And what was he accused of? What
19 was he charged with?

20 MS. JENKINS: Conspiracy.

21 THE COURT: And he was convicted?

22 MS. JENKINS: Yes, he was.

23 THE COURT: And this was your cousin?

24 MS. JENKINS: Yes.

25 THE COURT: And how long ago was that?

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1 MS. JENKINS: Three years.

2 THE COURT: It was three years ago?

3 MS. JENKINS: Uh-huh.

4 THE COURT: And was that handled by the
5 solicitor's office?

6 MS. JENKINS: No, ma'am.

7 THE COURT: Who did the prosecuting of the case?

8 MS. JENKINS: The federal.

9 THE COURT: Is there anything about -- it was
10 your cousin?

11 MS. JENKINS: Yes, ma'am.

12 THE COURT: Is there anything about your cousin
13 being charged and convicted that would affect your
14 ability to be fair and impartial in this case?

15 MS. JENKINS: No, ma'am.

16 THE COURT: Thank you.

17 THE BAILIFF: Juror Number 210, Your Honor.

18 MR. SMITH: Yes, Your Honor. I was wondering
19 what Mr. Smiley's full name is.

20 MR. SMILEY: James W. Smiley, IV. I go by Jim.
21 I'm from Isle of Palms.

22 MR. SMITH: Okay. I was represented by James
23 W. Smiley, III, one time.

24 MR. SMILEY: My dad is a college professor.
25 He's a guardian ad litem, though. I don't think it's

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1 the same.

2 THE COURT: Let me just ask you: is there
3 anything -- you are looking at Mr. Smiley, and he did
4 not represent you; is that correct?

5 MR. SMITH: No, he didn't.

6 THE COURT: And Mr. Smiley, IV, has indicated
7 that Mr. Smiley, III, is a -- that he's a guardian.
8 Were you represented by Mr. Smiley as a guardian in a
9 domestic case?

10 MR. SMITH: It was a -- over a failure to stop
11 for blue light.

12 THE COURT: All right. Just clarifying. Thank
13 you, sir. Your juror number?

14 MR. SMITH: 210.

15 THE COURT: 210. Thank you.

16 THE BAILIFF: 151, Your Honor.

17 MR. MCINERNEY: Can you remember my story?

18 THE COURT: And, again, while I remember, I need
19 you to tell Mr. Smiley and Ms. Linder.

20 MR. MCINERNEY: I just bring this -- some of my
21 friends use marijuana, and I don't agree with the
22 state's laws against marijuana.

23 THE COURT: Mr. Wright is charged with by an
24 indictment -- indictments, distribution of cocaine near
25 a school and distribution of cocaine base. Does the

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1 fact that he's been charged with those two crimes, does
2 that affect your ability to be fair and impartial in
3 this case?

4 MR. MCINERNEY: No, ma'am.

5 THE COURT: Will you be able to listen to the
6 facts and apply the law as I give it to you, even
7 though you may not agree with it?

8 MR. MCINERNEY: Yes.

9 MR. SMILEY: Can I ask what his number --

10 THE COURT: 151. Thank you.

11 THE BAILIFF: 278, Your Honor.

12 THE COURT: Juror 278 is going to tell you that
13 he wants this to be over quickly.

14 We will begin the trial of this case in the
15 morning, Mr. 278, and I have been informed that we
16 should be done by tomorrow evening.

17 MR. SUTTON: Excellent.

18 THE COURT: All right? And --

19 MR. SUTTON: I should tell you that, since the
20 last time, I believe that illegal drugs should be
21 legalized and then taxed.

22 THE COURT: Okay. The defendant has been
23 charged but pled not guilty to these indictments for
24 the distribution of cocaine and distribution of cocaine
25 base within the proximity of a school. Is there

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1 anything about knowing about the basis of what the
2 charges are that would affect your ability to be fair
3 and impartial in this particular case?

4 MR. SUTTON: No.

5 THE COURT: You can take the law as I give it to
6 you -- apply the facts as you hear from the witness
7 stand, and render a fair and impartial verdict?

8 MR. SUTTON: Yes.

9 THE COURT: Thank you.

10 MR. SUTTON: Thank you.

11 THE BAILIFF: 253, Your Honor.

12 THE COURT: Yes, sir.

13 MR. COMPTON: My aunt has been incarcerated for
14 drug-related offenses, and my brother-in-law has been
15 arrested by Charleston police for minor drug offenses.

16 THE COURT: And were both of those recently?

17 MR. COMPTON: My brother-in-law's was about
18 three or four years ago, and my aunt's was probably
19 about six or seven years ago.

20 THE COURT: The defendant, Mr. Wright, has been
21 charged with two indictments to which he has pled not
22 guilty to those indictments: one for distribution of
23 cocaine base within the proximity of a school, as well
24 as distribution of cocaine base. Is there anything
25 about your sister or --

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1 MR. COMPTON: It's my aunt --

2 THE COURT: Your aunt?

3 MR. COMPTON: -- and my brother-in-law.

4 THE COURT: -- and your brother-in-law being
5 arrested for drug offenses that would affect your
6 ability to be fair and impartial in this particular
7 case?

8 MR. COMPTON: No, ma'am.

9 THE COURT: You can listen to the facts as
10 presented by the witness stand, apply my law as I give
11 it, and render a fair and impartial verdict?

12 MR. COMPTON: Yes, ma'am.

13 THE COURT: Thank you. Your juror number?

14 MR. COMPTON: 253.

15 MS. LINDER: I was wondering if he was charged
16 by -- if the brother-in-law was charged three or four
17 years ago, I was wondering if I could find out the
18 name, because I handled some drug cases three or four
19 years ago.

20 MR. COMPTON: It was Edward Allen Votto
21 [phonetic]. It may have been longer than four years
22 ago --

23 MS. LINDER: Okay. That name is nowhere in my
24 memory.

25 THE COURT: And there will be -- some of the

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1 witnesses I called -- from the Charleston Police
2 Department. Will that affect your ability to be fair
3 and impartial in this case?

4 MR. COMPTON: I don't think so. I work mostly
5 with lieutenants --

6 THE COURT: And what do you do?

7 MR. COMPTON: I'm the deputy director of the
8 City of Charleston Parks Department, so I do all kinds
9 of stuff.

10 THE COURT: All right. Is there anything about
11 your employment that would affect your ability to be
12 fair and impartial in this case?

13 MR. COMPTON: No, ma'am.

14 THE COURT: Thank you, sir.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Mr. Wright has been charged in what
18 is called an indictment, and you will be given further
19 information on what an indictment is. But just
20 basically, it's the piece of paper that brings us all
21 here today. Mr. Wright has been indicted for
22 distribution of cocaine base, as well as distribution
23 of cocaine base within proximity of a school. Mr.
24 Wright has pled not guilty to each of those
25 indictments.

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1 The State alleges that Mr. Wright did in
2 Charleston County on or about September 19th of 2007,
3 unlawfully possess with intent to distribute, dispense,
4 sell, purchase, or manufacture a quantity of cocaine
5 base within a one-half mile radius of the grounds of
6 New Israel School. The State further alleges that on
7 or about September 19th, 2007, Mr. Wright did
8 manufacture, distribute, dispense, deliver, purchase,
9 or did aid, abet, attempt, or conspire to manufacture,
10 distribute, dispense, deliver, or purchase, or did
11 possess with the intent to distribute, dispense, or
12 deliver a controlled substance or controlled substance
13 analog, to wit, cocaine base.

14 Is there any member of the jury panel who has
15 had any knowledge of either one of the crimes alleged
16 in either one of those indictments prior to me reading
17 the indictment to you here today? If so, please stand.

18 [Whereupon, there is no response]

19 THE COURT: Thank you. There is none.

20 Is there any member of the jury panel who knows
21 or is employed by, has children that attend, lives
22 close to the school mentioned, New Israel School? If
23 so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: Thank you. There are none.

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1 Is there any member of the jury panel, based
2 upon the information that I have just read out or,
3 again, you were just sitting there and there is just
4 something that you feel you cannot be fair and
5 impartial in this particular case to both the State and
6 the defendant and there's -- and perhaps you may feel
7 like you can stand up and talk about it or you just
8 need to stand up and tell me, Judge, I need to come and
9 speak with you again in private. If that applies to
10 you, please stand at this time.

11 [Whereupon, there is no response]

12 THE COURT: Thank you. There are none.

13 Ms. Linder, any additional questions from the
14 State?

15 MS. LINDER: None from the State, Your Honor.

16 THE COURT: Any additional questions from the
17 defendant?

18 MR. SMILEY: No, Your Honor.

19 THE COURT: Any objection to the clerk drawing
20 the jury? From the State?

21 MS. LINDER: None from the State.

22 MR. SMILEY: None from the defense.

23 THE COURT: Thank you.

24 - - -

25 - - -

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STRIKING OF THE JURY

THE CLERK OF COURT: Ladies and gentlemen, like you did before, if I call your name if you'll please gather your belongings, come up to the podium, turn and face the parties. I will then ask the parties questions, after which I'll direct you either to have a seat in the jury box or have a seat back in the audience.

Juror Number 278, Jeffrey Sutton. 278.

[Whereupon, Mr. Sutton comes forward]

THE CLERK OF COURT: What say ye for the State?

[Whereupon, Ms. Linder and Mr. Byrd confer]

THE COURT: Ms. Linder?

MS. LINDER: Please excuse this juror.

THE CLERK OF COURT: Mr. Sutton, please have a seat back in the audience. You've been excused from the trial of this case.

[Whereupon, Mr. Sutton returns to the audience]

THE CLERK OF COURT: Juror Number 279, Emily Truss. 279.

[Whereupon, Ms. Truss comes forward]

THE CLERK OF COURT: What says the State?

MS. LINDER: Please present this juror.

THE CLERK OF COURT: What say ye for the defendant?

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1 MR. SMILEY: Please seat the juror.

2 THE CLERK OF COURT: Ms. Truss, please have a
3 seat in the jury box. You've been selected as a juror
4 in this case.

5 [Whereupon, Ms. Truss is seated in the jury box
6 as a juror]

7 THE CLERK OF COURT: Juror number 208, Michael
8 Simmons. 208.

9 [Whereupon, Mr. Simmons comes forward]

10 THE CLERK OF COURT: What says the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. SMILEY: Please seat the juror.

15 THE CLERK OF COURT: Mr. Simmons, please have a
16 seat in the jury box. You've been selected as a juror
17 in this case.

18 [Whereupon, Mr. Simmons is seated in the jury
19 box as a juror]

20 THE CLERK OF COURT: Juror number 151, Thomas
21 McInerney. 151.

22 [Whereupon, Mr. McInerney comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MS. LINDER: Please excuse this juror.

25 THE CLERK OF COURT: Sir, please have a seat

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1 back in the audience. You've been excused from the
2 trial of this case.

3 [Whereupon, Mr. McInerney returns to the
4 audience]

5 THE CLERK OF COURT: Juror number 111, Brian
6 Hudnall. 111.

7 [Whereupon, Mr. Hudnall comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. SMILEY: Please excuse the juror.

13 THE CLERK OF COURT: Sir, please have a seat
14 back in the audience. You've been excused from the
15 trial of this case.

16 [Whereupon, Mr. Hudnall returns to the audience]

17 THE CLERK OF COURT: Juror number 8, Darlene
18 Archie. Number 8

19 [Whereupon, Ms. Archie comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. SMILEY: Please seat this juror.

25 THE CLERK OF COURT: Ms. Archie, please have a

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1 seat in the jury box. You've been selected as a juror
2 in this case.

3 [Whereupon, Ms. Archie is seated in the jury box
4 as a juror]

5 THE CLERK OF COURT: Juror number 106, Heather
6 Holland. 106.

7 [Whereupon, Ms. Holland comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. SMILEY: Please seat the juror.

13 THE CLERK OF COURT: Ms. Holland, please have a
14 seat in the jury box. You've been selected as a juror
15 in this case.

16 [Whereupon, Ms. Holland is seated in the jury
17 box as a juror]

18 THE CLERK OF COURT: Juror number 120, Neechelle
19 Jenkins. 120.

20 [Whereupon, Ms. Jenkins comes forward]

21 THE CLERK OF COURT: What say ye for the State?

22 MS. LINDER: Please excuse this juror.

23 THE CLERK OF COURT: Ms. Jenkins, please have a
24 seat back in the audience. You've been excused from
25 the trial of this case.

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1 [Whereupon, Ms. Jenkins returns to the audience]

2 THE CLERK OF COURT: That is three strikes for
3 the State.

4 Juror number 253, Matthew Compton. 253.

5 [Whereupon, Mr. Compton comes forward]

6 THE CLERK OF COURT: What say ye for the State?

7 MS. LINDER: Please present this juror.

8 THE CLERK OF COURT: What say ye for the
9 defendant?

10 MR. SMILEY: Please excuse the juror.

11 THE CLERK OF COURT: Mr. Compton, please have a
12 seat back in the audience. You've been excused from
13 the trial of this case.

14 [Whereupon, Mr. Compton returns to the audience]

15 THE CLERK OF COURT: Juror number 164, Diane
16 Nelson. 164.

17 [Whereupon, Ms. Nelson comes forward]

18 THE CLERK OF COURT: What say ye for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK OF COURT: What say ye for the
21 defendant?

22 MR. SMILEY: Please excuse the juror.

23 THE CLERK OF COURT: Ms. Nelson, please have a
24 seat back in the audience. You've been excused from
25 the trial of this case.

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1 [Whereupon, Ms. Nelson returns to the audience]

2 THE CLERK OF COURT: That's three strikes for
3 the defendant.

4 Juror number 265, Richard Lawall. 265.

5 [Whereupon, Mr. Lawall comes forward]

6 THE CLERK OF COURT: What say ye for the State?

7 MS. LINDER: Please present this juror.

8 THE CLERK OF COURT: What say ye for the
9 defendant?

10 MR. SMILEY: Please seat the juror.

11 THE CLERK OF COURT: Mr. Lawall, please have a
12 seat in the jury box. You've been selected as a juror
13 in this case.

14 [Whereupon, Mr. Lawall is seated in the jury box
15 as a juror]

16 THE CLERK OF COURT: Juror number 271, Brian
17 Oshea.

18 [Whereupon, Mr. Oshea comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MS. LINDER: Please present this juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. SMILEY: Please seat the juror.

24 THE CLERK OF COURT: Mr. Oshea, please have a
25 seat in the jury box. You've been selected as a juror

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1 in this case.

2 [Whereupon, Mr. Oshea is seated in the jury box
3 as a juror]

4 THE CLERK OF COURT: Juror number 157, Candice
5 Morgan. 157.

6 [Whereupon, Ms. Morgan comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Please excuse the juror.

12 THE CLERK OF COURT: Ms. Morgan, please have a
13 seat back in the audience. You've been excused from
14 the trial of this case.

15 [Whereupon, Ms. Morgan returns to the audience]

16 THE CLERK OF COURT: That's four strikes for the
17 defendant.

18 Juror number 173, Theodora Patterson. 173.

19 [Whereupon, Ms. Patterson comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. SMILEY: Please seat the juror.

25 THE CLERK OF COURT: Ms. Patterson, please have

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1 a seat in the jury box. Thank you.

2 [Whereupon, Ms. Patterson is seated in the jury
3 box as a juror]

4 THE CLERK OF COURT: Juror number 252, Ryan
5 Casey. 252.

6 [Whereupon, Mr. Casey comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Please seat the juror.

12 THE CLERK OF COURT: Mr. Casey, please have a
13 seat in the jury box. You've been selected as a juror
14 in this case.

15 [Whereupon, Mr. Casey is seated in the jury box
16 as a juror]

17 THE CLERK OF COURT: Juror number 210, Carl
18 Smith. 210.

19 [Whereupon, Mr. Smith comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. LINDER: Please excuse this juror.

22 THE CLERK OF COURT: Mr. Smith, please have a
23 seat back in the audience. You've been excused from
24 the trial of this case.

25 [Whereupon, Mr. Smith returns to the audience]

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1 THE CLERK OF COURT: That's four strikes for the
2 State.

3 Juror number 72, Yolanda England. 72.

4 [Whereupon, Ms. England comes forward]

5 THE CLERK OF COURT: What say ye for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK OF COURT: What say ye for the
8 defendant?

9 MR. SMILEY: Please seat the juror.

10 THE CLERK OF COURT: Ms. England, please have a
11 seat in the jury box. You've been selected as a juror
12 in this case.

13 [Whereupon, Ms. England is seated in the jury
14 box as a juror]

15 THE CLERK OF COURT: Juror number 193, Lucia
16 Rutherford. 193.

17 [Whereupon, Ms. Rutherford comes forward]

18 THE CLERK OF COURT: What say ye for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK OF COURT: What say ye for the
21 defendant?

22 MR. SMILEY: Please excuse this juror.

23 THE CLERK OF COURT: Ms. Rutherford, please have
24 a seat back in the audience. You've been excused from
25 the trial of this case.

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1 [Whereupon, Ms. Rutherford returns to the
2 audience]

3 THE CLERK OF COURT: That's five strikes for the
4 defendant.

5 Juror number 113, Joseph Hunt. 113.

6 [Whereupon, Mr. Hunt comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK OF COURT: Any challenge from the
10 defendant?

11 MR. SMILEY: No challenge.

12 THE CLERK OF COURT: Mr. Hunt, please have a
13 seat in the jury box. You've been selected as a juror
14 in this case.

15 [Whereupon, Mr. Hunt is seated in the jury box
16 as a juror]

17 THE CLERK OF COURT: Juror number 215, Adrian
18 Sproul. 215.

19 [Whereupon, Mr. Sproul comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. LINDER: Please present the juror.

22 THE CLERK OF COURT: Any challenge from the
23 defendant?

24 MR. SMILEY: No challenge.

25 THE CLERK OF COURT: Mr. Sproul, please have a

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1 seat in the jury box. You've been selected as a juror
2 in this case.

3 [Whereupon, Mr. Sproul is seated in the jury box
4 as a juror]

5 THE CLERK OF COURT: Juror number 154, Michael
6 Miller. 154.

7 [Whereupon, Mr. Miller comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MS. LINDER: Please excuse this juror.

10 THE CLERK OF COURT: Mr. Miller, please have a
11 seat back in the audience. You've been excused from
12 the trial of this case.

13 [Whereupon, Mr. Miller returns to the audience]

14 THE CLERK OF COURT: That's five strikes for the
15 State.

16 Juror number 64, John Droze.

17 [Whereupon, Mr. Droze comes forward]

18 THE CLERK OF COURT: Any challenge from the
19 State?

20 MS. LINDER: None.

21 THE CLERK OF COURT: Any challenge from the
22 defendant?

23 MR. SMILEY: No challenge.

24 THE CLERK OF COURT: Mr. Droze, please have a
25 seat in the jury box. You've been selected as a juror

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1 in this case.

2 [Whereupon, Mr. Droze is seated in the jury box
3 as a juror]

4 THE CLERK OF COURT: Now picking for an
5 alternate.

6 One?

7 THE COURT: Yes, sir.

8 THE CLERK OF COURT: Strikes are one and two.
9 Juror number 40, Shawn Carter. 40.

10 [Whereupon, Ms. Carter comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. SMILEY: Please seat the juror.

16 THE CLERK OF COURT: Ms. Carter, please have a
17 seat in the jury box. You've been selected as a juror
18 in this case.

19 [Whereupon, Ms. Carter is seated in the jury box
20 as an alternate juror]

21 THE CLERK OF COURT: Your Honor, the jury has
22 been selected and is seated.

23 THE COURT: Thank you.

24 Any objections or motions or any matters
25 pertaining to the selected jury or the jury selection

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1 process? From the State?

2 MS. LINDER: Nothing from the State, Your Honor.

3 THE COURT: From the defendant?

4 MR. SMILEY: Nothing from the defendant.

5 THE COURT: And I am going to excuse this jury
6 until 9:30 in the morning.

7 Any objections, Ms. Linder?

8 MS. LINDER: None, Your Honor.

9 MR. SMILEY: None from the defense, Your Honor.

10 THE COURT: I will swear the jury when they
11 arrive at 9:30. Any objection, Ms. Linder?

12 MS. LINDER: No objections, Your Honor.

13 THE COURT: Any objection, Mr. Smiley?

14 MR. SMILEY: None, Your Honor.

15 THE COURT: Ladies and gentlemen of the jury,
16 you have been selected as the jury to try the case of
17 The State vs. Lloyd Wright. We will begin the trial of
18 this matter tomorrow morning at 9:30.

19 You will be escorted at this time to your jury
20 room so that you will know where to report. Please
21 report back at 9:30 in the morning and as soon as each
22 one of you are here, we will receive you into the jury
23 room and begin the trial of this case. Thank you.
24 Have a wonderful evening, and I will see you tomorrow
25 at 9:30.

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1 [Whereupon, the jury exits the courtroom at
2 5:26 p.m.]

3 THE COURT: Thank you. Please be seated.

4 Ladies and gentlemen that were not selected, you
5 need to report back in the morning at 9:00 a.m. Report
6 back downstairs in the jury selection room. Judge
7 Jefferson will be selecting a jury during her -- she is
8 presiding over the term of common pleas, and so she
9 will be selecting a jury for one of her cases.

10 It was a pleasure having each of you in my
11 courtroom for this entire afternoon, and again I thank
12 you for your service to Charleston County.

13 You are excused for the evening. Please, again,
14 report back tomorrow at 9:00. Thank you.

15 [Whereupon, the remaining jury panel exits the
16 courtroom at 5:22 p.m.]

17 THE COURT: Any further motions regarding the
18 jury selection process, Ms. Linder?

19 MS. LINDER: Nothing from the State, Your Honor.

20 MR. SMILEY: Nothing from the defense.

21 THE COURT: Let's go ahead and put -- I've got a
22 stack of motions, Mr. Smiley. Let's go ahead and put
23 them on the record.

24 - - -

25 - - -

1 MOTION TO EXCLUDE TESTIMONY OF PRIOR BAD ACTS

2 MR. SMILEY: Since we spoke with the clerk
3 earlier, I've found out there are going to be some
4 prior bad acts, that are on a videotape that will be
5 referenced, that I would like to have excluded the
6 audio part. They refer to prior sales.

7 And there's three instances: two of which
8 refers to a sale the prior day; and then one for a
9 future sale. And I think that doesn't meet the Lyle
10 analysis of this case, and would make a motion under
11 403(b) that reference to any other sales be excluded
12 and we try just the facts for this case.

13 THE COURT: Ms. Linder?

14 MS. LINDER: Your Honor, I would just say that
15 the exact parts in the video, the items referenced were
16 talking about how the defendant is in the same clothing
17 as yesterday. I would argue that that does not say
18 anything about a drug deal, about a transaction; just
19 that he had on the same outfit.

20 And if you are inclined to grant the defense's
21 motion, I would ask that we have time to get together
22 and agree on things, and at the appropriate times that
23 are agreed upon, we would mute what needs to be muted.

24 MR. SMILEY: That will be great with me.

25 THE COURT: All right. So, Mr. Smiley, your

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1 objection is to --

2 MR. SMILEY: Your Honor, my client is charged
3 with -- we're really trying one sale. He's actually
4 charged with a sale the day prior, but they aren't
5 trying that. But on the tape they reference that sale
6 the day before. And I'm saying that he's not on trial
7 for that in this trial and therefore it shouldn't be
8 referenced. If he's on trial for the one on September
9 19th and not the 18th, and therefore merely muting the
10 button that refers to the sale the day before, I don't
11 think -- if the officer gets on the stand, he certainly
12 can't start talking about other sales.

13 THE COURT: Mr. Smiley, will you be -- would
14 that be acceptable to you to mute the --

15 MR. SMILEY: Absolutely.

16 THE COURT: -- reference?

17 MR. SMILEY: Absolutely. There's three of them.

18 THE COURT: All right. The Court is ruling.

19 Mr. Smiley, I am granting your motion with reference to
20 any reference to the sale or inference to even the fact
21 that the defendant may have had the same clothing on
22 the day before when the alleged sale occurred. So if
23 you need the Court's assistance further, if you cannot
24 agree on what needs to -- what specifically needs to be
25 muted, we will address that before you play it.

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1 Ms. Linder, just for scheduling, is that tape
2 going to be played first? Where is it going to be
3 played in the trial?

4 MS. LINDER: It is our second witness, but our
5 first witness I would guess will only take ten to
6 fifteen minutes.

7 So I am open -- if we would like to meet after
8 this or if would like to meet first thing tomorrow
9 morning over in our office, we could go through it and
10 try to agree on everything so by the time we get here
11 everything will be agreed upon.

12 THE COURT: Is that acceptable, Mr. Smiley?

13 MR. SMILEY: Certainly.

14 THE COURT: Do you have a preference? This
15 evening, or in the morning?

16 MR. SMILEY: My preference, even though I'm not
17 a morning person, would be in the morning.

18 THE COURT: All right.

19 MR. SMILEY: I didn't expect to be here this
20 late today, quite frankly.

21 THE COURT: Neither did the Court, Mr. Smiley.

22 MR. SMILEY: I know. I know, Your Honor.

23

24

25

- - -

- - -

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MOTION TO SUPPRESS

THE COURT: As to the motion to suppress statements by the defendant pursuant to Jackson v. Denno?

MR. SMILEY: I'm being told that there will be no statements offered of my client, while he was in custody, in reference to interrogation.

THE COURT: Is that correct, Ms. Linder?

MS. LINDER: That is correct, Your Honor.

- - - - -

MOTION TO SEQUESTER WITNESSES

MR. SMILEY: And we agreed to sequestration. And I don't have any witnesses to sequester.

THE COURT: All right. Just so everyone is clear as to what each person -- because it has become very abundantly evident that each attorney has their own meaning of what sequestration means.

Mr. Smiley, what is your understanding and your preference as to sequestration of witnesses?

MR. SMILEY: My understanding of sequestration is that no witness shall be present in the courtroom prior to their testifying, nor shall witnesses discuss their testimony from the stand of a witness yet to testify.

THE COURT: Is that your understanding,

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1 Ms. Linder?

2 MR. SMILEY: One witness can't go out and say,
3 this is what I said. Okay?

4 MS. LINDER: Absolutely. Yes, sir, that's my
5 understanding.

6 MR. SMILEY: That's what I'm --

7 MS. LINDER: And we had spoken earlier and
8 indicated to Mr. Barker, your law clerk, that my
9 witnesses as -- right now they are not in here, and
10 they will be sequestered outside of the courtroom.

11 THE COURT: All right.

12 MR. SMILEY: Well, there's two parts. Not only
13 be out here, but can't talk about what we -- what they
14 testified. Now, you can talk to them before they
15 testify, of course, but once they're testifying you
16 can't.

17 THE COURT: And it is the Court's further
18 position that Ms. Linder can't say, Officer X just
19 testified to this and this and this, or is that what
20 you're also going to testify to.

21 MR. SMILEY: I absolutely agree to that.

22 THE COURT: Is that your understanding, Ms.
23 Linder?

24 MS. LINDER: Yes, Your Honor.

25 THE COURT: All right. So when the witnesses --

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1 when the jury is brought back, I'm going to swear the
2 witnesses -- swear the jury, and then we will -- I will
3 grant your motion to sequester the witnesses, Ms.
4 Linder, so please make sure that they are available but
5 not in the courtroom in the morning.

6 Anything further? Any other motions, Mr.
7 Smiley?

8 MR. SMILEY: No, I don't believe they -- they
9 had a Biggers motion, but didn't use any photo lineup
10 in this case. So that's it.

11 THE COURT: Any motions requested of the Court,
12 Ms. Linder?

13 MS. LINDER: None.

14 THE COURT: And Mr. Wright is in custody; is
15 that correct?

16 MR. SMILEY: Yes, he is.

17 THE COURT: All right. So I don't need to
18 address that issue.

19 MR. SMILEY: No, ma'am.

20 THE COURT: We will begin at 9:30, unless there
21 are some other technical issues regarding the
22 surveillance tape.

23 MR. SMILEY: I expect this case to be over by
24 1:30 or 2:00 tomorrow. I don't expect it to be very
25 long.

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1 THE COURT: All right. And if you have -- we
2 will begin working on the jury charges. Are you
3 requesting lesser included's?

4 MR. SMILEY: There's not one. He either sold it
5 or he didn't.

6 THE COURT: And do you have any additional
7 proposed charges?

8 MS. LINDER: I would just ask that before Your
9 Honor gets on the bench tomorrow morning if Mr. Smiley
10 and I can go up and pre-mark the handful of exhibits,
11 that will be, with the court reporter.

12 THE COURT: All right. My court reporter is
13 here, for all you morning people, at a quarter to 9:00.
14 And so I'll make sure the courtroom is open so that you
15 can mark exhibits and will be prepared to go at 9:30.

16 Anything further?

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

19 MR. SMILEY: [No response]

20 THE COURT: All right. We'll be in recess in
21 the matter of The State vs. Lloyd Wright until 9:30.
22 Thank you.

23 [JURY TRIAL ADJOURNS AT 5:34 P.M.]
24
25

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C E R T I F I C A T E

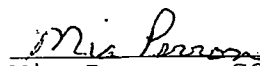
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, May 18, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 27th day of December, 2009.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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STATE OF SOUTH CAROLINA
VS.
LLOYD WRIGHT,
DEFENDANT.

VOLUME 2 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, May 19, 2009, Commencing at 9:44 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

1
2 THE COURT: All right. Mr. Smiley, Ms. Linder,
3 we have two jurors that have issues. One of the jurors
4 has indicated she now lives in Berkeley County, so I
5 need to bring her out and inquire as to that. Another
6 juror's daughter was in a car accident this morning and
7 is at the hospital. So depending on the -- what the
8 Berkeley County -- perhaps now the Berkeley County
9 resident is going to tell us, we'll have some issues.
10 I do not have an update as to the medical condition of
11 the daughter of the juror, so as soon as we get that
12 information we will proceed accordingly.

13 MR. SMILEY: And, Your Honor, just to let you
14 know -- thinking a little bit down the road -- because
15 my client is looking at life, I'm not going to be able
16 to proceed with less than twelve. I know that -- just
17 to let you know.

18 THE COURT: I am not going to proceed with less
19 than twelve.

20 MR. SMILEY: I did not --

21 THE COURT: My thought was --

22 MR. SMILEY: Okay. Yes, ma'am.

23 THE COURT: My thought was if we could proceed
24 with the twelve --

25 MR. SMILEY: Yes, ma'am.

1 THE COURT: -- and just move the alternate in,
2 in place of the person with the accident, since you've
3 ensured the Court that we should be done by this
4 afternoon.

5 MR. SMILEY: Yes, ma'am.

6 - - - - -

7 JUROR NUMBER 106 EXCUSED BY THE COURT

8 THE COURT: All right. What is the juror that
9 has indicated she has moved to Berkeley County?

10 THE CLERK OF COURT: That's juror 106, Heather
11 Holland.

12 THE COURT: If you could bring in juror 106,
13 Ms. Holland.

14 Mr. Smiley, do you need your client here for
15 this?

16 MR. SMILEY: I'll waive my client's presence for
17 this.

18 THE COURT: All right. Please make sure he does
19 not walk out of that door while the jury is in here.
20 Thank you.

21 MR. SMILEY: Unfortunately, he doesn't get to
22 come and go as he wants, so we're okay.

23 [Whereupon, Ms. Holland, juror number 106,
24 enters the courtroom at 9:46 a.m.]

25 THE COURT: Ms. Holland, if you would just have

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1 a seat in the jury box.

2 I have been informed that you have recently
3 moved; is that correct?

4 MS. HOLLAND: Yes. And I called the courthouse,
5 when I received the letter, saying do I still have to
6 attend because I moved, here's my new zip code, and
7 they said, yes, you do still need to report, you're
8 considered Charleston County.

9 THE COURT: All right. And --

10 MS. HOLLAND: Because I knew I was right on the
11 border.

12 THE COURT: When did you -- when did you move?

13 MS. HOLLAND: February.

14 THE COURT: February of this year?

15 MS. HOLLAND: Uh-huh.

16 THE COURT: And have you changed your driver's
17 license?

18 MS. HOLLAND: No.

19 THE COURT: What proof do you have that you do
20 not live in Charleston County?

21 MS. HOLLAND: I have bills.

22 THE COURT: Have you changed your voter
23 registration?

24 MS. HOLLAND: Yes. I do believe I have done
25 that.

1 THE COURT: Do you have that documentation with
2 you?

3 MS. HOLLAND: No.

4 THE COURT: You have moved you believe to
5 Berkeley County?

6 MS. HOLLAND: Well, I'm very close. I thought I
7 was still in Charleston County. It's on Clements Ferry
8 on Daniel Island.

9 THE COURT: I believe that all of Daniel Island
10 is in Berkeley County. The problem, Ms. Holland, is
11 that you don't have any proof that you've actually
12 moved, or changed any of your documentation, either
13 with the -- and if you could provide me with a copy of
14 your voter registration --

15 [Off the record momentarily]

16 MS. HOLLAND: I did change my address with the
17 clerk's office.

18 THE COURT: But you have not changed your
19 driver's license; is that correct?

20 MS. HOLLAND: No, not yet.

21 THE COURT: Do you have a voter registration
22 card?

23 MS. HOLLAND: I do have one. I don't know if I
24 have it with me, though.

25 THE COURT: Is your wallet in the jury room?

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1 MS. HOLLAND: Uh-huh.

2 THE COURT: Ms. Holland, if you could please go
3 and check to see if you have your voter ID that
4 indicates where you currently reside. Thank you.

5 [Whereupon, Ms. Holland exits the courtroom at
6 9:48 a.m.]

7 THE COURT: Ms. Linder, based upon what
8 Ms. Holland has indicated thus far, what is the
9 State's position as to her residency?

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

11 [Whereupon, Ms. Linder and Mr. Byrd confer]

12 MS. LINDER: Your Honor, the State does not
13 object to her remaining on our jury, especially if she
14 does not have proof that, in fact, she has moved out of
15 Charleston County.

16 THE COURT: Mr. Smiley?

17 MR. SMILEY: First of all, I would like the
18 address to be put on the record when she comes back
19 because if she in fact lives in Berkeley County, she's
20 not qualified to be a juror on this jury. Regardless
21 of what she says, if she in fact lives in Berkeley
22 County, she would not have been qualified, and I'm
23 afraid that that's an error that -- in this case that I
24 cannot consent to.

25 [Whereupon, Ms. Holland, juror number 106,

1 reenters the courtroom at 9:51 a.m.]

2 MS. HOLLAND: I'm sorry, ma'am. I don't have it
3 with me. I just have a bill that was sent to my new
4 address.

5 THE COURT: All right. Give it to -- hand that
6 to the bailiff.

7 [Whereupon, Ms. Holland proffers documents to
8 the bailiff. The bailiff proffers documents to the
9 Court]

10 [Whereupon, the Court reviews documents]

11 MS. HOLLAND: And I called the number on my --
12 sorry. I called the number on the letter that I
13 received and asked had they received the form that I
14 filled out and sent back, and to see if I was still
15 living here in Charleston County and if I still needed
16 to come, and they said yes.

17 THE COURT: All right.

18 MS. LINDER: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. LINDER: I apologize. I actually -- my
21 investigator just talked with some of the officers we
22 have here, who are all Charleston City, and they
23 actually are familiar with that area and they say that
24 everywhere on Clements Ferry is Berkeley County but,
25 yes, Charleston City. And usually it's Charleston,

1 South Carolina, 29492, but that's Berkeley County
2 in Charleston City. So I would tend to agree with
3 Mr. Smiley.

4 THE COURT: Ms. Holland, were you there during
5 general qualification when I inquired if everybody was
6 a resident of Charleston County?

7 MS. HOLLAND: Yes. And I thought I was. I'm
8 sorry. I even asked everybody that I worked with, and
9 they said it is considered Charleston County.

10 THE COURT: And, Ms. Holland, when did it come
11 to your attention that you may not live in Charleston
12 County?

13 MS. HOLLAND: [No response]

14 THE COURT: What prompted you to bring this to
15 the Court's attention?

16 MS. HOLLAND: What do you mean?

17 THE COURT: Today. What prompted this to come
18 to the Court's attention as to inquire which county you
19 lived in?

20 MS. HOLLAND: I have been e-mailing to the
21 e-mail address on the letter, as well as calling, and
22 they just responded, and I got it last night saying
23 that I am no longer -- I am not supposed to come. So I
24 e-mailed them back and said when I called they said I
25 am still --

1 THE COURT: And who sent you that e-mail? Do
2 you remember?

3 MS. HOLLAND: Jury service at whatever is on
4 that letter that was sent to me.

5 THE COURT: All right.

6 MS. HOLLAND: I'm sorry. I'm not from here. I
7 wasn't sure exactly what county.

8 THE COURT: Ms. Holland, please do not
9 apologize.

10 You are excused from the trial of this case, and
11 you are also excused for the week. You are not
12 qualified to serve as a juror this week, or any week
13 now, in Charleston County because you are now a
14 resident of Berkeley County. All right?

15 So you need -- if you would -- do you have any
16 other belongings in the jury room?

17 MS. HOLLAND: Huh-uh

18 THE COURT: All right. You are excused. And if
19 you would allow -- you, of course, will get paid for
20 today. If you need an excuse or anything -- and,
21 again, I appreciate your service to Charleston County,
22 even though you are no longer a resident. But you are
23 in the Ninth Judicial Circuit, and I'm the resident
24 judge in Berkeley County, so I look forward to having
25 you in my courtroom there.

1 Thank you, Ms. Holland, and good luck to you.

2 MS. HOLLAND: Thank you.

3 [Whereupon, Ms. Holland is excused as a juror
4 and exits the courtroom at 9:55 a.m.]

5 THE COURT: All right. So now that -- what is
6 our alternate's name?

7 THE CLERK OF COURT: The alternate is Shaun
8 Carter, juror number 40.

9 THE COURT: All right. Ms. Carter now becomes
10 part of the jury panel. We will proceed -- we will
11 proceed with twelve. We will be at ease until I have
12 information regarding --

13 And that is juror number?

14 THE CLERK OF COURT: That's juror number 173,
15 Theodore Patterson, with the daughter in the accident.

16 THE COURT: Right. Until Ms. Patterson's
17 daughter, we have ascertained the status of that.

18 My inclination, counsel, is that we will begin,
19 depending on where we are -- we already have a jury
20 picked, and we may begin that trial and cannot start
21 that trial today. But we will -- I will not --
22 depending on what time we hear back from Ms. Patterson
23 and what she indicates. And since we have lost a
24 juror, it may be that it's just better to start the
25 other trial. All right?

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1 So we will be at ease. If you want --

2 MR. SMILEY: Could we bring my client out so we
3 can tell him what just happened so he'll understand?

4 THE COURT: Yes. And I'll advise him, Mr.
5 Smiley --

6 MR. SMILEY: Okay. Thank you.

7 THE COURT: -- as to what happened.

8 [Whereupon, Mr. Wright enters the courtroom at
9 9:57 a.m.]

10 THE COURT: Mr. Wright, let me explain to you
11 what has happened so that you are clear. One of the
12 jurors moved, and moved across the county line, so she
13 is not qualified to serve as a juror in your case. So
14 I have excused her. There is also a juror that has
15 called in this morning, that her daughter was in an
16 automobile accident. So we are waiting for that juror
17 to call in.

18 We cannot proceed with less than twelve jurors.
19 At this time we now have twelve jurors but depending on
20 the status of one of the juror's daughter, we may have
21 to postpone your trial. So that is what we are doing
22 now. I am waiting to hear from the juror as to the
23 status of her daughter before we proceed.

24 Do you have any questions of your attorney or of
25 the Court at this time?

1 MR. WRIGHT: No, ma'am.

2 THE COURT: All right.

3 Mr. Smiley, do you need any additional time to
4 meet with Mr. Wright before --

5 MR. SMILEY: I can go downstairs and talk to
6 him, or up here, whatever, when we have a break next
7 time.

8 THE COURT: All right. So, Mr. Wright, it's
9 just kind of we're just going to sit and wait for a
10 little while to see what's going on, but I wanted you
11 to understand what we were doing in court here today.

12 MR. WRIGHT: Yes, ma'am.

13 [Whereupon, Mr. Wright exits the courtroom at
14 9:59 a.m.]

15 THE COURT: All right. Ms. Linder, anything
16 before we break?

17 MS. LINDER: Nothing, Your Honor.

18 THE COURT: Mr. Smiley, anything before we
19 break?

20 MR. SMILEY: I brought a book. I'll be fine,
21 Your Honor.

22 THE COURT: All right.

23 MR. SMILEY: I'm not going anywhere. I'm just
24 going to stay here.

25 THE COURT: Okay. All of the exhibits are

1 marked, and the tape is taken care of --

2 MR. SMILEY: Yeah. We're --

3 [Whereupon, a recess is taken from 9:59 a.m. to
4 10:50 a.m.]

5 THE COURT: -- and there were no issues --

6 MR. SMILEY: -- going to keep working on that,
7 because it's real tricky.

8 THE COURT: All right. Well, we are at ease in
9 this case until I hear from the juror, and then we will
10 make a decision.

11 But we are not proceeding with less than twelve,
12 Mr. Smiley.

13 MR. SMILEY: Thank you.

14 MS. LINDER: Thank you, Your Honor.

15 THE COURT: Thank you.

16 [Whereupon, a recess is taken from 9:59 a.m. to
17 10:50 a.m.]

18 THE COURT: Counsel, we have not heard from the
19 juror. We have several options, and so I'm going to
20 throw some proposals out. My inclination is to release
21 this jury, put them back in the jury pool, and we can
22 pick another jury. This jury has not been sworn and --

23 MR. SMILEY: If we could get my client, I think
24 that might be better.

25 [Whereupon, Mr. Wright enters the courtroom at

1 10:50 a.m.]

2 THE COURT: And that way we can -- I believe the
3 jury panel is with Judge Jefferson. She is almost done
4 selecting her jury, so by the time I release this jury
5 down to the jury -- the big pool, Judge Jefferson will
6 be done, as well, and so that we can just reselect.

7 Ms. Linder, do you have any objection to
8 handling it that way?

9 MS. LINDER: There's no objection from the
10 State, Your Honor.

11 THE COURT: Mr. Smiley?

12 MR. SMILEY: I've got to think about this for a
13 second.

14 [Off the record momentarily]

15 MR. SMILEY: Judge, I'm really -- we want our
16 jury that we have. I understand that one wasn't
17 qualified. But with an alternate in place, until we
18 know the status of the other juror I would ask you that
19 we wait. This is a very short case, and we have a jury
20 that was picked fairly in this case. I guess I should
21 have asked you to swear them last night. We would
22 certainly want that, because I want that jury.

23 But I'll have to think about it. I haven't been
24 put in this position before.

25 And I may be making an error, I'm not sure, but

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1 I don't know of any constitutional right that it
2 violates by re-picking a jury. Of course, in an
3 abundance of caution, I would ask that the jury that we
4 have be the one that's impaneled, that it remain until
5 we realize whether that juror is going to be able to
6 return or not. That's my position. I think I'm right,
7 but I'm not sure, quite frankly, Your Honor.

8 Your Honor, could we approach off the record
9 real quick?

10 THE COURT: Yes, Mr. Smiley.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 - - - - -

14 MISTRIAL DECLARED BY THE COURT

15 THE COURT: Based upon the fact that juror
16 number 106 was found not to be qualified, she is a
17 resident currently of Berkeley County and was
18 misinformed, indicates she thought that she was a
19 resident of Charleston County, the Court released her,
20 juror number 106.

21 Juror 173, Ms. Patterson, called in this
22 morning. It is now eleven o'clock. We have not heard
23 from Ms. Patterson since she indicated to the clerk
24 that her daughter had been in an automobile accident.
25 We now only have eleven jurors, assuming that we place

1 Ms. Carter as the alternate. We cannot go forward. I
2 am at this time declaring a mistrial. I will be
3 releasing the jurors back into the pool.

4 Please release this panel back into the jury
5 pool. One second. Hold on one second. I'm going to
6 explain to the jury what happened.

7 MR. SMILEY: If I could just put something --
8 put it on the record that of course I oppose the
9 mistrial because that -- until we know the status of
10 the other juror -- it's only been an hour and a half or
11 two hours since they were to report as being the
12 impaneled jury, I would ask that we at least wait until
13 then. And that would be my client's request.

14 THE COURT: And, Mr. Smiley, I note that for the
15 record. The issue then becomes how long do we wait.

16 MR. SMILEY: Yes, ma'am.

17 THE COURT: And then we would only have twelve.
18 The longer that we wait, then we run into the issue of
19 going over and coming back tomorrow --

20 MR. SMILEY: Yes, ma'am.

21 THE COURT: -- without an alternate.

22 This does not, in the Court's opinion, prejudice
23 your client whatsoever. And it will be up to the State
24 whether or not they are going to re-call the case at
25 this time.

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1 MR. SMILEY: Thank you.

2 THE COURT: Thank you.

3 Ms. Linder, are you going to re-call the case
4 this week?

5 MS. LINDER: Yes, Your Honor. We intent to re-
6 call the case immediately.

7 THE COURT: All right. So do we need to prepare
8 for jury selection in this matter, Ms. Linder?

9 MS. LINDER: Yes, Your Honor.

10 THE COURT: Mr. Smiley, are you prepared to --

11 MR. SMILEY: I'm going to have to go get all my
12 jury information. It's not with me. It will take me a
13 few minutes. I think it's in my car.

14 THE COURT: All right. What I'm going to do --

15 And, Mr. Wright, I'm going to excuse you at this
16 time.

17 I'm just going to have the jury brought back in,
18 and explain to them that there were some emergency
19 issues and that -- from one of the jurors and because
20 of that, we cannot proceed because of the fact that we
21 cannot proceed with less than twelve and that they will
22 go down -- and depending on where we are, as far as
23 Judge Jefferson picking a jury, then we will make that
24 call.

25 MR. SMILEY: One last thing. And I apologize if

1 I'm being too cautious here. Just I think it's
2 important to note on the record that the jury wasn't
3 sworn last night. Both parties were asked whether they
4 wished to have the jury sworn. Both of us declined to
5 have it sworn at that time, and I believe it's truly in
6 your discretion, and you asked us our preference and we
7 told you we had no problem with that. There has been
8 absolutely no evidence presented in this case, there's
9 been nothing more than voir dire done and the jury
10 selected, and I think that in framing the issue all of
11 that information needs to be concisely put. And that's
12 the only reason I bring it up. So while we oppose the
13 mistrial, we understand Your Honor's ruling.

14 THE COURT: Thank you, Mr. Smiley.

15 Mr. Wright, you may be excused. I understand
16 that the State may be re-calling your case this morning
17 or perhaps after lunch. Thank you.

18 [Whereupon, Mr. Wright exits the courtroom at
19 10:59 a.m.]

20 THE COURT: Please bring in the jury panel.
21 Please rise for the jury.

22 [Whereupon, the jury enters the courtroom at
23 10:59 a.m.]

24 THE COURT: Thank you. Please be seated.

25 Good morning, ladies and gentlemen of the jury.

1 I appreciate your patience. As you may have noticed,
2 there are two members missing from your numbers.
3 Through some unfortunate incident, Ms. Patterson called
4 in, and her daughter has been in a car wreck so we
5 cannot proceed with less than twelve. So at this time,
6 because of that I have declared a mistrial because we
7 cannot proceed with less than twelve. That is a
8 technical issue and has nothing to do with the merits
9 of the case. It is just the fact that our rules are
10 that a jury must consist of twelve persons. We cannot
11 proceed procedurally with less than twelve.

12 So at this time you are released from the trial
13 of this case at this time. You must now go down back
14 downstairs to the jury panel room, and I may see you up
15 here in a few moments. Otherwise, again, I appreciate
16 your service to Charleston County.

17 You are released from the service of this case
18 at this time.

19 Please stand for the jury.

20 [Whereupon, the jury exits the courtroom at
21 11:01 a.m.]

22 THE COURT: Thank you. Be seated.

23 Anything further with respect to this jury
24 panel?

25 MS. LINDER: Nothing from the State.

1 THE COURT: Mr. Smiley?

2 MR. SMILEY: Nothing.

3 THE COURT: All right. Ms. Linder, you are
4 re-calling the case at this time?

5 MS. LINDER: Yes, Your Honor.

6 THE COURT: And so you need me to send down to
7 have the jury panel brought back up; is that correct?

8 MS. LINDER: Yes, Your Honor, please.

9 THE COURT: Mr. Smiley, and you need a few
10 moments?

11 MR. SMILEY: I have got to go find my jury
12 information list where we impaneled the jury.

13 THE COURT: All right. Let the Court know when
14 you're ready. About how long do you think that will
15 be? Is it in your vehicle, Mr. Smiley?

16 MR. SMILEY: I'm hoping it is. Fifteen minutes,
17 ten minutes.

18 THE COURT: All right. By the time the jury
19 gets down and brought back up --

20 MR. SMILEY: All right.

21 THE COURT: Thank you.

22 [Whereupon, a recess is taken from 11:01 a.m. to
23 11:24 a.m.]

24 [Whereupon, State's Exhibit Numbers 1 through 3
25 are marked by the court reporter]

1 [Whereupon, the jury panel enters the courtroom
2 at 11:24 a.m.]

3 - - - - -
4 JURY VOIR DIRE

5 [JURY NUMBER TWO]

6 THE COURT: Good morning, ladies and gentlemen
7 of the jury panel. You are not having déjà vu. It is
8 the next day, I promise you.

9 I am Judge Kristi Harrington. I was the judge
10 that qualified you yesterday, and some of you I have
11 gotten to know a little bit better than others because
12 you were in my courtroom.

13 We are here today, the State vs. Lloyd Wright.
14 We had selected a jury last evening, for those of you
15 who were in my courtroom last evening. And there --
16 our laws are very clear. We must only go forward in a
17 jury trial with twelve. Through some series of
18 unfortunate events, we were -- we found ourselves in a
19 position that the jury we had selected last evening did
20 not comprise twelve persons, so we are here again to
21 select the jury in the matter of the State vs. Lloyd
22 Wright.

23 Again, I need you to answer all of the questions
24 as if you had not been part of the jury panel before.
25 And that is so that both the State and Mr. Wright have

1 a jury that is comprised of twelve, plus an alternate,
2 individuals that are here and are able to render a fair
3 and impartial verdict once all the evidence has been
4 presented.

5 Ladies and gentlemen, Mr. Wright is charged with
6 distribution of cocaine base and distribution of
7 cocaine base within a proximity of a school. He is
8 here on two indictments, which are the formal charging
9 documents, and Mr. Wright has pled not guilty to both
10 of these indictments.

11 Mr. Wright is represented by Mr. Smiley. Mr.
12 Smiley, if you will please stand, introduce yourself,
13 as well as your client.

14 MR. SMILEY: Once again, I'm Jim Smiley of the
15 private bar. I've been practicing criminal defense for
16 about sixteen, seventeen years now.

17 This is Ms. Laree Hensley, who is also in
18 private practice, a sole practitioner here in
19 Charleston. She does both criminal and some civil
20 work.

21 And of course it's my honor to represent Lloyd
22 Wright, who lives here in North Charleston.

23 THE COURT: Ladies and gentlemen of the jury
24 panel, is there any person related by blood, marriage,
25 close personal friend, have any social, business or

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1 this case?

2 MR. KEIPER: How do I know what was said --
3 whoever caught this person is true?

4 THE COURT: Will you be able to listen to the
5 testimony from the witness stand, and exhibits that are
6 introduced, apply the law as I give it to you, and thus
7 render a fair and impartial verdict?

8 MR. KEIPER: I would have to hear it.

9 THE COURT: And is there anything about what you
10 have indicated to the Court -- that would affect your
11 ability to be fair and impartial in this case?

12 MR. KEIPER: I have strong feelings against
13 cocaine, very strong.

14 THE COURT: Will those strong feelings affect
15 your ability in this particular case to apply the law
16 as I give it, based upon the facts as you find them,
17 and be able to render a fair and impartial verdict?

18 MR. KEIPER: It's not supposed to?

19 THE COURT: That's correct. It's not supposed
20 to. The point of jury selection is to find a juror --
21 you may not be qualified necessarily in ever case. The
22 defendant and the solicitor want a juror who is able to
23 listen to the facts as presented, apply the law as the
24 Court gives it, and thus render a fair and impartial
25 verdict. Will you be able to do that in this case?

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1 MR. KEIPER: The same thing applies for the
2 prosecution, too?

3 THE COURT: I'm sorry?

4 MR. KEIPER: Still -- it's still the point of a
5 trust issue. If something did occur --

6 THE COURT: Sir. I did not --

7 This is my question to you is that the State and
8 the defendant wants a trial that is fair.

9 MR. KEIPER: Yes, ma'am.

10 THE COURT: And the selection of twelve
11 individuals -- that will be able to listen to the facts
12 as presented, the law as I give it, render a verdict
13 that is based upon the evidence and the law as given,
14 and that each individual juror is fair and impartial.

15 MR. KEIPER: Yes.

16 THE COURT: Yes what?

17 MR. KEIPER: I believe I should be fair and
18 impartial.

19 THE COURT: Sir, I'm hearing you that a juror
20 should be fair and impartial. The question is, sir,
21 can you be fair and impartial.

22 MR. KEIPER: That still means that I've got to
23 find someone guilty, that I would have that
24 responsibility.

25 THE COURT: There will be evidence from the

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1 facts that are presented, and I will instruct you on
2 the law. There will be a determination of a verdict.

3 MR. KEIPER: Yeah.

4 THE COURT: Yes, what, sir?

5 MR. KEIPER: Fair and impartial.

6 THE COURT: You believe that you can be fair and
7 impartial in this particular case?

8 MR. KEIPER: I've got to say no because --

9 THE COURT: All right, sir.

10 MR. KEIPER: -- I just --

11 THE COURT: Sir, I appreciate your honesty,
12 and -- so there is nothing to be --

13 MR. KEIPER: I just have odd feelings about it.

14 THE COURT: I understand that, sir --
15 Your juror number?

16 MR. KEIPER: 128.

17 THE COURT: You are excused from the trial of
18 this case. You've been excused from jury selection
19 today.

20 128 is excused from the trial of this case.

21 Good luck to you, sir. Thank you, sir.

22 THE BAILIFF: 278.

23 MR. SUTTON: Hello. I might end up tomorrow
24 with the same situation we had today. The trial should
25 be over today?

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1 THE COURT: Yes, sir.

2 MR. SUTTON: No problem. We're good to go.

3 THE COURT: All right. And, sir, is there a
4 problem that would prevent you from attending tomorrow?

5 MR. SUTTON: Yes.

6 THE COURT: Okay. And I know that you know, and
7 I think I remember, but I have had three juries
8 selected since yesterday. If you would please, for
9 this record, indicate what your problem may be.

10 MR. SUTTON: My business involves live animals
11 and no one can take care of them but me, and I feel
12 like I won't have a choice to not show up tomorrow if
13 the trial goes to that.

14 THE COURT: All right, sir. And your jury
15 number and name?

16 MR. SUTTON: 278, Jeff Sutton.

17 THE COURT: All right. Mr. Sutton, I just want
18 to caution you, if you are selected for the jury and
19 you fail to appear, then a warrant could be issued for
20 your arrest.

21 MR. SUTTON: I understand.

22 THE COURT: So you -- is there anything about
23 that that would affect your ability -- your having to
24 care for your animals tomorrow that would affect your
25 ability to be fair and impartial in this particular

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1 case?

2 MR. SUTTON: No.

3 THE COURT: All right. Thank you. You will
4 remain. Thank you.

5 THE BAILIFF: 263.

6 MS. HODGES: Good morning.

7 THE COURT: Good morning.

8 MS. HODGES: I was the victim of a crime. I had
9 my wallet stolen, credit cards used.

10 THE COURT: And how long ago was that?

11 MS. HODGES: Last August.

12 THE COURT: And was the individual prosecuted?

13 MS. HODGES: Yes. He had a probation with a
14 judgment and --

15 THE COURT: Was that in Charleston County?

16 MS. HODGES: No. It was in Baltimore.

17 THE COURT: And is there anything about that
18 that will affect your ability to be fair and impartial
19 in this case?

20 MS. HODGES: No.

21 THE COURT: Thank you.

22 THE BAILIFF: 262.

23 MR. GRAY: Hello.

24 THE COURT: How you doing?

25 MR. GRAY: I've got one brother-in-law in prison

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1 and -- in cocaine. I've got my adopted son charged
2 with cocaine. I've got another one that's in Virginia
3 that's got a charge with cocaine.

4 THE COURT: Mr. Wright is charged with
5 indictments to which he has pled not guilty to two
6 charges involving cocaine. Do you have any -- being
7 impartial with involving cocaine that would affect your
8 ability to be fair and impartial in this case?

9 MR. GRAY: Well, I'm kind of upset that my
10 adopted son -- I know he didn't do it. His other
11 brother did it, and there's no way that the police are
12 listening to me about that.

13 THE COURT: Okay. Will you be able to listen to
14 the facts as presented in this case and apply the law
15 as the Court gives it to you and render a fair and
16 impartial verdict from the facts and the law as the
17 Court instructs you?

18 MR. GRAY: Uh-huh.

19 THE COURT: Thank you.

20 Mr. Smiley, do you have any additional
21 questions?

22 MR. SMILEY: No, ma'am.

23 THE COURT: Do you have any other questions?

24 MS. LINDER: No, ma'am.

25 THE COURT: The State and the defendant having

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1 no further questions of the jury panel, any objection
2 to the clerk drawing the panel?

3 MS. LINDER: None from the State, Your Honor.

4 - - - - -

5 STRIKING OF THE JURY

6 THE COURT: Any objection to the clerk drawing
7 the jury, Mr. Smiley?

8 MR. SMILEY: No, ma'am.

9 THE COURT: Was that a no? I'm sorry, Mr.
10 Smiley.

11 MR. SMILEY: No, Your Honor, I have no further
12 questions.

13 THE COURT: Thank you.

14 THE CLERK OF COURT: Ladies and gentlemen of the
15 jury panel, if I call your name -- some of you know how
16 to do this -- if you will please bring your belongings,
17 come up to the podium, turn and face the parties. I
18 will then ask the parties questions, after which I'll
19 either ask you to have a seat in the jury box or ask
20 you to have a seat back in the audience.

21 Juror number 164, Diane Nelson. 164.

22 [Whereupon, Ms. Nelson comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please excuse the juror.

3 THE CLERK OF COURT: Ms. Nelson, please have a
4 seat back in the audience. You've been excused from
5 the trial of this case.

6 [Whereupon, Ms. Nelson returns to the audience]

7 THE CLERK OF COURT: Juror number 184, Lillie
8 Ravenel. 184

9 [Whereupon, Ms. Ravenel comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. SMILEY: Please seat the juror.

15 THE CLERK OF COURT: Ms. Ravenel, please have a
16 seat in the jury box. You've been selected as a juror
17 in this case.

18 [Whereupon, Ms. Ravenel is seated in the jury
19 box as a juror]

20 THE CLERK OF COURT: Juror number 263, Marysue
21 Hodges. 263.

22 [Whereupon, Ms. Hodges comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please excuse the juror.

3 THE CLERK OF COURT: Ms. Hodges, please have a
4 seat back in the audience. You've been excused from
5 the trial of this case.

6 [Whereupon, Ms. Hodges returns to the audience]

7 THE CLERK OF COURT: Juror number 237, Cassandra
8 Wallace. 237.

9 [Whereupon, Ms. Wallace comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK OF COURT: What say ye for the
13 defendant?

14 MR. SMILEY: Please seat the juror.

15 THE CLERK OF COURT: Ms. Wallace, please have a
16 seat in the jury box. You've been selected as a juror
17 in this case.

18 [Whereupon, Ms. Wallace is seated in the jury
19 box as a juror]

20 THE CLERK OF COURT: Juror number 153, Nicholas
21 Miles. 153.

22 [Whereupon, Mr. Miles comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Mr. Miles, please have a
4 seat in the jury box. You've been selected as a juror
5 in this case.

6 [Whereupon, Mr. Miles is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror number 275, David
9 Spell. 275.

10 [Whereupon, Mr. Spell comes forward]

11 THE CLERK OF COURT: What say ye for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK OF COURT: What say ye for the
14 defendant?

15 MR. SMILEY: Please excuse the juror.

16 THE CLERK OF COURT: Mr. Spell, please have a
17 seat back in the audience. You've been excused from
18 the trial of this case.

19 [Whereupon, Mr. Spell returns to the audience]

20 THE CLERK OF COURT: That's three strikes for
21 the defendant.

22 Juror number 209, Patrick Smalls. 209.

23 [Whereupon, Mr. Smalls comes forward]

24 THE CLERK OF COURT: What say ye for the State?

25 MS. LINDER: Please excuse this juror.

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1 THE CLERK OF COURT: Mr. Smalls, please have a
2 seat back in the audience. You've been excused from
3 the trial of this case.

4 [Whereupon, Mr. Smalls returns to the audience]

5 THE CLERK OF COURT: Juror number 111, Brian
6 Hudnall. 111.

7 [Whereupon, Mr. Hudnall comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. SMILEY: Please excuse this juror.

13 THE CLERK OF COURT: Mr. Hudnall, please have a
14 seat back in the audience. You've been excused from
15 the trial of this case.

16 [Whereupon, Mr. Hudnall returns to the audience]

17 THE CLERK OF COURT: Four strikes for the
18 defendant.

19 Juror number 269, Steven Melcher. 269.

20 [Whereupon, Mr. Melcher comes forward]

21 THE CLERK OF COURT: What say ye for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK OF COURT: What say ye for the
24 defendant?

25 MR. SMILEY: Please seat the juror.

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1 THE CLERK OF COURT: Mr. Melcher, please have a
2 seat in the jury box. You've been selected as a juror
3 in this case.

4 [Whereupon, Mr. Melcher is seated in the jury
5 box as a juror]

6 THE CLERK OF COURT: Juror number 69, Debra
7 Eklund. 69.

8 [Whereupon, Ms. Eklund comes forward]

9 THE CLERK OF COURT: What say ye for the State?

10 MS. LINDER: Please present this juror.

11 THE CLERK OF COURT: What say ye for the
12 defendant?

13 MR. SMILEY: Please seat the juror.

14 THE CLERK OF COURT: Ms. Eklund, please have a
15 seat in the jury box. You've been selected as a juror
16 in this case.

17 [Whereupon, Ms. Eklund is seated in the jury box
18 as a juror]

19 THE CLERK OF COURT: Juror number 260, Hope
20 Florence. 260.

21 [Whereupon, Ms. Florence comes forward]

22 THE CLERK OF COURT: What say ye for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK OF COURT: What say ye for the
25 defendant?

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1 MR. SMILEY: Please seat the juror.

2 THE CLERK OF COURT: Ms. Florence, please have a
3 seat in the jury box. You've been selected as a juror
4 in this case.

5 [Whereupon, Ms. Florence is seated in the jury
6 box as a juror]

7 THE CLERK OF COURT: Juror number 224, Nita
8 Timothy. 224.

9 [Whereupon, Ms. Timothy comes forward]

10 THE CLERK OF COURT: What say ye for the State?

11 MS. LINDER: Please excuse this juror.

12 THE CLERK OF COURT: Ms. Timothy, please have a
13 seat back in the audience. You've been excused from
14 the trial of this case.

15 [Whereupon, Ms. Timothy returns to the audience]

16 THE CLERK OF COURT: Juror number 264, Delvin
17 Jefferson. 264.

18 [Whereupon, Mr. Jefferson comes forward]

19 THE CLERK OF COURT: What say ye for the State?

20 MS. LINDER: Please present this juror.

21 THE CLERK OF COURT: What say ye for the
22 defendant?

23 MR. SMILEY: Please seat the juror.

24 THE CLERK OF COURT: Mr. Jefferson, please have
25 a seat in the jury box. You've been selected as a

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1 juror in this case.

2 [Whereupon, Mr. Jefferson is seated in the jury
3 box as a juror]

4 THE CLERK OF COURT: Juror number 12, Hollie
5 Bagalio. 12.

6 [Whereupon, Ms. Bagalio comes forward]

7 THE CLERK OF COURT: What say ye for the State?

8 MS. LINDER: Please present this juror.

9 THE CLERK OF COURT: What say ye for the
10 defendant?

11 MR. SMILEY: Please seat the juror.

12 THE CLERK OF COURT: Madam Juror, please have a
13 seat in the jury box. You've been selected as a juror
14 in this case.

15 [Whereupon, Ms. Bagalio is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Juror number 157, Candice
18 Morgan. 157.

19 [Whereupon, Ms. Morgan comes forward]

20 THE CLERK OF COURT: What say ye for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK OF COURT: What say ye for the
23 defendant?

24 MR. SMILEY: Please seat the juror.

25 THE CLERK OF COURT: Ms. Morgan, please have a

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1 seat in the jury box. You've been selected as a juror
2 in this case.

3 [Whereupon, Ms. Morgan is seated in the jury box
4 as a juror]

5 THE CLERK OF COURT: Juror number 71, Justin
6 Elsey. 71.

7 [Whereupon, Mr. Elsey comes forward]

8 THE CLERK OF COURT: What say ye for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK OF COURT: What say ye for the
11 defendant?

12 MR. SMILEY: Please seat the juror.

13 THE CLERK OF COURT: Mr. Elsey, please have a
14 seat in the jury box. You've been selected as a juror
15 in this case.

16 [Whereupon, Mr. Elsey is seated in the jury box
17 as a juror]

18 THE CLERK OF COURT: Juror number 149, Robin
19 McCraw. 149.

20 [Whereupon, Ms. McCraw comes forward]

21 THE CLERK OF COURT: What say ye for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK OF COURT: What say ye for the
24 defendant?

25 MR. SMILEY: Please seat the juror.

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1 THE CLERK OF COURT: Ms. McCraw, please have a
2 seat in the jury box. You've been selected as a juror
3 in this case.

4 [Whereupon, Ms. McCraw is seated in the jury box
5 as a juror]

6 THE CLERK OF COURT: Juror number 244, Samuel
7 Wilkinson. 244.

8 [Whereupon, Mr. Wilkinson comes forward]

9 THE CLERK OF COURT: What say ye for the State?

10 MS. LINDER: Please present this juror.

11 THE CLERK OF COURT: What say ye for the
12 defendant?

13 MR. SMILEY: Please seat the juror.

14 THE CLERK OF COURT: Mr. Wilkinson, please have
15 a seat in the jury box. You've been selected as a
16 juror in this case.

17 [Whereupon, Mr. Wilkinson is seated in the jury
18 box as a juror]

19 THE CLERK OF COURT: Now picking for the
20 alternate. Strikes are one and two.

21 Juror number 274, William Schobein. 274.

22 [Whereupon, Mr. Schobein comes forward]

23 THE CLERK OF COURT: What say ye for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK OF COURT: What say ye for the

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1 defendant?

2 MR. SMILEY: Please seat the juror.

3 THE CLERK OF COURT: Mr. Schobein, please have a
4 seat in the jury box. You've been selected as a juror
5 in this case.

6 [Whereupon, Mr. Schobein is seated in the jury
7 box as an alternate juror]

8 THE CLERK OF COURT: Your Honor, the jury has
9 been selected and are seated.

10 THE COURT: Any objection or motions or matters
11 pertaining to the selected jury, or the jury selection
12 process? From the State?

13 MS. LINDER: None, Your Honor.

14 THE COURT: From the defendant?

15 MR. SMILEY: None, other than what we discussed
16 before.

17 THE COURT: Ladies and gentlemen, you have been
18 selected as the jury in this case. The bailiff will
19 escort you to your jury room, and at that time you will
20 receive further instructions.

21 [Whereupon, the jury exits the courtroom at
22 12:03 p.m.]

23 THE COURT: Thank you. Be seated.

24 We are now outside of the presence of the
25 selected jury. Any motions or matters pertaining --

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1 Ms. Linder?

2 MS. LINDER: None from the State, Your Honor.

3 MR. SMILEY: None from the defense, Your Honor,
4 other than what I had previously stated.

5 THE COURT: All right. Any objection to
6 releasing the jury panel?

7 MS. LINDER: No, Your Honor.

8 MR. SMILEY: No, Your Honor.

9 THE COURT: Ladies and gentlemen, those of you
10 who were not selected, you now have a free afternoon.
11 You need to call back after 6:00 p.m. to receive
12 instructions for the remainder of the week.

13 Again, it was a pleasure having you in my
14 courtroom and, again, thank you for your service to
15 Charleston County. You are excused for the afternoon.

16 [Whereupon, the jury panel exits the courtroom
17 at 12:04 p.m.]

18 THE COURT: I know it's been a long morning for
19 us so my preference is to go ahead and break for lunch,
20 have the jury come back and let's attempt to go as long
21 as we can.

22 How many witnesses do you have?

23 MS. LINDER: I have a total of I believe six
24 that I will be calling. Five of those six should take
25 maybe fifteen, ten minutes each, and there's going to

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1 be one that's going to take I would guess about forty-
2 five minutes.

3 THE COURT: Mr. Smiley, I will of course not
4 hold you to this. Do you have witnesses?

5 MR. SMILEY: I don't anticipate any, Your Honor.

6 THE COURT: All right. If we -- if I release
7 the jury at this time and have them back at 1:30, will
8 that give everyone sufficient time for lunch and any
9 procedural matters that we need to address?

10 MS. LINDER: Yes, Your Honor.

11 - - - - -

12 MOTION TO ADOPT PRE-TRIAL RULINGS

13 MR. SMILEY: As far as procedural matters, I
14 would make a motion to adopt your pre-trial rulings,
15 from the previous case that a mistrial was declared on,
16 because there will be the same issues presented again.
17 I don't think anybody would object to that.

18 THE COURT: All right. I have your motion to
19 sequester witnesses. That motion was granted in the
20 previous case. It will be granted at this time, as
21 well.

22 The motion to suppress statements by defendant
23 pursuant to Jackson v. Denno: my understanding from
24 the previous case, Ms. Linder, is that you do not plan
25 to call any -- or there are no statements that you plan

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1 to introduce by the defendant; is that correct?

2 MS. LINDER: Correct. There are no statements
3 post Miranda.

4 THE COURT: So that motion we do not need to
5 address, Mr. Smiley?

6 MR. SMILEY: The only one that has a ruling that
7 would have an effect on this trial, Your Honor, is I
8 made a motion about prior bad acts, 403(b) and Lyle.
9 We had agreed -- or subject to ruling, we had agreed to
10 mute parts of the video. We had gotten to that. There
11 may be one right before -- when we come back from lunch
12 there might be one where you might need to listen and
13 maybe -- we're still trying to agree. I guess that's
14 what we're saying.

15 THE COURT: And just so the record is clear --

16 MR. SMILEY: Yes, ma'am.

17 THE COURT: -- in this trial I granted your
18 motion to exclude testimony of prior bad acts. My
19 understanding, as related by Ms. Linder, is there was
20 some indication that the tape that you plan to
21 introduce had conversations and statements regarding a
22 drug deal the day before. Is that correct, Ms. Linder?

23 MS. LINDER: Your Honor, the -- yes, more or
24 less. Yes. The undercover officer indicated the
25 defendant was in the same clothing during this as he

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1 was the previous day. So that -- yes.

2 THE COURT: All right. And when we broke last
3 evening, Mr. Smiley and Ms. Linder, you were attempting
4 to agree upon where to mute the tape.

5 And I understand that now there may just be one
6 issue; is that correct, Mr. Smiley?

7 MR. SMILEY: Well, there are two prior -- their
8 two references to prior deals is not a problem. There
9 is one reference to a future deal, which is basically
10 the same thing, that we are trying to agree which part
11 is relevant, not relevant, or prejudicial, and if we
12 can't reach a resolution then I need you to intercede.
13 But I would guess we'll reach an agreement.

14 THE COURT: All right. Well, I am going to
15 bring in the jury. Do you have a preference of whether
16 or not I swear the jury before we break for lunch?

17 MR. SMILEY: I think we ought to go ahead and
18 swear them, Judge.

19 MS. LINDER: Leave it in the discretion of the
20 Court, Your Honor.

21 THE COURT: All right. I will swear the jury.

22 I will have them back in their jury rooms at
23 1:30. We will begin as promptly at that time. All
24 right? Please stand for the jury.

25 Please bring in the jury.

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1 [Whereupon, the jury enters the courtroom at
2 12:09 p.m.]

3 THE BAILIFF: Jurors are present, Your Honor.

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen of the jury, I am going to
6 give you your oath, and then we are going to recess for
7 lunch, so you will need to be back in your jury room at
8 1:30.

9 If you will please swear the jury.

10 THE CLERK OF COURT: Yes, Your Honor.

11 Please have the defendant stand.

12 [Whereupon, Mr. Wright complies]

13 THE CLERK OF COURT: Ladies and gentlemen of the
14 jury, if you will please stand and raise your right
15 hand. If you will please reply back to me, after I've
16 given you this oath, verbally.

17 [Whereupon, the jury is duly sworn by the clerk
18 of court as follows: do you swear or affirm that ye
19 shall well and truly try and a true deliverance made
20 between the State of South Carolina and the defendant
21 at the bar, whom you shall have in charge, and a true
22 verdict rendered according to the evidence and the law,
23 so help you God]

24 [Whereupon, jurors respond]

25 THE BAILIFF: Thank you. Be seated.

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1 THE COURT: Ladies and gentlemen, I will give
2 you further instructions on procedural matters. We
3 will break now for lunch. It is important that you do
4 not begin discussing this case amongst yourselves. Do
5 not begin your deliberations.

6 Do not do any independent research via
7 newspapers, television, internet, anything. All of the
8 evidence that you hear must come from this courtroom.

9 And, again, and I will instruct you on this
10 further. But if you see any of the parties during your
11 lunch hour and they do not acknowledge you, they are
12 not being rude. They are merely following the Court's
13 instructions that they may not discuss this case with
14 you. So they may give you a quick smile, and that will
15 be it, but do not think that they are being -- any
16 officers of the Court are being rude if they do not
17 speak with you.

18 Please be back in your jury room at 1:30.

19 Ms. Florence, you have been selected as the
20 foreperson of this case.

21 Mr. Schobein, you are the alternate. And I will
22 probably mispronounce your name one more time but I
23 will attempt, throughout the course of this trial, to
24 get it correctly.

25 Ms. Florence, you will be in that end seat when

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1 you return, on the front row, and Mr. --

2 MR. SCHOBELIN: Schobel.

3 THE COURT: -- Schobel, you will need to remain
4 in about that same seat. The rest of you may sit
5 wherever you choose.

6 You will notice that the persons in the audience
7 will be standing when you walk in. That is because you
8 are now the judges of the facts in this case. So
9 please come in, take your seat, and once all of you are
10 seated the audience will then be seated, as well.

11 Again, have a nice lunch. Please be back in
12 your jury room at 1:30. Thank you.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 12:12 p.m.]

16 THE COURT: Thank you. Be seated.

17 Do either of you have a preference on note-
18 taking?

19 MR. SMILEY: I have no preference.

20 MS. LINDER: I have no preference.

21 THE COURT: All right. And anything before we
22 break for lunch? From the State?

23 MS. LINDER: Nothing from the State, Your Honor.

24 MR. SMILEY: Nothing from the defense.

25 THE COURT: All right. Mr. Wright, we will

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1 begin your trial promptly at 1:30. I hope you have a
2 wonderful lunch, as well. Thank you.

3 We are in recess until 1:30.

4 [Whereupon, a recess is taken from 12:13 p.m. to
5 1:29 p.m.]

6 THE COURT: Thank you. Be seated.

7 MS. LINDER: Your Honor, just to kind of
8 explain, we just watched the video in its entirety
9 over on my computer in my office, and it went with no
10 problems. And it just kept playing. And it goes for
11 about seven minutes with no problems and then the audio
12 you hear, the video is paused, but you can advance it
13 just past that. My investigator is getting our other
14 laptop to see if its this computer, since it worked
15 fine on the computer in my office.

16 But we may want to bring up our disagreement,
17 still, for one section of whether it should be muted or
18 not. And we can fast-forward to that section, so we
19 can at least address that, to keep the case moving
20 forward at this time if you would like.

21 THE COURT: Okay. Do you want to do that now,
22 Ms. Linder?

23 MS. LINDER: The State is ready to go forward
24 right now.

25 THE COURT: All right.

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1 MS. LINDER: As the motion heard yesterday and
2 Your Honor ruled upon it, the references where the
3 undercover police officer says he's in the same
4 clothing, he's in the same clothing as yesterday, your
5 ruling -- and we've gone back and we are going to be
6 muting all of that time so there's no reference to the
7 same clothing. I believe that's said two to three
8 times during it. It's been recorded. Mr. Smiley and
9 Mr. Byrd have gone over that. Those will all be muted.

10 The issue that we are not coming to an agreement
11 on is during the I would say fifteen to twenty-second
12 transaction itself, of the hand-to-hand, Mr. Wright
13 comes into the picture. Mr. Wright comes into the
14 picture and what happens is -- more or less the
15 conversation is, yo, why didn't you call me, why didn't
16 you call me. And she says, oh, I forgot, or whatever.
17 Why didn't you call me; you don't need to drive in
18 here. And then he says, you know, it looks suspicious
19 with the police. He's black, she's white. So on and
20 so forth. And then he says, call me next time, call me
21 next time. And she says, okay, okay, I'll try to get
22 money, and I'll call you.

23 MR. SMILEY: Your Honor, she talks about that
24 she's putting her money together to make another deal
25 on Friday. And that's clear on there. And where she

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1 got the phone number was the deal the day before, so I
2 can't cross her about where she got the phone number
3 without opening the door to the prior bad act.

4 THE COURT: All right. Let me view the video.

5 MS. LINDER: And, Your Honor, I would like to be
6 heard briefly at the appropriate time.

7 [Whereupon, CD is played for the Court]

8 - - - - -

9 MOTION TO SUPPRESS

10 MR. SMILEY: That covers the part that's in
11 dispute. That covers the part that's in dispute, Your
12 Honor.

13 THE COURT: All right. Ms. Linder?

14 MS. LINDER: Your Honor, I would just say that
15 Mr. Wright -- allegedly, Mr. Wright is the person who
16 initiates the conversation, saying don't call me, don't
17 pull up in this area. I believe that goes to his
18 intention at this moment, at this incident that we're
19 here on trial for today, and then it shows kind of his
20 forward-looking, yes.

21 But we would argue, as Mr. Smiley brought up
22 with 404(b) and Lyle, nothing in Lyle talks about
23 subsequent or potential future bad acts. I would just
24 say that, especially in the beginning section, he's
25 talking about where she should and should not park for

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1 this transaction, as he's walking up, because, why
2 didn't you call me, and you shouldn't be here, you need
3 to go to Katie Street or whatever street he said. And
4 that references, I argue, his frame of mind for this
5 transaction, which is why we are on trial today.

6 THE COURT: Mr. Smiley?

7 MR. SMILEY: The alleged phone number was taken
8 from the deal done with allegedly the same person the
9 day before. And that's when the police report says: I
10 obtained this phone number. And the 9/18 charge that
11 he was charged with, which he is charged with, the
12 distribution, he's not on trial for today. So there's
13 a reference to the prior bad act about the phone call.

14 Then there is talk about, I'm putting money
15 together for another act, that subsequently takes
16 place. It wasn't but -- it was for \$50, that he's
17 charged with in this case, too. So there's a
18 subsequent prior -- subsequent acts and prior bad acts
19 are covered the same under Lyle. I'm pulling up cases,
20 but I'm kind of familiar with these. I know that for a
21 fact. And they can only be used if the State intends
22 to show through a pattern -- first, they've got to show
23 clear and convincing; they've got to show a pattern,
24 motive, intent. They've got to meet one of those
25 exceptions. And then they've got to show by clear and

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1 convincing evidence. And in this case he's charged
2 with those crimes separately, and he's not on trial for
3 those today. And so they've elected to go forward on
4 the 9/19, 2007 charge, and it refers to other arrests
5 or that become arrests, other acts, bad acts. They
6 can't be considered anything other.

7 I would ask Your Honor to suppress any reference
8 to future or prior bad acts or information that's
9 obtained -- I can't cross-examine him without opening
10 the door to the other act. I can't. I can't question
11 about, where did you obtain the phone number; oh, when
12 we bought from him the day before, or putting in that
13 reference, because that's not what's on trial here
14 today.

15 That's all I have. And I'll get you a case, if
16 you need one, about subsequent prior acts -- subsequent
17 acts. I'm looking them up as fast as I can, but I --

18 THE COURT: Ms. Linder?

19 MS. LINDER: Your Honor, I would just reiterate
20 that the conversation was initiated by Mr. Wright. And
21 especially on the beginning he kept saying for this
22 act, for this date on September 19th, 2007, he said,
23 you should have called me. He later talks about how,
24 you know, it'll flag attention by the police with them
25 being together, she should have called, she should have

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1 gone to a different street. And I hold that that is
2 his mind set, his intention, for this statement and
3 that's why it is relevant and should be allowed in.

4 THE COURT: Mr. Smiley, what is your exact
5 objection? What is it -- what is the language that you
6 are objecting to?

7 MR. SMILEY: I object to this part that we've
8 looked at. We've already got the prior bad act stuff
9 we've agreed to. This part I object to a couple of
10 different -- he referenced about, why didn't you call
11 me, and her talking about the phone call, the calling
12 him. I can't cross-examine about that prior bad act.
13 I can't ask about, well, did you have his phone number;
14 oh, yes; where did you get it from; when we bought on
15 the day before. I can't ask any questions on that.
16 He's not on trial for the one from the day before. So
17 I'm blocked about the phone call --

18 Secondly, I think it's real clear when they
19 start talking about -- when she had said, I'm putting
20 money together to buy from you again, I'll try to get a
21 couple hundred together, certainly is talking about a
22 subsequent contemplated bad act.

23 I would make a motion to have both of those
24 suppressed.

25 THE COURT: Ms. Linder, is the testimony going

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1 to be that the purchaser in the video received the
2 phone number pursuant to the transaction the day
3 before?

4 MS. LINDER: No, Your Honor. I've already
5 spoken with Investigator Springmeyer, who is the
6 undercover officer in this case, and she understands
7 your ruling yesterday and she is not -- she understands
8 that it will be muted, she cannot make reference to the
9 outfit, she cannot make reference, you know, unless
10 asked by defense. But I am not going to be asking her
11 about the phone number, about anything, and she knows
12 to stay away from the areas.

13 MR. SMILEY: But, yes, she obtained -- in her
14 report dated 9/18/2007, she reports that she obtained
15 the phone number. And so she did obtain -- she
16 allegedly obtained it from my client the day before.

17 THE COURT: Mr. Smiley, how did she obtain --
18 she only obtained the phone number because she had
19 purchased from him before --

20 MR. SMILEY: Right.

21 THE COURT: -- is that --

22 MR. SMILEY: -- a black male --

23 THE COURT: -- your contention?

24 MR. SMILEY: Yes. And I'm going to read this
25 record. The black, male man handed -- and I'm reading

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1 from the report from this officer on 7/18/07:

2 [reading] the black male handed the reporting officer
3 the pieces, and reporting officer gave black male \$50.
4 Reporting officer asked the black male his name, and he
5 muttered something like L. And then reporting officer
6 asked for his phone number. The black male gave the
7 number of [REDACTED]. And reporting officer again asked
8 his name. This time he replied, my name is Swamp.

9 So that's information from the day before's
10 purchase.

11 THE COURT: Ms. Linder?

12 MS. LINDER: Your Honor, I would -- again, the
13 same argument as before. This officer is talking about
14 this incident this day. She is not talking about
15 previous encounters with the defendant about the name
16 or anything in those reports that Mr. Smiley says is
17 that's a separate number we are trying today.

18 THE COURT: Mr. Smiley, I am granting your
19 motion to suppress the reference to the gathering of
20 the money for the future purpose -- for future purpose.

21 I am denying your motion to suppress as to the
22 reference to, why didn't you call. I think it goes to
23 the -- one of the elements to distribution, and I am
24 going to allow it.

25 However, that being said, your officer needs to

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1 be clear that there cannot be any reference to the
2 purchase on September 18th of 2007.

3 MS. LINDER: Your Honor, with that ruling, I
4 would ask for about five minutes to just reiterate that
5 to my officer to make sure everything is clear.

6 Also, we have our IT person here. She's going
7 to check out this laptop. And Mr. Byrd and Mr. Smiley
8 will probably want to get together for the same five
9 minutes. I'll be speaking with the investigator to
10 make sure that the correct -- per your ruling the
11 correct things are muted.

12 THE COURT: Thank you.

13 MS. LINDER: Thank you, Your Honor.

14 MR. SMILEY: And of course I guess I should say
15 note my objection, to the one part you're allowing, on
16 the record. Thank you.

17 THE COURT: Yes, sir.

18 MR. SMILEY: And then I will of course have to
19 repeat that when it comes up during testimony.

20 THE COURT: Yes, sir. Yes, sir, you will.

21 MR. SMILEY: All right. Thank you.

22 THE COURT: Thank you.

23 [Whereupon, a recess is held from 1:45 p.m. to
24 1:52 p.m.]

25 MS. LINDER: Your Honor, Ms. Buccas [phonetic]

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1 is redoing the new computer. That should just take a
2 moment. I did have the opportunity, and I thank you
3 for that, to speak very clearly with my officer to not
4 address any of that whatsoever and to focus on the act
5 at hand, which is the hand-to-hand which is why we are
6 here today. So she has been very, very clearly
7 explained that and understands.

8 THE COURT: Thank you.

9 Anything further before we bring in the jury,
10 Mr. Smiley?

11 MR. SMILEY: No, Your Honor. I don't believe
12 so.

13 We've pre-marked some exhibits. I think there's
14 only two, but I haven't agreed to their admissibility
15 until a foundation is laid.

16 THE COURT: All right.

17 Is there anything that we can address, before I
18 bring in the jury, while we are switching computers?

19 MS. LINDER: It's booted up right now. She's
20 about to put it in. I would just ask that we make sure
21 that it does, in fact, play before we leave it back up
22 with the court reporter.

23 [Whereupon, Mr. Smiley and Ms. Linder confer]

24 THE COURT: I'm sorry?

25 MR. SMILEY: I asked her if she planned on using

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1 the video in opening because if she did, we needed to
2 address an issue or two beforehand. But she doesn't,
3 so that --

4 [Off the record momentarily]

5 THE COURT: Ms. Linder, are we about --

6 MS. LINDER: She is here making sure that
7 there's nothing wrong with the disk itself. There
8 doesn't appear to be.

9 [Off the record momentarily]

10 THE COURT: All right. Ms. Linder, I'm going to
11 bring in the jury, give my opening, and your IT person
12 is welcome to remain at the table to continue working
13 on the computer.

14 MS. LINDER: Yes, ma'am.

15 THE COURT: Then you will do your opening,
16 Mr. Smiley will do his opening, and we'll make a
17 determination.

18 My recollection from yesterday is that the video
19 applies to witness number two; is that correct?

20 MS. LINDER: Yes, Your Honor.

21 THE COURT: All right. So that should give your
22 IT person sufficient time. And if we need to take a
23 break at that time, we will.

24 MS. LINDER: Thank you, Your Honor.

25 THE COURT: Anything before I bring in the jury?

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1 MS. LINDER: I just wanted to let you know that
2 the sound is not connected with the computer she's
3 working on, and the speaker itself has been turned off,
4 so a mishap should not happen.

5 THE COURT: Should not. They should not happen.
6 Mr. Smiley, anything before I bring in the jury?

7 MR. SMILEY: No, Your Honor.

8 THE COURT: All right. Please bring in the
9 jury.

10 [Off the record momentarily]

11 THE COURT: All right. Just let me know before
12 you bring them in.

13 Please be seated. We have a juror in the
14 restroom.

15 [Off the record momentarily]

16 THE COURT: All right. Please rise for the
17 jury.

18 And they have been given notebooks.

19 [Whereupon, the jury enters the courtroom at
20 2:00 p.m.]

21 THE BAILIFF: Jurors are present, Your Honor.

22 THE COURT: Thank you. Thank you. Please be
23 seated.

24 Madam Forelady, ladies and gentlemen of the
25 jury, what I now say is intended to serve as an

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1 introduction to the trial of the case of the State vs.
2 Lloyd Wright. The remarks that I give to you are not a
3 charge on the law in this case. I will instruct you on
4 the law applicable to this case at the end of the trial
5 before you retire to consider your verdict. This is
6 merely an explanation of the procedure that we will
7 follow during this trial so that you may better
8 understand what is happening.

9 You have been given notebooks. You will be
10 allowed to take notes during this trial, and those
11 notebooks will go back with you during your
12 deliberation. But just as you may remember in school,
13 some of us are better note-takers than others. Those
14 notes are intended to help you, and you alone, while
15 you are listening to the trial. One juror's notes do
16 not take precedence over another juror's notes and so I
17 caution you, when you retire back into your jury room
18 to deliberate, that that needs to be the case.

19 Also, it is important that you pay attention to
20 what is going on during the trial, and sometimes when
21 you are taking notes you do not see the witnesses'
22 demeanor on the witness stand. So with all of those
23 admonitions to taking notes, again, you are permitted
24 to take notes during this trial.

25 As I stated during jury selection, Mr. Wright is

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1 charged by an indictment filed in this court. He is
2 charged with distribution of cocaine base and
3 distribution of cocaine base within a proximity of a
4 school. I will explain to you the elements of each of
5 those charges later. The indictment is simply the
6 charge by which the case is brought into court, and is
7 not in any sense evidence of the allegations it
8 contains.

9 The defendant has pled not guilty to each
10 indictment. The State therefore has the burden of
11 proving each of the elements of each indictment beyond
12 a reasonable doubt. It will be your duty, ladies and
13 gentlemen, to decide whether the State has met that
14 burden.

15 Your purpose as jurors is to find and determine
16 the facts. You are the sole judge of the facts in this
17 case. If at any time I make any comment regarding the
18 facts, you must disregard it. You are to determine the
19 facts from the testimony you hear and other evidence
20 introduced in court. It is up to you to determine the
21 inferences which you feel may be properly drawn from
22 the evidence. It is especially important that you
23 perform your duty of determining the facts diligently
24 and conscientiously, because ordinarily there is no
25 way to correct an erroneous determination of the facts

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1 by a jury.

2 On the other hand, and with equal emphasis, the
3 same law that makes you the judges of the facts makes
4 me the judge of the law. The law as given by this
5 Court is the only law that you may consider. You must
6 accept and follow it, even though you may not -- even
7 though you may disagree with it. I cannot tell you
8 what the facts are in this case, and you cannot
9 disagree with me about what the law is or what the law
10 should be. Your job is to take the law as I give it to
11 you, apply it to the facts as you find them from the
12 testimony of witnesses and any other evidence that is
13 introduced. After doing that, you will render your
14 verdict, a true and just verdict, under the solemn oath
15 that you took as jurors.

16 Until I advise you to begin your deliberations,
17 you must not discuss this case with anyone, including
18 your fellow jurors, friends, family members, and anyone
19 involved in this case. After this case is submitted to
20 you, you must discuss this case only in the jury room
21 only with your fellow jurors.

22 As I indicated to you before we broke for lunch,
23 the attorneys and the parties in this case have been
24 advised that they are not to talk to you at all. So if
25 you see anyone involved in this case, please remember

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1 they are merely following the Court's warning and they
2 are not being rude.

3 During the trial do not read, listen to, watch
4 any news reports about this case. This includes
5 anything that may be in the newspapers, on the
6 internet, or the radio or the television. You must
7 not consider anything that you may have read or heard
8 about this case outside of this courtroom, whether
9 before or during the trial.

10 It is important that you keep an open mind and
11 not decide any issue in this case until all of the
12 evidence has been presented, the parties have made
13 their closing arguments, and I have instructed you on
14 the law in this case. It is your solemn responsibility
15 to determine the guilt or innocence of the defendant,
16 and your verdict must be based solely on the evidence
17 as it is presented to you in this trial, as well as on
18 the law as I instruct you during and at the close of
19 the trial.

20 In just a moment the solicitor will make what is
21 called an opening statement in which the solicitor will
22 explain to you the issues in the case, or at least what
23 the solicitor thinks the issues are. The attorney for
24 the defendant may also make a statement, although he is
25 not required to do so. What the attorneys tell you

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1 during their opening statement is not evidence in this
2 case. It is only their contention as to what the
3 issues may be. The evidence in this case will be
4 presented to you by testimony of sworn witnesses from
5 the witness stand and by any exhibits that may be
6 introduced into evidence.

7 From time to time during the trial you may hear
8 one of the lawyers say something like, objection, or,
9 Your Honor, may we approach, I believe we have a
10 question of law, and I might find it necessary to
11 excuse you for just a brief moment so that I may
12 discuss a matter of law. The reason for this is not
13 that we are hiding anything from you but because you
14 are the judges of the facts in this case and sometimes
15 when making a decision on the law, I must discuss the
16 facts. It may be necessary for me to excuse you so
17 that I may comment on the facts and not influence you
18 in any way by my comments.

19 In determining what the true facts are in this
20 case, you must decide whether or not the testimony
21 of the witnesses is believable. It will be my
22 responsibility to rule as a matter of law as to
23 whether certain testimony is admissible or not, but
24 once the testimony is admitted, whether or not you
25 believe it is solely for you to determine.

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1 In deciding whether to believe a witness, you
2 have the right to consider the interest of a witness,
3 the bias of a witness, the prejudice of a witness, the
4 opportunity for the witness to have seen and heard the
5 things about which the witness testifies, as well as
6 the way the witness acts on the witness stand. You
7 have a right to consider anything that is in the record
8 that will help you evaluate the testimony of the
9 witnesses. That means it is your duty to pay close
10 attention to the witnesses, observe the witnesses, and
11 to pay close attention to the attorneys and to the
12 Court.

13 Please do not let your thoughts wander, but give
14 strict attention to the testimony in this case so at
15 the end of all the testimony, after the arguments of
16 counsel and the charge on the law by the Court, you
17 will be in a position to determine what the true facts
18 are and to apply the law to those facts and render a
19 true and just verdict.

20 It is your added duty, Madam Foreperson, to
21 preside in the jury room and to be the jury
22 spokesperson here in court. It will also be your
23 duty to write the verdict, but I'll give you
24 instructions on that later.

25 You will now hear the opening statement from the

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1 solicitor. Ms. Linder?

2 MS. LINDER: Thank you. May it please the
3 Court.

4 - - - - -

5 OPENING STATEMENT

6 MS. LINDER: Good afternoon, ladies and
7 gentlemen of the jury. We are here today for The State
8 versus Lloyd Wright. Mr. Wright has been charged with
9 distribution of cocaine base and distribution of
10 cocaine base within one-half mile proximity.

11 This case should be fairly short, simple, and
12 straightforward. Drugs are illegal. It is illegal to
13 possess drugs, it is illegal to distribute drugs, and
14 it is illegal to distribute drugs within a one-half
15 mile proximity of a school, park or playground.

16 Back on September 19th of 2007, the defendant I
17 will submit did just that. The city police department,
18 the Charleston Police Department, they utilized a
19 narcotics unit. They had an undercover police officer
20 go into the area, go into where Romney Street and
21 Athens Court is here in Charleston County. They went
22 in there where Romney and Athens Court are, and that is
23 where the defendant distributed crack cocaine, or
24 cocaine base, as it is called, to the undercover police
25 officer. All of that was done within one-half mile of

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1 the New Israel School. And the New Israel School is
2 located at 88 Simmons Street. Like I said, this will
3 be simple, straightforward, and very short.

4 We are here today because Mr. Wright has been
5 charged. And we ask that you pay attention and listen,
6 for back in September 19th, 2007, in the area of Athens
7 Court and Romney Street here in Charleston County, he
8 distributed crack cocaine or cocaine base to an
9 undercover police officer, and all within one-half mile
10 proximity of the New Israel School. Thank you.

11 THE COURT: Mr. Smiley?

12 MR. SMILEY: Please the Court.

13

- - - - -

14

OPENING STATEMENT

15 MR. SMILEY: Ladies and gentlemen, as you've
16 heard, Lloyd Wright is accused of a crime, and he's
17 told you not guilty, he didn't do it, and so it's your
18 job to decide the facts in this case. But where we
19 start right now is you stand next to Lloyd that he
20 didn't do it. Not over here in the middle. Or, let's
21 see. He starts with the presumption of innocence, and
22 the jury stands over here that he didn't sell it, and
23 stands with him until and if the State can prove beyond
24 a reasonable doubt that he, in fact, sold the drugs.
25 If they can't prove that, he stays not guilty.

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1 Now, things aren't always as they seem. And so
2 as the testimony is presented here today, look at it.
3 Look at what's actually being presented, and look at
4 what's not being presented; what's not being presented.
5 Are they giving you the information that's required to
6 make such an important decision on the facts to
7 determine a man's innocence or guilt? I'm going to
8 submit to you it does not rise to that level. There is
9 only one verdict in this case, and that's not guilty.
10 Thank you.

11 THE COURT: Ms. Linder, please call your first
12 witness.

13 MS. LINDER: The State calls Corporal Todd
14 Hurteau.

15 [Whereupon, Mr. Hurteau enters the courtroom]

16 [Whereupon, Mr. Hurteau is duly sworn by the
17 clerk of court as follows: do you swear or affirm that
18 your testimony will be the truth, the whole truth, and
19 nothing but the truth so help you God]

20 THE WITNESS: I do.

21 THE COURT: Be seated.

22 [Whereupon, Mr. Hurteau takes the witness stand]

23 THE CLERK OF COURT: If you'll please state your
24 full name and then spell your last name.

25 THE WITNESS: Todd Hurteau, H-U-R-T-E-A-U.

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1 MS. LINDER: Good afternoon, Corporal Hurteau.

2 - - -

3 TODD HURTEAU,

4 Having Been First Duly Sworn,

5 was Examined and Testified as Follows:

6 DIRECT EXAMINATION

7 BY MS. LINDER:

8 Q. What is your occupation?

9 A. I am a police officer with the City of
10 Charleston Police Department.

11 Q. And what are your duties with CPD?

12 A. I've been working in the narcotics unit for
13 approximately eight years. We investigate drug
14 distribution, drug sales to include crack cocaine, heroin,
15 cocaine, marijuana, pharmaceutical pills, and ecstasy.

16 Q. And do you have any special training or skills?

17 A. Yes, I do. Prior to getting into law
18 enforcement I obtained a bachelor's degree in public
19 justice, with a minor in forensic science. I'm currently
20 attending the Citadel to obtain my master's degree in
21 education. I'm three classes shy of that.

22 I have eleven years in law enforcement
23 experience, eight of which I have done exclusively
24 narcotics investigations. While in the narcotics unit I
25 worked for four years as an investigator, then after four

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1 years I was promoted to a supervisor of the unit where
2 I've been working for four and a half years now.

3 I've done joint investigators with the FBI, the
4 DEA, the ATF, State Law Enforcement Division, as well as
5 other local jurisdictions. And I've also done over 1,000
6 drug investigations in my career.

7 I've debriefed informants, I've interviewed
8 suspects and witnesses, I've written affidavits, I've
9 written reports, I've had the opportunity to testify as an
10 expert witness in both state and federal court, and I have
11 approximately 500 hours of formal training in interview
12 and interrogation, affidavit writing, and tactical
13 surveillance, and things of that nature.

14 Q. Did you have the occasion to be working back on
15 September 19th, 2007?

16 A. Yes, I did.

17 Q. And did you have the occasion to be brought into
18 this case, State vs. Lloyd Wright --

19 A. Yes, I did.

20 Q. -- on any way on that date?

21 A. Yes, I did.

22 Q. And how were you brought into this case? What
23 happened?

24 A. Well, prior to that date we had received several
25 complaints in reference to an open-air drug market, open-

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1 air drug street-level sales over in that area. We did a
2 joint investigation with the FBI. Due to the amount of
3 citizen complaints that we were receiving, and complaints
4 from other officers that worked that area, we began to
5 conduct an investigation in that area.

6 Q. Okay. And then along with that how, then, did
7 it develop from there?

8 A. We started the investigation -- in this
9 particular case, you can either use a confidential
10 informant or an undercover officer. We elected to do --
11 utilize an undercover officer to make controlled drug
12 purchases. The FBI is the one that funded the money for
13 these controlled purchases in this area.

14 Q. And what is the procedure that you follow for
15 conducting the controlled purchase?

16 A. We start the investigation initially by coming
17 up with an operational plan. Essentially, that is we put
18 everything on paper in order to provide for the safety of
19 the officers that are involved, the citizens that are
20 involved, and also the suspects that are involved.

21 After we develop the operational plan, we send
22 the undercover officer into this particular location which
23 is on the corner of Athens Court and Romney Street where
24 our undercover officer that worked with the Charleston
25 Police Department did a hand-to-hand crack cocaine

1 purchase with the defendant.

2 Q. And is there any -- for procedure of these buys,
3 is there any recordings, is there -- how is it funded?
4 Can you tell us kind of how it all occurs?

5 A. Yeah. These buys are funded -- this particular
6 buy was funded by the FBI. Like I said, this was a joint
7 investigation with the Federal Bureau of Investigation.
8 They give the undercover officer the money. The
9 undercover officer goes to that particular area. There is
10 audio and video surveillance inside the vehicle. So this
11 particular transaction was captured on an audio-video
12 recording device.

13 Q. Are there other officers down there in that
14 area, or is it just that undercover officer?

15 A. There are multiple officers in the area. I
16 personally was the supervisor of the operation. We had
17 approximately six or seven other officers that are
18 assigned responsibilities. In the event that the drug buy
19 goes bad we can get in there, we can keep the citizens
20 safe, we can extract our undercover officer if necessary,
21 and we can detain any suspects if necessary. They are
22 also listening to the audio recording of the transaction.
23 I was listening to the audio recording of the transaction
24 on this date.

25 Q. And then you listen to it, you're set up, you go

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1 through everything. In this case was the transaction, for
2 lack of a better term, successful?

3 A. Yes, this particular transaction was successful.
4 An undercover officer went into the area. She purchased
5 \$50 worth of cocaine. It was captured on the videotape.
6 The transaction took place through the driver's side
7 window of the undercover vehicle. She handed him the U.S.
8 currency that was given to her by the Federal Bureau of
9 Investigation. After the transaction was completed, she
10 drove out of the area at a pre-determined location.

11 There's two types of investigations that we can
12 do in order to curtail that problem. One of them is
13 called a buy-bust, and that's simply when our undercover
14 officer goes in and immediately after the transaction we
15 make the arrest. Or we can do what's called the buy-walk.
16 In that particular case, the undercover officer will go
17 into that location, they'll make the hand-to-hand
18 transaction with the defendant, they will leave the area.
19 And after the transaction is completed, we will secure
20 arrest warrants at a later time. And the reason that we
21 do that is we don't want to --

22 MR. SMILEY: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. SMILEY: Because I believe it's going to go
25 to the 404(b).

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1 THE COURT: Counsel approach.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: Overruled.

5 MR. SMILEY: Thank you, Your Honor.

6 Q. [Ms. Linder] Corporal Hurteau, if you could
7 continue -- I know we're about done here -- just
8 specifically with this date back on September the 19th.

9 A. Like I was explaining earlier, it was a buy-walk
10 operation. And what our undercover officer does is they
11 go into the area and they make the controlled buy from the
12 defendant. After the transaction is completed, we don't
13 go right in right away to arrest the defendant.

14 Q. Not arresting someone immediately, is that --
15 does that have to do with the officer, or what does that
16 have to do with?

17 A. It's so we don't compromise the identity of our
18 undercover officer.

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

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Linder and Mr. Byrd confer]

22 MS. LINDER: I have no further questions.

23 Please answer any the defense may have.

24 THE COURT: Mr. Smiley.

25 - - -

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CROSS-EXAMINATION

BY MR. SMILEY:

Q. Corporal Hurteau, you said that these plans are put to paper?

A. They typically can be put on paper, and they're reviewed prior to the transaction.

Q. Was this plan put to paper for the September 19th of 2009?

A. I don't have a copy of the operation plan.

Q. That wasn't my question. Was it put to paper?

A. I believe it was. I just don't have a copy of the operational plan. But prior to any investigation that we do --

Q. It's policy --

A. -- we will --

Q. -- you write it up; right?

A. -- come up with a plan.

It's not policy to write it up. It is policy to go over the operational plan.

Q. Okay. But your answer in this case is you believe that there was an operational plan put to paper?

A. I believe that there was. I'm just not absolutely certain that we saw the copy of it.

Q. All right. Well, it wouldn't be destroyed, would it? If you created -- create a plan for a case, you

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1 don't later destroy it, do you --

2 A. No, we --

3 Q. -- it's part of the file?

4 A. No, we wouldn't destroy it.

5 Q. Did you create any reports yourself for this
6 case?

7 A. I did not. I just approved the reports in this
8 case.

9 Q. Okay. I've noticed you've been looking at notes
10 during your testimony. Are those your notes you're
11 looking at, or just a blank piece of paper, or somebody
12 else's report?

13 A. I've got a copy of the incident report that
14 Mr. Seabrook wrote, Officer Seabrook, and I've got a copy
15 of the incident report in front of me that Investigator
16 Springmeyer wrote.

17 Q. So when you were answering the questions you
18 weren't relying upon your memory, you're relying upon the
19 words written down of Officer Seabrook and Officer
20 Springmeyer?

21 A. That's not correct. During the transaction, I
22 have a live audio feed of exactly what's transpiring
23 during the transaction. She's wearing a wire so I can
24 hear, with a scanner, exactly how the transaction is
25 transpiring.

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1 Q. Well, let me ask you this. Would it be fair
2 that within your testimony, that you've referred to those
3 reports?

4 A. I referred -- when I was doing my testimony, I
5 was referring to my background notes.

6 Q. Okay. So you're saying you haven't looked at
7 those reports? They haven't refreshed your memory or
8 anything like that?

9 A. Yes. Before I came to trial I prepared for
10 trial, and I did review the incident report and
11 supplemental reports.

12 Q. So you reviewed the knowledge of other people to
13 supplement your knowledge?

14 A. I've reviewed what they wrote down on paper, but
15 I also recall what happened based on my -- based on my own
16 knowledge and the audio feed from that day, the live
17 transaction.

18 Q. Okay. And you brought their reports to the
19 witness stand; correct?

20 A. I have a copy of Investigator Seabrook's report
21 and a copy of Investigator Springmeyer's report.

22 MR. SMILEY: I have a motion, Your Honor.

23 THE COURT: Please approach.

24 [Whereupon, an off-the-record bench conference
25 is held]

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1 THE COURT: Ladies and gentlemen of the jury,
2 there is a matter of law that I must take up outside of
3 your presence.

4 Please do not begin your deliberations. Do not
5 discuss this case amongst yourselves.

6 Please rise for the jury.

7 [Whereupon, the jury exits the courtroom at
8 2:23 p.m.]

9 THE COURT: Thank you. Be seated.

10 Mr. Smiley, before we proceed with your motion,
11 do you want Corporal Hurteau in or out of the
12 courtroom?

13 MR. SMILEY: He's fine in the courtroom.

14 THE COURT: Corporal Hurteau, you are fine right
15 there. If you want to step down you may do so, as
16 well. Your choice.

17 - - - - -

18 MOTION TO STRIKE TESTIMONY

19 MR. SMILEY: If you could -- if I could, Your
20 Honor, it's a well established fact that any testimony
21 from the stand should come from the person's personal
22 observations and their own memories. Any time they
23 refresh their memory or prepare for testimony, it
24 should be through their own notes and their own reports
25 because what we want is their knowledge, not someone

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1 else's.

2 In this case they're questioning -- he is the --
3 the officer clearly states that he was present. He
4 does have a recollection, and he does -- he's stated
5 under oath that in preparing for his testimony he
6 reviewed the reports of Officer Springmeyer and Officer
7 Seabrook. He also brought those reports with him to
8 the stand in case he needed to refresh his memory. He
9 doesn't have any notes from this report -- from this
10 incident, Your Honor.

11 And so he, in my belief, can't -- see how to
12 state this and try to be delicate, because it is a --
13 Officer's Hurteau's memory can only be influenced, it
14 could not -- by the reports of other officers. It
15 couldn't -- there's no way to say, my memory wasn't
16 impinged upon by others, when because he used their
17 reports to reflect upon him preparing for his
18 testimony; therefore, since it's not based on only his
19 recollection or his notes, but the notes of others, I
20 would move to strike his testimony as not being
21 reliable because of the fact that it's not based on his
22 independent recollection or notes that he has taken.

23
24 - - -

25 - - -

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BRADY MOTION

MR. SMILEY: On an additional -- I've got that issue, but I have one more, Your Honor.

Additionally, his testimony is -- he says that they put an operational plan together beforehand that was not provided in discovery. I believe it's discoverable, and I have a Brady motion as to that.

THE COURT: All right. I'll be happy to hear from you on that one.

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

First, as far as the operational plan, the State has turned over any and all paperwork that we have to the defense. It is -- you know, Corporal Hurteau can respond to this more. It's my understanding that typically operational plans, if they are reduced to writing, is an internal item of the police department with confidential information and sensitive information such as that is not typically -- I've never received one in a prior case. Everything I have has always been turned over.

As far as Corporal Hurteau refreshing his memory based on other reports: Corporal Hurteau testified that he himself remembers this transaction, remembers that day, remembers working that day. And as far as

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1 him not personally have written a report of the
2 accounts of that day, there are many officers involved.
3 And as he testified, he was supervising them. He was
4 there present during it and he supervised. He was
5 there before, he was monitoring during, and he was
6 present after.

7 Each individual -- there were numerous people
8 involved. There happened to be two reports written.
9 Corporal Hurteau was supervising the entire sting;
10 therefore, I hold that that is his knowledge and
11 personal -- it's his recollection of that day, as he
12 previously testified that he was there that day.

13 MR. SMILEY: If I could respond?

14 THE COURT: Certainly, Mr. Smiley.

15 MR. SMILEY: First, as to the operational plan,
16 the United States vs. Gigglio puts the inferment of the
17 duty on the prosecution to check to see if there are,
18 in fact, any other discoverable documents. Just the
19 fact that they don't -- never been given doesn't mean
20 it's not a discoverable document.

21 I would ask that the plan be presented to Your
22 Honor -- any exculpatory information whatsoever has not
23 been reviewed by an attorney and therefore we can't
24 determine whether it is, in fact, discoverable.

25 So the excuse that "I've never gotten one" just

1 doesn't cut it. The prosecutor has an affirmative duty
2 to search for that. The fact that the police didn't
3 turn it over because some attorney connected with the
4 state in this -- in this matter I would ask that a
5 detached, neutral person, Your Honor, look at it and
6 see if there's anything discoverable. If, in fact, it
7 is, I believe that we were entitled to it.

8 THE COURT: Mr. Smiley, didn't Corporal Hurteau
9 testify that he does not --

10 MR. SMILEY: He doesn't know where it is. But
11 he can find it. They don't destroy them. I asked
12 that. And he believes that one was prepared in this
13 case. To that issue.

14 On the other issue, there's no way you can
15 say that a report created by someone else is his
16 recollection, number one. Number two, if his
17 recollection was so clear, he wouldn't have brought
18 both of the officers' reports with him to the stand.
19 And, therefore, I would want to say that the fact that
20 he has read through the recollections of other
21 officers, has used that to supplement his memory of the
22 events, and that's not his memory, that's someone
23 else's.

24 THE COURT: Mr. Smiley, do you need to inquire
25 of Corporal Hurteau, or do we rely -- would you wish

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1 the Court to rely on the testimony already presented?

2 MR. SMILEY: I believe that I've already asked
3 the questions, but I'll ask him again if I need to.

4

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PROFFER

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BY MR. SMILEY:

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Q. So, Corporal Hurteau, is there -- and I believe
I asked you this. But at the start -- during your direct
you said: at the start of every investigation coming up
with an operational plan, we put everything on paper to
provide for the safety of the undercover officer, the
citizens, and the suspect.

13

That's your testimony; correct?

14

A. Yes. We typically do that, yes.

15

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20

Q. Okay. And then on cross I asked you if there
was an operational plan in this one, and you said yes.
And then I asked you if, in fact, operational plans
ever -- were destroyed and you said, of course not. And
so, in fact, there's an operational plan somewhere on this
case; correct?

21

22

23

24

25

A. Well, what I said was I'm not sure if I have a
copy of the operational plan on paper; that we do do an
operational plan. So it may be a verbal operational plan.
I don't have a copy of the operational plan in our case
file or in front of me right now or anything like that.

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1 Q. So your testimony on direct that -- and so your
2 testimony on direct that the start of every investigation
3 by coming up with an operational plan putting everything
4 on paper is just not true?

5 A. We typically do. But I said I wasn't sure if we
6 have -- if we have an operational plan on paper for this
7 particular incident, but we do an operational briefing
8 prior to any operation --

9 Q. All right.

10 A. -- so everybody is given out their assignments
11 of what they're responsible for so we're not just going
12 out there on a free-for-all.

13 Q. Okay. And, now, on my other issue. On the
14 other issue I asked if you created any of your own
15 reports and you said, no; correct? You didn't --

16 A. Correct. I just -- I just overlooked the
17 reports of the --

18 Q. Okay. I'm going to get to it for you, I
19 promise.

20 A. -- of the officers.

21 Q. You didn't create any of your own reports;
22 correct?

23 A. No, I did not.

24 Q. And this happened September, 2007; correct?

25 A. That's correct.

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1 Q. And by your own testimony, you've done thousands
2 of drug buys; correct?

3 A. That's correct.

4 Q. In preparing for this trial, you accessed the
5 report of Investigator Springmeyer and Investigator
6 Seabrook; correct?

7 A. That's correct.

8 Q. You reviewed those in preparing for your
9 testimony; correct?

10 A. Correct. As well as my own recollections
11 of the --

12 Q. I'm not doubting that. But you did read their
13 reports in preparation; correct?

14 A. Correct.

15 Q. And you brought those reports to the stand with
16 you; correct?

17 A. Correct. But I did not look -- I wasn't looking
18 at these reports while I was testifying. The only thing
19 that I referenced was my background -- was this sheet of
20 paper here.

21 Q. Right. That's sort of your curriculum vitae or
22 your resume of the things you've done?

23 A. Correct.

24 Q. All right. But it is your testimony that in
25 preparation for this case, to refresh your memory you

1 read -- you looked over the report of Investigator
2 Springmeyer and Investigator Seabrook; correct?

3 A. Correct; as I would with any -- with any report.
4 It's part of my job.

5 MR. SMILEY: That's all I have, Your Honor. And
6 I would still make my motion.

7 THE COURT: And your motion is to Rule 612 to
8 strike the testimony of this officer; is that correct,
9 Mr. Smiley?

10 MR. SMILEY: Yes, ma'am. Yes, ma'am.

11 And, also, I have a Brady motion and its prodigy
12 about the operational plan that was -- may or may not
13 have been put to paper but certainly wasn't summarized,
14 certainly wasn't provided to the State, and hasn't been
15 provided to myself and I don't know if it contains any
16 exculpatory information or not. But certainly we would
17 be entitled to it.

18 THE COURT: With respect to -- anything further,
19 Ms. Linder?

20 MS. LINDER: Nothing further, Your Honor.

21 THE COURT: As to the use of the reports by
22 Corporal Hurteau while he was testifying, based upon
23 the Court's observation and listing to the testimony,
24 Corporal Hurteau indicated that the reports that he
25 brought, he referred to them only to the -- as he

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1 referred to it, his background, as Mr. Smiley referred
2 to them as his curriculum vitae. The officer testified
3 that he wasn't using them to testify from, that he did
4 use -- look at them prior to coming to court.

5 Mr. Smiley, I will allow you an opportunity to
6 review the documents that Corporal Hurteau has on the
7 stand with him. We can mark them as defense exhibits,
8 Court's exhibits. Let's mark them as Court's exhibits.
9 You may have an opportunity to inspect them, and I will
10 allow you to cross-examine Corporal Hurteau as to the
11 information contained therein.

12 MR. SMILEY: Yes, ma'am.

13 THE COURT: As to the operational plan, the
14 testimony given by Corporal Hurteau was that typically
15 it is written down. He did not have one written -- he
16 could not locate a written one in this case.

17 There has been no showing so far that it was in
18 the possession of the State; that the State suppressed
19 it, or that Corporal Hurteau or the prosecutor's office
20 has failed to disclose it to you.

21 Based upon the testimony given by Corporal
22 Hurteau, I am denying your motion to strike this
23 officer's testimony with respect to the Brady issue.

24 MR. SMILEY: Yes, ma'am. Just please note my
25 objection for the record.

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1 THE COURT: I will note your objection to both
2 issues, Mr. Smiley.

3 Corporal Hurteau, may I have --

4 Bailiff, if you will get those documents. And
5 how many pages are there?

6 There are six pages. I'm going to paperclip
7 them together. This will be Court's 1.

8 [Whereupon, Court's Exhibit Number 1, Corporal
9 Hurteau's documents, is marked by the court reporter]

10 THE COURT: And if you will allow -- give
11 Court's 1 to Mr. Smiley.

12 Mr. Smiley, we will take a ten-minute recess.
13 If you need any additional time, please let the Court
14 know.

15 MR. SMILEY: That will be plenty, I'm sure.

16 THE COURT: Corporal Hurteau, the rule of
17 sequestration has been invoked. What that means is you
18 may not discuss your testimony with either the State or
19 Mr. Smiley or with any of the witnesses that are
20 outside of the courtroom at this time. Do you
21 understand that rule, sir?

22 THE WITNESS: Yes, ma'am, I do.

23 THE COURT: You may step down. We're going to
24 take -- we're going to take our afternoon break to
25 allow Mr. Smiley to review the document that you had on

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1 the stand, and we will resume in ten minutes.

2 Anything before we take our afternoon break,
3 Ms. Linder?

4 MS. LINDER: Nothing, Your Honor.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: No, ma'am.

7 THE COURT: And, again, if you need additional
8 time, please --

9 MR. SMILEY: Thank you very much.

10 THE COURT: -- let the Court know. Thank you.

11 [Whereupon, a recess is taken from 2:37 p.m. to
12 2:51 p.m.]

13 THE COURT: Thank you. Be seated.

14 Mr. Smiley, are you ready?

15 MR. SMILEY: I'm prepared, Your Honor.

16 THE COURT: Okay. Corporal Hurteau, please come
17 and have a seat back on the witness stand.

18 [Whereupon, the witness re-takes the witness
19 stand]

20 THE COURT: Please bring in the jury.

21 [Whereupon, the jury enters the courtroom at
22 2:53 p.m.]

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. Please be seated.

25 MR. SMILEY: Mr. Smiley, your witness.

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CONTINUED CROSS-EXAMINATION

BY MR. SMILEY:

Q. Okay. Corporal Hurteau, you were in charge of this buy; correct?

A. Yes. I was in charge of overseeing the operation, along with a couple of the FBI agents.

Q. Okay. While we're talking about the operation, this operation you said had an operational plan; correct?

A. We would go over our assignments. There would be an operational plan. Whether we had it in writing I'm not sure, but I know that people would be given out assignments prior to the operation so they would know what their responsibilities are during the operation.

Q. Now, you testified on direct that operational plans are put to paper, didn't you?

A. They usually are put to paper, yes.

Q. Okay. Well, your -- that wasn't my question. In your direct testimony, you testified operational plans were put to paper?

A. I believe I said that they are typically put to paper, but --

Q. Okay. And that's done for the safety of your undercover officer, that's done for the safety of the citizens, and possible suspects; correct?

A. That's correct.

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1 Q. Since this is an operation that's targeting an
2 area -- correct?

3 A. Correct.

4 Q. And I think you described it as an open-air
5 market; correct?

6 A. That's correct.

7 Q. A place where there were multiple people selling
8 drugs; correct?

9 A. That's correct.

10 Q. To your knowledge -- wait before I get to that.
11 This operation was in connection with the
12 Federal Bureau of Investigation; correct? They were
13 involved?

14 A. That's correct. It was a joint investigation
15 with the Federal Bureau of Investigation.

16 Q. And of course the Federal Bureau of
17 Investigation, they like to put lots of things to paper,
18 too, don't they?

19 A. I believe that they do. I don't know what
20 they --

21 Q. You've dealt with them --

22 A. Right.

23 Q. -- several times.

24 And you've been in narcotics for over eight
25 years, haven't you?

1 A. There could be a possibility that they would
2 have a copy of the operational plan.

3 Q. Okay. So if we ask the FBI, they may or may not
4 have one on this case?

5 A. That's correct.

6 MR. SMILEY: And I would like to make another
7 motion, but I can wait until the end of my testimony.

8 THE COURT: All right.

9 MR. SMILEY: But I need to note it at this time,
10 Your Honor, if that's all right.

11 Q. [Mr. Smiley] All right. Now, you make -- I
12 think your testimony was your -- you've made, over your
13 career, in excess of thousands of drug buys -- or, excuse
14 me -- arrests.

15 A. A thousand drug cases --

16 Q. Cases.

17 A. -- to include arrests, buys, search warrants.

18 Q. Okay. And that's over an eight-year period;
19 correct?

20 A. That's correct.

21 Q. Okay. That's in excess of over a hundred cases
22 a year?

23 A. That's correct. I've done as many as fourteen
24 buys in one day.

25 Q. Okay. That's a lot.

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1 A. That is a lot.

2 Q. All right. And during these last two years from
3 September the 19th, 2007, until May of this year, you made
4 a lot of -- a lot of drug cases; correct?

5 A. Yeah. We made many drug cases. That's what my
6 job is.

7 Q. Okay. And you have an independent recollection
8 of each one? of each of those thousand?

9 A. I remember most of them. Of course, I would
10 have to refresh my memory by looking at copies of incident
11 reports and whatnot.

12 Q. Okay. However, in refreshing your memory, you
13 don't have any notes on this case?

14 A. I didn't need to take notes on this case because
15 the notes were taken by the officers. By policy and
16 procedure with our department, the officers write the
17 incident reports --

18 MR. SMILEY: Your Honor --

19 A. -- and then I approve them.

20 MR. SMILEY: -- could I ask him to answer the
21 question that I'm asking? I asked him a very simple
22 question.

23 Q. [Mr. Smiley] Did you prepare any notes in this
24 case?

25 A. I did not personally prepare any notes.

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1 few moments. Thank you.

2 I do remind you that the rule has been invoked.

3 Thank you.

4 THE WITNESS: Thank you.

5 [Whereupon, the witness exits the witness stand]

6 THE COURT: Ladies and gentlemen of the jury,
7 there is a matter of law that I must take up outside of
8 your presence. Please do not begin your deliberations.
9 Do not discuss this case amongst yourselves.

10 Please rise for the jury.

11 [Whereupon, the jury exits the courtroom at
12 3:12 p.m.]

13 THE COURT: Thank you. Be seated.

14 - - - - -

15 RENEWED MOTION TO EXCLUDE BRADY MATERIAL

16 MR. SMILEY: And I'm sorry I needed to do it
17 outside the presence. I wish we could have done it
18 otherwise, but the motion that I need to make is I need
19 to renew my motion for excluded Brady material.

20 On further examination Corporal Hurteau, he has
21 reason to believe -- he doesn't know for a fact --
22 reason to believe that the FBI may, in fact, have a
23 copy of this operational plan. If there is an
24 operational plan in existence, as he has testified is
25 germane to about every case and it's typically put to

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1 paper and when a -- that the Federal Bureau of
2 Investigation was included in this case is -- under
3 United States vs. Gigglio and its prodigy, it is the
4 State has an obligation to go to each of their police
5 bodies and to inquire about the existence of any
6 evidence and then determine if it's exculpatory. That
7 has not been done in this case. The destruction -- if
8 there, in fact, was an operational plan, the
9 destruction of an operational plan certainly should
10 have been disclosed to the defense prior to trial.

11 So I renew -- now, I understand your ruling,
12 Your Honor, but I renew my motion again now that I've
13 got -- there is a piece of evidence that could be,
14 very probably would be, exculpatory in nature. But
15 this operational plan wasn't focused on Lloyd Wright.
16 This operational plan was focused, according to his
17 testimony, on an open-air drug market which multiple
18 buys were being made. And I think it's important that
19 I get any information that could be exculpatory to my
20 client's cause.

21 THE COURT: Ms. Linder?

22 MS. LINDER: Thank you, Your Honor.

23 When Mr. Smiley was asking Corporal Hurteau
24 questions on the stand, his position is that he was
25 asking questions about, you know, the FBI wants paper,

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1 the FBI wants a paper trial, wouldn't you think the FBI
2 would have these written down, and Corporal Hurteau
3 repeated time and time again that typically things are
4 written down. Does that mean on paper? Does that mean
5 on a dry-erase board? Does that mean on a chalkboard?
6 Does that mean it's just verbal?

7 I wasn't there. I'm not aware that -- he
8 definitely said that if there were items, that they are
9 not typically destructed [phonetic]. But that, again,
10 kind of is pulling out and making it more and more
11 vague, along with that --

12 This case, and in every case, the State does ask
13 affirmatively to police and officers for every bit of
14 evidence; and that is, everything -- and we received
15 everything after that inquiry, and everything was
16 immediately turned over to Mr. Smiley and defense
17 counsel.

18 THE COURT: Anything further, Mr. Smiley?

19 MR. SMILEY: If there's not one and wasn't one
20 and I'm mistaken, Your Honor, I would certainly want
21 to do more inquiry to find out if there is one. I
22 guess I'll do a Freedom of Information Act request
23 on the FBI. I would ask the FBI was there any direct
24 request from the FBI for any information pertaining to
25 this case.

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1 MS. LINDER: Your Honor, we would absolutely
2 defer to the Court's ruling; however, at these -- in my
3 experience in looking at these, it appears as though
4 this was a City Police Department item with FBI
5 involvement.

6 [Whereupon, Ms. Linder and Mr. Byrd confer]

7 MS. LINDER: Your Honor, I would just reiterate
8 everything I said before: that we did make an
9 affirmative attempt to receive all items and give
10 all items to the defense, as was done quite a while
11 ago with everything.

12 MR. SMILEY: If -- then I --

13 THE COURT: Hold on one second.

14 Ms. Linder, is Special Agent Klimas [phonetic]
15 going to be testifying?

16 MS. LINDER: No. I'm not going to call him. I
17 do not intend to at this time.

18 THE COURT: And what was the nature of your
19 conversations with Special Agent Klimas [phonetic], and
20 did you review his file and the contents thereof?

21 MS. LINDER: I did not review a file of Special
22 Agent Klimas [phonetic]. Part and parcel of why I'm
23 not intending to call him is that his limited
24 interaction in this is fronting it, giving the money to
25 a police officer, and being one of the stationary

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1 individuals.

2 All reports from any and every agency that I've
3 seen, that I have heard of, everything has been turned
4 over to the defense.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: If it's the State's position that
7 an affirmative request was made of the FBI for anything
8 to do with this case, and they say they don't have
9 anything when, in fact, they do, it would be an FBI
10 problem and we'll deal with it that way.

11 So, I mean, I'm not accusing Ms. Linder, of
12 course, of doing anything wrong except that I'm trying
13 to make sure all the discovery -- some discovery that I
14 just found out may or may not exist from the stand.

15 And you know, Judge, I wasn't there at this
16 operational meeting. It was through the testimony of
17 the officer that says, we do an operational plan and we
18 put it on paper. And then he says, we don't destroy
19 it. And I'm just trying to find it. And then he said
20 maybe he didn't have one in this case.

21 Then he tells me this is a joint task force with
22 the FBI, a joint operation. So I asked if they would
23 have it, and he says they would possibly. And I'm just
24 trying to make sure we get it, if it's there.

25 And then it has to be determined if it's

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1 discoverable. It may not be, but an attempt has to be
2 made to ensure my guy -- my client's constitutional
3 rights to have a safe and -- excuse me -- a fair and
4 impartial trial.

5 THE COURT: Based upon the testimony presented
6 by officer -- or, excuse me -- Corporal Hurteau, there
7 has been no showing that the destruction -- that there
8 was a report written in written form. I believe that
9 his exact statement was, typically we reduce them to
10 writing, however, he cannot state with certainty that
11 it was done in this case; it was not part of the
12 material that he reviewed in preparing for his
13 testimony here today, nor part of the packet which has
14 now become Court's Exhibit Number 1.

15 Further, it has not been shown that the State,
16 by and through Ms. Linder, ever had possession of a
17 written plan, operational plan, nor has it been shown
18 that Ms. Linder has intentionally suppressed the
19 discovery of that operational plan.

20 And, further, Corporal Hurteau testified to what
21 the operational plan was, be it -- even though he did
22 state typically it is planned on paper.

23 Based upon all of those factors, I deny -- I'm
24 not sure, Mr. Smiley, even what you were asking the
25 Court to do at this point.

1 MR. SMILEY: Okay. Then I'll make it clear: to
2 strike any testimony that would have come as a result
3 of an operational plan; in other words, all of Corporal
4 Hurteau. If, in the alternative, there in fact was a
5 plan that's exculpatory, to declare a mistrial in this
6 case.

7 And so I understand you are denying my motion.
8 I just ask that you note it for the record.

9 THE COURT: I am denying your motion to strike
10 any reference to the operational plan by Corporal
11 Hurteau.

12 I am denying your request for a mistrial based
13 upon the failure to produce a written operational plan.

14 And I am denying any request by the defense to
15 request that the FBI produce the operational plan at
16 this time.

17 MR. SMILEY: Thank you, Your Honor.

18 THE COURT: Anything further, Mr. Smiley?

19 MR. SMILEY: No, ma'am.

20 THE COURT: Anything further from the State?

21 MS. LINDER: Your Honor, for scheduling
22 purposes, we may need to approach. My next witness is
23 the undercover officer. That's going to get into the
24 video. I have a feeling she'll be up there for
25 probably, between the two of us, a solid hour or so.

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1 And, also if Corporal Hurteau is any indication of just
2 how meticulous Mr. Smiley is going to be in doing his
3 representation, there is a chance it may go beyond an
4 hour.

5 So for scheduling matters we just wanted to
6 bring it to the Court's attention, if we needed to go
7 over that, along with finalizing with Mr. Smiley the
8 areas during the transaction to mute it based upon your
9 ruling.

10 THE COURT: Ms. Linder, I thought we were all
11 clear on what needs to be muted, what did not need to
12 be muted. Do we need to go over this again?

13 MS. LINDER: Your Honor, I believe that we are
14 clear. Out of an abundance of caution, I was hoping to
15 go over it with Mr. Smiley so there's no risk of
16 hurried approach and a quick -- just out of an absolute
17 abundance of caution --

18 THE COURT: So what are you asking, Ms. Linder?
19 That you and Mr. Smiley go over the video one more
20 time?

21 MS. LINDER: Yes, Your Honor.

22 THE COURT: And how long is this video, Ms.
23 Linder?

24 MS. LINDER: The video, the -- the important
25 part is about twenty to thirty seconds, is what we're

1 going to be going over.

2 THE COURT: All right. Take your thirty
3 seconds.

4 [Whereupon, Ms. Linder, Mr. Byrd, and Mr. Smiley
5 confer]

6 MS. LINDER: Your Honor, as always, more
7 technical difficulty. This laptop is having the same
8 issue. My physical computer from my office is sitting
9 down the hallway.

10 MR. SMILEY: -- hook it up. If you've got to --

11 MS. LINDER: It is -- the issue is that either
12 we -- the picture pauses and if we skip it ahead six,
13 the audio continues. If we skip it ahead six seconds,
14 then it meets back up, for some reason, on laptops.
15 On other computers that it's been playing on, it's
16 no problem at all. So in order to play it in its
17 entirety --

18 THE COURT: So what are you requesting, Ms.
19 Linder?

20 MS. LINDER: I'm requesting for Ms. Buccas
21 [phonetic] to literally go in the hallway and get my
22 computer from my office and sit it right here --

23 MR. SMILEY: She needs ten minutes, Your Honor.

24 MS. LINDER: -- to have a resolution of the
25 video issues.

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1 MR. SMILEY: And I would tend to agree because
2 they're going to have to have it right or else we've
3 got a mess. Just to make sure it works exactly right.

4 [Off the record momentarily]

5 THE COURT: All right. So if I give you ten
6 minutes, you'll be able to get the desktop hooked up,
7 the video running, and we can proceed accordingly?

8 MS. LINDER: Yes, Your Honor.

9 THE COURT: All right. You have ten minutes.
10 We'll be at ease for ten minutes.

11 [Whereupon, a recess is taken from 3:25 p.m. to
12 3:46 p.m.]

13 THE COURT: Be seated.

14 Are we prepared to bring in the jury, Ms.
15 Linder?

16 MS. LINDER: Yes, we are.

17 THE COURT: Mr. Smiley, anything before we bring
18 in the jury?

19 MR. SMILEY: No, ma'am.

20 THE COURT: And you have viewed the video and
21 we -- there are no objections?

22 MR. SMILEY: The test run had a couple of
23 problems. If the second test run is how it appears
24 before the jury, we're okay. If it's not, we've got a
25 problem. So it's going to be all up to Mr. Byrd. I

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1 don't want to put any pressure on him, but --

2 THE COURT: All right. Mr. Byrd, there is --

3 MR. SMILEY: If you click at the wrong --

4 THE COURT: Mr. Byrd, you are aware of where we
5 need to stop?

6 MR. BYRD: Where we'll need to mute.

7 THE COURT: Mute, yes.

8 MR. BYRD: And where it stops, Your Honor.

9 THE COURT: Yes.

10 And with the exception of your objection to the
11 Court's ruling --

12 MR. SMILEY: Yes, ma'am.

13 THE COURT: -- there is no further objections to
14 this video; is that correct?

15 MR. SMILEY: Once they establish their
16 foundation --

17 THE COURT: Yes, sir. All right.

18 MS. LINDER: Your Honor, if I may just approach
19 to return this to the court reporter? the exhibit?

20 THE COURT: Yes, ma'am.

21 [Whereupon, Ms. Linder proffers CD to the court
22 reporter]

23 THE COURT: Anything before we bring in the
24 jury?

25 MS. LINDER: [No response]

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1 MR. SMILEY: [No response]

2 [Whereupon, Mr. Smiley and Ms. Linder confer].

3 THE COURT: All right. Anything before we bring
4 in the jury?

5 MS. LINDER: Nothing from the State, Your Honor.

6 MR. SMILEY: Good to go.

7 THE COURT: Please bring in the jury. Please
8 rise for the jury.

9 [Whereupon, the jury enters the courtroom at
10 3:49 p.m.]

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Ms. Linder, call your next witness.

14 MS. LINDER: Thank you, Your Honor. The State
15 calls Investigator Karen Springmeyer.

16 [Whereupon, Investigator Springmeyer enters the
17 courtroom]

18 [Whereupon, Investigator Springmeyer is duly
19 sworn by the clerk of court as follows: do you swear
20 or affirm your testimony will be the truth, the whole
21 truth, and nothing but the truth so help you God]

22 THE WITNESS: I do.

23 THE CLERK OF COURT: Be seated.

24 [Whereupon, Investigator Springmeyer takes the
25 witness stand]

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1 THE CLERK OF COURT: If you will state your full
2 name and spell your last name for the record.

3 THE WITNESS: Yes. Karen Springmeyer. It's
4 K-A-R-E-N S-P-R-I-N-G-M-E-Y-E-R.

5 THE COURT: Ms. Linder, your witness.

6 MS. LINDER: Thank you, Your Honor.

7 Good afternoon, Investigator Springmeyer.

8 - - - - -

9 KAREN SPRINGMEYER,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. LINDER:

14 Q. What is your occupation?

15 A. I'm a police officer.

16 Q. And who is your employer?

17 A. The City of Charleston Police Department.

18 Q. What are your duties with the City of Charleston
19 Police Department?

20 A. Currently I am an investigator in the special
21 investigations unit.

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

23 A. I've been with the City Police Department for
24 approximately four and a half years, and I've been in the
25 narcotics -- or the special investigations unit, as a

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1 narcotics investigator, for approximately three years.

2 Q. And will you please tell the jury about any
3 special training or skills you have with regards to law
4 enforcement.

5 A. Yes, ma'am. Through my three years in the
6 investigations unit, I've had approximately 300-plus hours
7 of undercover training. Included in that, I've been to a
8 DEA basic investigator school for narcotics; I've attended
9 an undercover techniques school at the South Carolina
10 Criminal Justice Academy; I've attended a narcotic
11 techniques and survival class taught by the International
12 Association of Undercover Officers; and I've also attended
13 a female undercover narcotics class, given by the same
14 association. In addition, I've attended an interview and
15 interrogation class and I've also completed approximately
16 75-plus undercover transactions for the Charleston Police
17 Department, for other local jurisdictions, as well as for
18 the FBI, the DEA, and the ATF.

19 Q. Investigator Springmeyer, did you have the
20 occasion to be working back on September 19th, 2007?

21 A. Yes, ma'am.

22 Q. Did you have the occasion to become involved in
23 the investigation of this case, The State vs. Lloyd
24 Wright?

25 A. Yes, ma'am.

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1 Q. And how were you brought into this case? And if
2 you can please explain to the jury what happened.

3 A. Yes, ma'am. Our -- the CPD narcotics unit had
4 received complaints from citizens and also from patrol
5 officers in the area of Romney Street and Athens Court, in
6 reference to street drug dealing, on subjects hanging out
7 on street corners selling drugs pretty much at all
8 different times of the day. Our unit, as well as the FBI
9 field office located in Charleston, got together and
10 started a joint investigation on the area.

11 What we decided to use was an undercover officer
12 to drive into the areas and attempt to purchase cocaine
13 base or heroin and different types of narcotics.

14 Q. And who was that undercover officer?

15 A. I was the undercover officer.

16 So on this date, members of the CPD narcotics
17 unit, including myself and also several special agents
18 with the FBI, met at a meeting location where we conducted
19 a briefing. During a briefing, what will normally happen
20 is we all get together and go over what the operation is
21 going to consist of. Being I was an undercover officer, I
22 was going to be the undercover role. And we will have
23 surveillance units, which would be my fellow officers in
24 the surrounding areas, used for safety and also to listen
25 to what's going on during the operation.

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1 After the initial briefing, one of the special
2 agents with the FBI gave me \$50 of prerecorded currency
3 from their FBI fund, meaning that they recorded the serial
4 numbers of the currency that he gave me.

5 After that, for safety reasons and for evidence
6 purposes, we normally -- myself, I will always wear a wire
7 and also a video and audio recorder. I do that myself.
8 At this point I was going to be driving a car so I set up
9 an audio-video recorder inside of the vehicle, and I also
10 had an audio wire on my person which transmitted to
11 receivers that my other officers would have that were on
12 surveillance.

13 Q. You mentioned that this was recorded on audio-
14 video.

15 A. Yes, ma'am.

16 Q. Did you attach that device?

17 A. Yes. What it is is a digital recorder, and it
18 has a port for an audio feed and a video feed. I would
19 set it up myself. I turned on the audio and video, set it
20 up in a stationary location inside the vehicle, and it was
21 in my control at all times. I was the only one in the
22 vehicle during the buy.

23 Q. Were there any problems with that device's
24 operation the day in question back to September 19, 2007?

25 A. No, ma'am.

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1 Q. And you started talking about this device that's
2 in the car that records. If you could talk a little bit
3 more about that: how and when it's put in, who puts it
4 in, how any items are retrieved if anything is recorded.

5 A. Yes, ma'am. Like I said, it's a small digital
6 device. It's probably about the size of a cell phone. We
7 keep that -- we have, obviously, various equipment that we
8 keep in our office which is a secure police facility away
9 from the headquarters downtown. In that facility we keep
10 all of our audio-video recording equipment.

11 When we are scheduled to do a transaction and
12 have a briefing and such, I, being an undercover officer
13 that's going to be using it, will take it out from our
14 facility, set it up in the vehicle, and set it up on
15 myself. And we'll do the transaction.

16 After that's completed, I'll go back to our
17 office and I'll take the equipment out of -- in this case
18 it was in the vehicle -- take it out of the vehicle and
19 off my person. What it has is one of the USB ports that
20 you hook up a printer, or that sort of thing, to your
21 computer. It hooks up the same way. So you just get a
22 USB cord and you hook up the device to the computer.

23 At that point there's a program that we have
24 installed in our computers in our office called U.S. Bird.
25 And what it does is it takes that digital evidence and it

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1 transfers it to the computer so we can see it, because
2 inside of the box it's -- all it is is pretty much like a
3 storage. It collects it and stores it. To be able to see
4 it, you have to transfer it to a computer.

5 Q. And once it was transferred to the computer for
6 viewing, did you ever transfer it to anything else aside
7 from that computer?

8 A. Yes. What we'll do is we'll transfer it onto a
9 main hard drive where it stays on the computer hard drive.
10 From that we can make CDs, a disk, that you can watch in a
11 computer so that you can view it on not only the main
12 computer which it's stored on, but other computers.

13 And then the device itself can only store so
14 much. So after each transaction that we do, after it's
15 transferred onto the hard drive of the -- hard drive of
16 the computer, we have to erase the device itself because
17 it only has a storage time of somewhere around three hours
18 of actual memory, I guess you would call it.

19 MS. LINDER: Your Honor, may I approach?

20 THE COURT: You may.

21 Q. [Ms. Linder] Investigator Springmeyer, at this
22 time I show you what has been marked as State's Exhibit 3.
23 Do you recognize this?

24 A. Yes, ma'am.

25 Q. Have you reviewed this?

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1 A. Yes, I have.

2 Q. Does that fairly and accurately represent the
3 what occurred that day?

4 A. Yes, it does.

5 MS. LINDER: Your Honor, beg the Court's
6 indulgence.

7 THE COURT: Yes, ma'am.

8 [Whereupon, Ms. Linder and Mr. Byrd confer]

9 MS. LINDER: Your Honor, at this time I would
10 ask that the disk be published for the jury.

11 THE COURT: Any objection?

12 MR. SMILEY: Objection to the foundation. It's
13 not -- objection to the foundation.

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Sustained, Mr. Smiley.

18 Q. [Ms. Linder] Investigator Springmeyer, just in
19 case I missed this before, or if I did hear incorrectly,
20 can you explain again about the recording of this U.S.
21 Bird, or -- I don't know what you were calling it. But if
22 you can explain that again to the jury.

23 A. Sure. Once we complete a transaction, we'll
24 take the actual device back to our office. Our office is
25 located away from the -- the central police department

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1 headquarters in an undisclosed location at a secure
2 facility here. You take the device, you plug in a USB
3 cable from the device to the computer. It'll pop up as a
4 new device found.

5 And then if you open up the U.S. Bird program,
6 which comes along with the device -- it's a program that
7 comes with it. When you open it up, it'll say the device
8 is attached. And it said -- it'll ask if you want to
9 transfer. And it'll show you on the screen the size of
10 the video you want to transfer, how long it may be. It
11 may be seventeen minutes. Do you want to transfer. You
12 hit yes, and it transfers it from the device to the
13 computer hard drive.

14 You then have to -- like I say, it can only hold
15 so much. And the equipment is thousands of dollars for
16 one of these devices. So we have to erase the device that
17 we take out in the field, and we now have the information
18 on the hard drive of the computer which is located in our
19 secure office.

20 Q. And what happens with that information that's on
21 the hard drive in your computer in your secure office?
22 What happens? Is that ever transferred to another medium?

23 A. Yes. We can transfer it so that we can view it
24 outside of the office if necessary, such as in a trial.
25 So what we can do is take the -- you can take the video

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1 that's on the U.S. Bird system and transfer it to I
2 believe it's a Windows media file, a wave file, and what
3 you can do is you can transfer that onto -- into one of
4 those type of files, which goes onto a disk. And then we
5 just burn the CD and you can view it on another computer.

6 Q. And that disk that I previously approached and
7 showed you as State's Exhibit I believe it's 3 --

8 A. Yes, ma'am.

9 Q. -- do you recognize that disk?

10 A. Yes, ma'am.

11 Q. And have you viewed -- have you reviewed that
12 disk?

13 A. Yes, I have.

14 Q. Does that disk fairly and accurately represent
15 what was transferred from the device to the Bird --

16 A. The hard drive.

17 Q. -- the hard drive --

18 A. Yeah. Uh-huh.

19 Q. -- is that a fair and accurate representation?

20 A. Yes.

21 MS. LINDER: Your Honor, at this time I would
22 ask that it be published to the jury.

23 MR. SMILEY: I still have the same objection,
24 Your Honor.

25 THE COURT: Counsel approach.

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1 [Whereupon, an off-the-record bench conference
2 is held]

3 THE COURT: Mr. Smiley, I am overruling your
4 objection.

5 Ms. Linder, you may publish State's Exhibit
6 Number 3 to the jury.

7 Mr. Smiley, I note your objection and will --

8 MR. SMILEY: Thank you.

9 THE COURT: -- allow you to fully articulate on
10 the record your reasons that we discussed at the
11 sidebar.

12 Ms. Linder?

13 MS. LINDER: Thank you, Your Honor. May I
14 approach the witness --

15 THE COURT: You may.

16 MS. LINDER: -- to retrieve the item?

17 [Whereupon, the witness proffers CD to Ms.
18 Linder]

19 MS. LINDER: At this time we'll be publishing
20 the video in its entirety.

21 THE COURT: One moment, Mr. Byrd. Counsel
22 approach.

23 [Whereupon, an off-the-record bench conference
24 is held]

25 MR. SMILEY: And I guess this would be an

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1 appropriate time to note my objection to the one part
2 that you overruled.

3 THE COURT: All right.

4 MR. SMILEY: And just for the record.

5 THE COURT: State's Exhibit Number 3 will be
6 published to the jury with the limited exception of the
7 Court's ruling.

8 I note your objection for the record, Mr.
9 Smiley.

10 You may play.

11 [Whereupon, State's Exhibit Number 3, CD of drug
12 buy, is played for the jury]

13 Q. [Ms. Linder] Investigator Springmeyer, now
14 having published the video, is that a fair and accurate
15 representation of what happened that day?

16 A. Yes, ma'am.

17 Q. Have there been any alterations to -- aside from
18 the --

19 A. Transfer?

20 Q. -- sound, are there any alterations made to
21 this?

22 A. No, ma'am.

23 MS. LINDER: Your Honor, we're going to ask that
24 this be admitted into evidence.

25 THE COURT: Mr. Smiley?

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1 MR. SMILEY: Again, to my same exceptions, for
2 the record.

3 THE COURT: State's Exhibit Number 3 into
4 evidence over your objection, Mr. Smiley.

5 [Whereupon, State's Exhibit Number 3, CD of drug
6 buy, is admitted into evidence by the Court]

7 Q. [Ms. Linder] Investigator Springmeyer, the jury
8 just watched this. Can you explain and kind of take
9 through -- take the jury through what happened?

10 A. Yes, ma'am. Just the video or --

11 Q. Yes, please.

12 A. Okay. This is when I first turned on the device
13 inside the car. The long period of time that I was just
14 sitting there is when the rest of my unit was setting up
15 surveillance outside of the area. So I'm waiting for them
16 to get set up. And I'm still waiting at the location, so
17 that was that log gap of time there when I'm just sitting.

18 Q. And is this device on your person, or on the
19 vehicle?

20 A. No, ma'am. This video-recording device is -- I
21 placed it in the vehicle like at the center console kind
22 of area next to my right leg. See, I can actually adjust
23 it if I need to -- when I put it there. So I adjusted it
24 there. And now this is where I wait for a little while
25 until everyone gets set up. I did receive a phone call

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1 from one of the supervisors saying that they were ready to
2 go, and that's when I started driving towards the area.

3 Q. We're just going to skip ahead here. And if you
4 could tell us what's happening --

5 A. Uh-huh.

6 Q. -- around this time.

7 A. I had already left the location where we met,
8 and I was driving towards the Romney Street Athens Court
9 area. And you can tell I've been driving and getting off
10 cross streets because, like I said, I am wearing a wire
11 that the rest of my unit can hear. That way they know
12 exactly where I am at all times. That's at this point.

13 Q. And where did this incident occur?

14 A. This occurred on Athens Court, which is -- it's
15 a one-way horseshoe kind of street. You can make a left
16 off of Romney Street, and it's just a big horseshoe that
17 comes right out very close to the entrance.

18 Q. And is that in Charleston County?

19 A. Yes, ma'am.

20 Right here I was driving underneath the I-26
21 overpass that goes downtown. I'm on Romney Street right
22 now, and I'm making a left turn down Athens Court.

23 At this point, as I did mention, I saw several
24 subjects on the corner. I --

25 Q. Would you mind speaking more into the

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1 microphone? I apologize --

2 A. I'm sorry.

3 I saw several subjects on the corner, so I
4 slowed down the vehicle. One of them advised me to pull
5 down the street, and that's what I did. I pulled farther
6 down onto Athens Court and pulled over onto the right side
7 of the road and I waited.

8 At this point the defendant walked up. As I
9 said, I had received \$50 of currency from the FBI. And I
10 told the defendant how much cocaine base I wanted.

11 Q. And what is this?

12 A. That was the hand-to-hand transaction. The
13 defendant put his hand in the car; inside was the
14 cocaine base.

15 After I took that from him, I handed him the
16 currency. You can see it was folded up.

17 After I received it, the defendant walked away,
18 and I drove out of the horseshoe and I went back to the
19 meeting location where the rest of the unit met with me.

20 Q. And what happened with those drugs?

21 A. After I got back to the location and I turned
22 off the video, I met with the rest of the unit and I
23 turned over the cocaine base to the case agent, which was
24 Investigator Seabrook.

25 MS. LINDER: Your Honor, may I approach the

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1 court reporter with this at this time?

2 THE COURT: Yes, ma'am.

3 Q. [Ms. Linder] Investigator Springmeyer, I'm
4 showing you what's been marked as State's Exhibit 1 for
5 identification purposes.

6 A. Uh-huh.

7 Q. Do you recognize this exhibit?

8 MR. SMILEY: Your Honor, can we turn the video
9 off since we're doing something else? Just -- yeah,
10 that's --

11 THE COURT: Ms. Linder, are you done with the
12 video?

13 MS. LINDER: Yes, sir.

14 MR. SMILEY: You can turn --

15 THE COURT: Thank you.

16 MR. SMILEY: -- it back on. There's just two
17 things going at once. That's all.

18 THE COURT: Thank you, Mr. Smiley.

19 MR. SMILEY: All right. Thank you, Your Honor.

20 Q. [Ms. Linder] Do you recognize this exhibit?

21 A. Yes, ma'am.

22 Q. How are you able to do so?

23 A. It's a view of the city of Charleston downtown
24 area. I've obviously worked for the City Department for
25 four and a half years and when I was on patrol, this area

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1 was part of my patrol area.

2 Q. And is this a fair and accurate representation?

3 A. Yes, ma'am.

4 Q. Have there been any deletions or alterations
5 made to this map?

6 A. No, ma'am.

7 MS. LINDER: Your Honor, at this time I would
8 like to offer into evidence State's Exhibit 1.

9 MR. SMILEY: I don't have any objection.

10 THE COURT: State's 1 into evidence without
11 objection.

12 [Whereupon, State's Exhibit Number 1, map, is
13 admitted into evidence by the Court]

14 MS. LINDER: At this time, may Investigator
15 Springmeyer step down to be able to better point out
16 items on the map to the jury?

17 THE COURT: Yes, ma'am.

18 MS. LINDER: You can step down.

19 [Whereupon, the witness complies]

20 THE COURT: Investigator Springmeyer, you are
21 very soft-spoken so you are now going to be away from a
22 microphone. Please speak loudly so that every member
23 of the jury can hear you.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you.

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1 MS. LINDER: That will be your prop.

2 Q. [Ms. Linder] Will you please explain to the
3 jury what this exhibit depicts? State's Exhibit 1.

4 A. This is an area of downtown, an overheard view.
5 You see right in the corner, that's I-26 right over here.

6 Q. And can you -- can you see on this map where the
7 transaction occurred back on September 17th --

8 A. Yes, ma'am.

9 Q. -- excuse me -- September 19th, 2007?

10 A. Yes, ma'am. As I stated, and you heard on the
11 video, I said I was driving underneath the overpass which
12 was for I-26. I came down -- I came down Romney Street.
13 And this right here, this horseshoe, that is Athens Court.
14 I made a left onto Athens Court. I slowed down
15 approximately here. And when I pulled over and waited, I
16 was about right here where the map is labeled Athens
17 Court.

18 Q. And on this map do you see New Israel School
19 located at 88 Simmons Street?

20 A. Yes, ma'am.

21 Q. Would you please point it out to the jury?

22 A. That is this right here. And this is Simmons
23 Street running right here. And then in here is the
24 school.

25 Q. And do you know the approximate distance between

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1 the incident location and the New Israel School?

2 A. Yes. It's approximately 400 yards from the
3 incident location to the school right here.

4 Q. And how are you aware of that distance or
5 approximate distance?

6 A. As I said, it's my jurisdiction. I was on
7 patrol there in that area for a year and a half, and I've
8 done many drives from this street to the area of the buy
9 on Athens Court, so I'm very familiar with the location
10 itself and how long and how far it takes to get from point
11 A to point B.

12 Q. And for those who cannot do conversions, is the
13 incident location less than one half of a mile away from
14 New Israel Simmons [sic]? I believe you said, in yards,
15 those numbers.

16 A. Yes. It is less than one half mile.

17 MS. LINDER: Thank you. Please be seated on the
18 stand.

19 [Whereupon, the witness complies]

20 Q. [Ms. Linder] Just to review, Investigator
21 Springmeyer, in what capacity were you working back on
22 September 19th, 2007?

23 A. I was in an undercover capacity for the
24 Charleston Police Department.

25 Q. And what was your -- what was the incident that

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1 day? why we are here today?

2 A. It was a distribution of cocaine base from the
3 defendant to myself.

4 Q. And where was the location of that?

5 A. It occurred on Athens Court.

6 Q. And is that Charleston County?

7 A. Yes, ma'am.

8 Q. What exactly -- was something exchanged in the
9 transaction? If so, what?

10 A. Yes. The defendant handed me cocaine base, and
11 in exchange I gave him the \$50 of prerecorded currency
12 given to me by the special agent with the FBI.

13 Q. And what happened with the -- with the cocaine
14 base, previously mentioned, after the transaction? What
15 did you do with it?

16 A. I turned it over to the case agent, Investigator
17 Seabrook, who is also one of the investigators in our
18 narcotics unit.

19 Q. Do you see the individual that sold drugs to you
20 in the courtroom today?

21 A. Yes, ma'am.

22 Q. Can you please identify him.

23 A. Yes, ma'am. He's sitting at the defendant's
24 table with the blue shirt with the white stripes, and dark
25 pants.

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1 MS. LINDER: Your Honor, please let the record
2 reflect Investigator Springmeyer has entered the
3 courtroom identification of the defendant, Lloyd
4 Wright.

5 THE COURT: Mr. Smiley?

6 MR. SMILEY: There's only one defendant here, so
7 I would guess she was pointing to him. Yes, ma'am.

8 THE COURT: The record will reflect.

9 MS. LINDER: Thank you, Your Honor. Beg the
10 Court's indulgence.

11 THE COURT: Yes, ma'am.

12 [Whereupon, Ms. Linder and Mr. Byrd confer]

13 MS. LINDER: I have no further questions at this
14 time. If you would answer any questions the defense
15 may have.

16 THE COURT: Mr. Smiley.

17 CROSS-EXAMINATION

18 BY MR. SMILEY:

19 Q. All right. So it's your testimony that the
20 crack cocaine that you recovered was given to Damian
21 Seabrook; is that correct?

22 A. Yes, ma'am. Or yes, sir. I'm sorry.

23 Q. Okay. And then that at that point you -- it was
24 out of your custody and you were done with it until it
25 came back here in court today; correct?

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1 A. Yes, sir.

2 Q. Okay. Are you familiar with a chain-of-evidence
3 card?

4 A. Yes, sir.

5 Q. Would you have been the one that filled this
6 chain-of-evidence card out?

7 A. No, sir.

8 Q. That was someone else?

9 A. Yes, sir.

10 Q. Let's talk about operational plans. This is a
11 joint operation with the FBI; correct?

12 A. Yes, sir.

13 Q. And how many people from the FBI were involved?

14 A. I believe there was two.

15 Q. Do you remember their names?

16 A. It was Special Agent Klimas [phonetic] and
17 Griffin.

18 Q. And then it was your special investigations
19 narcotics unit that was involved; correct?

20 A. Yes, sir.

21 Q. And that would have consisted of your -- I guess
22 your supervisor, Corporal Hurteau --

23 A. Yes, sir.

24 Q. -- Hurteau?

25 A. Yes, sir.

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1 Q. Excuse me. I mispronounce his name all the
2 time.

3 Your immediate superior or case agent in this
4 case, Damian Seabrook?

5 A. Yes. He was present, as well.

6 Q. Corporal Constanza?

7 A. Yes, sir.

8 Q. Any other -- Investigator Grill?

9 A. Yes, sir.

10 Q. Yourself?

11 A. Uh-huh.

12 Q. Anybody else?

13 A. [No response]

14 Q. I think I got them all.

15 A. I would have to check the report to make sure,
16 but perhaps Investigator Gilmore, as well.

17 Q. Okay. But that's the group, and y'all met
18 together to create an operational plan; correct?

19 A. Yes, sir.

20 Q. And y'all do that in just about every case;
21 right?

22 A. We conduct -- I'm sorry. Can --

23 Q. An operational plan. Put down what you're going
24 to do.

25 A. Yes.

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1 Q. And was that put down in writing?

2 A. I did not make the operational plan, so --

3 Q. That would have been --

4 A. -- I didn't put it down in writing.

5 Q. -- with Corporal Hurteau; right?

6 A. Well, normally it's a case agent. I was an
7 undercover officer, and normally the undercover officer
8 cannot run an operation.

9 Q. Absolutely.

10 But you would have been present when the
11 operational plan was presented; correct?

12 A. Yes.

13 Q. All right. It's your experience in narcotics
14 that these operational plans are in writing?

15 A. Yes.

16 Q. Now, you had prerecorded buy money in this case;
17 right?

18 A. Yes, sir.

19 Q. Now, when I ask you about prerecorded buy money,
20 that means the actual bills are photocopied or serial
21 numbers are recorded before they are given to you; right?

22 A. Well, in my experience when we use our own money
23 from the CPD narcotics fund, that is what we do. Now,
24 what the FBI does previously, I'm not sure if they
25 photocopy it, or if they write down serial numbers, or how

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1 they record it.

2 Q. Okay. My point being --

3 A. Okay.

4 Q. -- is when you say prerecorded, that those bills
5 are identified --

6 A. Yeah.

7 Q. -- correct?

8 A. Yes.

9 Q. And the purpose of that is that once the money
10 and drugs are exchanged is you can try to recover the
11 bills; right?

12 A. If that's the type of operation we're doing,
13 yes.

14 Q. Right.

15 A. Uh-huh. Yes.

16 Q. But I mean, otherwise it's sort of senseless;
17 right? The point of prerecorded buy money is to be able
18 to track the money; right?

19 A. Yes.

20 Q. Okay. Now, in this case you were in a rental
21 car; is that right?

22 A. Yes, sir.

23 Q. And this -- I'm not real educated with IT, but
24 let me see if I can do a little better. The device, the
25 recording device, is placed in the car. It's basically

1 like a hard drive. It's putting information in; right?

2 A. Yes.

3 Q. Okay.

4 A. Okay.

5 Q. And it has a camera that goes into it, and your
6 audio goes into it; right?

7 A. Yes, sir.

8 Q. And you actually have another camera in the back
9 seat; right?

10 A. Yes, sir.

11 Q. And that's going into it, also?

12 A. As a separate --

13 Q. It has its own hard drive in the back --

14 A. Right. Yeah.

15 Q. -- okay?

16 A. There's only one video that can be plugged into
17 each --

18 Q. Okay. Okay.

19 A. -- each --

20 Q. So we've got video in the back seat, we've got
21 video in the front seat, and we've got some audio being
22 recorded on -- well, I've got a good example. When you
23 use your camera --

24 A. Uh-huh.

25 Q. -- you've got a memory card in it; right?

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1 A. Yes.

2 Q. In a digital camera. And that memory card is
3 what you're -- in some form or fashion is what you're
4 recording to; right?

5 A. Yes.

6 Q. Okay. So you're gathering this information and
7 you then take it back to your secret headquarters, your
8 secure secret headquarters; right?

9 A. Yes, sir.

10 Q. Okay. And then you take that card or, in this
11 case, the device, and hook it up to the computer; right?

12 A. Yes, sir.

13 Q. And transfer it off of that device into the
14 computer?

15 A. Yes, sir.

16 Q. And then the original medium that was recorded
17 on, that being the card or --

18 A. Well --

19 Q. -- whatever it is --

20 A. Yeah. There's no card with --

21 Q. I understand. But --

22 A. -- this one.

23 Q. But for lack of a better word, the hard drive;
24 correct?

25 A. Right.

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1 Q. It's erased; right?

2 A. Yes.

3 Q. So the original stuff is gone, has been
4 transferred into the computer?

5 A. It's been transferred to a way to see it,
6 because there's no way to view it.

7 Q. Right. I've got you. But you've moved it;
8 right?

9 A. Yes.

10 Q. Okay. And it's in this computer there at the
11 secret hideout. Now, that computer, is it tied into
12 modems or anything like that?

13 A. Do we have internet? Yes.

14 Q. To that computer. Yeah.

15 A. Yes.

16 Q. So it can be accessed; right?

17 A. Through internet, yes.

18 Q. Okay. Now, that data when it's on there, is it
19 in a -- this is my question, and I'm not very good at
20 asking it so we'll try it.

21 This computer that you've got this information
22 in, is it a standalone or is it part of a network?

23 A. I believe our -- the CPD computers are networks.
24 Like I said --

25 Q. Okay.

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1 A. -- I'm not a --

2 Q. So --

3 A. -- IT expert.

4 Q. Me either.

5 A. Okay.

6 Q. But we're trying to get to a point here.

7 So this information is on a computer that can be
8 accessed through a network; correct?

9 A. Yes.

10 Q. All right. And you view it through a program
11 called U.S. Bird; right?

12 A. Yes. That's the program that comes with the
13 device.

14 Q. Right. It's a package deal. It's what moves it
15 over for you; right?

16 A. Right. Correct.

17 Q. Is it also the device that allows you to
18 manipulate it to see it?

19 A. To play it? Yes, you can play it on it.

20 Q. All right. When that information is put on your
21 hard drive, okay, it's not in a read-only fashion because
22 you copy it somewhere else; right?

23 A. I'm not sure what read-only --

24 Q. Well, I probably should get a software expert,
25 but I'm going to get to it here.

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1 That information that's sitting on your hard
2 drive, all right, it's just data sitting there; right? We
3 agree?

4 A. Yes.

5 Q. You moved it over there.

6 A. Okay.

7 Q. It is capable of manipulation? It can be
8 changed; correct?

9 A. I don't know how to, no.

10 Q. Well, I didn't say you knew --

11 A. Oh. Okay.

12 Q. -- how to.

13 But it's not in a fashion that can't be changed?
14 Do you know?

15 A. That I don't know.

16 Q. Okay. That's fair enough.

17 Did you note the size of the file that went into
18 the computer?

19 A. It tells you automatically. Like I explained
20 before, it'll say do you want to transfer this, and it'll
21 show a minute and it --

22 Q. It doesn't --

23 A. I don't think it shows like a gigabyte or
24 that --

25 Q. It doesn't --

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1 A. -- but it shows like a time --

2 Q. All right.

3 A. -- that you transfer over.

4 Q. How many people have access to that computer?

5 A. Well, the investigators in narcotics.

6 Q. Okay. To get from another part of the network,
7 do you have to have a password?

8 A. To get -- each person in the whole police
9 department has a password to get onto a computer, so --

10 Q. Okay. Can -- can all of the officers at CPD
11 access U.S. Bird?

12 A. Not that I'm aware of, no.

13 Q. Do you have to have a special password to get
14 into the information you're storing on a network computer?

15 A. I'm not sure I understand the question.

16 Q. Okay. And you may not be able to answer it, but
17 I'm going to ask, is you've got this information on a
18 computer and that computer is on a network; correct?

19 A. Yes.

20 Q. What's your -- let me just ask it this way. And
21 I don't ever ask "what" questions, but I'll try it.

22 What's your security on that computer?

23 A. That I do not know.

24 Q. You don't have a clue. You just --

25 A. No. I know we have our IT department that does

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1 such things with the fire walls and --

2 Q. Okay. Well, let me --

3 A. -- computer security.

4 Q. -- ask this question.

5 Who is protecting that data when it's sitting on
6 your computer? Do you have any clue?

7 A. Who's protecting like our computer physically?

8 Q. That -- no.

9 A. Okay.

10 Q. That file when it's on your computer that's on a
11 network, who is protecting it so it's not changed,
12 manipulated?

13 A. I guess you could say the City of Charleston's
14 IT department. They're the ones that set up the security.

15 Q. Are you aware of any log of people that accessed
16 that information? the information that was collected in
17 this case?

18 A. Let me make sure -- if you could -- make sure I
19 understand you correctly. You're asking if I know who
20 signed on to CPD computers or --

21 Q. No. I asked it more specifically. The data
22 file that you collected in this case --

23 A. Yes, sir.

24 Q. -- do you have any clue who accessed that file
25 other than yourself?

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1 A. No, sir.

2 Q. Okay. But it's possible someone else could have
3 looked at that file? You don't know?

4 A. I do not --

5 MS. LINDER: Your Honor, objection.
6 Speculation.

7 THE COURT: Overruled.

8 Q. [Mr. Smiley] All right. So you're truly not
9 the custodian of that information on the computer? You
10 just put it in and then you printed it out; right?

11 A. [No response]

12 Q. You aren't protecting it; correct?

13 A. I myself am not, no.

14 Q. Okay.

15 A. Huh-uh.

16 Q. Okay. Very good.

17 Did you note the length of the program, the data
18 file that was put in?

19 A. Did I note it like in a note somewhere else?

20 Q. Anywhere. Did you -- or remember it?

21 A. No. I didn't -- I didn't write it down, the
22 exact time.

23 Q. When you made your copies, did you note the
24 length of the file then?

25 A. After it transferred onto the file we just

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1 viewed today?

2 Q. Yeah.

3 A. I didn't make any kind of physical note, no, but
4 I --

5 Q. Do you know if it's the same size or not?

6 A. Yes. I remember that is when I turned it on and
7 turned it off.

8 Q. Okay. But as far as how many gigabytes,
9 kilobytes, whatever the word is --

10 A. No.

11 Q. -- you don't know if they're the same or not?

12 A. I don't know anything about gigabytes because,
13 as I said --

14 Q. All right. Got you.

15 All right. Now, you were driving in your car --
16 or your rental car, excuse me, and you were going to make
17 a purchase; correct? That's the whole reason you're doing
18 it; right?

19 A. Yes.

20 Q. Okay. And you approach the corner of Romney and
21 Athens Court, and there's nobody on the corner there;
22 right?

23 A. Correct.

24 Q. And I think it's been described as the reason
25 y'all were doing that joint operation is it's sort of an

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1 open-air market there? Lots of people selling?

2 A. Yes, sir.

3 Q. Okay. And this was about 2:30 in the afternoon,
4 somewhere around there?

5 A. Approximately, yes.

6 Q. Okay. So you turned onto Athens Court and saw a
7 group of individuals down the road?

8 A. Yes, sir.

9 Q. And I believe you said it was six to eight, you
10 can't be more specific than that.

11 A. I believe I said five to six.

12 Q. Five to six.

13 A. Yes, sir.

14 Q. All right. Five or six people. All black
15 males?

16 A. That, I do not remember.

17 Q. All right. As you pulled up, they told you to
18 pull forward; correct?

19 A. Yes, sir.

20 Q. All right. And when you pulled forward, a black
21 male approached you; right?

22 A. Yes, sir.

23 Q. And you did a hand-to-hand contact transaction
24 with that black male; right?

25 A. Yes, sir.

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1 Q. And then you left the area; correct?

2 A. Correct.

3 Q. Nobody was arrested as a result of your
4 operation that day?

5 A. Not that day, no, sir.

6 Q. All right. In fact, Mr. Wright wasn't arrested
7 until October the 9th. Does that sound about right to
8 you?

9 A. It does, yes, sir.

10 Q. So no prerecorded buy money is recovered?

11 A. No, not at -- not during his arrest.

12 Q. Well, you don't have the prerecorded buy money,
13 so it wasn't recovered; right?

14 A. Correct.

15 Q. Okay. When you were attempting to identify that
16 individual that made the purchase for you, were you ever
17 shown a photo lineup?

18 A. No, sir.

19 Q. Was the drugs that you were handed contained in
20 anything?

21 A. As -- or meaning?

22 Q. Plastic bags --

23 A. Oh.

24 Q. -- tinfoil, anything like that?

25 A. No.

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1 Q. No?

2 Did the individual that came to your car, did he
3 touch the car?

4 A. That, I don't recall.

5 Q. Well, you certainly didn't dust for any
6 fingerprints.

7 A. On the vehicle, no.

8 Q. No.

9 Did you dust anything for fingerprints? Did you
10 dust the cocaine?

11 A. No.

12 Q. Now, you were -- the only officer that had a
13 view of the black male that conducted the transaction was
14 you; correct?

15 A. Realtime, yes.

16 Q. Well, the other ones had it on the video; right?

17 A. Yes.

18 Q. There was nobody else watching it, correct, from
19 their own --

20 A. Not that I know --

21 Q. -- point of view?

22 A. -- know of. Like I said, my officers were
23 surrounding the area. I don't know if any of them -- I
24 don't think they all had a live view.

25 Q. All right. Now, you've been on narcotics for

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1 three years; is that right?

2 A. Yes, approximately.

3 Q. So you started in May of 2007, right, give or
4 take?

5 A. No. I started June of 2006.

6 Q. June of 2006?

7 A. Yes. So it'll be three years in June.

8 Q. I got you.

9 All right. And you told us about at the time of
10 this incident how many undercover buys had you been
11 involved in? Because you said about seventy-five over the
12 three years, but you had been on for about nine months.
13 And so less than twenty-five?

14 A. I would say between twenty-five and forty,
15 estimated.

16 Q. And those courses that you told us that you had
17 taken --

18 A. Yes, sir.

19 Q. -- were all those prior to this, or some of them
20 were since --

21 A. No. Two --

22 Q. -- the buy?

23 A. Two of the courses were after the --

24 Q. Okay.

25 A. The undercover association, those two courses

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1 were after. The others were before.

2 Q. That recording from the back seat didn't really
3 show anything, though, did it?

4 A. That, I don't recall. I would have to review
5 the video again.

6 Q. Right. But you copied it off? You transferred
7 it on your computer and copied it off --

8 A. The same way.

9 Q. -- the same way? All right.

10 A. Yes.

11 Q. And you said New Israel School was 400 yards
12 away?

13 A. Approximately. I believe there's a legend on
14 the map, as well, to where the --

15 Q. Yeah. Yeah.

16 That's 140 feet, so about 400 yards, 1200 feet,
17 right, give or take? Close by?

18 A. Yes.

19 Q. Close by. All right.

20 MR. SMILEY: All right. Beg the Court's
21 indulgence.

22 THE COURT: Yes, sir.

23 [Whereupon, Mr. Smiley and Ms. Hensley confer]

24 MR. SMILEY: Just a couple more.

25 Q. [Mr. Smiley] You did a report as a result of

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1 your buy; correct?

2 A. Yes, sir.

3 Q. When you do a report, what you're trying to do
4 is to put down your recollection while it's still fresh in
5 your memory and put as much information as possible in it?

6 A. Yes, sir.

7 Q. Okay. And is it standard procedure in your part
8 of the -- once you produce a report, that a superior
9 officer will look at that report and sign off on it?

10 A. Yes, sir.

11 Q. And in this case Corporal Constanza is the
12 officer that signed off on your report?

13 A. Yes, sir.

14 MR. SMILEY: Nothing further.

15 THE COURT: Ms. Linder.

16 MS. LINDER: Briefly, Your Honor. May it please
17 the Court.

18 REDIRECT EXAMINATION

19 BY MS. LINDER:

20 Q. Investigator Springmeyer, does the video we saw
21 fairly and accurately represent -- or an account of what
22 occurred back on September 19th, 2007?

23 A. Yes, ma'am, it does.

24 Q. And we've heard about different types of
25 operations. Was this a buy-bust operation or a buy-walk

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1 operation?

2 A. This was what we call a buy-walk operation.

3 Q. And can you please explain to the jury kind of
4 the pros and cons and explain why one was utilized instead
5 of another in this case.

6 A. Yes, ma'am. A buy-bust is --

7 MR. SMILEY: Your Honor, I'm going to object.
8 Beyond the scope.

9 MS. LINDER: Your Honor, if we may approach?

10 THE COURT: You may.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 THE COURT: Sustained.

14 Q. [Ms. Linder] Why was the prerecorded money
15 not -- why was it not recovered?

16 A. Because we arrested the individual approximately
17 three weeks later. I believe we did the buy on September
18 19, 2007, and I believe the affidavit for the arrest
19 warrant was issued on October 9th. So the chances of him
20 having the money we gave him on September 19th on his
21 person during the time of arrest more than three weeks
22 later is probably very slim.

23 Q. And did a transaction occur on September 19th,
24 2007, when you were in an undercover capacity?

25 A. Yes.

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1 Q. What was exchanged in this transaction?

2 A. The \$50 of U.S. currency provided to me by the
3 FBI in exchange for I believe the lab report said .31
4 grams of cocaine base.

5 Q. And what's the name of the person that sold you
6 the drugs?

7 A. Lloyd Wright.

8 Q. Where is this -- where did this occur?

9 A. On Athens Court.

10 Q. And is that within half a mile proximity of the
11 New Israel School?

12 A. Yes, ma'am, it is.

13 MS. LINDER: I've nothing further, Your Honor.

14 THE COURT: Mr. Smiley?

15 MR. SMILEY: Nothing further.

16 THE COURT: May this witness step down and be
17 excused? Any objection, Ms. Linder?

18 MS. LINDER: No, Your Honor.

19 THE COURT: Any objection, Mr. Smiley?

20 MR. SMILEY: I don't have any reason to keep her
21 here.

22 THE COURT: Investigator Springmeyer, you may
23 step down. You may remain in the courtroom if you
24 wish, but you also may be excused.

25 THE WITNESS: Thank you.

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1 THE COURT: Thank you.

2 [Whereupon, the witness is excused and exits the
3 witness stand]

4 THE COURT: Call your next witness.

5 MR. BYRD: Your Honor, the State calls Damian
6 Seabrook.

7 [Whereupon, Mr. Seabrook enters the courtroom]

8 [Whereupon, Mr. Seabrook is duly sworn by the
9 clerk of court as follows: do you swear or affirm that
10 your testimony will be the truth, the whole truth, and
11 nothing but the truth so help you God]

12 THE WITNESS: Yes, sir.

13 THE CLERK OF COURT: Thank you. Be seated.

14 [Whereupon, Mr. Seabrook takes the witness
15 stand]

16 THE CLERK OF COURT: If you will state your full
17 name and then spell your last name for the record.

18 THE WITNESS: Damien L. Seabrook, Damien Latrell
19 Seabrook, and that's S-E-A-B-R-O-O-K.

20 THE COURT: Mr. Byrd.

21 MR. BYRD: Thank you, Your Honor.

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1 DAMIEN L. SEABROOK,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. BYRD:

6 Q. Mr. Seabrook, what is your profession?

7 A. I'm a City of Charleston police officer.

8 Q. All right. And what are your duties with the
9 City of Charleston Police Department?

10 A. I am now currently the housing -- one of the
11 housing liaison officers.

12 Q. How long have you been employed there?

13 A. Eight and a half years.

14 Q. Any special training or skills?

15 A. Yes. I went to the DEA narcotics school; I went
16 to the surveillance operation school; a certified hostage
17 negotiator; certified bicycle, to ride the bicycle, excuse
18 me; joint operations with the FBI, DEA, ATF; did numerous
19 search warrants; did numerous narcotics investigations.

20 Q. Let me ask you: in your capacity as an officer
21 with the City of Charleston Police Department, did you
22 have an occasion to become involved with the investigation
23 of this case on September 19th, 2007?

24 A. Yes, sir.

25 Q. Would you tell us: how were you brought into

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1 that case then? What was your involvement?

2 A. I was in narcotics back in September 19th, 2007,
3 and we were initiating an undercover operation and I was
4 one of the case agents for that operation, which we were
5 utilizing an undercover officer to make narcotics
6 purchases in the downtown Charleston area.

7 Q. All right. And that particular -- and in that
8 capacity making those purchases, did it relate to the
9 investigation of this particular case and what was your
10 specific involvement with that?

11 A. Yes. My specific involvement is I prepared some
12 of the paperwork since being that I was the case agent,
13 and also receiving the properly of evidence from
14 Investigator Springmeyer who was the undercover officer.

15 MR. BYRD: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 Q. [Mr. Byrd] Investigator Seabrook, I placed in
19 front of you what's been marked as State's Exhibit 2
20 for identification purposes.

21 A. Yes, sir.

22 Q. Do you recognize that?

23 A. Yes, sir.

24 Q. Could you tell us what that is, please.

25 A. That is crack cocaine, cocaine which is cocaine

1 base.

2 Q. Let me ask you: the evidence tag --

3 A. Uh-huh.

4 Q. -- that you see on that, are you familiar with
5 that?

6 A. Yes.

7 Q. Okay. And what makes you familiar with that?

8 A. Because it's my handwriting.

9 Q. Your handwriting?

10 A. Yes, sir.

11 Q. All right. And when you look at it, I notice
12 that -- did you fill the entire thing out describing the
13 evidence?

14 A. Yes, except for the signature. Yes.

15 Q. Except for the signature?

16 A. Yes. Uh-huh.

17 Q. All right. And why didn't you sign it?

18 A. It was merely an oversight.

19 Q. But the evidence yourself you received from
20 Investigator Springmeyer?

21 A. Yes, sir. Uh-huh.

22 Q. Let me ask you this. When you received it from
23 Investigator Springmeyer, what did you do with it?

24 A. I then properly placed it in the plastic bag,
25 filled out the evidence sheet, and secured it inside our

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1 facility inside the City of Charleston Police Department,
2 which is a secure facility in a secured room.

3 Q. All right. You mentioned a secure lockbox. Was
4 there any way to get back into that once it's been dropped
5 off there?

6 A. No, sir.

7 Q. Not at all?

8 A. No, sir.

9 Q. All right. And you mentioned the not having
10 your signature on it. What was the reason for that again?

11 A. Say that again, sir.

12 Q. The signature not being on it. You filled out
13 the entire tag --

14 A. Yes, sir.

15 Q. -- you mentioned, but your signature wasn't on
16 it. What was the reason for that again?

17 A. Just merely an oversight. I prepared several
18 documents during that time. Just it was merely an
19 oversight.

20 MR. BYRD: Okay. No further questions, Your
21 Honor.

22 If you would please answer any questions of the
23 defense counsel.

24 THE COURT: Mr. Smiley.

25 - - -

CROSS-EXAMINATION

BY MR. SMILEY:

Q. You've been an officer for eight and a half years; right?

A. Yes, sir.

Q. And you were a case agent in this case; right?

A. Yes, sir.

Q. All right. And you understand what a chain of custody is; right?

A. Yes, sir.

Q. And how important a chain of custody is --

A. Yes, sir.

Q. -- to ensure that the evidence from the time it's collected until the time it hits the court is in the same condition and it hasn't been manipulated in any form or fashion; correct?

A. Yes, sir.

Q. That we have rules of criminal procedure regarding that. Rule 5 it says that we need to record who's had -- who had the evidence. And that's why we sign a chain of custody; correct?

A. Yes, sir.

Q. Now, in this case it's your testimony that Investigator Springmeyer turned over the crack cocaine to you; correct?

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1 A. Yes, sir.

2 Q. All right. And that you, in fact, filed out
3 this Form 48; correct?

4 A. Yes, sir.

5 Q. And that's your writing on the front there?

6 A. Yes, sir.

7 Q. And on it it tells us, evidence, description,
8 three pieces of off-white-in-color rocklike substance;
9 right? Actually, I'll let you look at it. That would be
10 easier.

11 [Whereupon, Mr. Smiley proffers exhibit to the
12 witness]

13 Q. [Mr. Smiley] And then it talks about where it's
14 recovered, Athens Court; right?

15 A. Yes, sir.

16 Q. And the date it's recovered, the time; right?

17 A. Yes, sir.

18 Q. It talks about the suspect; right?

19 A. Yes, sir.

20 Q. And where it says suspect, what does it say?

21 A. Unknown.

22 Q. Unknown.

23 All right. And then on the back of the tag is
24 where each person that has handled the evidence signs it;
25 correct?

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1 A. Uh-huh. Yes, sir.

2 Q. And the first person says -- that's on there,
3 and it says obtained by, is Investigator Springmeyer;
4 right?

5 A. Yes, sir.

6 Q. Then the next person on there is who it went to,
7 has the initials of J.L., or Jose LaLema, I believe it is,
8 the evidence tech or collection custodian? Does it say
9 J.L. next?

10 A. Yes.

11 Q. All right. So you're just telling this jury
12 that with your experience and knowing how important it is
13 in the collection of evidence, that you just forgot to
14 sign it; right?

15 A. No, I didn't say I forgot to sign it, just was
16 an oversight.

17 Q. Well, you didn't sign it.

18 A. Yes.

19 Q. And you have the evidence --

20 A. Yes.

21 Q. -- right?

22 A. Uh-huh.

23 Q. So do you know if anybody else forgot to sign it
24 or who else might have had it?

25 A. No. Only it was turned over -- once I obtained

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1 it from Investigator Springmeyer, secured it in a locked
2 facility.

3 Q. Right. But we don't know if anybody else forgot
4 to sign it like you did, do we?

5 A. No.

6 Q. And that's why we have rules about who has
7 evidence, and they sign the back. But you didn't sign it?

8 A. [Indicates affirmatively]

9 Q. Now, what time did you get the evidence from
10 Investigator Springmeyer?

11 A. What time?

12 Q. Yeah.

13 A. Approximately on the evidence tag should be
14 about 1510, which is 3:10, if I'm not mistaken.

15 Q. Okay. And then where did you put this evidence
16 at that point in time?

17 A. When I obtained it?

18 Q. Yeah.

19 A. In a plastic bag.

20 Q. All right. Is this the plastic bag you put it
21 in?

22 A. This is one like this, yes.

23 Q. You don't know if it's the one, though?

24 A. No.

25 Q. You don't?

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1 A. I put it in a plastic bag but --

2 Q. You put it in a plastic bag --

3 A. Yes.

4 Q. -- did you identify that plastic bag with your
5 initials or your signature of any sort?

6 A. No, sir.

7 Q. All right.

8 A. Uh-huh.

9 Q. So it was a bag like that? That's --

10 A. Uh-huh.

11 Q. -- what you put it in?

12 A. Yes, sir.

13 Q. All right.

14 A. Uh-huh.

15 Q. And then that was about three o'clock in the
16 afternoon. Then what did you do with the evidence?

17 A. I have to take it to City of Charleston Police
18 Department, 180 Lockwood.

19 Q. All right. And once you took it there, what did
20 you do with it?

21 A. Once I took it there I took and filled out the
22 property sheet, then that set of paperworks, and then took
23 it to the evidence locker.

24 Q. What property sheet would that be?

25 A. That would be a property sheet that we fill out.

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1 MR. SMILEY: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Smiley reviews documents]

4 MR. SMILEY: Beg the Court's indulgence. Just
5 looking to try to find the property sheet in my
6 discovery.

7 THE COURT: Yes, sir.

8 [Whereupon, Mr. Smiley reviews documents]

9 MR. SMILEY: May we approach?

10 THE COURT: You may.

11 [Whereupon, an off-the-record bench conference
12 is held]

13 Q. [Mr. Smiley] All right. Tell me about this
14 evidence sheet. Excuse me. Excuse me. It's a property
15 sheet. What does it look like?

16 A. It's the form that we fill out --

17 Q. When you take the evidence to turn it in --

18 A. Yes.

19 Q. -- right?

20 A. And you --

21 Q. You fill out a form --

22 A. You fill out a form --

23 Q. -- because you turn it into evidence; right?

24 A. Yes, sir.

25 Q. And on that you describe the evidence, I would

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1 assume?

2 A. Yes.

3 Q. Okay. And who you are dropping it off?

4 A. Yes, sir.

5 Q. And what time it was dropped off?

6 A. Yes, sir.

7 Q. Okay. And then you take that evidence sheet and
8 do what with it?

9 A. You place it in -- there's this bin you place it
10 in, and then that's collected by the evidence officers.

11 Q. So it accompanies the property you're turning
12 in?

13 A. Yes. Uh-huh.

14 Q. All right. And you're sure you filled one out
15 in --

16 A. Yes.

17 Q. -- this case?

18 A. Uh-huh.

19 Q. Okay. Because you're not on this chain of
20 custody; right? You're not on that?

21 A. Right.

22 Q. Okay. So the only way we would know besides
23 your testimony would be to have that evidence sheet which
24 would show that you were in the chain, because it would
25 show you turned it in; right?

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1 A. Right.

2 Q. Okay. All right. So you filled out an evidence
3 sheet and turned it in at what time?

4 A. Probably the approximate --

5 Q. Not probably.

6 A. -- time --

7 Q. Not probably. What time did --

8 A. I don't know what time.

9 Q. -- you turn it in?

10 You don't know, because you don't have the
11 evidence sheet?

12 A. Right.

13 Q. We know that an officer evidence technician,
14 whatever his title is, J.L. initials, picked it up the
15 next day at 4:15, 0451 -- 15?

16 A. Uh-huh. Yes, sir.

17 Q. All right. But until you testified here today,
18 we had no clue that you were on that custody thing,
19 because you didn't sign it, and the only way we would know
20 that is with the evidence sheet; right?

21 A. Yes, sir.

22 Q. All right. Now, let me ask you some other
23 questions. We'll move on from that.

24 Where are you located during this event at
25 Athens Court and Romney?

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1 overview of what your duties are.

2 A. Once evidence is turned in, we collect it from a
3 temporary holding facility which is downstairs, lockers,
4 or if the officers bring it to us, and then I fill out
5 some submittal forms if it has to go somewhere for
6 testing. If not, we sign the chain of custody, secure it,
7 and place it on a shelf until further time it's needed for
8 court.

9 Q. All right. And do you generally assign the
10 evidence a case number or some sort of identifying mark?

11 A. We actually put bar codes on it for tracking.
12 The case number comes when the officers turn it in that
13 date. Put the case number there with their evidence on
14 there.

15 Q. Okay. And is that all part of how you log it
16 in?

17 A. Yes, sir.

18 Q. And where do you log it in?

19 A. We have a system, an evidence-tracker system,
20 where we put the -- basically a case number, defendant's
21 name, officer's name, a description of the evidence, and a
22 location where it's placed, and it's all kept at our
23 police headquarters in a room either on a shelf or in a
24 box until court.

25 Q. All right. Let me ask you this. When you

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1 receive evidence from CPD officers --

2 A. Yes, sir.

3 Q. -- what forms do you fill out?

4 A. A property sheet and an evidence tag.

5 Q. Now, specifically on September 20th, 2007, was
6 evidence related to this case received by your department?

7 A. Yes, sir.

8 MR. BYRD: Okay. May I approach, Your Honor?

9 THE COURT: You may.

10 Q. [Mr. Byrd] I've just given you what's been
11 marked as State's Exhibit 2 for identification
12 purposes. Could you tell us what that is, please.

13 A. According to the evidence tag, three pieces of
14 off-white rocklike substance.

15 Q. All right. And can you tell by looking at that
16 evidence tag who received that in your office?

17 A. Sargent LaLema.

18 Q. How can you tell?

19 A. From his initials.

20 Q. Do you recognize his initials?

21 A. I do.

22 Q. How do you recognize them?

23 A. Dealing with other evidence he's handled the six
24 years I've been in the evidence room.

25 Q. And once you received that evidence -- or,

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1 excuse me -- once Officer LaLema received that evidence,
2 where was it put?

3 MR. SMILEY: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. SMILEY: It's going to require speculation.
6 He didn't receive the evidence.

7 THE COURT: Counsel approach.

8 [Whereupon, an off-the-record bench conference
9 is held]

10 THE COURT: One moment, Mr. Byrd.

11 Ladies and gentlemen of the jury, there is a
12 matter of law that I must take up outside of your
13 presence. Please do not begin your deliberations.
14 Please do not discuss this case amongst yourselves.

15 We are going to go until approximately 6:30, so
16 this would be an appropriate time for us to take our
17 late-afternoon break.

18 Please rise for the jury.

19 [Whereupon, the jury exits the courtroom at
20 5:23 p.m.]

21 THE COURT: Please be seated.

22 Mr. Smiley, would you like to articulate your
23 argument on the record as the basis of my previous
24 ruling?

25 MR. SMILEY: In regards to which ruling? This

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1 one?

2 THE COURT: If you would like to articulate --

3 MR. SMILEY: I'll start here.

4 THE COURT: All right.

5 MR. SMILEY: Your Honor, I object on the basis
6 that it requires speculation on behalf of this witness
7 to talk about another person dealing with the evidence.
8 To say it's general routine or practice that he would
9 take it from here to there is irrelevant, because we
10 need to know what happened with this evidence.

11 If I should back up to the previous witness, I
12 have to -- if you want me to.

13 THE COURT: I want this witness only, Mr.
14 Smiley.

15 MR. SMILEY: Okay.

16 THE COURT: And I sustained your objection.
17 Officer Hinton --

18 THE WITNESS: Yes, ma'am?

19 THE COURT: -- I'm going to allow you to step
20 off this witness stand --

21 THE WITNESS: Okay.

22 THE COURT: -- tuck in your shirt, and get rid
23 of the gum.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you. You may do that now.

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1 [Whereupon, the witness exits the witness stand]

2 THE COURT: We're in recess for ten minutes.

3 Thank you.

4 [Whereupon, a recess is taken from 5:24 p.m. to
5 5:33 p.m.]

6 THE COURT: Be seated.

7 Ms. Linder, after Mr. Hinton you have two more
8 witnesses; is that correct?

9 MS. LINDER: Yes, Your Honor.

10 THE COURT: Do you anticipate we'll be able to
11 finish by 6:30?

12 MS. LINDER: Yes, Your Honor.

13 THE COURT: Where is Mr. Smiley?

14 [Off the record momentarily]

15 THE COURT: Anything before we bring in the
16 jury, Ms. Linder?

17 MR. SMILEY: Yes, Your Honor.

18 THE COURT: Ms. Linder?

19 MS. LINDER: Nothing from the State, Your Honor.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: Your Honor, I hate to be a
22 fussbudget, a whiner, whatever but, unfortunately,
23 during the break the sequestration rule was violated.

24 THE COURT: All right. Mr. Smiley, why don't
25 you put that on the record.

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1 MR. SMILEY: It was during -- and I didn't view
2 it, so I'm going to let Ms. Hensley describe what she
3 saw, and then we'll go from there.

4 If you would tell the Court what you saw.

5 MS. HENSLEY: Your Honor, may it please the
6 Court.

7 Just the witness that's on the stand was having
8 discussion with the State's case investigator during
9 the break.

10 MR. SMILEY: Don't know the substance, but they
11 were having a discussion during the break.

12 THE COURT: Mr. Smiley, do you wish for me to
13 inquire of this witness what they were talking about,
14 or were you merely bringing this to the Court's
15 attention?

16 MR. SMILEY: I think we have to inquire if he
17 was being instructed how to testify. And if he wasn't,
18 I was just bringing it to your attention. There's a
19 reason we ask for sequestration.

20 THE COURT: Officer Hinton --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- it has been brought to the
23 Court's attention, and you were present during the
24 instruction.

25 And I have forgotten your name, and I apologize.

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1 Ms. Linder --

2 MS. LINDER: Investigator Kelly.

3 THE COURT: Investigator Kelly, could you just
4 step right outside those double doors while I inquire.

5 There has been -- the defense has instructed the
6 Court that there was a conversation between you and
7 this witness during the break and so I just want to
8 inquire so that -- I may need to inquire of you, as
9 well.

10 INVESTIGATOR KELLY: Yes, ma'am.

11 THE COURT: Thank you.

12 [Whereupon, Investigator Kelly exits the
13 courtroom]

14 THE COURT: Officer Hinton --

15 THE WITNESS: Yes, ma'am.

16 THE COURT: -- there has been indicated to the
17 Court that you and the investigator from the
18 solicitor's office were having discussions during the
19 break. And were you advised that the rule of
20 sequestration was invoked?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: And do you understand what that
23 means?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Would you explain to the Court what

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1 your understanding of the rule of sequestration is.

2 THE WITNESS: Not to discuss anything related to
3 the -- related to this case.

4 THE COURT: All right. And did you and the
5 investigator from the solicitor's office have
6 discussions regarding your testimony?

7 THE WITNESS: No, ma'am. It was regarding my
8 gum.

9 THE COURT: Regarding your gum?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Mr. Smiley, did you need any further
12 inquiry of this witness, or of the investigator from
13 the solicitor's office, regarding the rule of
14 sequestration and the conversation you brought to the
15 Court's attention?

16 MR. SMILEY: Your Honor, I believe we have to.
17 In caution, I would ask -- would inquire of the Court
18 to ask the investigator if there was anything else in
19 the conversation. At that point, I'll drop it. I'm
20 just -- from my perspective, Your Honor. I would ask
21 you to do that.

22 THE COURT: Mr. Smiley, I have inquired of this
23 witness. He is still under oath.

24 MR. SMILEY: Yes, ma'am.

25 THE COURT: He indicated to the Court that he

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1 understood the rule of sequestration; that the
2 conversation was -- with the investigator's office was
3 regarding the gum. I am assuming that this is the
4 first time that this officer has been in front of me,
5 while I do know that the investigator from the
6 solicitor's office does know my accordance for the use
7 of chewing gum, especially when you're on the witness
8 stand. I am assuming that that was the nature of the
9 conversation --

10 MR. SMILEY: Yes, ma'am.

11 THE COURT: -- as verified by this witness. So
12 I deny your request --

13 MR. SMILEY: Thank you.

14 THE COURT: -- to inquire of the investigator.

15 MR. SMILEY: Yes, ma'am.

16 THE COURT: Let me make this clear, because
17 there were some other people. There is to be no gum-
18 chewing in the courtroom. It is disrespectful to the
19 Court and to the honor and integrity of this courtroom
20 to be chewing gum in this courtroom.

21 THE WITNESS: I apologize.

22 THE COURT: Thank you.

23 Anything before we bring in the jury?

24 MR. SMILEY: No, ma'am.

25 THE COURT: Thank you.

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1 Please bring in the jury. Please rise for the
2 jury.

3 MS. LINDER: Your Honor, may Investigator Kelly
4 be allowed back in?

5 THE COURT: Yes, ma'am. Thank you.

6 [Whereupon, Investigator Kelly re-enters the
7 courtroom]

8 [Whereupon, the jury enters the courtroom at
9 5:41 p.m.]

10 THE BAILIFF: Jurors are present, Your Honor.

11 THE COURT: Thank you. Thank you. Please be
12 seated.

13 Mr. Smiley, your witness --

14 MR. SMILEY: Actually --

15 THE COURT: Or, I'm sorry. Mr. Byrd, your
16 witness.

17 MR. BYRD: Thank you, Your Honor. I only have
18 one final question.

19 CONTINUED DIRECT EXAMINATION

20 BY MR. BYRD:

21 Q. Mr. Hinton --

22 A. Yes, sir.

23 Q. -- based on that evidence tag that we discussed
24 a minute ago --

25 A. Yes, sir.

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1 Q. -- who in your department received the evidence?

2 A. Joe LaLema. Sargent LaLema.

3 MR. BYRD: Thank you very much.

4 THE COURT: Mr. Smiley?

5 CROSS-EXAMINATION

6 BY MR. SMILEY:

7 Q. What did -- did you touch this evidence in this
8 case?

9 A. No, sir.

10 Q. So you really don't have anything to do with
11 this case?

12 A. No, sir.

13 MR. SMILEY: Okay. Nothing further.

14 THE COURT: Mr. Byrd?

15 MR. BYRD: Nothing further from the State, Your
16 Honor.

17 THE COURT: May this witness step down and be
18 excused?

19 MR. BYRD: Yes, Your Honor.

20 THE COURT: Any objection, Mr. Smiley?

21 MR. SMILEY: No objection.

22 THE COURT: Officer Hinton, you may step down
23 and you may be excused. You are welcome to remain in
24 the courtroom. Thank you.

25 THE WITNESS: Thank you.

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1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Call your next witness.

4 MR. BYRD: Your Honor, the State calls Susan
5 Moody.

6 [Whereupon, Ms. Moody enters the courtroom]

7 [Whereupon, Ms. Moody is duly sworn by the clerk
8 of court as follows: do you swear or affirm that your
9 testimony will be the truth, the whole truth, and
10 nothing but the truth so help you God]

11 THE WITNESS: I do.

12 THE CLERK OF COURT: Have a seat.

13 [Whereupon, Ms. Moody takes the witness stand]

14 THE CLERK OF COURT: If you'll state your full
15 name and then spell your last name for the record.

16 THE WITNESS: My name is Susan Marie Moody,
17 M-O-O-D-Y.

18 THE COURT: Mr. Byrd.

19 MR. BYRD: Thank you, Your Honor. May it please
20 the Court.

21

22

23

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SUSAN MOODY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BYRD:

Q. Ms Moody, where are you currently employed?

A. I work for the City of Charleston Police
Department.

Q. And what's your occupation?

A. I'm a laboratory technician.

Q. What type of training and education do you have
to be a laboratory technician?

A. I have an associate degree, and we go through
in-house training in our division.

Q. Okay. And what are your duties?

A. I'm mainly the evidence custodian. I carry
evidence back to and from the lab; I receive evidence from
outside agencies; I return evidence; I also do lab
reports; keep track of inventories; and clerical items.

THE COURT: Ms. Moody, could you speak into the
microphone. I'm having a hard time hearing you.

Q. [Mr. Byrd] All right. And let me ask you. On
September 20th of 2007, did you receive evidence
relating to this case?

A. I did.

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1 Q. And you picked it up yourself?

2 A. I did.

3 Q. And where did you get it from?

4 A. I picked it up from the evidence room at the
5 police station.

6 Q. And how did you get it?

7 A. I signed it over to myself in the evidence room.

8 Q. Okay. And did particular people give it to you
9 or you just --

10 A. Sargent LaLema.

11 Q. Sargent LaLema gave it to you. Okay.

12 MR. BYRD: May I approach, Your Honor?

13 THE COURT: You may.

14 Q. [Mr. Byrd] I've handed you what's been marked
15 as State's Exhibit 2 for identification purposes. Do
16 you recognize it?

17 A. I do.

18 Q. And could you tell us what it is, please.

19 A. It is the sealed evidence container of evidence
20 relating to this particular case.

21 Q. Okay. And is that the evidence that you
22 previously were talking about?

23 A. Yes, sir.

24 Q. When you picked it up from Sargent LaLema, where
25 did you take it?

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1 A. I brought it back to the lab.

2 Q. Okay. And did you give it to anyone at the lab?
3 What happened then?

4 A. I enter it into our database, I assign it a lab
5 number, and then I place it in our drug safe.

6 Q. Let me ask you: you're looking at that right
7 now. Is it in substantially the same condition currently
8 as it was when you saw it last?

9 A. Yes, sir.

10 MR. BYRD: Thank you, Your Honor.

11 Nothing further. Please answer defense
12 counsel's questions.

13 THE COURT: Mr. Smiley.

14 MR. SMILEY: Can I hold it, please?

15 THE WITNESS: Uh-huh.

16 [Whereupon, the witness proffers exhibit to Mr.
17 Smiley]

18 MR. SMILEY: Thank you.

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. Now, your name is on this evidence card;
22 correct?

23 A. Yes, sir.

24 Q. Your initials are; correct?

25 A. Yes, sir.

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1 Q. And your initials are S.M.M.?

2 A. Uh-huh.

3 Q. Okay. So on September the 20th, at eight
4 o'clock, you picked up the evidence; correct?

5 A. Yes, sir.

6 Q. All right. And then you checked it back in that
7 say day at about, what, 3:30 in the afternoon?

8 A. Yes, sir.

9 Q. When you picked it up, was it in this big bag?

10 A. Yes, sir.

11 Q. And you --

12 A. When I originally picked it up or --

13 Q. Right.

14 A. -- when I picked --

15 Q. When you originally --

16 A. -- it up the last time?

17 Q. -- picked it up, was it in the big bag?

18 A. It was inside the plastic bag inside.

19 Q. In that little bag?

20 A. Uh-huh.

21 Q. As you've testified, it's in substantially the
22 same condition as when you picked it up. And did you make
23 any markings to indicate that --

24 A. I do not mark on the evidence.

25 Q. You didn't mark on the evidence?

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1 A. No.

2 Q. Okay. So when you say that, you're just
3 assuming it is? You didn't make any marks of any sort?

4 A. The evidence tag was attached to that, to the --

5 Q. All right. Well, right. And so the reason we
6 have -- you'll be a good person to ask. The reason we
7 have this evidence tag is -- and you put your name on it
8 when you get the evidence because you want to put
9 everybody that's touched the evidence on there; right?

10 MR. BYRD: Objection, Your Honor.

11 THE COURT: Bases?

12 MR. BYRD: Asking for opinion testimony.

13 Speculation.

14 THE COURT: Overruled.

15 Q. [Mr. Smiley] Correct?

16 A. Yes, sir.

17 Q. That way you can assure that the evidence hasn't
18 been tampered with or is in the same condition, because
19 you know everybody that touched it; right?

20 A. Uh-huh.

21 Q. Your basic job, tough, was to courier it -- be a
22 courier to take it from one spot to another --

23 A. Yes.

24 Q. -- right?

25 So you -- as far as you know, you don't know how

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1 it got into evidence or who took it there or anything like
2 that? You just know you picked it up, took it to the lab,
3 and took it back?

4 A. Correct.

5 MR. SMILEY: Nothing further.

6 MR. BYRD: The State has nothing further, Your
7 Honor.

8 THE COURT: May this witness step down and be
9 excused?

10 MR. BYRD: The State has no objection.

11 MR. SMILEY: No objection.

12 THE COURT: Any objection?

13 Ma'am, you may step down and be excused from the
14 courthouse. You are free to remain.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Call your next witness.

18 MR. BYRD: Thank you, Your Honor. The State
19 calls Elizabeth Nicky Wiggins-Mitchell.

20 [Whereupon, Ms. Wiggins-Mitchell enters the
21 courtroom]

22 [Whereupon, Ms. Wiggins-Mitchell is duly sworn
23 by the clerk of court as follows: do you swear or
24 affirm that your testimony will be the truth, the whole
25 truth, and nothing but the truth so help you God]

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1 THE WITNESS: I do.

2 THE CLERK OF COURT: Thank you. Be seated.

3 [Whereupon, Ms. Wiggins-Mitchell takes the
4 witness stand]

5 THE CLERK OF COURT: State your full name and
6 spell your last name.

7 THE WITNESS: Elizabeth Wiggins-Mitchell,
8 W-I-G-G-E-N-S M-I-T-C-H-E-L-L.

9 THE COURT: Mr. Byrd.

10 MR. BYRD: Thank you, Your Honor.

11 Before we proceed, just out of curiosity, do you
12 prefer to be called Ms. Wiggins-Mitchell or just Ms.
13 Mitchell?

14 THE WITNESS: Mitchell is fine.

15 MR. BYRD: All right. Thank you.

16 - - - - -

17 ELIZABETH N. WIGGINS-MITCHELL,

18 Having Been First Duly Sworn,

19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MR. BYRD:

22 Q. Ms. Mitchell, what is your profession?

23 A. I'm a laboratory manager for the Charleston
24 Police Department.

25 Q. Okay. How long have you been employed by the

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1 Charleston Police Department?

2 A. Since 2002, so seven years.

3 Q. Okay. And specifically what position do you
4 hold there?

5 A. I'm sorry. I couldn't hear you.

6 Q. It was lab technician you said was your --

7 A. I can't hear you.

8 Q. Your specific position? I'm sorry.

9 A. I'm the laboratory manager.

10 Q. Thank you.

11 And what are your duties as a laboratory
12 manager?

13 A. I oversee the daily operations and the personnel
14 within the laboratory, and I also perform analyses on
15 physical evidence submitted to the laboratory.

16 Q. What kind of training and education do you have?

17 A. I have a bachelor's degree in biochemistry and
18 chemistry from the College of Charleston. From there I
19 worked a couple of years in a research laboratory.

20 And then when I started with the Charleston
21 Police Department we have an internal training program
22 that includes reading, shadowing somebody who's already
23 qualified to do analyses, the DNA forensic chemist
24 seminar; competency tests where we actually get tested
25 practically on how to analyze evidence; and also an oral

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1 exam.

2 Q. Okay. And have you ever had occasion to analyze
3 substances to determine whether or not they contain
4 narcotics or narcotic type drugs?

5 A. I have.

6 Q. Okay. About how many times would you say you've
7 done that?

8 A. Oh, I would say probably 7,000 or so.

9 Q. All right. And have you ever had occasion to
10 more specifically analyze substances to determine whether
11 they contain cocaine base?

12 A. I have.

13 Q. Okay. And about how many times would you say
14 you've done that?

15 A. I can't even estimate that number.

16 Q. Okay. Let me ask you this. How many would you
17 say you possibly do on average in a week?

18 A. In a week? Twenty or thirty, just depending on
19 the week and how busy it is.

20 Q. Okay. And when you say -- given that number,
21 would that's -- you say that's a regular part of your
22 duties?

23 A. I'm sorry?

24 Q. Analyzing that type of substance, would you say
25 it's a regular part of your duty?

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1 A. It is a regular part of my duty.

2 Q. Okay. And have you had occasion to qualify as
3 an expert in this area before?

4 A. I have.

5 Q. About how many times would you say you've done
6 that?

7 A. Eleven or twelve.

8 Q. Okay. Did you actually testify?

9 A. I did.

10 MR. BYRD: Okay. Your Honor, at this point the
11 State would ask that the witness be declared an expert
12 in the field of chemistry and analysis of narcotics.

13 MR. SMILEY: No problem that she be an expert in
14 chemical analysis.

15 THE COURT: Mr. Byrd, chemical analysis?

16 MR. BYRD: [No response]

17 THE COURT: Mr. Byrd?

18 MR. BYRD: Your Honor, I don't see any problem
19 with her being also qualified as an expert in the more
20 specific analysis of chemicals containing narcotics.

21 THE COURT: Mr. Smiley?

22 MR. SMILEY: I didn't know there was a
23 subdivision, but that's fine.

24 THE COURT: Mr. Byrd, specifically you are
25 asking that Ms. Wiggins-Mitchell be qualified as an

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1 expert in the area of chemical analysis, specifically
2 in the analysis of narcotics?

3 MR. BYRD: Well, specifically chemistry and the
4 analysis of narcotics, Your Honor.

5 MR. SMILEY: That's fine, Your Honor.

6 MR. BYRD: Sorry --

7 THE COURT: Mr. Smiley, you have no objection?

8 MR. SMILEY: No objection.

9 THE COURT: Ladies and gentlemen of the jury,
10 normally a person cannot give opinion testimony.
11 Normally when a person testifies they must testify as
12 to what they either saw, heard or sensed by smell, or
13 something of that nature. However, there is an
14 exception when someone is qualified because of their
15 education or their experience. They are permitted to
16 give their opinion in certain areas if the Court
17 qualifies them that way.

18 This witness will be qualified in the area of
19 chemistry and the analysis of narcotics, to give
20 opinion testimony in that area. That does not mean
21 that you must accept the opinion. It is evidence for
22 you to use in any way that you see fit.

23 Mr. Byrd.

24 MR. BYRD: Thank you, Your Honor. May I
25 approach the witness?

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1 THE COURT: You may.

2 Q. [Mr. Byrd] I've just sort of pushed in your
3 direction what's been marked as State's Exhibit 2 for
4 identification purposes. Based on your experience and
5 training, do you have an opinion as to what it is?

6 A. Yes. This is evidence that I analyzed for the
7 particular case at hand. Do you want me to identify what
8 I found it contains?

9 Q. Please.

10 A. Okay. I found the substance to weigh .31 grams
11 and contain cocaine base.

12 Q. Curiosity: how can you identify it as cocaine
13 base?

14 A. How do I identify it as that evidence --

15 Q. Right.

16 A. -- or -- all right.

17 After I analyze every case, I mark the container
18 that it was in and reseal it and put a sticker on the
19 outside of the packaging. Then I have the case number, a
20 number that our laboratory associates with that case, as
21 well as my initials and a date that I sealed it. And I
22 recognize all of that.

23 Q. Okay. And when did you mark it?

24 A. On the 20th of September, 2007.

25 Q. Okay. And is that the same day it was

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1 submitted?

2 A. It sure is.

3 Q. Okay. And where did you receive it?

4 A. I received it from the evidence safe within the
5 laboratory.

6 Q. Okay. And -- all right.

7 MR. BYRD: Your Honor, at this point I would
8 like to offer State's Exhibit 2 into evidence.

9 MR. SMILEY: I object.

10 THE COURT: Mr. Smiley?

11 MR. SMILEY: I object, Your Honor.

12 THE COURT: Basis?

13 MR. SMILEY: Chain; foundation --

14 THE COURT: All right. Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Ladies and gentlemen of the jury,
18 there is a matter of law that I must take up outside of
19 your presence.

20 Please do not begin your deliberations. Do not
21 discuss this case amongst yourselves. We will receive
22 you back in the courtroom just as soon as possible.

23 Please rise for the jury.

24 Ms. Wiggins-Mitchell, you may be seated.

25 THE WITNESS: Thank you.

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1 [Whereupon, the jury exits the courtroom at
2 5:58 p.m.]

3 THE COURT: Thank you. Be seated.

4 Mr. Smiley, I'm going to allow you to begin your
5 argument anew.

6 MR. SMILEY: Yes, ma'am. And I apologize for my
7 speaking too loud. It's late in the day and I'm
8 getting a little --

9 Rule 6 of the South Carolina Rules of Criminal
10 Procedure established a rule for criminal analysis and
11 chain of custody. In it, it says that I can
12 specifically demand an appearance of each person in the
13 chain. And I did that, Your Honor, in my Brady motion,
14 Rule 5 motion, dated January 15th of 2009, and then --
15 on page -- I didn't number the pages. But under
16 specific requests -- under specific request number 11,
17 I made a demand: it's hereby made of the personal
18 testimony of all personnel with any chain of custody as
19 to the item of evidence.

20 So I adhered to the rule. They have two
21 problems, Your Honor. The first problem that -- the
22 most obvious problem is one of the persons in the chain
23 has not testified, and that would be Sargent LaLema.
24 He hasn't testified to taking the evidence, he hasn't
25 testified to keeping the evidence, and he hasn't

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1 testified to sending out the evidence. Which is
2 complicated even more in this case because the chain --
3 it's important for the preservation of the evidence,
4 hasn't been followed, as Officer Seabrook has testified
5 that he received the evidence from Investigator
6 Springmeyer and took it to the evidence lab to turn it
7 in.

8 They filled out a property sheet that hasn't
9 been provided to show that and put in that Sargent
10 LaLema took. He did not sign the chain of custody.
11 And I did not find this out, which I think is pretty
12 important, until he testified. If they were aware of
13 their chain, probably they sure -- certainly could have
14 made me aware of it beforehand besides, well, you
15 should know my writing.

16 They've got to give it to me eleven days before
17 the trial of the case. And I don't have that paper, I
18 don't have -- they haven't established the chain in
19 this case. My client is on trial for his life, and so
20 to say it's just, well, we just overlooked, I don't
21 think is acceptable.

22 There's a rule specifically for it. I've made
23 the proper demand. And I don't believe that this
24 evidence should be submitted and allowed into evidence
25 without the chain being accomplished; and, therefore, I

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1 make an objection to the admission of the drug at this
2 point in time.

3 THE COURT: Mr. Byrd, Ms. Linder?

4 MR. BYRD: Your Honor, the chain was actually,
5 it was my understanding, sent to Mr. Smiley earlier on
6 in discovery. So this notion of --

7 MR. SMILEY: It wasn't --

8 MS. LINDER: Your Honor --

9 THE COURT: Hold on one second, Mr. Smiley.

10 MS. LINDER: Your Honor, while tag-teaming, so
11 to speak, is not looked favorably upon, I was hoping
12 that I could address the chain issues since I was the
13 person handling the case from that aspect, or I can
14 whisper to Mr. Byrd and he can --

15 THE COURT: Ms. Linder, what I would like to
16 hear from you is I would like for you to articulate
17 for the record, in response to what Mr. Smiley had
18 said, the chain --

19 MS. LINDER: As regards --

20 THE COURT: -- as testified to here today.

21 MS. LINDER: Your Honor, would you like to keep
22 that with Mr. Byrd, since he questioned those
23 witnesses?

24 THE COURT: No, ma'am. I want to hear it from
25 you.

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1 MS. LINDER: Okay. With regards to those
2 witnesses, the copy of the tag was in the discovery
3 that was sent to Mr. Smiley. Before that, the case was
4 Ms. Gay's case.

5 THE COURT: Okay. No, no, no. Maybe I wasn't
6 clear.

7 I want to start from the drugs in the hands of
8 the defendant to -- and I want to know where the drugs
9 have been, what they have been testified to here today.

10 MS. LINDER: Testified here today, the drugs
11 were in the hands of the defendant, went to
12 Investigator Springmeyer, which turned them over -- who
13 turned them over to Damian Seabrook, Officer Seabrook,
14 who turned them into the secured lockbox at evidence.
15 Those were logged in, based on the tag by LaLema. Mr.
16 Hinton works with Mr. LaLema or before Mr. LaLema
17 retired. From there, Susan Moody, per their own
18 procedure, checked out the drugs from evidence, took
19 them to the lab, placed them in the lab safe. And then
20 at that point Ms. Mitchell takes them out of the lab
21 safe and analyzes them.

22 THE COURT: All right, Ms. Linder. And then you
23 were indicating to the Court the information given to
24 Mr. Smiley?

25 MS. LINDER: Yes, Your Honor. The chain, the

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1 actual chain of custody -- this is not the first time
2 this has been on the docket. This was on the docket
3 well before this. The chain was -- a copy was made of
4 the physical tag that was on that, and that was sent to
5 defense counsel, being Lisa Gay at that time. She is
6 to hand over her entire file. And also at that time my
7 secretary resubmits everything she has ever sent, to
8 new counsel which was Mr. Smiley.

9 MR. SMILEY: And I'm not complaining about not
10 getting the tag, Your Honor. What I'm complaining
11 about is until Officer Seabrook testified today, I've
12 had no way to know he was -- allegedly in the chain,
13 because he didn't sign the chain. They didn't put me
14 on notice that, hey, we've got somebody else in the
15 chain.

16 MS. LINDER: It was in the report, Your Honor --

17 MR. SMILEY: What report?

18 THE COURT: Hold on one second.

19 MS. LINDER: I apologize. I'll let Mr. Smiley
20 finish, Your Honor.

21 MR. SMILEY: I don't know what report I'm
22 supposed to look at, Your Honor. I looked at the
23 chain.

24 Also, I wasn't put on notice that they were
25 going to have a substitute for Sargent LaLema to say

1 that's what he usually does. They didn't have him
2 testify I saw him take the drugs out of the lockbox; I
3 saw it put into custody. They're trying to get around
4 that. They've got a chain problem, Your Honor.

5 THE COURT: Ms. Linder, you may finish your
6 argument.

7 MS. LINDER: Your Honor, as far as notice of
8 Mr. Seabrook being part of the chain, in the report,
9 specifically -- you know, fortunately, unfortunately,
10 there are two pieces of paper, as far as reports
11 from the police. There is a one-sentence -- one long,
12 round sentence, or two sentences, short one by
13 Seabrook and another one by Springmeyer. In the --
14 it says: [reading] the cocaine base was turned over to
15 Investigator Seabrook and then Seabrook says the
16 narcotics tag is secured into CPD evidence.

17 Along with that, the State has furnished the
18 witness list. On that witness list it even says -- on
19 the witness list that I submitted to the Court and
20 defense counsel, it says who the people are. I mean,
21 it says where they work. It says I believe it's the
22 CPD evidence on that.

23 [Whereupon, Ms. Linder reviews documents]

24 MS. LINDER: Your Honor, as far as any issues or
25 non issues about who has or has not testified about who

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1 has or has not signed the tag, we would argue that all
2 of that goes toward a weakness in the chain, not to the
3 admissibility of the chain, and that weight should be
4 allowed by the judges of fact, the jury, to decide on
5 how much weight they're going to give to the
6 credibility and -- to that, as opposed to the
7 admissibility.

8 THE COURT: Mr. Smiley?

9 MR. SMILEY: I'm looking at Detective Seabrook's
10 report. He doesn't say in his report that he took
11 possession of the cocaine. He says: [reading] the
12 narcotics will be tagged and secured in CPD evidence.

13 That doesn't say, I took the cocaine.

14 Now, in Detective Springmeyer's supplemental, it
15 does say in the last sentence: [reading] the cocaine
16 base was turned over to Investigator Seabrook.

17 And I guess I missed that. But I had no reason
18 to be looking for a problem in the chain.

19 But under Rule 6, Your Honor, is: [reading] the
20 defendant or his attorney may demand appearance in
21 court of the persons within the chain of custody in the
22 same manner as prescribed in Section A.

23 And I certainly, in my specific discovery
24 request, demanded the appearance of the persons in the
25 chain. We've had one testify who is not in the chain

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1 who -- but actually was in the chain, and then we've
2 had one not testify who was in the chain. And we're --
3 I guess the other officer tried to say this was normal,
4 but he didn't have any personal knowledge of this case.

5 So, I mean, the chain -- her argument as to
6 weight: you've got to make the chain first. If you
7 can't make the chain, then it doesn't get submitted to
8 the jury for them to weigh it. I mean, it's not --
9 it's a chain. It's got to be linked. If it's not
10 linked and it doesn't make the chain, then they haven't
11 linked it.

12 THE COURT: Anything further, Ms. Linder?

13 MS. LINDER: Your Honor, I am currently
14 refreshing my recollection of a case here. If I
15 may beg the Court's indulgence for one moment.

16 THE COURT: Yes, ma'am.

17 [Whereupon, Ms. Linder reviews documents]

18 THE COURT: Ms. Linder?

19 MS. LINDER: Your Honor, I believe State vs.
20 Taylor addresses this issue. If I may approach, I can
21 give you copies.

22 THE COURT: Yes, ma'am. And make sure -- I
23 don't know if Ms. Hensley is connected in.

24 MS. HENSLEY: I'm connected, Your Honor.

25 THE COURT: Do you have a copy?

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1 MS. LINDER: May I approach?

2 THE COURT: You may.

3 [Whereupon, Ms. Linder proffers documents to the
4 Court]

5 [Whereupon, the Court reviews documents]

6 THE COURT: Ms. Linder, do you have any further
7 arguments?

8 MS. LINDER: Your Honor, I would just look to
9 this case, The State vs. Taylor, for further argument
10 and discussion in the matter. In this case some basic
11 facts are similar. Traffic stop; officer receives
12 drugs from person who was charged; that officer makes
13 note of it, hands it over to superior officer -- in
14 this case we would say the case agent organizing it,
15 which was Seabrook was the officer -- that officer did
16 not sign tag. That was then turned over to their
17 evidence, so to speak, because evidence custodian no
18 longer worked at the facility.

19 Which is what we have. Sargent LaLema no longer
20 works for the Charleston Police Department. He is
21 retired. He has moved hours away.

22 And further, in here it says: [reading] where
23 the identify of persons handling the evidence is
24 unknown, it needs to be admissible.

25 And we agree with that, obviously. But then it

1 says in here that --

2 [Whereupon, Ms. Linder reviews documents]

3 MS. LINDER: In here it says that, in contrast
4 from that previous situation: [reading] when there is
5 evidence to establish the identity of those who have
6 handled the evidence in the manner in which it was
7 handled.

8 Which we would argue identity is through
9 testimony. For Seabrook it was not he -- he filled out
10 the tag. He testified that he handled it, and he
11 testified that it was in his custody. He testified
12 that he turned it into a secure lockbox. Also, with
13 Mr. Hinton: when he testified, Mr. Hinton identified
14 Sargent LaLema's initials on the tag. And Susan Moody,
15 who is the next person on -- the bookend, so to speak,
16 of that in taking it from the evidence to the lab, she
17 also identified it being from Sargent LaLema. The
18 identity is not in question.

19 So, again, with that, Your Honor, I would say
20 that this is a weakness in the chain which then goes to
21 a question of credibility, not admissibility.

22 THE COURT: Mr. Smiley, briefly, any response?

23 MR. SMILEY: Can I finish reading the case --

24 THE COURT: I'm sorry?

25 MR. SMILEY: Can I finish reading the case just

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1 for a second?

2 THE COURT: Yes, sir.

3 [Whereupon, Mr. Smiley reviews documents]

4 MR. SMILEY: A couple of things, Your Honor,
5 that distinguishes this case from the case before
6 the --

7 First of all, I didn't hear -- and maybe I'm
8 wrong, because I wasn't listening for it, is -- at
9 least I hope I'm wrong, is that Officer Hinton hasn't
10 testified, first of all, that he is the successor to
11 Sargent LaLema. And in this case I think it's very
12 important to establish -- Sargent LaLema was the head
13 of their evidence. He's the one that did that job. I
14 don't believe it was established that Hinton took over
15 the same role and was in charge of those procedures. I
16 think that's important.

17 But here, I think, the more important point: in
18 the case State v. Taylor, and something that the
19 Supreme Court hinged their ruling upon, is that
20 evidence was placed in a Best evidence kit and sealed
21 at the scene by the second trooper, Trooper Long. It
22 was handed by Trooper Webber to Trooper Long, who put
23 it in a Best evidence kit, sealed it. And it says by
24 the Supreme Court: [reading] the evidence shows that
25 the arresting officer placed the crack cocaine in a

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1 special bag providing to preserve the integrity of the
2 evidence against tampering. It contained a glue-like
3 seal that once applied was stronger than the bag;
4 hence, the bag could not have been opened without
5 tearing.

6 We've got no testimony here. As a matter of
7 fact, Your Honor -- and I don't know if you've been
8 able to look at the bag -- the original bag that I've
9 tried my best to question, to discover, that was turned
10 in is nothing more than a simple Ziploc bag.

11 Now, it also in that case, the State Law
12 Enforcement Division or public safety, they follow
13 protocol by the forms that are printed out that were
14 approved by the Court, the Rule 6(a)(b)(c)(d), where
15 you fill it out and you have it notarized and sworn
16 that you have custody and you turn it in to the next
17 person. That wasn't used here.

18 So we have two problems going on here. Problem
19 number one is we've got an officer who didn't follow
20 any of the procedure, who I was not -- until he
21 testified that he was in the chain and took custody of
22 the evidence, he didn't place it in any bag that
23 couldn't be tampered with. He dropped it off, as we
24 have heard, that it must have been LaLema that took the
25 evidence.

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1 We haven't had any testimony of the condition of
2 the evidence, what he found it in. There's no marks by
3 Detective Seabrook on that evidence to show it's, in
4 fact, the same evidence that he took into his custody.
5 He even testified to that, that he doesn't know, he
6 just put it in a bag. It wasn't sealed, it wasn't
7 marked that, I took this evidence.

8 And so the proper -- they want to argue it's
9 a weakness in the chain, Your Honor. It's not a
10 weakness. They don't have a complete chain here.
11 They don't have going from Springmeyer to analysis and
12 back.

13 I think it's very important in State v. Taylor
14 that once that evidence was put in the -- they aren't
15 relying upon what the officer said. What they are
16 relying upon is that the evidence at that time was
17 placed in a tamper-proof bag. It's like glued shut.
18 If you tear on it, stretch it, it destroys the bag.
19 You can see if someone tries to get into it. We don't
20 have that here.

21 I don't even -- I haven't been able to establish
22 that because I haven't asked the questions of this
23 witness that that outside bag wasn't added until after
24 the analysis. Because that's simply -- I don't even --
25 that's what I haven't asked, was it -- did it come in

1 that bag? Where did that bag come from? Is that a
2 standard bag you use? I mean, Best kit bags are
3 standardized bags that you put the evidence in, you
4 pull the strip off, and they're sealed. We do not have
5 that in this case, Your Honor.

6 Therefore, I would distinguish that in State v.
7 Taylor, is I also demanded the appearances of the
8 witnesses. We do not have the appearances of the
9 witnesses. We don't even have Sargent LaLema's
10 successor, is we have an officer that comes in and
11 says, yeah, I work in there; yeah, that's what I did.
12 But we don't know if there was -- if they still would
13 accept it and that's how it was found. Was that how it
14 was marked in? He says he bar code -- that they get
15 bar coded, but we don't have anything to show up with a
16 bar code.

17 And lastly, Your Honor, is the person that
18 injected themselves into the chain today says, I filled
19 this out, this card out, but I didn't sign it; however,
20 I filled out a property sheet when I took it to put it
21 into evidence. They don't have that, either.

22 So we don't know what happened to that evidence
23 from the time that it was taken until the time that
24 actually Ms. Moody got -- there's no evidence, no
25 testimony, about what happened with that evidence. We

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1 don't know if it's been tampered with in any shape or
2 form, because it's not in a tamper-resistant bag. Is
3 we don't have LaLema, and we have the injection of an
4 officer who didn't sign. And the one thing he did do
5 is not here.

6 Therefore, I don't think they have established a
7 chain, much less -- well, they haven't established a
8 chain; therefore, I mean, it's not about a weak chain.
9 There is no chain.

10 THE COURT: The testimony before the Court was
11 that Investigator Springmeyer came into contact with a
12 hand-to-hand transfer, hand-to-hand buy, from the
13 person she identified to be the defendant.
14 Investigator Springmeyer then returned to the office
15 where she turned over the drugs to Officer Seabrook,
16 who she indicated was the case agent. Officer Seabrook
17 testified here today under oath that he then turned the
18 drugs over to -- placed the evidence in a plastic bag,
19 the sheet accompanies the property, it was in his
20 handwriting, and that he placed them in the secured
21 box. Officer Hinton testified that he was the evidence
22 technician. Then Susan Moody testified that she
23 removed the -- checked the property from the evidence
24 room. And Officer Mitchell -- excuse me -- Wiggins-
25 Mitchell, Ms. Wiggins-Mitchell, indicated that she then

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1 tested the drugs.

2 Mr. Smiley, it appears that your main argument
3 is the fact that Officer Seabrook testified -- or was
4 unable to testify as to his role in this chain, that he
5 had not testified that he succeeded Officer LaLema, who
6 I'm assuming on this property tag, chain of possession
7 of evidence, is the J.L. Is that correct, Ms. Linder?

8 MS. LINDER: Yes, Your Honor. Sargent Jeff
9 LaLema.

10 THE COURT: And is that the crux of your
11 argument, Mr. Smiley?

12 MR. SMILEY: One part is he's not the successor.
13 But also I asked him if he had anything to do with this
14 case, and he said no. So he's not in the chain. So
15 there's nothing from the time --

16 THE COURT: So that I'm clear, Mr. Smiley. I
17 just want to make sure.

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: It appears that your argument would
20 be what happened after it was placed by Officer
21 Seabrook into the lockbox.

22 MR. SMILEY: I've got --

23 THE COURT: Is that your argument?

24 MR. SMILEY: That's part of it. I've got a
25 problem, also, with where -- how the evidence was

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1 handled, since there was no documentation of it from
2 the time that he took it and the condition it was in
3 and how it was found. He said he put it in a lockbox
4 with a property sheet that no longer exists. How do I
5 know this is the same evidence? There were no marks on
6 it.

7 THE COURT: All right. Mr. Smiley, the purpose
8 of the chain of custody is to determine whether or not
9 there -- or it is not to negate the possibility of all
10 tampering. There has been absolutely no testimony or
11 no indication offered by either the State or the
12 defendant that the drugs, State's Exhibit Number 2,
13 have been tampered with.

14 Based upon the testimony as presented, the
15 handling of the evidence has reasonably been
16 demonstrated from that into the hands of Investigator
17 Springmeyer to Ms. Wiggins-Mitchell. I am admitting
18 the State's Exhibit Number 2 into evidence. The
19 weakness in the chain implicates credibility; it does
20 not render the evidence inadmissible.

21 Each person indicated to whom they gave the
22 evidence, from Springmeyer to Seabrook to the lockbox.
23 Hinton indicated that it was taken from -- checked
24 from -- actually, Moody indicated that she checked
25 it from evidence, and Mitchell then checked it from Ms.

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1 Moody.

2 I overrule your objection. State's Exhibit
3 Number 2 will be admitted into evidence. I will note
4 your objection for the record.

5 MR. SMILEY: Please, Your Honor.

6 THE COURT: Thank you.

7 Please come get State's Exhibit Number 2.

8 [Whereupon, Mr. Byrd complies]

9 THE COURT: And this is your last witness, Mr.
10 Byrd?

11 MR. BYRD: That's correct, Your Honor.

12 THE COURT: All right.

13 MR. BYRD: Thank you, Your Honor. May I give it
14 back to the --

15 THE COURT: You may place it -- please bring in
16 the jury.

17 Ms. Linder, Mr. Smiley, I indicated to you that
18 we would stop at 6:30. We will finish with this
19 witness, and then we will adjourn for the evening.
20 Okay?

21 MS. LINDER: We would prefer to rest --

22 THE COURT: But please take your time. Both of
23 you. Mr. Smiley, take your time with this witness.

24 [Whereupon, the jury enters the courtroom at
25 6:28 p.m.]

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1 THE BAILIFF: All present, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 Ladies and gentlemen of the jury, just for
4 scheduling purposes: this is our last witness for the
5 evening, so do not think that I'm going to keep you
6 until the wee hours of the morning. This will be our
7 last witness for the evening.

8 Mr. Byrd.

9 MR. BYRD: Thank you, Your Honor.

10 - - - - -

11 CONTINUED DIRECT EXAMINATION

12 BY MR. BYRD:

13 Q. All right. Ms. Mitchell, did you have occasion
14 to perform a chemical analysis on this evidence?

15 A. I'm sorry. What was the last part of that?

16 Q. A chemical analysis. Did you do a chemical
17 analysis?

18 A. I did.

19 Q. Okay. And when did you make that analysis?

20 A. I did it on September 20th of 2007.

21 Q. What kind of test did you perform?

22 A. I performed a color test, initially, and then I
23 did two instrumental confirmations of that color test.

24 Q. Okay. And from those tests were you able to
25 form an expert opinion as to what the substance is or what

1 it contained?

2 A. I was.

3 Q. And what were your results?

4 A. The substance contains cocaine base.

5 Q. Okay. Now, what was the weight of that?

6 A. The weight of it was .31 grams.

7 [Whereupon, Mr. Byrd and Ms. Linder confer]

8 MR. BYRD: And, Your Honor, just for purposes of
9 clarifying the record, I would like to confirm that
10 this has been admitted as State's Exhibit 2.

11 THE COURT: State's Exhibit Number 2 admitted
12 into evidence.

13 Note your objection, Mr. Smiley.

14 [Whereupon, State's Exhibit Number 2, bag
15 containing drugs, is admitted into evidence by the
16 Court]

17 MR. BYRD: Thank you, Your Honor. No further
18 questions.

19 THE COURT: Mr. Smiley.

20 MR. SMILEY: Ms. Mitchell, I've got a bunch of
21 different questions.

22

23

24

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CROSS-EXAMINATION

BY MR. SMILEY:

Q. Are you familiar with a Best kit that's used by State law enforcement?

A. I've never worked with it. I've heard of it, I've seen it, but I can't really say I know how to use it.

Q. When you receive evidence --

A. Uh-huh.

Q. -- you want to make sure it's substantially in the same condition as when it was collected; correct?

A. Yes.

Q. Because if it's put in a tamper-resistant bag, then you can tell whether somebody manipulated it or changed it because the bag would be tampered with; correct?

A. Yes.

Q. So if this evidence was put in a bag that was sealed before you got it, you would be able to see if that was in the same condition as when it was collected?

A. Yes.

Q. Did you receive this evidence in any kind of tamper-resistant bag?

A. I received it -- you can kind of see through here -- in the Ziploc type bag that it's in. It was sealed across with a heat seal, initialed -- the seal is

1 initialed across with J.L. That's Sargent LaLema's
2 initials.

3 Q. Okay. So before it got to J.L. --

4 A. Uh-huh.

5 Q. -- you don't know what it was in?

6 A. That's correct. I don't.

7 Q. All right. Now, when you get evidence in your
8 lab, your job is to take what you're given, test it, come
9 to a conclusion, and then make a report to that?

10 A. Yes.

11 Q. All right. And when you do your report, you're
12 given certain information like allegedly where the
13 substance was located?

14 A. Sometimes. Not all the time.

15 Q. Well, I'm going to show you your report and
16 we'll just get right to the specifics. On your report
17 dated September 20th, 2007, it says that the substance
18 that you analyzed was allegedly located at Athens Court
19 and Romney?

20 A. Yes.

21 Q. Okay. Also, sometimes you receive who the
22 suspect or subject that the evidence was collected from;
23 correct?

24 A. We get a name --

25 Q. Right.

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1 A. -- sometimes.

2 Q. In this case who was -- now, this was September
3 the 20th; right?

4 A. Yes.

5 Q. Okay. On September the 20th when you conducted
6 that report, you were supplied with whom as the subject or
7 suspect?

8 A. I was not -- I was not given a name.

9 Q. Unknown. Okay.

10 Now, let me ask you some questions about chain
11 of custody. You're familiar with the chain of custody --

12 A. Yes, I am.

13 Q. -- and its importance?

14 All right. A chain of custody, is it fair to
15 say, is used to establish who would have handled an item
16 from the time it's collected until the time it gets to
17 court, actually; right?

18 A. Yes.

19 Q. And that each person that handled that item is
20 included in the chain?

21 A. That is the policy in the laboratory.

22 Q. All right. If somebody -- well, you're the
23 manager of your lab --

24 A. Uh-huh.

25 Q. -- right?

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1 A. Uh-huh.

2 Q. If somebody in your lab took a piece of evidence
3 and handled it, they would mark that they were in the
4 chain; correct?

5 A. Yes. In the laboratory.

6 Q. And that's so that we know who handled it, to
7 remove the risk of tampering so we know which evidence is
8 which; correct?

9 A. Yes.

10 Q. And, in fact, in this it shows that Ms. Moody
11 brought it to you?

12 A. Yes.

13 Q. That you tested it? Well, it doesn't show that.
14 Then it shows that you took custody of it?

15 A. I took custody.

16 Q. And then you returned the custody to Ms. Moody?

17 A. Uh-huh. Yes, sir.

18 Q. All right. And then there are some other
19 initials that -- on there. But as far as your lab goes,
20 Moody to you, back to Ms. Moody; correct?

21 A. Yes.

22 Q. All right. Now, this big bag on the outside --

23 A. Uh-huh.

24 Q. -- did you put it in --

25 A. I added that. I added --

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1 Q. You added that?

2 A. Uh-huh.

3 Q. And those are your initials?

4 A. It is.

5 Q. And you had actually initialed the bag that the
6 drugs came in?

7 A. I initialed the bag the drugs came in. The
8 little bag in here that's got the blue tint, I added that
9 bag --

10 Q. Okay. So you added that, also? And you put a
11 number on it and your initials; correct?

12 A. Yes.

13 Q. And that's so you can identify that evidence;
14 right?

15 A. Correct.

16 Q. So any bags that were given to you -- none of
17 those were thrown away, were they?

18 A. No.

19 Q. And so if somebody else like the officer that
20 collected it, if he had put his initials on something, it
21 would show up, correct --

22 A. Yes.

23 Q. -- because he wouldn't throw it away?

24 A. No.

25 Q. All right. Now, when -- from the time the

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1 evidence is collected until the time it gets to you, you
2 don't have a clue besides what you're told; correct?

3 A. Yes.

4 Q. And then you analyze whatever you're given;
5 right?

6 A. Yes.

7 Q. Do you know what a property sheet is?

8 A. I do.

9 Q. And does it come with the evidence?

10 A. We get a copy of it with the evidence which we
11 then return back to the evidence room.

12 Q. All right. But you don't -- you didn't -- you
13 don't have a property sheet --

14 A. I don't retain -- I don't retain a copy of it.

15 Q. Okay.

16 MR. SMILEY: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 [Whereupon, Mr. Smiley and Ms. Hensley confer]

19 MR. SMILEY: Could I get that copy back from
20 you?

21 THE WITNESS: Uh-huh.

22 [Whereupon, the witness proffers documents to
23 Mr. Smiley]

24 MR. SMILEY: Thank you. That's all I've got.
25 Thank you, ma'am.

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1 THE COURT: Mr. Byrd?

2 MR. BYRD: Nothing further from the State, Your
3 Honor.

4 THE COURT: Mr. Smiley, any objection to this
5 witness being excused?

6 MR. SMILEY: Certainly not.

7 THE COURT: Ms. Wiggins-Mitchell, you may step
8 down. You are free to remain in the courtroom if you
9 wish, but you may be excused. Thank you.

10 THE WITNESS: Thank you, Your Honor.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Call your next witness.

14 MS. LINDER: Your Honor, at this time the State
15 rests.

16 THE COURT: Ladies and gentlemen of the jury,
17 this indicates to the Court that not only is there a
18 matter of law that I must take up outside of your
19 presence, it's also a perfect time for our evening
20 recess.

21 Counsel, please approach.

22 [Whereupon, an off-the-record bench conference
23 is held]

24 THE COURT: Ladies and gentlemen of the jury,
25 again, we are going to recess for the evening. You

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1 need to be back in your jury room at 9:30.

2 Please do not discuss this case amongst
3 yourselves or -- you are going to get home and your
4 family members are going to want to know what you did
5 today. You can tell them that the judge ordered you
6 not to discuss this case. Once you have reached a
7 verdict at the close of this case, you may then discuss
8 this case freely. And I will give you further
9 instructions regarding that, as well.

10 Again, the testimony -- your verdict must be
11 based upon the facts as presented by the Court -- in
12 the court, not on any independent research. So please
13 do not do any independent research this evening.
14 Please do not begin your deliberations. Please do not
15 discuss this case amongst yourselves until you are
16 given -- you have not received the instructions on the
17 law, so please remember my admonishments doing that.

18 I will see you back -- please have a restful
19 evening. See you back in your jury room at 9:30.

20 Please rise for the jury.

21 [Whereupon, the jury exits the courtroom at
22 6:39 p.m.]

23 THE COURT: Please be seated.

24 - - -

25 - - -

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MOTIONS

THE COURT: Mr. Smiley, any motions?

MR. SMILEY: You want to do the motions? All right.

Your Honor, I would make a motion first for directed verdict because the issue in this case, the main issue -- several -- but the main issue in this case is identification, is whether the individual who sold narcotics on September 19th of 2007 is, in fact, Lloyd Wright. There's been no identification other than Officer Springmeyer pointing and saying, that's the guy I sold to, in court and no identification outside or any methods used to identify Mr. Wright as the seller of the drugs.

And so first I would make a motion that they haven't established a crucial element of distribution that, in fact, it was Mr. Wright who distributed the drugs.

I would renew my motion as to the Brady violation for the failure of the State to find or determine that there, in fact, was a written operational plan created by the City of Charleston narcotics unit, possessed by them or possessed by the Federal Bureau of Investigation in this case, is both Corporal Hurteau and Investigator Springmeyer spoke

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1 about the existence of such a plan. They don't know
2 if, in fact, there is -- or what happened to that.

3 I think it's clearly a Rule 5 Brady, violates
4 the United States Constitution and the constitution of
5 South Carolina, and would make a motion for a mistrial
6 on that bases or at least to strike the testimony of
7 Officer Hurteau.

8 My second motion would be a motion -- I guess it
9 would be for a mistrial at this point, for the
10 admission of the evidence when a chain has not been
11 established. The officer -- and I'm going to reiterate
12 it all, if you don't mind, is Sargent LaLema, who at
13 the time was the evidence tech for the City of
14 Charleston, did not testify. His successor, to the
15 best of my knowledge, did not testify, either, is that
16 the evidence was taken and how it was handled and what
17 condition it was taken from the lockbox.

18 I would also move for a mistrial for the lack of
19 chain on the fact that through testimony today it was
20 determined that Officer Damian Seabrook injected
21 himself into the chain. He took the evidence, did not
22 put it in a tamper-resistant bag of any sort, and
23 allegedly put it in the lockbox at the City, and that
24 he filled out a property sheet that hasn't been given
25 to myself or shown to the Court it exists; that he, in

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1 fact, did that.

2 So I believe the chain fails on -- not just
3 weak, but fails on both of those bases; therefore the
4 violation of Rule 6, the United States Constitution
5 and the Constitution of South Carolina requires that
6 the evidence not be submitted into evidence; and,
7 therefore, without any evidence I believe --

8 It's not a mistrial. It would be a directed
9 verdict on behalf of my client. So I think a directed
10 verdict in that light.

11 And I believe even taking the evidence in the
12 light most favorable to the State, they still have a
13 hole in the chain. The chain is not complete.

14 And I understand Your Honor's reasoning, but we
15 can agree to disagree about whether the chain has been
16 established or not. And I would therefore respectfully
17 request directed verdicts.

18 Let me make sure I've covered all my points. If
19 you'll give me just a second.

20 THE COURT: Take all the time you need, Mr.
21 Smiley.

22 [Whereupon, Mr. Smiley reviews documents]

23 MR. SMILEY: The only other motion that I guess
24 I need to renew, Your Honor, was my motion to have the
25 phone -- the reference to the call made that was in the

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1 video also redacted. And you allowed that part, of
2 course, in. I asked that my objection be noted, and I
3 just renew that again, Your Honor, again violating my
4 client's sixth amendment right to a fair and impartial
5 trial.

6 Thank you. That's all I have, Your Honor. I
7 think I've covered everything.

8 THE COURT: Are you sure, Mr. Smiley? Do you
9 want to take a moment?

10 [Whereupon, Mr. Smiley and Ms. Hensley confer]

11 MR. SMILEY: That will be all, Your Honor.

12 THE COURT: Ms. Linder.

13 MS. LINDER: Thank you, Your Honor. I'll make
14 this very brief.

15 Kind of in reverse order of Mr. Smiley: as far
16 as the reference to any calls in the video that was
17 played, Your Honor, I would just state that Your Honor
18 has heard extensively about this and heard that part of
19 the tape -- of the video, rather, already, and you have
20 previously ruled.

21 As far as Mr. Smiley asking for a mistrial due
22 to the chain: we would say that, in fact, Sargent
23 LaLema did testify with Mr. Hinton, and that, again,
24 that goes to -- any weakness goes to the credibility,
25 not the admissibility. Again, Your Honor, you have

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1 already ruled.

2 Brady violation: we believe that it's supported
3 by testimony that both officers -- or Investigator
4 Springmeyer and Corporal Hurteau did not know if it was
5 reduced to paper. And Your Honor did rule on that.

6 As far as a directed verdict: as Your Honor is
7 well aware, that's merely the existence or nonexistence
8 of evidence. And in a light most favorable to the
9 State, I would submit that we have both circumstantial
10 and direct evidence in this case and the directed
11 verdict, along with the others, should be denied.
12 Thank you.

13 THE COURT: Mr. Smiley?

14 MR. SMILEY: I don't believe I need to respond,
15 except I didn't hear that Officer Hinton was the new
16 successor to Sargent LaLema. And I could be wrong. I
17 apologize if I am. If he's in charge of our evidence,
18 then I'll --

19 THE COURT: With reference to in you renewing
20 your motion to have the reference to the phone call
21 stricken from the video, I articulated the reasons why
22 and --

23 MR. SMILEY: Yes, ma'am.

24 THE COURT: -- I overrule your motion; note it
25 for the record.

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1 With the renewal of the Brady violation motion
2 regarding the written operational plan, the request for
3 either a mistrial or to have Corporal Hurteau's
4 testimony stricken, I again deny that motion. There
5 was testimony that Corporal Hurteau typically does
6 reduce it to writing; however, he could not recall
7 whether or not that was done in this case. He
8 testified to the operational plan here today in court
9 and indicated in response to questioning that he did
10 not know where the written operational plan was.

11 I deny your request for a mistrial, to strike
12 Officer -- excuse me -- Corporal Hurteau's testimony,
13 or any other sanction with regards to that written
14 operational plan. I do not feel that it rises to the
15 level of a Brady violation.

16 With respect to the motion for the directed
17 verdict, under Rule 19 the Court is, again, concerned
18 with the existence or non existence of the evidence
19 in the light most favorable to the nonmoving party,
20 which would be the State. Officer -- excuse me --
21 Investigator Springmeyer indicated that on -- in her
22 testimony that this happened in Charleston County; that
23 the person that she identified to be the defendant was
24 the person from whom she purchased the drugs. I will
25 address the issue of the admissibility of the drugs

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1 with respect to the chain in a moment -- testified that
2 New Israel School is within 400 yards, which according
3 to calculations is well within the half-mile school --
4 half mile of the location where the cocaine was
5 distributed, thus within the half-mile proximity
6 required by the charge. Based upon all of those, I
7 deny your motion for a directed verdict.

8 With respect, again, to your request for a
9 mistrial as to the admission of the drugs or the
10 failure of the State to produce sufficient evidence as
11 to the chain of custody: there was sufficient evidence
12 and testimony presented as to the chain which was,
13 again, from the defendant, to Springmeyer, to Seabrook,
14 to the lockbox, to Moody, to Mitchell, back to Moody,
15 and back to evidence.

16 The Court's interpretation of State v. Taylor,
17 as well as the cases following, the chain does not have
18 to be complete. What we are -- must not leave to
19 conjecture who was in possession of the drugs. What we
20 must be concerned with was what was done with the
21 evidence and between the taking and the analysis. The
22 testimony was complete, and based upon the Court's
23 review of the evidence and the testimony with respect
24 to the chain, went from the defendant, to Springmeyer,
25 to Seabrook, who was the case agent, to the lockbox, to

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1 Moody, who then gave it to Mitchell to be tested.

2 All of the individuals are known. There is no
3 missing evidence custodian. I note your objection for
4 the record, Mr. Smiley, that Officer LaLema was not
5 here to testify. But there is no -- in the Court's
6 opinion, there is no missing link that would render the
7 evidence inadmissible. Based upon that, again, the
8 State's Exhibit Number 2, which is the .31 grams of
9 cocaine base, is admissible.

10 Note your objection to all of my rulings, again,
11 for the record, Mr. Smiley.

12 Anything further?

13 MR. SMILEY: No, Your Honor.

14 THE COURT: All right. Mr. Wright, I am going
15 to advise you of your rights at this time so that you
16 can have the evening hour to discuss these rights with
17 your attorney. Please rise.

18 [Whereupon, Mr. Wright complies]

19 THE COURT: Please swear the defendant.

20 THE CLERK OF COURT: Mr. Wright, please raise
21 your right hand.

22 [Whereupon, Mr. Wright is duly sworn by the
23 clerk of court as follows: do you swear or affirm to
24 tell the truth, the whole truth, and nothing but the
25 truth so help you God]

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1 THE WITNESS: Yes, sir.

2 THE COURT: Mr. Wright, at this time I am going
3 to advise you of your rights. We've reached now the
4 stage of the trial when you may testify, if you choose
5 to do so. If you do not understand anything that I
6 say, please let me know. If you wish for me to explain
7 anything in more detail, please let me know. Do you
8 understand?

9 MR. WRIGHT: Yes, Your Honor.

10 THE COURT: You've reached the stage of the
11 trial where you may present your defense. You have the
12 right to claim the protections given to you by the
13 fifth amendment to the Constitution of the United
14 States. This amendment states, in part, no person
15 shall be compelled in any criminal case to be a witness
16 against himself. This means, sir, that you cannot be
17 required to testify in this case. You have the right
18 to testify on your own behalf; however, no one can make
19 you testify. This is a personal right that you have,
20 sir, and no one can waive this right except for you.

21 If you decide to testify, sir, you will be
22 subject to the same rules that govern other witnesses,
23 and you may be examined and cross-examined on any
24 relevant issue in this case.

25 Additionally, if you have convictions involving

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1 dishonest or false statement or for crimes punishable
2 by imprisonment for one year and I, as the Court,
3 determine that the probative value of admitting this
4 evidence outweighs its prejudicial effect to you, the
5 solicitor will be able to introduce your record to
6 attack your credibility.

7 If you decide to testify, sir, this decision on
8 your part must be freely, voluntarily and intelligently
9 made with the knowledge of the protections given to you
10 by the fifth amendment as well as the consequences of
11 your decision to testify.

12 Sir, if you decide not to testify, I will
13 instruct the jurors that they cannot give the fact
14 that you did not testify any consideration whatsoever
15 and that there is to be absolutely no prejudice to you
16 because you did not testify.

17 It is left entirely up to you whether you wish
18 to testify or not. You may talk with your attorneys,
19 your family, your friends, or anyone else, but the
20 decision will be left entirely up to you.

21 Do you understand what I have explained to you,
22 Mr. Wright?

23 MR. WRIGHT: Yes, Your Honor.

24 THE COURT: Do you have any questions about what
25 I have explained to you?

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1 MR. WRIGHT: No, ma'am.

2 THE COURT: Have you previously discussed with
3 your lawyer whether you should or should not testify?

4 MR. WRIGHT: Yes, ma'am.

5 THE COURT: And do you need any additional time
6 to meet with your attorney to discuss this matter?

7 MR. WRIGHT: No, ma'am.

8 THE COURT: Mr. Smiley, do you request any
9 additional time to go over these rights with your
10 client, or do you wish --

11 MR. SMILEY: Your Honor, can we let you know in
12 the morning? I don't expect him to testify, but I
13 would like the evening -- in the morning beforehand
14 before making a final decision.

15 THE COURT: Thank you, Mr. Smiley.

16 Mr. Wright, when we come back, the first
17 question I am going to ask you is do you wish to
18 testify.

19 Do you understand everything that I have
20 explained to you here today?

21 MR. WRIGHT: Yes, Your Honor.

22 THE COURT: And do you have any questions of the
23 Court concerning your right to testify?

24 MR. WRIGHT: No, Your Honor.

25 THE COURT: And so that you are fully advised:

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1 Madam Solicitor, are there convictions with which you
2 intend to impeach the defendant?

3 MS. LINDER: Your Honor, if the defendant does
4 testify and gets -- and opens the door, so to speak, to
5 the character, obviously we would want to approach and
6 be heard on that matter.

7 As far as his priors, if he does not talk about
8 the drugs -- in the past ten years he does not have any
9 convictions that I would intend to be seeking for
10 impeachment purposes.

11 THE COURT: Is that your understanding, Mr.
12 Smiley? Is that what you had advised your client
13 previously?

14 MR. SMILEY: He has several drug convictions.
15 But I understand Ms. Linder -- what Ms. Linder is
16 saying, and I'm going to explain that to my client.

17 THE COURT: All right. You may be seated, Mr.
18 Wright. Thank you.

19 [Whereupon, Mr. Wright complies]

20 THE COURT: Is there anything further, Mr.
21 Smiley?

22 MR. SMILEY: No, Your Honor.

23 THE COURT: Anything --

24 MR. SMILEY: Oh. Actually, there is one other
25 thing that I need to renew that I forgot about, is I

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1 objected to releasing the other jury until we found out
2 about the twelfth juror situation and --

3 THE COURT: Yes, sir. As of -- just for the
4 record, as of -- now it is seven o'clock --

5 MR. SMILEY: Yes, ma'am.

6 THE COURT: -- we still have not heard. So --

7 MR. SMILEY: I understand you completely.

8 THE COURT: -- I just -- just for the record,
9 Mr. Smiley.

10 And I will -- as I indicated to you, if you
11 request it in the charge on the law, I will again
12 reiterate, give somewhat of a curative instruction or
13 just more of an explanation that the fact that they
14 were perhaps participated in two jury selections should
15 not be held against your client in any way.

16 MR. SMILEY: Thank you. Then that's all.

17 THE COURT: All right. Anything further, Ms.
18 Linder?

19 MS. LINDER: Nothing from the State, Your Honor.

20 THE COURT: Okay. 9:30. I have not received
21 any further jury instructions; is that correct?

22 MR. SMILEY: I haven't submitted anything at
23 this point. I may in the morning give you one about
24 the chain of custody, since it just came up. I would
25 like --

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1 THE COURT: Yes, sir.

2 MR. SMILEY: -- to do that.

3 THE COURT: Yes, sir. Anything further, Ms.

4 Linder?

5 MS. LINDER: Your Honor, obviously if Mr. Smiley
6 submits something, we would like the opportunity to
7 review it. But as far as specific jury charges that we
8 would like to hand up for your review, we leave that in
9 the Court's discretion.

10 THE COURT: Thank you. And as of now, Mr.
11 Smiley, are you requesting any lesser-included?

12 MR. SMILEY: I don't believe there is one
13 available to us.

14 THE COURT: All right. Ms. Linder?

15 MS. LINDER: No, Your Honor.

16 THE COURT: All right. Thank you. We are in
17 recess until 9:30. Thank you.

18 [JURY TRIAL ADJOURNS AT 7:00 P.M.]

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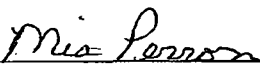
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Tuesday, May 19, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 27th day of December, 2009.



Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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STATE OF SOUTH CAROLINA
VS.
LLOYD WRIGHT,
DEFENDANT.

VOLUME 3 OF 3

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Wednesday, May 20, 2009, Commencing at 9:33 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

THE COURT: Please bring in Mr. Wright, and I'll go ahead and question him.

Mr. Smiley, do you need to speak to your client before I bring him in?

MR. SMILEY: No, ma'am.

[Whereupon, Mr. Wright enters the courtroom at 9:34 a.m.]

THE COURT: Good morning, Mr. Wright. Please stand.

[Whereupon, Mr. Wright complies]

THE COURT: Mr. Wright, yesterday evening I advised you of your constitutional rights. Have you had an opportunity to speak with your attorneys this morning or last evening concerning your right to testify?

MR. SMILEY: No. We haven't talked since last night. We made our decision and it hasn't changed, I don't think.

THE COURT: And at this time, Mr. Wright, what is your decision regarding testifying here today?

MR. WRIGHT: I don't want to.

THE COURT: Mr. Wright, I am sitting right under an air-conditioning vent, so could you speak up?

MR. WRIGHT: I don't want to testify.

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1 THE COURT: All right, sir. Thank you.

2 MR. WRIGHT: Yes, ma'am.

3 THE COURT: And with that, Mr. Smiley and Ms.

4 Linder --

5 You may be seated, Mr. Wright.

6 [Whereupon, Mr. Wright complies]

7 THE COURT: -- we will leave, in the charges,
8 the defendant's failure to testify.

9 MR. SMILEY: Yes, ma'am.

10 [Off the record momentarily]

11 MR. SMILEY: May I approach, Your Honor?

12 THE COURT: You may.

13 MR. SMILEY: I went over your charge, and the
14 only thing I would ask you to consider is the chain of
15 custody instruction. I gave a copy to the State to
16 review, and I have the cases --

17 THE COURT: Any objection to this proposed
18 charge, request to charge, from the defendant?

19 MS. LINDER: Your Honor, if I may just have a
20 moment to look at the case itself?

21 THE COURT: Yes.

22 MR. SMILEY: And, unfortunately, I only got one
23 case printed out, but I wanted to make sure she gets
24 it. If you need it, Your Honor, I'll get it.

25 THE COURT: No, sir. I'm familiar with that

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1 case.

2 I am going to mark this as Court's 2, your
3 proposed --

4 MR. SMILEY: Or Defendant's Request one,
5 either one. Yes, ma'am. However you wish to do
6 it.

7 [Whereupon, Court's Exhibit Number 2,
8 Defendant's Request to Charge, is marked by the
9 court reporter]

10 MR. SMILEY: Just so I don't interrupt us during
11 the --

12 THE COURT: Yes, sir.

13 MR. SMILEY: -- in a rush to get here.

14 [Whereupon, a recess is taken from 9:35 a.m. to
15 9:39 a.m.]

16 THE COURT: Mr. Smiley --

17 MR. SMILEY: Yes, ma'am.

18 THE COURT: -- are you calling any witnesses --

19 MR. SMILEY: No, ma'am.

20 THE COURT: -- on behalf of your client? So at
21 this time --

22 MR. SMILEY: The defense rests --

23 THE COURT: -- the defendant rests?

24 MR. SMILEY: Yes, ma'am.

25 - - -

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RENEWED MOTIONS

1
2 THE COURT: And are there any -- I will allow
3 you to rest in front of the jury when I bring them back
4 in. But just procedurally, is there anything
5 additional?

6 MR. SMILEY: Your Honor, I would just renew all
7 of the things that I renewed at the close of the
8 State's case for record purposes again now. I respect
9 all of the rulings. They wouldn't be any different.
10 For just for appellate purposes, if there is -- if any
11 need for that, I renew everything I did last night.

12 THE COURT: And the Court renews its rulings on
13 each of those motions.

14 MR. SMILEY: Yes, ma'am. Understood.

15 THE COURT: And is there anything further?

16 MR. SMILEY: No, ma'am. Ready to go as soon as
17 we get a jury.

18 THE COURT: Ms. Linder, is there anything
19 further from the State, as far as evidence?

20 MS. LINDER: No, ma'am.

21 THE COURT: And State's Exhibits 1, 2, and 3 are
22 the only evidence that has been introduced; is that
23 correct, Ms. Linder?

24 MS. LINDER: Yes, Your Honor.

25 THE COURT: Is that your understanding, Mr.

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1 Smiley? 1, 2, and 3, State's --

2 MR. SMILEY: Yes, ma'am.

3 However, I know it's not right now -- Number 3
4 will not go back into the jury room because there's
5 parts of it that have to be muted. If they wish to
6 view it, they have to come out.

7 THE COURT: That is correct. If they need -- if
8 they request to view the video, I will bring the jury
9 back in and we will play it again for them. But that
10 will not go back.

11 MR. SMILEY: Yes, ma'am.

12 THE COURT: Mr. Smiley, are you prepared with
13 your closing?

14 MR. SMILEY: Yes, ma'am.

15 THE COURT: And with the exception of now
16 Court's Number 2, any additions or corrections to the
17 Court's charge?

18 MR. SMILEY: No, ma'am.

19 THE COURT: And, Ms. Linder, any additions or
20 corrections to the Court's charge, with the exception
21 we will address defendant's request to charge chain of
22 custody?

23 MS. LINDER: Your Honor, with respect to the
24 Court's charges that you hand -- Your Honor handed, the
25 State has no exceptions or additions.

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1 THE COURT: All right. And what is the State's
2 position as to the defendant's request to charge?

3 MS. LINDER: The State would just like to state
4 for the record that we believe there is a difference
5 with this case. It's distinguished from this in Sweet.
6 Sweet has to deal with a confidential informant who was
7 not there to testify -- that is where the majority of
8 the issue of the chain is in the Sweet case -- whereas
9 this case is all sworn law enforcement officers. And
10 we just believe that distinguishes the cases.

11 THE COURT: Mr. Smiley, be happy to hear from
12 you regarding your request to charge.

13 MR. SMILEY: I'm presenting the charge in a
14 legal concept rather than a factual concept. The legal
15 concept is that the chain shall be proved up as best it
16 can but it should not be left to conjecture. In this
17 case we don't have officers that are testifying, we
18 have officers who have been added. So I think it's an
19 appropriate legal concept to be charged to the jury
20 under law of the State, and I ask that you charge it.

21 THE COURT: I will include the defendant's
22 request to charge. I will note the State's exception.

23 MS. LINDER: Thank you, Your Honor.

24 THE COURT: And, Mr. Smiley, do you have any --
25 do you have a proposed request regarding the calling --

1 that this was the second jury? Do you have any
2 proposed charge?

3 MR. SMILEY: I thought about that, Your Honor,
4 and it's -- there is one juror that I struck from the
5 first jury, that I actually had to place on the second
6 jury, because of peremptory strikes. And I thought
7 what would a curative instruction do, and the more I
8 thought of it, I do not request a curative instruction.

9 THE COURT: All right. Does the State request
10 any sort of curative or informative charge regarding
11 the fact that we had to pick -- that this would
12 actually be the second jury that we picked this week?

13 MS. LINDER: Your Honor, the State does not
14 request that. The State believes that your instruction
15 to the second jury, both the panel before chosen and
16 after this jury was chosen, we believe the Court's
17 instruction at that time is sufficient.

18 THE COURT: Thank you.

19 MS. LINDER: Thank you, Your Honor.

20 THE COURT: And I believe we are still waiting
21 on one juror. We will be at ease until the juror
22 arrives.

23 At that time, Mr. Smiley, I will allow you to
24 rest on the --

25 MR. SMILEY: Yes, ma'am.

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1 THE COURT: -- record, and we will begin closing
2 arguments at that time.

3 And I have the verdict forms prepared, if each
4 of you will come and view those and make sure that they
5 are in order.

6 We will get started as soon as everyone -- well,
7 we'll be at ease. Thank you.

8 [Whereupon, a recess is taken from 9:48 a.m. to
9 9:50 a.m.]

10 THE COURT: Be seated.

11 Any additions or corrections to the verdict
12 forms? From the State?

13 MS. LINDER: None, Your Honor.

14 THE COURT: From the defendant?

15 MR. SMILEY: None, Your Honor.

16 THE COURT: All of the jurors are here. Are we
17 ready to bring in the jury? From the State?

18 MS. LINDER: Yes, Your Honor.

19 THE COURT: From the defendant?

20 MR. SMILEY: Yes, Your Honor.

21 THE COURT: Please bring in the jury. Please
22 rise for the jury.

23 MR. SMILEY: Your Honor, Ms. Hensley has a
24 hearing in family court at 10:15, and I told her if she
25 runs a little bit late that I'm sure we can get word

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1 down. She is running a few minutes late.

2 THE COURT: Who are you in front of, Ms.

3 Hensley?

4 MS. HENSLEY: Judge Segars-Andrews, I believe,

5 Your Honor. It's a DSS --

6 THE COURT: I'll send her an e-mail. You may be
7 excused after Mr. Smiley completes his closing --

8 MS. HENSLEY: Thank you.

9 THE COURT: -- if that's what you are also
10 requesting.

11 MS. HENSLEY: Thank you, Your Honor.

12 MR. SMILEY: Thank you.

13 [Whereupon, the jury enters the courtroom at
14 9:52 a.m.]

15 THE BAILIFF: All present, Your Honor.

16 THE COURT: Thank you. Thank you. Please be
17 seated.

18 Good morning, ladies and gentlemen. I hope you
19 had a wonderful evening.

20 Mr. Smiley?

21 MR. SMILEY: Your Honor, at this time my client
22 avails himself to his constitutional rights and does
23 not wish to put up any evidence, and the defense would
24 rest.

25 THE COURT: Thank you.

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1 Ladies and gentlemen of the jury, you have now
2 heard all of the testimony and the evidence presented
3 in this case. As I indicated to you in my opening,
4 we've reached the stage where you will now hear closing
5 arguments on behalf of the defendant and the State.

6 As I indicated to you, just as the opening
7 statements, closing arguments are not to be considered
8 evidence by you in this case.

9 Mr. Smiley.

10 MR. SMILEY: I would be closing --

11 THE COURT: You are correct.

12 MR. SMILEY: Thank you. You scared me there for
13 a minute.

14 THE COURT: Ms. Linder?

15 MS. LINDER: Thank you, Your Honor. May it
16 please the Court.

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CLOSING ARGUMENT

MS. LINDER: Good morning, ladies and gentlemen of the jury.

Yesterday when I had the opportunity to address you, I told you that this trial would be short and fairly straightforward. I submit to you now at the conclusion of the case the case is just that, short, simple, and straightforward.

Back on September 19th, 2007, the Charleston Police Department narcotics unit utilized an undercover police officer to purchase a quantity of cocaine base. I submit that the defendant, Lloyd Wright, distributed that cocaine base to an undercover officer back on September 19th, 2007, in the area of Romney and Athens Street here in Charleston County and that location was within one half a mile of the New Israel School. The transaction was recorded on both audio and video and utilized prerecorded money.

The CPD utilized an undercover police officer. You've heard the testimony from the supervisor, Corporal Todd Hurteau, and Investigator Springmeyer. There were complaints about the drug area. It was an open-air drug market, I believe one of them said. What did the police do in response? They created a plan. They created a plan that involved Investigator Karen

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1 Springmeyer working in an undercover capacity. She
2 was to work in that undercover capacity. And you heard
3 her -- you heard her talk about the training, her
4 education and her experience not just with general law
5 enforcement but with narcotics cases, with undercover
6 schools that she's been to, all of that training.

7 She was the undercover police officer. She was
8 there. She knows what happened. She wired her car
9 with, quite frankly, what sounded like a pretty high-
10 tech device the size of a cell phone that records it,
11 and then it's transferred, and a lot of technical
12 mumbo-jumbo that, quite frankly, I just -- is not my
13 game.

14 She testified that it transmitted a live audio
15 feed to other officers in the area. She also testified
16 that she did an audio and video recording. She
17 testified that she received some funds from the FBI to
18 do this purchase. She knew the location where she was
19 going to go. She knew that location here in Charleston
20 County. She knew that location because it was a drug
21 area.

22 She wasn't alone in this case. There were other
23 officers around. The live audio feed was transmitted
24 to those other officers. There were officers stationed
25 in perimeter locations. There were officers there, for

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1 many reasons, listening to the feed in perimeter
2 locations for surveillance. And you also heard that
3 other officers were around for her safety. She was an
4 undercover police officer going to buy drugs in a drug
5 area.

6 That undercover officer went to the area. The
7 other officers were around. I ask that you go back to
8 the video, watch. She approaches the area. Shortly
9 thereafter the defendant, Lloyd Wright, approaches her.
10 An exchange occurred. There was a verbal exchange, but
11 there was also another exchange, the most important
12 exchange, which was undercover officer Springmeyer gave
13 \$50 to the defendant, Lloyd Wright, for cocaine base.
14 That exchange of money was for cocaine base. He is
15 breaking up cocaine base, I submit, to sell to
16 Investigator Springmeyer. That cocaine base that the
17 undercover officer received was from the defendant,
18 Lloyd Wright. Watch the video. I submit that the
19 picture shows Karen Springmeyer and, more importantly,
20 shows the defendant breaking up the cocaine base,
21 selling the cocaine base to Officer Springmeyer,
22 handing the cocaine base to Officer Springmeyer. The
23 deal was done after all of this. After he took the \$50
24 from the undercover officer and he sold her, he
25 distributed to her, cocaine base, the deal is done.

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1 The hand-to-hand transaction was complete.

2 The defendant, Lloyd Wright, distributed that
3 cocaine base to the undercover officer Karen
4 Springmeyer. You heard from her on the stand. She
5 was there. You heard from her that the man who
6 distributed the cocaine base to her, the man that you
7 see before you there, is indeed this man in the
8 courtroom. She identified him for you yesterday. That
9 man, Lloyd Wright, is the one who distributed cocaine
10 base to her.

11 After the deal, after the defendant distributed
12 the cocaine base to the undercover officer, she met
13 back up with the other officers. The deal was done.
14 Those officers I submit, though, knew the deal was
15 done. They knew the deal was done and they knew to
16 meet back up, because they were listening to the live
17 audio feed. They heard the deal was done. They heard
18 that.

19 After debriefing, the undercover officer,
20 Investigator Springmeyer, gave the cocaine base to the
21 case agent. The case agent was Damian Seabrook.
22 Seabrook told you that he filled out the tag. He
23 filled out the location of where it happened. He
24 filled out the case number. He filled out what
25 substance they were submitting. He had sole custody

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1 and control of the drugs. A law enforcement officer
2 had sole custody and control of those drugs. Those
3 drugs that the defendant, Lloyd Wright, sold to
4 Investigator Springmeyer were given to the case agent,
5 Damian Seabrook.

6 Seabrook told you that he took those drugs to
7 CPD evidence. He put them in a secured lockbox. I
8 envision it as kind of like one of the big metal
9 mailboxes on the street. You can open it, you can put
10 your mail in, and once it's in there you're done. You
11 can have it lifted and what -- and there's no way to
12 get into it. Seabrook told you that it was a secured
13 evidence lockbox. He had no other access to it. Once
14 he secured it there, he was done.

15 From there, the evidence custodians log them
16 in. The evidence custodian is like a postal carrier.
17 They have that special key, so to speak, and can -- are
18 the only people who can access it. That evidence
19 custodian --

20 MR. SMILEY: Objection, Your Honor. Arguing
21 facts not in evidence.

22 MS. LINDER: The evidence custodian logs in --

23 THE COURT: Ms. Linder?

24 Sustained. Move on.

25 MS. LINDER: The evidence custodian logged in

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1 everything. The drugs then were in a secured location
2 in the evidence facility.

3 Susan Moody then signed out the drugs and
4 couriered them, so to speak, to the lab for analysis.
5 Susan Moody told you that she dropped the drugs from
6 this case in a drug safe, a secure drug safe.

7 Then you heard from Elizabeth Nicky Wiggins-
8 Mitchell, Ms. Mitchell, the chemical analyst, the
9 expert. She told you that she is trained in conducting
10 tests on substances. She was declared an expert. She
11 tested the substance in this case and it was .31 grams
12 of cocaine base. .31 grams of cocaine base.

13 The defendant, Lloyd Wright, sold .31 grams of
14 cocaine base to an undercover police officer back --
15 Romney Street and Athens Court -- Romney Street and
16 Athens Court, and that happened back on September 19th,
17 2007.

18 Drugs are illegal. It's illegal to possess
19 drugs, it's illegal to distribute drugs, it's illegal
20 to distribute drugs within a one half mile proximity of
21 a school. That is why we are here today. We are here
22 today for the Defendant Lloyd Wright's day in court.

23 Back on September 19th, 2007, the CPD narcotics
24 unit, they initiated an undercover operation.
25 Investigator Springmeyer is the undercover officer.

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1 The car was wired. She was given money. She told you
2 that it was a buy-walk operation, so there was no
3 immediate take-down. She drove to the area of Romney
4 Street and Athens Court. The deal went down. The
5 defendant sold a quantity of cocaine base, which was
6 specifically .31 grams of cocaine base, to the
7 undercover officer in exchange for \$50. All of this,
8 all of this, happened within one half a mile of the New
9 Israel School.

10 Back in the jury room you will have everything
11 that has been admitted into evidence. You will have
12 the video. It has been admitted as evidence. You will
13 have the map. It has been admitted as evidence. And
14 you will have the drugs. They have been admitted as
15 evidence in this case.

16 I ask that you review the evidence in this case
17 and come back with a verdict of guilty, that the
18 defendant, Lloyd Wright, is guilty of distribution of
19 cocaine base and that the Defendant, Lloyd Wright, is
20 guilty of distributing cocaine base within a half mile
21 proximity of the New Israel School. Thank you.

22 THE COURT: Thank you, Ms. Linder. Mr. Smiley?

23 MR. SMILEY: May it please the Court.

24 - - -

25 - - -

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CLOSING ARGUMENT

MR. SMILEY: They told you the case was short, straightforward, and simple. That's sort of how they went about it.

They didn't do their job, first of all. You know, this case basically comes down to an ID right off the top, and the only ID you heard any testimony about was in court where she said, do you see the person you sell drugs to. I can tell you, I can basically put my ten-year-old son up there and -- we're on trial. He's the only defendant. I would hope the officer could point him out. But did you hear any other ID? Did you hear his name called during the tape? Did you hear a description of Lloyd Wright?

Stand up, Lloyd.

[Whereupon, Mr. Wright confers]

MR. SMILEY: He's about six foot three, six foot four. He's a big guy, 240, 250. Y'all guess. Common sense, you know. Big guy. Did you hear a description of the person she purchased from? Anything? We know that they didn't know who the person was that day. And how do we know that? We know that because whoever filled out this evidence tag, supposedly Detective Seabrook, or Damian Seabrook, puts suspect unknown. Okay? Because when it got to the lab the next day they

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1 didn't provide a suspect, because the chemist puts
2 suspect unknown. So they didn't know who it was. And
3 they have provided you no evidence, no evidence, to
4 tell you how they came up with Lloyd Wright. None.

5 There's another thing that's bothering me. In
6 the video you hear about, give me a call, all right,
7 like they knew each other kind of thing. Well, you
8 know good and well if they had that phone number of
9 Lloyd Wright, you would have seen those phone records
10 here in court. If they had his phone number: here is
11 his phone. They don't have that. They didn't know who
12 it was. And it wasn't Lloyd Wright.

13 Now, I told you it was important to look at what
14 they did and what they didn't do. See, they've got
15 this camera and they think that's all they've got to do
16 is point the camera in the general direction and, you
17 know, we don't need to do any other work. But no other
18 officer was around. They were listening, over behind
19 the old library over on King Street, a good ways away.

20 We've asked a couple of officers that testified
21 if they saw anything. But you notice none of the other
22 officers were here. Corporal Constanza, he wasn't
23 here. I asked her who else. Where's the FBI guy? He
24 wasn't here.

25 Things they didn't do: you look at the video,

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1 it appears to me -- and y'all are the judges of the
2 evidence -- that whoever sold that drug touched the
3 car. It wasn't fingerprinted. Certainly it doesn't
4 cost the State a whole lot, or the federal government,
5 for that matter, and it could have given them a
6 positive ID.

7 But there was something simpler they could have
8 done, all right, that would have removed doubt about
9 who sold those drugs, is they provided Agent
10 Springmeyer with prerecorded buy money. Okay? That
11 money is marked. It's copied. They know that those
12 bills, that \$50, is marked. There's a reason you use
13 marked money. And I asked and -- well, every time I
14 seemed to ask a question, the officers seemed to try to
15 be evasive.

16 But the bottom line is common sense. You use
17 prerecorded buy money so when you arrest the guy, he's
18 got it in his pocket. Then there's not even a
19 question. But this was a buy-walk, for officer safety.
20 Well, the officer could have drove off and those
21 officers that were having coffee behind the library,
22 they could have been closer by and come in and arrested
23 the person she described. I forgot, she didn't
24 describe him. But she could have described him, and
25 they could have been close by and they could have come

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1 to arrest the guy that sold it. They didn't do that.
2 They didn't do that. They didn't go get warrants in
3 this case for some three weeks later.

4 And they're concerned about an open-air market.
5 Whoever sold those drugs, I guess he's probably still
6 out in the open-air market along with the other six
7 guys that were out there, or whoever else. They could
8 have made a difference that day. They could have
9 presented you with evidence that would not have made
10 you guess. You know, your job is not to guess. Your
11 job is not to be police officers, your job is not to be
12 prosecutors, your job is not to be a judge. Your job
13 is to look at the evidence.

14 If you look at the evidence starting from over
15 here where I stood at the very beginning of my opening
16 argument, y'all -- with Lloyd. He said not guilty.
17 And that's where we started: over here. Presumed
18 innocent by the constitution of the United States.

19 And, you know, everybody says, boy, those
20 rights, those rights to that constitution, just let the
21 bad guys get off. No. Those rights are for innocent
22 people. Those rights are for people, because without
23 those rights there would be no checks and balances
24 against the government to do whatever they want. We
25 would be in a state where you don't get a trial and you

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1 don't get a jury, you don't get the presumptions, and
2 they just take you out back and shoot you like they do
3 in Iraq or wherever else where we don't have a system
4 that works.

5 So y'all start right here: not guilty. And the
6 State doesn't have to move you half way. They've got
7 to move you beyond a reasonable doubt. It's their
8 burden to do that. They must bring you the evidence
9 that does not make you guess.

10 Now, Detective -- excuse me -- Corporal Hurteau,
11 who was the supervisor, the head of narcotics, came in
12 and testified. And you've got to watch how each of
13 these people -- these officers testify, is he told you
14 about his experience. And he spent quite some time
15 telling you how thoroughly he had been trained, how he
16 had done thousands of arrests, how he had been involved
17 with the FBI, the ATF, the DEA, and that he had made
18 significant contributions in the area of narcotics.
19 And he certainly was thoroughly trained.

20 Now, he told you that this was a joint operation
21 with the FBI, and they brought in the FBI to clean up
22 this open-air market, and that in every case he started
23 off -- at least this way -- in every case they do an
24 operational plan to show the targets, what -- the
25 safety, what they're up to, and that they commit it to

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1 paper. However, when questioned about where that plan
2 was, he didn't know. I don't know; maybe we didn't do
3 one; maybe the FBI has got it; I don't know.

4 I mean, he's trained. That plan would have
5 provided you with the necessary information to at least
6 know what they intended to do and whether they followed
7 it, whether -- who their targets were. It's a piece of
8 information that we'll never know what it contains. I
9 can guarantee you if it helped their case, it would
10 have been found. It's not here. And this is their
11 head honcho, with all of his training. Now, I think
12 the world of Corporal Hurteau. I'm not here to
13 disparage him personally. I'm just telling you
14 professionally he got lazy. He didn't do his job.
15 They've got video, but there wasn't anything else.

16 Then I asked about those reports, you know. He
17 didn't do one. He's made in the thousands of busts.
18 Truthfully, he told you he had to review everybody
19 else's notes before he got up here that day. I mean,
20 he knew what time it took place. Not from memory,
21 because he had to review a report. Who, two years
22 later, can remember 1440 unless you read it in somebody
23 else's report or, if you had taken notes, read it from
24 your own? While they tried to make it sound as if this
25 is of the utmost importance, they're just plain lazy

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1 and they didn't do their job and they're asking you now
2 to do it for them.

3 Now, Investigator Seabrook -- and forgive me if
4 I get his rank wrong. I try my best. Investigator
5 Seabrook was the case agent and he was overseeing it,
6 but he wasn't -- he was back behind the library
7 listening. But he says that when they met with
8 Detective Springmeyer, he got the evidence. They
9 didn't describe the evidence to you, but he got it, and
10 that he collected it and he filled out this card. But
11 it doesn't have his initials, his name, on it. And it
12 sounds like, who cares.

13 It's important. It's important because the
14 State has an obligation to prove their chain of
15 custody. It's not to be left up to conjecture, to
16 guessing. And why is it important? Because when you
17 take a piece of evidence, you want to know that that
18 evidence comes from that case -- they do thousands of
19 cases -- and how it was handled, was it changed, was it
20 manipulated. Or are we just suppose to trust? If we
21 just trust, we don't need this. We don't need
22 evidence. And, truthfully, we don't need y'all if we
23 just trust and we don't test, we just believe whatever
24 they say. That's why there's reasons for this.

25 And the simplest thing in this chain of custody

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1 is when you collect it, you sign it. He didn't sign
2 it. Well, I just forgot about it. This man says he's
3 been doing this for eight and a half years and that
4 he's thoroughly trained and that he knows what he's
5 doing. They can't have it both ways. They want you to
6 think that their narcotics investigators are so trained
7 and so good and that they don't make any mistakes, but
8 then by the same token they would want you to just
9 overlook the fact, oh, we lost that operational plan,
10 or maybe we didn't do one, and, you know, I forgot to
11 sign the big thing, but, so what, I got the drugs.
12 They can't have it both ways.

13 Now, we know from looking at the card, that's
14 evidence, that on the 19th Detective Springmeyer says
15 she obtained a substance that hadn't been tested or
16 weighed. The next thing we know is someone named --
17 with the initials JL got it the next day at 4:15. All
18 right? Now, Investigator Springmeyer says he had it in
19 between then. But he didn't sign it. He didn't tell
20 you when he got it. He didn't tell you what he did
21 with it. He told you -- excuse me -- he testified that
22 he took it down to the headquarters and filled out a
23 property sheet, right, that would have had his name on
24 it, and deposited the drugs in the drug box. Well,
25 where's the property sheet? You know, it's not

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1 important; I guess it just disappeared; but you know
2 what, y'all, we wouldn't lie to you; we're doing our
3 job; we don't make mistakes; y'all just go along with
4 us.

5 The police also have to be held to a standard.
6 We don't know where those drugs were, we don't know
7 what it was contained in, we don't know if they were
8 drugs, we don't know where they went. We just know
9 that something was turned in to JL the next day. Now,
10 chain of custody is -- you're going to hear from the
11 judge's instructions. As I said, it's not something
12 left up to conjecture. They must prove their chain.

13 Now, the next person allegedly in the chain is
14 JL. And because of our experience and what the young
15 man said, we know that JL is allegedly Sargent LaLema,
16 who was the evidence custodian. He didn't testify.
17 The head guy, he didn't testify. They brought this
18 young fellow in to tell you what procedures were there,
19 but he didn't have anything to do with this case. And
20 he's just telling you, yeah, that's what we usually do.
21 Where is the next person in the chain? He isn't there.
22 He cannot confirm anything that Detective Seabrook --
23 oh, excuse me -- Investigator Seabrook, he can't tell
24 you what he collected and what bag he collected it in
25 and where that property sheet is, because he's not

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1 here.

2 The evidence is checked out -- well, before I
3 move on: there's another way we could feel better
4 about the evidence that was allegedly collected in this
5 case. And I asked the chemist, Wiggins, Ms. Wiggins,
6 about that, and she said -- I asked her about the
7 tamper-proof bags, bags you put what evidence in when
8 you collect it, and you seal it, and then whatever was
9 collected, whether it was drugs or not -- because we
10 don't know at this point, because it had to have been
11 taken up to the lab and tested -- would be in something
12 that if it was tampered with, they would know if it was
13 manipulated, if it was changed. I'm not telling you it
14 was. I don't know. We don't know. And it's not your
15 job to guess. It's not your job to fill in the blanks.
16 It's not your job to look at it with conjecture. It's
17 your job to take the evidence as it's given to you and
18 apply it and see if the State has met their burden.

19 Now, Investigator Springmeyer is an undercover
20 agent. She made a purchase from some black male that
21 they allege is Lloyd Wright, but they don't fill in the
22 blank how they got to Lloyd Wright, just on October the
23 9th they arrested him.

24 You know, when your liberty is at stake, it is
25 the most dire thing that you can possibly face. And

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1 that's why we come to this room and have twelve people
2 to look at it, to take it seriously. They can see if
3 the police has done their job. Their job is to arrest
4 people. And that is their job. They did their job.
5 They arrested someone. It's the State's job to do
6 justice. It's my job to zealously represent the
7 interest of my client. It's the judge's job to be the
8 judge of the law and keep the process moving. It is
9 your job to take those facts and apply them. You can
10 tell the police, you didn't do your job; you haven't
11 proved to us one little minute that that young black
12 man, whatever size he was, is Lloyd Wright; you just
13 didn't; the next time, don't come in here with mistakes
14 and ask us to fix it; don't come in here with
15 conjecture; don't come in here and ask us to guess;
16 come in here with a case that you could have easily
17 made before you come before us and ask us to take
18 someone's liberty.

19 There's only one verdict, and that is not
20 guilty.
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CHARGE OF THE COURT

THE COURT: Ladies and gentlemen of the jury, I remind you that during this trial you and I have had certain duties to perform. As the trial judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony.

You are to consider only the testimony which has been presented from the witness stand, any exhibits which have been made part of the record in this case, as well as any stipulations of counsel.

I have the additional duty to charge you on the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. It is your duty as jurors to accept it and to apply the law as I state it to you now. If you already have an idea as to what the law is or what the law ought to be, and it does not agree with what I now tell you, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you now.

In every case tried in this court before a jury,

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1 the jury becomes the sole and exclusive judge of the facts
2 in a case. A trial judge cannot state, comment on, or
3 make any statement to a trial jury about the facts in the
4 case. Since you, the jury, are the sole judge of the
5 facts in this case, you are not to infer from anything
6 that I have said during the progress of this trial in
7 ruling upon the admissibility of any of the evidence or
8 otherwise, or anything that I say now during the course of
9 the instruction on the law to you, that I have any opinion
10 as to the facts of this case. The law simply does not
11 allow me to have an opinion about the facts in this case.
12 This is a matter solely for you, the jury, to determine.

13 It is your duty to determine the effect, value,
14 and weight and the truth of the evidence presented during
15 this trial.

16 The indictments charge the defendant with the
17 crimes of distribution of cocaine base and distribution
18 of cocaine base within a proximity of a school. I remind
19 you the fact that the defendant was arrested, charged,
20 and indicted in this case is not evidence in this case
21 and cannot be considered by you as evidence of guilt in
22 this case, nor does it create any presumption or inference
23 of guilt. The documents are simply the formal written
24 instrument which contains the charges against the
25 defendant. It is the formal document which brings this

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1 case to court.

2 The indictments in this case allege several
3 different offenses against the defendant. The charges
4 are, indictment number one, distribution of cocaine base,
5 indictment number two, distribution of cocaine base within
6 a proximity of a school. Each indictment contains a
7 separate and distinct offense. You must decide each
8 indictment separately on the evidence and the law
9 applicable to it, uninfluenced by your decision as to any
10 other indictment.

11 The defendant may be convicted or acquitted on
12 any or all of the offenses charged. You will be asked to
13 write a separate verdict of guilty or not guilty for each
14 indictment.

15 The defendant has pled not guilty to each
16 indictment, and that plea puts the burden on the State
17 to prove the defendant guilty. A person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove himself innocent.

20 I charge you that it is an important rule of
21 law that the defendant in a criminal trial, no matter what
22 the seriousness of the charge may be, will always be
23 presumed to be innocent of the crime for which the
24 indictment was issued unless guilt has been proven by
25 evidence satisfying you of that guilt beyond a reasonable

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1 doubt. This presumption of innocence does not end when
2 you begin your deliberations, but it accompanies the
3 defendant throughout the trial until you reach a verdict
4 of guilt based on evidence satisfying you of that guilt
5 beyond a reasonable doubt. The presumption of innocence
6 is like a robe of righteousness placed around the
7 shoulders of the defendant, which remains with the
8 defendant until it has been stripped from the defendant
9 by evidence satisfying you, the jury, of the defendant's
10 guilt beyond a reasonable doubt. The presumption of
11 innocence is not mere legal theory. It is not just a
12 legal phrase. It is a substantial right to which every
13 defendant is entitled unless you the jury are satisfied
14 from the evidence, of the defendant's guilt, beyond a
15 reasonable doubt. The State has the burden of proving
16 the defendant guilty beyond a reasonable doubt. Some
17 of you may have served as jurors in a civil trial before
18 where you were told that it was only necessary to prove
19 a fact more likely true than not true, such as by the
20 greater weight or the preponderance of the evidence.
21 In criminal cases, the State's burden is more powerful
22 than that. It must be beyond a reasonable doubt. Proof
23 beyond a reasonable doubt is proof that leaves you firmly
24 convinced of the defendant's guilt. There are very few
25 things in this world that we know with absolute certainty,

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1 and in criminal cases the law does not require proof that
2 overcomes every possible doubt. If based upon your
3 consideration of the evidence you are firmly convinced
4 that the defendant is guilty of the crime charged, you
5 must find the defendant guilty. On the other hand, if
6 you think there is a real possibility that the defendant
7 is not guilty, you must give the defendant the benefit of
8 the doubt and find him not guilty.

9 There are two types of evidence which are
10 generally presented during a trial: direct evidence
11 and circumstantial evidence. Direct evidence is the
12 testimony of a person who claims to have actual knowledge
13 of a fact, such as an eyewitness. It is evidence which
14 immediately establishes the main fact to be proved.
15 Circumstantial evidence is proof of a chain of facts and
16 circumstances indicating the existence of a fact. It is
17 evidence which immediately establishes collateral facts
18 from which the main fact may be inferred. Circumstantial
19 evidence is based on inference and not on personal
20 knowledge or observation. The law makes absolutely no
21 distinction between the weight or value to be given either
22 direct or circumstantial evidence, nor is a greater degree
23 of certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all of the evidence in
25 this case. After weighing all of the evidence, if you are

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1 not convinced of the guilt of the defendant beyond a
2 reasonable doubt you must find the defendant not guilty.

3 Necessarily, you must then determine the
4 credibility of witnesses who have testified in this case.
5 Credibility simply means believability. It becomes your
6 duty as jurors to analyze and to evaluate the evidence
7 and to determine which evidence convinces you of its
8 truth. In determining the believability of witnesses who
9 have testified in this case, you may believe one witness
10 over several witnesses or several witnesses over one
11 witness. You may believe part of the testimony of one
12 witness and reject the remaining part of the testimony of
13 that same witness. You may believe the testimony of a
14 witness in its entirety, or you may reject the testimony
15 of that same witness in its entirety. You may consider
16 whether any witness has exhibited to you any interest,
17 bias, prejudice, or other motive in this case. You may
18 also consider the appearance and the manner of a witness
19 while he or she was on the witness stand.

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or to conclusions. An
22 exception to this rule exists for witnesses we call expert
23 witnesses, a witness who by education and experience has
24 become expert in some art, science, profession, or
25 calling, may state an opinion as to a relevant and

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1 material matter in which the witness claims to be an
2 expert and may also state the reasons for that opinion.

3 You should consider any expert opinion received
4 in evidence in this case and, like any evidence, give it
5 the weight that you think it deserves. If you decide that
6 the opinion of an expert witness is not based on
7 sufficient education and experience, or if you conclude
8 that the reasons given in support of the opinion are not
9 sound or that the opinion is outweighed by other evidence,
10 you may disregard the opinion entirely. An expert
11 witness' testimony is to be given no greater weight than
12 that of other witnesses simply because that witness is an
13 expert. Further, you are not required to accept an
14 expert's opinion, even though it is not contradicted.

15 I instruct you and emphasize that the fact
16 that the defendant did not testify is not a factor to be
17 considered by you in any way in your deliberations and
18 in your consideration on the question of the guilt or
19 innocence of the defendant. It must not be considered
20 by you in any manner whatsoever. A defendant has a
21 constitutional right to remain silent, and the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath you are to draw
24 no conclusion whatsoever from the fact that the defendant
25 in this case did not testify. The fact that this

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1 defendant did not testify should not even be discussed in
2 the jury room. The burden of proof, as I have stated to
3 you, is on the State. The defendant is not required to
4 prove his innocence. The burden of proof remains on the
5 State to prove guilt beyond a reasonable doubt.

6 An issue in this case is the identification
7 of the defendant as the person who committed the crime
8 charged. The State has the burden of proving identity
9 beyond a reasonable doubt. You must be satisfied beyond
10 a reasonable doubt of the accuracy of the identification
11 of the defendant before you may convict the defendant.
12 Identification testimony is an expression of belief or
13 impression by a witness. You must determine the accuracy
14 of the identification of the defendant. You must consider
15 the believability of each identification witness in the
16 same way as any other witness. You may consider whether
17 the witness had an adequate opportunity to observe the
18 offender at the time of the offense. This will be
19 affected by things like how long or short a time was
20 available, how far or close the witness was, the lighting
21 conditions, and whether the witness had the chance to see
22 or know the person in the past. Once again, I instruct
23 you the burden of proof on the State extends to every
24 element of the crime charged, and this specifically
25 includes the burden of proving beyond a reasonable doubt

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1 the identity of the defendant as the person who committed
2 the crime. If after examining the testimony you have a
3 reasonable doubt as to the accuracy of the identification,
4 you must find the defendant not guilty.

5 In order to establish criminal liability,
6 criminal intent is required. For example, the mental
7 state required by the State to be proven for a particular
8 crime might be purpose, intent, knowledge, recklessness,
9 or criminal negligence. Criminal intent must be proven
10 by the State beyond a reasonable doubt. Criminal intent
11 is always a matter that must be determined by the jury
12 from the circumstances surrounding the situation. There
13 is no way to prove intent to a mathematical certainty.
14 There is no way medical science can dissect a person's
15 brain and determine what the person had in mind, so
16 the law says that the intent may be inferred from the
17 circumstances shown to have existed. This is how you
18 make a determination of whether or not the element
19 requiring intent was present. It is not necessary to
20 establish intent by direct and positive evidence, but
21 intent may be established by inference in the same way
22 as any other fact, taking into consideration the facts of
23 the parties -- the acts of the parties, and all the facts
24 and circumstances of the case. Criminal intent is a
25 mental state, a conscious wrongdoing. It is up to you to

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1 determine what the defendant intended to do, based on the
2 circumstances shown to have existed. Criminal intent can
3 arise from action or a failure to act. It may arise from
4 negligence, recklessness, or an indifference to duty, or
5 to consequences that is considered by the law to be the
6 equivalent of criminal intent.

7 The defendant is charged with distribution of
8 cocaine base. The State must prove beyond a reasonable
9 doubt that the defendant distributed cocaine base.

10 Distribute means to deliver or to actually constructively
11 or attempt to transfer a drug, other than by administering
12 or dispensing. Deliver means to actually constructively
13 or attempt to transfer a drug. A transfer can involve an
14 exchange for money, a barter, or a gift. There does not
15 have to be anything given in exchange for the drugs or a
16 transfer to constitute distribution.

17 The defendant is charged with distribution
18 of cocaine base within a proximity of a school or park.
19 The State must prove beyond a reasonable doubt that the
20 defendant distributed, sold, purchased, manufactured, or
21 unlawfully possessed with intent to distribute cocaine
22 base while in, on, or within one half mile of the grounds
23 of a public or private elementary, middle or secondary
24 school, a public playground or park, a public vocational
25 trade school or technical education center, or a public or

1 private college or university.

2 A party offering into evidence fungible items
3 such as drugs or blood samples must establish a complete
4 chain of custody, as far as practical. Where an analyzed
5 substance has passed through several hands, the identity
6 of individuals who acquired the evidence and what was done
7 with the evidence between the taking and the analysis must
8 not be left to conjecture.

9 Ladies and gentlemen of the jury, there are
10 four possible verdicts which you may find in this case.
11 And, again, I state to you that they are in no particular
12 order. It's simply one must go first, so there is no
13 significance to the fact which one I state first.

14 Ladies and gentlemen, your verdict must be
15 unanimous.

16 Madam Foreperson, when the jury agrees on the
17 verdict, you will write the verdict on the verdict form,
18 then you will knock on the jury room door indicating to
19 the bailiff that you have reached a verdict, and we will
20 receive you back into the courtroom.

21 There are two verdict forms. One, State of
22 South Carolina vs. Lloyd Wright, docket number 2007-GS-10-
23 13898, we, the jury, find the defendant not guilty; or,
24 we, the jury, find the defendant guilty of distribution of
25 cocaine base. Madam Foreperson, you must certify that

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1 this is the unanimous decision of the jury, and you will
2 sign and date that verdict form. Docket number 2007-GS-
3 10-13899, State of South Carolina vs Lloyd Wright, we, the
4 jury, find the defendant not guilty, or, we, the jury,
5 find the defendant guilty of distribution of cocaine base
6 within a proximity of a school. Again, Madam Foreperson,
7 you must sign certifying that the decision is the
8 unanimous decision of the jury, sign and date it.

9 Ladies and gentlemen of the jury, you will
10 have copies of -- you will have the verdict form, the
11 indictments, and the evidence that has been submitted in
12 this case, in the room with you while you are reaching
13 your verdict.

14 I ask now that you return to your jury room but
15 please do not begin your deliberations until you are told
16 by the clerk or the bailiff to do so. There are some
17 matters that must be discussed before you may begin your
18 deliberations, and we must gather the evidence and the
19 verdict forms and the indictments to go back with you.

20 Mr. Schobein, as the alternate, you have
21 completed your service to the State and I ask that you
22 remain for just a few moments until all of the evidence
23 has gone back to the jury. And, again, I thank you for
24 your service to Charleston County.

25 Please rise for the jury.

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1 [Whereupon, the jury exits the courtroom at
2 10:39 a.m.]

3 THE COURT: Thank you. Be seated.

4 Any objections to the charge as read? From the
5 State?

6 MS. LINDER: None from the State, Your Honor.

7 THE COURT: From the defendant?

8 MR. SMILEY: None, Your Honor.

9 THE COURT: And State's 1, 2 and 3 will go back.
10 There is no way that they can play the video, Mr.
11 Smiley, so I'm going to go ahead and send the video
12 back with the jury. If they do request --

13 MR. SMILEY: Yes, ma'am.

14 THE COURT: -- to see it, then I will bring them
15 back in.

16 I'm sending back both indictments and both
17 verdict forms.

18 Anything before we send State's 1, 2, 3,
19 indictments, and verdict forms back to the jury? From
20 the State?

21 MS. LINDER: Mr. Byrd just needs to give the
22 disk back. Aside from that, nothing further from the
23 State, Your Honor.

24 MR. SMILEY: Do you send your instruction back
25 to them?

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1 THE COURT: I do not.

2 MR. SMILEY: Okay. I just was asking because if
3 you did, I wanted the defendant's request taken off --

4 THE COURT: If they should ask for a written
5 copy, Mr. Smiley, I will just print that off and put it
6 in a separate page for you.

7 MR. SMILEY: Thank you.

8 THE COURT: That's one of the reasons why I'm
9 not sending --

10 MR. SMILEY: Yes, ma'am.

11 THE COURT: -- this particular charge back at
12 this time.

13 Here's the verdict form and the indictment.

14 And we will be at ease until we get a verdict.
15 Thank you.

16 [Whereupon, evidence is sent to the jury at
17 10:42 a.m.]

18 [Whereupon, a recess is taken from 10:42 a.m. to
19 1:05 p.m.]

20 [Whereupon, Court's Exhibit Number 3, note from
21 the jury, is marked by the court reporter]

22 THE COURT: We have a note, marked Court's
23 Exhibit 3. The jury would like to view the audio-video
24 CD, State's Exhibit Number 3; signed, Hope Florence.

25 Anything before we bring in the jury?

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1 MS. LINDER: Your Honor, we were -- unless they
2 make a specific request, we were hoping to -- we have
3 it set up and cued up. We were hoping to just play it
4 in mute --

5 MR. SMILEY: Unless they ask for it.

6 MS. LINDER: -- unless they ask us, just to have
7 less potential for error.

8 THE COURT: Okay.

9 MR. SMILEY: And that would be by my agreement,
10 too, because one slip and stuff comes out that
11 shouldn't come out.

12 THE COURT: All right. I will advise the jury
13 that due to technical difficulties we have the video
14 set up, and not the audio, and if they need the audio
15 then it will take additional time.

16 MS. LINDER: Thank you, Your Honor.

17 THE COURT: Please bring in the jury. And you
18 have State's 3 now?

19 MS. LINDER: Yes, Your Honor.

20 THE COURT: Thank you.

21 [Whereupon, the jury enters the courtroom at
22 11:07 a.m.]

23 THE BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. Thank you. Please be
25 seated.

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1 Madam Foreperson, we have received a note that
2 you wish to view State's Number 3. Again, we are
3 having some technical difficulties. It will only be
4 the video, not the audio.

5 [Whereupon, State's Exhibit Number 3, CD, is
6 played for the jury from 11:09 a.m. to 11:20 a.m.]

7 THE COURT: Ladies and gentlemen of the jury,
8 that concludes the video, State's Exhibit Number 3.

9 Ms. Florence, is there anything additional that
10 the jury is requesting before you go back to continue
11 your deliberations?

12 THE FOREPERSON: No, ma'am. But it's still not
13 possible to hear the audio portion?

14 THE COURT: Counsel approach.

15 [Whereupon, an off-the-record bench conference
16 is held]

17 THE COURT: Ladies and gentlemen of the jury, we
18 are attempting to remedy the technical problem, so if
19 you will give -- counsel has indicated it will be about
20 five more minutes so I'm going to allow you to retire
21 to your jury room, to give the time to correct the
22 problem, and we will receive you back in at that time.

23 Is there anything additional, Ms. Florence,
24 before I release you?

25 THE FOREPERSON: I don't think so.

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1 THE COURT: All right. Please rise for the
2 jury.

3 [Whereupon, the jury exits the courtroom at
4 11:22 a.m.]

5 THE COURT: Thank you. Be seated.

6 MR. SMILEY: Your Honor, there's one other way
7 to listen to the audio without the threat, is the court
8 reporter has it recorded from when it was testified. I
9 was just thinking of a better alternative that didn't
10 put at risk the different evidence --

11 THE COURT: Let me check with my court reporter
12 to verify.

13 [Whereupon, the Court and the court reporter
14 confer]

15 [Off the record momentarily]

16 THE COURT: Counsel, my court reporter is
17 attempting to go through the testimony to --

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: Thank you.

20 MR. SMILEY: Yes, ma'am. I'm sorry.

21 [Off the record momentarily]

22 THE COURT: All right. We are going to listen
23 to -- the court reporter has found the audio of the
24 audio, and we're going to attempt to see if it's picked
25 it up.

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1 [Off the record momentarily]

2 THE COURT: Any objection to us just playing
3 that? From the State?

4 MS. LINDER: There is no objection from the
5 State. Obviously, if the jury says again it is not --
6 they can't understand it as much, then I guess we can
7 revisit it. But the State has no objection to that.

8 THE COURT: Mr. Smiley?

9 MR. SMILEY: Certainly not.

10 THE COURT: I think that this is what was
11 played. Well, I know this is what was played. I
12 think that this is the best solution to this immediate
13 problem. If it is inaudible or the jury requests
14 something else, we will address that at that time, but
15 this is what was played for the jury yesterday. I
16 believe this is what we should play today.

17 MR. SMILEY: The last words that they say on the
18 audio I think we agreed -- it wasn't played through to
19 where she says the deal is done --

20 THE COURT: Please bring in the jury. Please
21 rise for the jury.

22 [Whereupon, the jury enters the courtroom at
23 11:38 a.m.]

24 THE BAILIFF: All present, Your Honor.

25 THE COURT: Thank you. Thank you. Be seated.

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1 Ladies and gentlemen of the jury, you are now
2 going to hear the audio of State's Exhibit Number 3.

3 [Whereupon, State's Exhibit Number 3, audio
4 portion of CD, is played for the jury]

5 THE COURT: Ladies and gentlemen of the jury,
6 that concludes the audio portion of State's Exhibit
7 Number 3. I am going to send you back to your jury
8 room to continue your deliberations.

9 Please rise for the jury.

10 [Whereupon, the jury exits the courtroom at
11 11:49 a.m.]

12 THE COURT: Thank you. Be seated.

13 Anything further before we recess awaiting
14 either another note or a verdict?

15 MS. LINDER: Nothing further from the State,
16 Your Honor.

17 MR. SMILEY: Nothing from the defense.

18 THE COURT: I have made arrangements, since it
19 is now approximately noon, to order lunch for the jury.
20 All right. We'll be in recess.

21 [Whereupon, a recess is taken from 11:49 a.m to
22 12:39 a.m.]

23 THE COURT: Counsel, and it will be Court's
24 Exhibit Number 3, I believe. The jury would like to
25 see the judge's written instructions of her charge,

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1 specifically concerning the role of the chain of
2 custody.

3 I have retyped your charge, taken off the
4 defendant's request to charge. I am going to give the
5 jury the entire charge, and that will be marked Court's
6 Exhibit Number 4.

7 [Whereupon, Court's Exhibit Number 4, Court's
8 charge on the law, is marked by the court reporter]

9 THE COURT: Anything further from the State?

10 MS. LINDER: Nothing from the State.

11 THE COURT: Anything further from the defense?

12 MR. SMILEY: No, Your Honor.

13 THE COURT: We'll be at ease in that particular
14 case. The pizza has arrived, and so the jury is
15 eating.

16 Mr. Smiley, we have your cell number. Ms.
17 Linder, and we have a way to contact you?

18 MS. LINDER: Yes, Your Honor.

19 THE COURT: Thank you.

20 [Whereupon, a recess is taken from 12:40 p.m. to
21 1:50 p.m.]

22 THE COURT: Be seated.

23 [Whereupon, Court's Exhibit Number 5, note from
24 the jury, is marked by the court reporter]

25 THE COURT: Court's Exhibit Number 5, the jury

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1 would like to hear or see the written transcript of
2 Officer Seabrook's testimony.

3 Anything before we bring in the jury?

4 MS. LINDER: Nothing, Your Honor, from the
5 State.

6 MR. SMILEY: And only that direct and cross be
7 played, unless instructed from the jury otherwise,
8 would be my request. They hear the whole thing.

9 THE COURT: We are playing the --

10 MR. SMILEY: Entire testimony.

11 THE COURT: -- entire testimony, Mr. Smiley.
12 Thank you.

13 MR. SMILEY: Thank you.

14 THE COURT: Please bring in the jury.

15 [Whereupon, the jury enters the courtroom at
16 1:48 p.m.]

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: Thank you. Please be seated.

19 Ladies and gentlemen of the jury, you will now
20 hear the testimony of Officer Seabrook.

21 [Whereupon, the testimony of Damian Seabrook is
22 played back to the jury]

23 THE COURT: Ladies and gentlemen, that concludes
24 the testimony of Officer Seabrook. Please return to
25 your jury room and continue your deliberations.

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1 Please rise for the jury.

2 [Whereupon, the jury exits the courtroom at

3 2:19 p.m.]

4 THE COURT: Thank you. Be seated. All right.

5 We'll be in recess in this matter.

6 [Whereupon, a recess is taken from 2:19 p.m. to

7 2:54 p.m.]

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VERDICT

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THE COURT: I understand we have a verdict.
Anything from the State before we bring in the jury?

MS. LINDER: Nothing, Your Honor.

THE COURT: Anything from the defense?

MR. SMILEY: Nothing, Your Honor.

THE COURT: Please bring in the jury. Please
rise for the jury.

[Whereupon, the jury enters the courtroom at
2:57 p.m.]

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you. Thank you. Please be
seated.

Madam Foreperson, I understand the jury has
reached a verdict. Please hand the verdict form to the
bailiff.

[Whereupon, the foreperson proffers documents to
the bailiff. The bailiff proffers documents to the
Court]

[Whereupon, the Court reviews documents]

[Whereupon, the Court proffers documents to the
clerk of court]

THE COURT: Mr. Wright, please stand.

[Whereupon, Mr. Wright complies]

THE CLERK OF COURT: The verdict forms in the

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1 matter of the State of South Carolina vs. Lloyd Wright,
2 defendant, as to case number 2007-GS-10-13898, we, the
3 jury, find the defendant guilty of distribution of
4 cocaine base; signed by the foreperson of the jury on
5 May 20th, 2009.

6 Ladies and gentlemen of the jury, if this was
7 your verdict, please raise your right hand.

8 [Whereupon, jurors comply]

9 THE CLERK OF COURT: Thank you.

10 Please let the record reflect that all twelve
11 jurors raised their right hand.

12 As to case number 2007-GS-10-13899, we, the
13 jury, find the defendant guilty of distribution of
14 cocaine base within proximity of a school; signed the
15 foreperson of the jury on May 20th, 2009.

16 Ladies and gentlemen of the jury, if this was
17 your verdict please raise your right hand.

18 [Whereupon, jurors indicate]

19 THE CLERK OF COURT: Thank you.

20 Please let the record reflect that all twelve
21 jurors raised their right hand.

22 THE COURT: Thank you.

23 Thank you. Please be seated.

24 [Whereupon, Mr. Wright complies]

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POLLING OF THE JURY

THE COURT: Any additional matters before the jury is released? From the State?

MS. LINDER: Nothing from the State, Your Honor.

THE COURT: From the defendant?

MR. SMILEY: Ask that the jury be polled, please.

THE CLERK OF COURT: Ladies and gentlemen of the jury, what is going to happen now is called polling of the jury. What I'm going to do, when I call your jury number if you'll please just raise your hand. I'll acknowledge you and you can put your hand down. I'll then ask you two questions. Please reply back to me verbally answering these questions.

Juror Number 260, were those your verdicts?

MS. FLORENCE: Yes.

THE CLERK OF COURT: Are they still your verdicts?

MS. FLORENCE: Yes.

THE CLERK OF COURT: Thank you.

Juror Number 12.

MS. BAGALIO: Yes.

THE CLERK OF COURT: Were those your verdicts?

MS. BAGALIO: Yes, sir.

THE CLERK OF COURT: Are they still your

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1 verdicts?

2 MS. BAGALIO: Yes, sir.

3 THE CLERK OF COURT: Thank you.

4 Juror Number 69, were those your verdicts?

5 MS. EKLUND: Yes.

6 THE CLERK OF COURT: Are they still your
7 verdicts?

8 MS. EKLUND: Yes.

9 THE CLERK OF COURT: Thank you.

10 Juror Number 71, were those your verdicts?

11 MR. ELSEY: Yes.

12 THE CLERK OF COURT: Are they still your
13 verdicts?

14 MR. ELSEY: Yes.

15 THE CLERK OF COURT: Thank you.

16 Juror Number 149, were those your verdicts?

17 MS. MCCRAW: Yes.

18 THE CLERK OF COURT: Are they still your
19 verdicts?

20 MS. MCCRAW: Yes.

21 THE CLERK OF COURT: Thank you.

22 Juror Number 153.

23 MR. MILES: Yes, sir.

24 THE CLERK OF COURT: Were those your verdicts?

25 MR. MILES: Yes, sir.

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1 THE CLERK OF COURT: Are they still your
2 verdicts?

3 MR. MILES: Yes, sir.

4 THE CLERK OF COURT: Thank you.

5 Juror Number 157, were those your verdicts?

6 MS. MORGAN: Yes.

7 THE CLERK OF COURT: Are they still your
8 verdicts?

9 MS. MORGAN: Yes.

10 THE CLERK OF COURT: Thank you.

11 Juror Number 184, were those your verdicts?

12 MS. RAVENEL: Yes.

13 THE CLERK OF COURT: Are they still your
14 verdicts?

15 MS. RAVENEL: Yes.

16 THE CLERK OF COURT: Thank you.

17 Juror 237, were those your verdicts?

18 MS. WALLACE: Yes.

19 THE CLERK OF COURT: Are they still your
20 verdicts?

21 MS. WALLACE: Yes.

22 THE CLERK OF COURT: Thank you.

23 Juror 244, were those your verdicts?

24 MR. WILKINSON: Yes, sir.

25 THE CLERK OF COURT: Are they still your

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1 verdicts?

2 MR. WILKINSON: Yes, sir.

3 THE CLERK OF COURT: Thank you.

4 Juror 264, were those your verdicts?

5 MR. JEFFERSON: Yes, sir.

6 THE CLERK OF COURT: Are they still your
7 verdicts?

8 MR. JEFFERSON: Yes, sir.

9 THE CLERK OF COURT: Juror Number 269, were
10 those your verdicts?

11 MR. MELCHER: Yes.

12 THE CLERK OF COURT: Are they still your
13 verdicts?

14 ME. MELCHER: Yes.

15 THE CLERK OF COURT: Thank you.

16 Was there any juror whose number I did not call?
17 Please raise your hand.

18 [Whereupon, there is no response]

19 THE CLERK OF COURT: Your Honor, the jury has
20 been polled and the verdict stands.

21 THE COURT: Thank you. Anything further, Mr.
22 Smiley?

23 MR. SMILEY: No, Your Honor.

24 THE COURT: Ladies and gentlemen of the jury,
25 this completes your service in this trial. You have

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1 also completed your service for the remainder of the
2 week. You may be released once I receive you in your
3 jury room.

4 You, again, now have the opportunity -- you may
5 discuss this case amongst yourselves, with friends,
6 family members, any parties involved in this case but
7 you also have the right not to speak to anyone
8 regarding your verdict. If anyone continues to try to
9 speak with you after you have told them you do not wish
10 to do so, please contact the clerk and they will
11 contact me and I will handle the matter personally.

12 Again, thank you for your contribution to our
13 justice system and to your service for Charleston
14 County. You may be excused.

15 Please rise for the jury.

16 [Whereupon, the jury is excused and exits the
17 courtroom at 3:02 p.m.]

18 THE COURT: Thank you. Be seated.

19 Are we prepared to go forward with the
20 sentencing at this time?

21 MR. SMILEY: Since there's only one sentence you
22 can impose, Your Honor, it's pretty simple. Yes,
23 ma'am.

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RENEWED MOTIONS

MR. SMILEY: Before you sentence, though, the motions that I made at the close of the State's case and the motions that I made before we gave -- after I rested, I would like to renew at this time. I don't have any further motions or objections to go on the record, just to renew them one more time, Your Honor, for appellate purposes.

THE COURT: All right. Ms. Linder, do you have the sentencing sheets?

MS. LINDER: No, Your Honor. I am going to have Mr. Byrd run and get them. I have -- actually, I believe I do. I have something where previously -- when we thought we had a plea, I had it marked plea. I will x that out, initial it, make it convicted, or I can print new ones. What would Your Honor prefer?

THE COURT: Print a new one, Ms. Linder. I'm going to go release the jury.

I'll come back and address your motions, Mr. Smiley --

MR. SMILEY: Yes, ma'am.

THE COURT: -- and impose sentencing Mr. Wright.

MR. SMILEY: Thank you.

MS. LINDER: Thank you, Your Honor.

THE COURT: We will be at ease.

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1 [Whereupon, a recess is taken from 3:03 p.m. to
2 3:10 p.m.]

3 THE COURT: Ms. Linder, do you have the
4 sentencing sheet?

5 MS. LINDER: Yes, Your Honor.

6 [Off the record momentarily]

7 MS. LINDER: Your Honor, also at this time I
8 would like to hand up, or I can wait until the
9 appropriate time -- I can hand up the copies of the
10 life without parole notice, and the certified
11 convictions, for the Court's record.

12 THE COURT: Hand them up now, please.

13 MS. LINDER: May I approach?

14 THE COURT: You may.

15 [Whereupon, Ms. Linder proffers documents to the
16 Court]

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18 MOTION TO SET ASIDE VERDICT

19 THE COURT: All right. Mr. Smiley, you have
20 renewed all of your objections and all of your motions
21 made throughout the trial; is that correct?

22 MR. SMILEY: Yes, ma'am, Your Honor.

23 THE COURT: And do you have any additional
24 arguments?

25 MR. SMILEY: I do not, except instead of

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1 directed verdict and mistrial, I would be asking at
2 this point to set aside the verdict and grant a new
3 trial. But other than that, they are all the same.

4 THE COURT: Mr. Smiley, I acknowledge that you
5 have renewed all your motions, and now a motion for a
6 new trial to set aside the verdict. And I'm assuming,
7 Mr. Smiley, that you are standing by your initial
8 articulation of the facts and law that you had
9 previously cited; is that correct?

10 MR. SMILEY: That's correct, Your Honor.

11 THE COURT: Mr. Smiley, I note for the record
12 your previous objection to my rulings, and at this time
13 the Court is denying your motions for the same reason
14 as articulated before. Note your --

15 MR. SMILEY: Thank you, Your Honor.

16 THE COURT: -- note your exception.

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SENTENCING

Anything further before I impose sentence upon your client?

MR. SMILEY: No, Your Honor. As I told you before, there is only one sentence as to the proximity charge in this case, which is life because it is a third strike.

The other charge carries from fifteen to thirty years, and of course I would ask for a concurrent time on that, as --

And, you know, I can give you some background about my client. His other two strikes are proximities from a YOA sentence that he received, and an additional possession with intent to distribute heroin with proximity to a school that he got six years concurrent with a revocation of his Y. So those are his two -- primarily his two prior strikes in this case.

His record has always revolved around drugs and drug problems. We respect the verdict of the jury and wish you could do something other than sentence him to life, but I don't believe you have any other options, Your Honor.

THE COURT: And, Mr. Smiley, you agree that your client and counsel at the time, Lisa Gay, were timely served with the notice of intention to seek a sentence

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1 of life without parole?

2 MR. SMILEY: Certainly. I have no qualms about
3 the presentation, the service, of the notice for the
4 intention to seek life. And my client and I certainly
5 were aware of the State's intention. We reviewed the
6 prior indictments and sentence sheets and agree that
7 those have been certified.

8 And also for Your Honor's records that, being
9 it's a life sentence, I would ask that you note that
10 his -- he's been incarcerated since October the 9th of
11 2007. Oh. I take that back. He got out for a period
12 of time, didn't he? I didn't think about that. Well,
13 SCDC will figure it out, when he's been out and came
14 back in.

15 THE COURT: Mr. Smiley, does your client wish to
16 address the Court at this time?

17 MR. SMILEY: I don't believe so, Your Honor. I
18 don't believe that he has a desire to. I appreciate
19 it, Your Honor.

20 THE COURT: Ms. Linder, does the State take any
21 position as to running the distribution of cocaine base
22 third concurrent or consecutive to the life sentence?

23 MS. LINDER: Your Honor, both the distribution
24 and proximity are strikes. They both qualify for the
25 life without parole.

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1 MR. SMILEY: Really? I didn't know the third
2 was a strike.. I know the proximity was, but I --

3 MS. LINDER: Distribution of cocaine base second
4 and third are considered strikes.

5 MR. SMILEY: Okay. Well, I guess they're both
6 life sentences, and I stand corrected, Your Honor.

7 THE COURT: Well, let me renew that question to
8 you. Do you take any position as to running the two
9 life sentences concurrent or consecutive?

10 MS. LINDER: Your Honor, concurrent.

11 THE COURT: Ms. Linder, are there any charges
12 that are outstanding that you will be nol-prosing?

13 MS. LINDER: Yes, Your Honor. There are nine
14 outstanding charges for distribution, there's four
15 proximities, and a possession. I'll read the
16 indictment numbers for the record and then I intend to
17 walk over to the clerk and nol-pros those. 2007-GS-10-
18 13900, 13902, 13895, 13896, 13824, 13825, 13829, and
19 2009-GS-10-512 and 513.

20 THE COURT: Anything further, Mr. Smiley?

21 MR. SMILEY: No, Your Honor.

22 THE COURT: It is the order of the Court on
23 indictment 2007-GS-10-13898, Mr. Wright, that you be
24 committed to the State Department of Corrections for a
25 term of life without the possibility of parole. It is

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1 the order of the Court on indictment 2007-GS-10-13899
2 that you be committed to the State Department of
3 Corrections for a term of life without the possibility
4 of parole.

5 Mr. Wright, you have the right to appeal this
6 sentence, as well as the trial that -- the finding of
7 you guilty on both of these indictments, but you or
8 your attorney must do so within ten days. Do you
9 understand your appeal rights, sir?

10 MR. WRIGHT: Yes, Your Honor.

11 THE COURT: Do you have any further questions
12 for the Court?

13 MR. WRIGHT: No, ma'am.

14 THE COURT: Mr. Wright, good luck to you.

15 [Whereupon, Mr. Wright exits the courtroom
16 momentarily]

17 MS. LINDER: Your Honor?

18 THE COURT: Yes.

19 MS. LINDER: I apologize. There are bench
20 warrants attached to many of these --

21 THE COURT: Please bring Mr. Wright back.

22 [Whereupon, Mr. Wright re-enters the courtroom
23 at 3:17 p.m.]

24 MS. LINDER: Your Honor, I apologize.

25 I was just reminded that there are bench

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

1 warrants attached to the majority of these indictments.
2 If those can also all be rescinded.

3 THE COURT: I will rescind the bench warrants
4 that you indicated that you will be nol-prosing.

5 Is there anything further, Ms. Linder?

6 MS. LINDER: Nothing further, Your Honor. I
7 apologize.

8 THE COURT: And I'm not sure if I was clear, but
9 now -- Mr. Wright, now that you're back: these two
10 life without parole sentences will run concurrently.
11 Good luck to you.

12 MS. LINDER: Thank you, Your Honor.

13 MR. SMILEY: Enjoyed it as always, Your Honor.
14 Thank you very much.

15 THE COURT: Thank you, Mr. Smiley.

16 MS. LINDER: Thank you, Your Honor.

17 THE COURT: Thank you, Ms. Hensley, Ms. Linder,
18 Mr. Byrd. You were all very professional. Thank you.

19 [Whereupon, Court's Exhibit Number 6, note from
20 the jury, is marked by the court reporter]

21 [JURY TRIAL CONCLUDES AT 3:18 P.M.]

22

23

24

25

State v. Lloyd Wright
Jury Trial - Volume 3 of 3
May 20, 3009

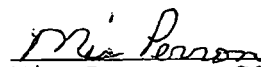
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Wednesday, May 20, 2009.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 27th day of December, 2009.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONLloyd Wright *304199

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2013-CP-10-1646
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JULIE J. ARISTRONG
CLERK OF COURT
MAR 19 PM 3:50INSTRUCTIONS - 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 fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Charleston County Courthouse
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 07-GS-10-13898
 - (b) 07-GS-10-13899
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 20 2009 Life with out the possibility of Parole
 - (b) _____

- (a) Ineffective assistant of Counsel - See attachment
 (b) Ineffective assistant of Counsel - See attachment
 (c) Ineffective assistant of Counsel - See attachment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Attachment
 (b) See Attachment
 (c) See Attachment

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. 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. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. N/A
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. N/A
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Could not be raised in a Appeals court
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (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? Yes

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. James W. Smiley 3842-B Leeds Ave. Charleston, SC 29405
- ii. Ms. Lavelle C. Durant P.O. Box 11589 Columbia, S.C. 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. James W. Smiley represented me at trial.
- ii. Ms. Lavelle Durant represented me on appeal.
- iii. _____

19. State clearly the relief you seek in filing this application:

Reversed and Vacated

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Steph Wright

SWORN to and subscribed before me this 14
day of March, 2017.

Debra Z... (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , 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.

Steph Wright
Applicant

SWORN or affirmed to and subscribed before me this

14 day of March, 2013.

Debra Suss
Notary Public

My Commission Expires: 11-4-2015

Attachment

Ineffective assistance of trial counsel

1) Counsel failure to object to the use of an incident report that was not filed by the officer. If officer use false evidence including false testimony to secure conviction the defendants due Process rights are violated.
 Wilson v Lawrence County 260 F3d 946 (8th Cir 2006)

2) Counsel failure to Present a coherent argument to the Judge and Jury based on defense of Police fabrication rendered defendants trial fundamentally unfair and unreliable, violated the 6 and 14 amendment

3) failure to challenge chain of custody on the Grounds the state did not lay a Proper foundation.

(A) Leloma did not testify to what he did with the evidence nor what he received.

(B) Hinton could not testify to what Leloma received nor to what he did with the evidence by ~~knowing~~ ^{knowing} his initials on the evidence bag. Violated the 6 and 14 amendment.

4) Prosecutorial misconduct

state violated Rule 5 and Brady v Maryland
 Defense counsel had requested the appearance of each Person in the chain according to SCMP.

Sargent LaLema did not appear nor was a signed affidavit from him presented to the court in ~~violation~~ violation of the 6 and 14 Amendment.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2013-CP-10-1646

Lloyd Wright, #304199,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

FILED
2013 DEC -6 PM 12:48
JULIE J. ARMSTRONG
CLERK OF COURT

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 19, 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 Charleston County Clerk of Court. The Applicant was indicted at the December 2007 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) cocaine base- third offense (2007-GS-10-13898) and possession with intent to distribute (PWID) cocaine base within proximity of a school (2007-GS-10-13899). Applicant was represented by James Smiley, Esquire.

On May 18-20, 2009, the Applicant proceeded to trial and was convicted. The Applicant was sentenced by the Honorable Kristi L. Harrington to confinement for a period of life without parole on all charges.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Lanelle Durant, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Wright, No. 11-UP-363 (S.C. Ct. App. June 30, 11). The Applicant filed a Petition for Certiorari to the Supreme Court which was denied on January 25, 2013. Upon information and believe the Remittitur was issued and the Applicant's appeal concluded.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to object to use of an incident report that was not filed by the officer.
 - b. Failed to present a coherent argument to the judge and jury based on the defense of police fabrication.
 - c. Failed to challenge the chain of custody on the grounds the State did not law a proper foundation.
2. Prosecutorial Misconduct.
 - a. Violation of Rule 5 and Brady.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 334 S.E.2d 813.

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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 the record does not conclusively refute. Accordingly, 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.

The Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). The Respondent submits the Applicant has not carried his burden of proving actual prosecutorial misconduct, therefore, this allegation should be summarily dismissed.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Applicant's prosecutorial misconduct allegation be summarily dismissed and that an evidentiary hearing be held on the remaining allegations.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Ah H. W. S.
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Dec 2, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LLOYD WRIGHT, #304199

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-10-1646

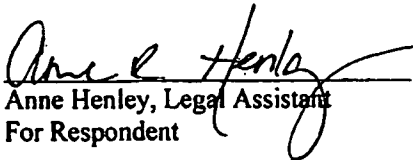
AFFIDAVIT OF SERVICE BY MAIL

FILED
2013 DEC -6 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
125 Wappoo Creek Road
Charleston, SC 29412

DATED this 3rd day of December, 2013


Anne Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
Lloyd Wright,	)	
	)	
Applicant,	)	
v.	)	Case No. 13-CP-10-1646
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 15, 2014, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Christopher Murphy, Esq.
 STUCKEY LAW FIRM
 123 Meeting Street
 Charleston, South Carolina 29401
 Appearing for Applicant

Ashleigh Wilson, Esq.
 U.S. ATTORNEYS OFFICE
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014
Before The Honorable R. Markley Dennis

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Lloyd Wright v State of South Carolina

3

Case No. 13-CP-10-1646

PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

1 THE COURT: You are Lloyd Wright?

2 APPLICANT: Yes, sir.

3 THE COURT: Mr. Wright, this is your
4 application for post-conviction relief that
5 you've brought with your lawyer. Are you
6 ready to go forward, sir?

7 APPLICANT: Yes, sir.

8 THE COURT: Mr. Murphy?

9 MR. MURPHY: We call Mr. Wright, Your
10 Honor.

11 THE COURT: Okay.

12 (WITNESS TAKES STAND)

13 LLOYD WRIGHT, having been sworn
14 to tell the truth, and nothing but the truth,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MURPHY:

18 Q. Mr. Wright, you were charged with
19 possession with intent to distribute cocaine
20 base and PWID, possession with intent to
21 distribute, cocaine base within the proximity
22 of a school in Charleston County?

23 A. Yes, sir.

24 Q. And you were represented by Mr.
25 Smiley on those charges?

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

4

1 A. Yes, sir.

2 Q. How many times did you meet with Mr.
3 Smiley about your case?

4 A. I think twice.

5 Q. Twice.

6 A. (Affirmative nod).

7 Q. And were you in jail for the entire
8 time from your arrest until your trial?

9 A. No, sir. I bonded out. I had Ms.
10 Gay and then I had Mr. Smiley afterwards.

11 Q. So you originally had Mr. Smiley and

12 -----

13 A. No, I originally had Ms. Gay. Then
14 I had Mr. Smiley.

15 Q. In terms of the facts surrounding
16 these charges, you sold cocaine to an
17 undercover police officer?

18 A. Yes, sir.

19 Q. That was on video, as well?

20 A. Yes.

21 Q. Going back to Mr. Smiley, how many
22 times did you meet with him to discuss the
23 case?

24 A. Twice.

25 Q. How long were those meetings?

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

5

1 A. Maybe ten or fifteen minutes apart
2 -- apiece.

3 Q. Did you discuss any defenses with
4 him?

5 A. Not that I can remember.

6 Q. Did you have any defenses to these
7 charges?

8 A. No, sir.

9 Q. Did he talk to you about any offers
10 that the State had made, any plea negotia-
11 tions?

12 A. He said twenty-five years.

13 Q. Was there anything other than that
14 twenty-five year sentence?

15 A. No, sir.

16 Q. And that twenty-five years was
17 offered right before trial, going to trial;
18 is that correct?

19 A. Yes, sir.

20 Q. And you understand what constitutes
21 a "strike" under the LWOP, life without the
22 possibility of parole, procedure?

23 A. No, I can't say that I did at the
24 time.

25 Q. Tell me what you did understand

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

6

1 after you were facing these charges?

2 A. I didn't understand that it was
3 mandatory that if I went to trial that the
4 judge had no choice but to give me life
5 without parole.

6 Q. Well, let's back up one second.
7 Did you receive notice of a life without the
8 possibility of parole sentence from the
9 prosecutors?

10 A. Ms. Gay told me something about it.

11 Q. Did you sign a document acknowledge-
12 ing that you knew that they were seeking life
13 without the possibility of parole?

14 A. Not that I remember. No, sir.

15 Q. And Ms. Gay, when you were talking
16 to her about this, what were your
17 discussions?

18 A. She was like, *'they say if you don't*
19 *accept the plea, they're going to try to get*
20 *life without parole.'*

21 Q. Did you have any understanding of
22 what that meant when you were talking with
23 Ms. Gay?

24 A. That there was a possibility that I
25 could receive life, but that the judge made

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

7

1 that decision.

2 Q. You thought that the judge had
3 discretion in sentencing, pursuant to your
4 conversations with Ms. Gay?

5 A. Yes, sir.

6 Q. And did you have additional
7 conversations with Mr. Smiley about the
8 judge's ability to sentence you if you were
9 convicted?

10 A. No, sir.

11 Q. Did you ever discuss the LWOP
12 sentence with Mr. Smiley?

13 A. No, sir, he didn't -- he just told
14 me that the life without parole was dropped.

15 Q. Prior to going to trial, what was
16 your understanding of what the sentencing
17 options were if you were convicted?

18 A. That I could receive anywhere from
19 ten to thirty years and that it was the
20 option of the judge.

21 Q. What was the basis of your -- that
22 opinion that you had?

23 A. Because when it was told to me it
24 was like, 'I am going to court' -- to me, it
25 was like 'the judge, he can either give you

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646
PCR Hearing of April 15, 2014 - Testimony of Lloyd Wright
Before The Honorable R. Markley Dennis

8

1 ten years, thirty, or he could give you life
2 without parole.' To my understanding, I
3 don't know too much what that means. That's
4 why I asked my lawyer what -- exactly what I
5 was facing. If was told that I had no
6 choice, that I was going to receive life
7 without parole if I was found guilty, I would
8 have took the years.

9 Q. So if you had understood that the
10 judge had no discretion in sentencing, you
11 would have accepted the plea deal?

12 A. I would have taken it.

13 Q. Did you discuss that with Mr. Smiley
14 at all?

15 A. Yes.

16 Q. And in terms of the strikes, you had
17 two convictions that constituted strikes
18 prior to these convictions?

19 A. Yes, sir. One of them, I was
20 seventeen and I had a YOA.

21 Q. What was the charge that you were
22 convicted of?

23 A. Possession of cocaine.

24 Q. That was when you were seventeen
25 years old?

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646 - PCR Hearing of April 15, 2014
Testimony of Lloyd Wright - Cross Examination
Before The Honorable R. Markley Dennis

9

1 A. Yes, sir.

2 Q. And how was -- what was the second
3 strike?

4 A. Possession of heroin, if I am not
5 mistaken.

6 Q. How old were you then?

7 A. Maybe twenty-four, twenty-five.

8 MR. MURPHY: That's all that I
9 have, Your Honor.

10 THE COURT: Cross examine?

11 MS. WILSON: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. WILSON:

14 Q. Mr. Wright, you said that you recall
15 only meeting with Mr. Smiley two times before
16 you went to trial?

17 A. Yes, ma'am. He came to see me while
18 I was in the detention center.

19 Q. Did you communicate with him by
20 phone or in writing?

21 A. No, ma'am. He used to come see me.

22 Q. You also mentioned that at some
23 point you bonded out of jail. Did you go
24 speak with him while you were bonded out?

25 A. I didn't have him then. I had Ms.

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646 - PCR Hearing of April 15, 2014
Testimony of Lloyd Wright - Cross Examination
Before The Honorable R. Markley Dennis

10

1 Gay.

2 Q. Do you recall going over with him
3 the evidence that the State had against you?

4 A. Yes, ma'am. As far as the video, he
5 told me that they had video and he told me
6 that they had audio.

7 Q. What else did y'all talk about when
8 y'all met?

9 A. That was really about it, ma'am. He
10 was trying to get me to get some kind of
11 deal. Other than that, that was it.

12 Q. Did he talk to you about possible
13 defenses?

14 A. No, ma'am, not other than at trial.

15 Q. What was your understanding that
16 y'all were going to present at trial?

17 A. My understanding was that the
18 evidence was not supposed to be used or was
19 supposed to -- that Mr. Smiley -- my
20 understanding was that the evidence couldn't
21 be used because no one signed, that there
22 were not signatures on it.

23 Q. And you testified that you were
24 offered a twenty-five year plea offer prior
25 to trial, and that you rejected that; is that

Lloyd Wright v State of South Carolina
Case No. 13-CP-10-1646 - PCR Hearing of April 15, 2014
Testimony of Lloyd Wright - Cross Examination
Before The Honorable R. Markley Dennis

11

1 correct?

2 A. Yes, ma'am.

3 Q. And it was your decision to proceed
4 to trial?

5 A. Yes, ma'am.

6 Q. And it's your testimony today that
7 you didn't know that you proceeded to trial
8 that you would be sentenced to life if you
9 were convicted?

10 A. Yes, ma'am. I didn't know it was
11 mandatory.

12 Q. This was not your first conviction;
13 is that correct?

14 A. (Affirmative nod), no, ma'am.

15 MS. WILSON: Thank you.

16 MR. MURPHY: Nothing further, Your
17 Honor.

18 THE COURT: You may come down, Mr.
19 Wright.

20 (WITNESS STEPS DOWN)

21 THE COURT: You may call your next
22 witness.

23 MR. MURPHY: That is it, Your
24 Honor.

25 THE COURT: All right. Does the

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1 State have any witnesses?

2 MS. WILSON: Yes, Your Honor. The
3 State would like to call Mr. James Smiley.

4 (WITNESS TAKES STAND)

5 JAMES V. SMILEY, IV, having been
6 sworn to tell the truth, and nothing but the
7 truth, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WILSON:

10 Q. Good morning, Mr. Smiley.

11 A. Good morning.

12 Q. About how long have you been
13 practicing law?

14 A. Since 1993, twenty-one years almost.

15 Q. How much of your time has been spent
16 practicing criminal law?

17 A. Exclusively all twenty-one years,
18 except for about six months.

19 Q. Do you recall exactly when you were
20 retained by Mr. Wright to represent him?

21 A. Well, Mr. Wright -- I had known Mr.
22 Wright for a while. I had known his family.
23 When he was first arrested, I met with them
24 and I actually did the preliminary hearing in
25 this case. I talked with him and then -- I'd

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1 only been retained for the prelim.

2 Then he later retained Ms. Gay.

3 Then the family came to me in like
4 January before the trial -- I don't recall
5 how long it was before trial, but I came back
6 into the picture right before the trial. He
7 was convicted ---

8 THE COURT: I signed the Order ---
9 any objection -- substituting counsel. I
10 assume that there is no objection to my
11 hearing this matter.

12 MR. MURPHY: No, not at all.

13 MS. WILSON: None from the State.

14 WITNESS: He was -- it looks
15 like he was convicted in May of 2009, so ----

16 THE COURT: January 13th, 2009 is
17 when the Order ---

18 WITNESS: Yes, sir. And Judge
19 Harrington signed the sentencing sheet on May
20 20th, 2009. So I came back in to prepare for
21 trial.

22 Also at that point in time, I came back
23 to try to get a different deal for him. He'd
24 been offered twenty-five years. Ms. Lindler
25 wouldn't budge off of that. They didn't have

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1 a whole lot of incentive to budge off of that
2 because they had a really good case. I
3 tried.

4 Mr. Wright wanted them to go with a first
5 offense. I told him that I would try to get
6 them to the bottom of a third offense but
7 that was the best that I thought that we
8 could do. Ms. Lindler would not budge, had
9 already served a life without the possibility
10 of parole notice on Ms. Gay before I even
11 took over the case.

12 However, -- and I'm looking at my notes.
13 When I met with Mr. Wright at the beginning
14 of the case, I told him that this was a
15 possible life without the possibility of
16 parole case because of his priors. I didn't
17 say that it was going to be, because he
18 hadn't been served at that point. But from
19 day one, on our first visit I told him that,
20 that he was looking at -- that it could
21 possibly be a life without the possibility of
22 parole case.

23 DIRECT EXAMINATION CONTINUED

24 BY MS. WILSON:

25 Q. Do you recall how many times that

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1 you got to meet with him during that period,
2 before trial?

3 A. I know that I met with him a few
4 times. I do have my file -- and I'm not real
5 good at documenting jail visits -- and in
6 this I document one, two, three, four, five
7 -- no, no -- four, five -- at least five
8 visits. That would have been when he was
9 first arrested and before trial, Your Honor.

10 Our defense -- it was a tough defense.
11 The only defense that we had was that it
12 wasn't him that sold the drugs, or if I could
13 get the State to screw up. In my opinion,
14 they did. The Court of Appeals didn't agree
15 with me.

16 Q. Did you discuss that offense with
17 Mr. Wright before you went to trial?

18 A. Certainly. We were doing everything
19 that we could as -- like I said, I had known
20 Lloyd, and I had known his family.

21 Lloyd and I communicated well. We didn't
22 always agree on things but we communicated
23 well. I thought that Lloyd was an
24 intelligent fellow who was in the throes of
25 addiction, quite frankly. So he understood

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1 our conversations, if that's where we are
2 heading with that.

3 Q. And did you file Rule 5, *Brady*
4 material for Mr. Wright?

5 A. Yes, I did.

6 Q. And what you received, did you
7 review it with Mr. Wright?

8 A. Yeah. I am not going to tell you
9 that I went page by page. The linchpin of
10 this case was the video. This was a sale by
11 a young undercover officer to Lloyd on
12 multiple occasions. They had really clear
13 video and, unfortunately, they had Lloyd's
14 face framed really nice in the video.

15 The only thing that we had going for us
16 was that they didn't use Lloyd's name, per
17 se. So I was arguing that he wasn't the
18 target and I was arguing that they didn't
19 know for sure that it was him.

20 Q. You talked to Mr. Wright about the
21 elements of the charges that he was facing
22 and what the State had to prove?

23 A. Yeah. They had to prove he sold
24 drugs. Yeah.

25 Q. Did you talk to him about his

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1 version of the facts?

2 A. Well, -- he didn't remember making
3 the sale. So he certainly didn't tell me,
4 'oh, yeah, I remember selling to this
5 officer.' That wouldn't have been very
6 helpful to us at all. So, yeah, we discussed
7 whatever there was to discuss. Yes.

8 Q. And was the key evidence against Mr.
9 Wright the video?

10 A. (Affirmative nod).

11 Q. Was there anything else pointing
12 toward him?

13 A. Well, they had the video, they had
14 an undercover officer who subsequently was
15 hired by the FBI in Atlanta, Detective
16 Springmeyer. They also had two, I believe it
17 was two other narcotics agents who said that
18 they saw him -- or saw parts of it. That was
19 the crux of their case.

20 They also had a bunch of buys. If they'd
21 lost -- if we had prevailed with this case,
22 we would have been teeing up the next one.
23 They had four sales.

24 Q. And did Mr. Wright give you any
25 potential witnesses or people to investigate

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18

1 in this case?

2 A. No.

3 Q. What did your investigation in this
4 case involve?

5 A. Watching the video and going over
6 discovery. It was a drug case, it was pretty
7 straightforward.

8 Q. Did you feel like you had adequate
9 time to prepare for trial?

10 A. I was quite prepared, (affirmative
11 nod).

12 Q. As we all know, Mr. Wright was
13 ultimately sentenced to life without parole,
14 based on his prior convictions. Did you
15 review his rap sheet, prior convictions, with
16 him before trial?

17 A. I did because we had some questions
18 about it. I had asked Mr. Lindler to provide
19 me with the prior convictions. I still have
20 those in my file. She didn't provide me with
21 just a couple of prior convictions, she
22 provided me with all of his prior convictions
23 -- for drugs and for the, uh, the, uh,
24 certified copies of the indictments.

25 Q. Mr. Wright (sic), do those documents

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1 that I have just handed to you appear to be
2 the two convictions that the State relied on
3 to -- to convict Mr. Wright and obtain a
4 sentence of life without parole?

5 A. It is.

6 Q. And could you identify the
7 information on those sentencing sheets?

8 A. The first conviction that they
9 relied on was an indictment from 1997:
10 97-GS-10-4942, a conviction for possession
11 with intent to distribute cocaine in the
12 proximity of a school. He received a six-
13 year sentence. Unfortunately that was not a
14 YOA.

15 It was consecutive -- I know you've got
16 it but I'll read it, Judge, because it's sort
17 of -- when I first read it, it was a little
18 confusing. It says six years suspended upon
19 the service of zero days and the balance
20 suspended for probation for five years. Then
21 it says "Other: Consecutive. Probation to
22 begin only upon the completion of any YOA
23 parole or Indictment 97-4944."

24 So in fact this was not a Youthful
25 offender Act sentence. It was a direct

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20

1 sentence suspended after a YOA.

2 The other that they relied was 02-GS-10-
3 1126, an indictment for possession with
4 intent to distribute heroin within proximity
5 of a school. He pled guilty on that in front
6 of The Honorable Vic Rawl on September 15th,
7 2002.

8 So those would have been the ones that
9 they relied upon.

10 Q. From your review of these documents,
11 Mr. Wright indeed was eligible for a sentence
12 of life without the possibility of parole; do
13 you agree?

14 A. Absolutely. Proximity to schools
15 are strikes.

16 Q. Did you discuss that and discuss
17 that as an outcome, if convicted, with Mr.
18 Wright?

19 A. Yeah. I talked to Lloyd that he was
20 looking at life without parole the first time
21 that I met him, because I knew his history.
22 Whether he understood what "life without
23 parole" means or not, I certainly talked to
24 him about it. I never got that he didn't
25 understand. He understood the import of what

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21

1 he was looking at. That's all that I can
2 tell you. If he thought that life without
3 the possibility of parole meant that a judge
4 could do less than that, he never -- he never
5 communicated that to me. I thought it was
6 pretty self-explanatory that life without
7 parole was life without parole. So we didn't
8 have a discussion about what that means.

9 I used to tell people, and I don't know
10 if I told him this in this case, that life
11 without parole is that you come out in a pine
12 box, whenever that is.

13 Q. So you didn't -- you did discuss the
14 mandatory nature and that the Court didn't
15 have any discretion on it?

16 A. I believe that I did. I don't think
17 that there was question that if we lost that
18 he wasn't coming home -- period.

19 Q. And you also talked to us today
20 about a twenty-five plea offer that the State
21 offered Mr. Wright shortly before trial. Did
22 they ever offer anything else?

23 A. I have in my notes that at some
24 point in time that there was a discussion
25 about fifteen. I don't know that it was ever

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22

1 made in a formal offer. I thought that it
2 had been but I can't say that it was. I
3 would have -- quite frankly, if they'd made
4 an offer of fifteen, I would have been
5 pushing so hard on Mr. Wright to take it that
6 we would have been here for a different
7 purpose today.

8 I know that there -- when I took the
9 case, in fact, over we had already gone
10 through all those steps. There was twenty-
11 five on the table but once we started trial
12 there wasn't an offer.

13 MS. WILSON: Thank you, Mr. Smiley.
14 Your Honor, the State would like to enter
15 those two into evidence as State's Exhibits 1
16 and 2.

17 THE COURT: Any objection?

18 MR. MURPHY: No objection.

19 THE COURT: Without objection,
20 State's Exhibits 1 and 2 are admitted.

21 COURT REPORTER: The 1997 indict-
22 ment is Exhibit 1 and the 2002 indictment is
23 Exhibit 2.

24 (SO ENTERED AS STATE'S EXHIBIT 1)

25 (SO ENTERED AS STATE'S EXHIBIT 2)

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23

1 THE COURT: Mr. Murphy?

2 MR. MURPHY: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. MURPHY:

5 Q. Mr. Smiley, the State had a very
6 strong case against Mr. Wright, didn't it?
7 Wouldn't you agree?

8 A. They did.

9 Q. And did you explain -- it sounds to
10 me like you really didn't have very much
11 defense to these charges?

12 A. Not much of one, no.

13 Q. Did you explain that to him?

14 A. I did.

15 Q. And you talked about -- you got
16 involved -- Ms. Gay was representing him for
17 some time prior to your involvement?

18 A. I think he indicates that she took
19 over the case. That's when he got out of
20 jail, got put back in jail and -- went back
21 and forth. I wasn't having contact with him
22 then.

23 Q. But in terms of the LWOP notice,
24 that was given to Ms. Gay?

25 A. That's correct. It was not served

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24

1 on me.

2 Q. And you talk about this fifteen-year
3 offer. That was not communicated to you from
4 the prosecutor's office?

5 A. Well, I have -- I'm trying to find
6 where I saw it. I've got it written on the
7 discovery that I had got when I got back in
8 the case "15 to 30", but it was not any
9 formal offer or any kind of in-writing offer.
10 I remember discussion about it. I don't
11 remember if that was a discussion where I was
12 begging for it or -- however, it's important
13 to understand that Lloyd understood that his
14 position was not a good one.

15 It's not a real hard thing to get your
16 head around, I think, what was going on with
17 Lloyd about accepting a plea for twenty-five
18 years. In his mind -- and he was a little
19 bit older, he wasn't young -- comparatively
20 speaking. When you say twenty-five years and
21 you ain't coming out for twenty-one, you --
22 it's just -- it's a hard thing to grasp. So
23 you go to trial hoping that something good is
24 going to happen. We did make some progress
25 at the trial, on a lot of different fronts.

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25

1 Q. And in terms of -- I just want to --
2 would it make sense to you that if a fifteen-
3 year offer would have been communicated to
4 Ms. Gay and it was rejected, therefore the
5 LWOP notice was served?

6 A. That would make sense. I can't say
7 that happened.

8 Q. Understood. At any rate, you don't
9 recall talking to Mr. Wright about a fifteen-
10 year ---

11 A. When I came back into the case,
12 there was not a discussion about it.

13 Q. Okay. And you understood that he
14 was a juvenile, that he was seventeen years
15 old at the time that ---

16 A. That's not a juvenile. He was an
17 adult as far as this court is concerned.

18 I mean, yeah, personally he was a
19 juvenile but in our State courts, he's an
20 adult.

21 MR. MURPHY: One moment, Your
22 Honor.

23 THE COURT: Certainly.

24 MR. MURPHY: That's all that I
25 have, Your Honor.

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1 THE COURT: Redirect.

2 MS. WILSON: Nothing from the
3 State, Your Honor.

4 THE COURT: Were any of the
5 rejections placed on the record? I don't see
6 any statement about that.

7 MR. SMILEY: Not by me, Your
8 Honor.

9 MS. WILSON: Well, Your Honor, I
10 think the twenty-five years plea offer, that
11 was in the record, Your Honor. That was in
12 volume one of the transcript.

13 THE COURT: But before Ms. Gay, we
14 don't have anything about that?

15 MS. WILSON: (No verbal response).

16 THE COURT: You may step down.
17 Thank you.

18 (WITNESS STEPS DOWN)

19 THE COURT: Anything further from
20 the State?

21 MS. WILSON: Your Honor, we would
22 just like to briefly call Ms. Laree Hensley.

23 THE COURT: Okay. That will be
24 fine.

25 (WITNESS TAKES STAND)

26

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Testimony of Laree Hensley
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1 LAREE HENSLEY, having been sworn to tell
2 the truth, and nothing but the truth,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. WILSON:

6 Q. Good morning, Ms. Hensley.

7 A. Good morning.

8 Q. Briefly, you also represented Mr.
9 Wright at trial; is that correct?

10 A. Well, I sat with Mr. Smiley at the
11 trial. My role isn't so much representation.
12 I have a master's degree in Library Science
13 and, as such, have some ability to perform
14 legal research rather quickly. Because of
15 that and because I've known Mr. Smiley for a
16 long time, we sit with each other in trials.
17 It's just kind of an agreement that we have.
18 We're not in practice together, we don't have
19 any association -- formal association. But
20 when he has a trial, he will ask me to come
21 and sit with him. I help him with research.
22 drafts his Motions, uh, -- take notes during
23 the trial and that type of thing. I don't
24 review any discovery. I don't cross-examine
25 any witnesses. I don't actually perform any

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1 legal work, lawyering other than
2 research.

3 Q. Thank you.

4 MR. MURPHY: Nothing, Your Honor.

5 THE COURT: Thank you, Ms.
6 Hensley.

7 (WITNESS STEPS DOWN)

8 THE COURT: Anything else?

9 MS. WILSON: Nothing further from
10 the State, Your Honor.

11 THE COURT: All right. I will be
12 happy to hear from you.

13 MR. MURPHY: For the record, we
14 would ask that -- first of all, we move to
15 amend the PCR Application to conform to the
16 testimony.

17 Secondly, Judge, we would ask that
18 it be granted on the grounds that the
19 fifteen-year offer was not communicated to
20 Mr. Wright. Mr. Smiley testified that it was
21 most likely that the fifteen-year deal was
22 offered and was rejected -- or that it was
23 offered and because it was rejected that the
24 LWOP notice was served.

25 He also stated that if the fifteen-

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1 year offer was offered that he would have
2 been pushing very hard to do that. Mr.
3 Wright testified that the only deal that he
4 knew of was the twenty-five years deal.

5 Thus, we think the application
6 should be granted on that basis.

7 Second (sic), Judge, we -- for the
8 record, we would ask that the application be
9 granted based on Mr. Wright's testimony that
10 he had no idea that the sentencing judge had
11 no discretion in sentencing on a conviction.

12 MS. WILSON: May it please the
13 Court, Your Honor, the State would just ask
14 that you dismiss this application for post-
15 conviction relief.

16 With regard to the fifteen-year
17 offer, Your Honor, Mr. Wright has failed to
18 carry the burden that we made any fifteen-
19 year plea offer. There was no testimony --
20 and Mr. Smiley's testimony is not that there
21 was a fifteen-year offer, that there may have
22 been but he wasn't sure, he didn't know
23 anything about it.

24 Also, Your Honor, with regard to Mr.
25 Wright's testimony that he didn't know about

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1 that he was facing life without parole, Mr.
2 Smiley's testimony was clearly that he
3 frequently discussed that with Mr. Wright and
4 that he never felt that Mr. Wright had any
5 misunderstandings about the fact that he was
6 going to be -- that he would serve life
7 without parole.

8 We just ask that you dismiss this
9 application with prejudice.

10 THE COURT: Reply?

11 MR. MURPHY: In terms of the
12 fifteen-year deal, Your Honor, we can't --
13 I didn't know anything about it before today,
14 therefore we couldn't have raised it.
15 Simply, we didn't know about it.

16 THE COURT: That gives me pause/
17 concern right off the bat. If that's the
18 point of the Applicant's position, he'd have
19 been screaming about that from the start.
20 So that's not it. That's some pie-in-the-sky
21 hope, in my opinion.

22 The fact of the matter is that he
23 had the twenty-five year offer, which he
24 should have taken. That's the bottom line.

25 I've been there. I understand it.

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1 I've been there as a lawyer -- not much from
2 that standpoint, but as a trial judge I've
3 been there numerous times and have had the
4 conversation -- that's one thing about doing
5 these. I enjoy doing them. I consider an
6 application filed by anyone to be a serious
7 matter, to be considered seriously because I
8 know it's important.

9 But I also use it as a learning tool
10 for me in what I do when I'm trying a case.
11 One of the things that I do when -- and I'm
12 not faulting Judge Harrington at all, because
13 we went through with you totally. But I make
14 sure that I say, 'you understand that I don't
15 have any choice.' I remember that -- it
16 wasn't in this courtroom, it was next door,
17 or (Courtroom) B, but I remember a gentleman
18 -- and I don't know how old you are today but
19 I think that he was younger than you are. I
20 had to sentence him to life without parole
21 and he said, 'I didn't do anything. I just
22 had two' basically minors. Well, they were
23 minor in the sense -- his vision, but they
24 weren't in the law's. There was no option.
25 His wasn't life without parole, his was a

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1 mandatory twenty-five years which he had to
2 face.

3 Clearly the judge goes through that.
4 She said -- it doesn't say, necessarily, that
5 she doesn't have any options. She says, 'I
6 can sentence you up to a hundred sixty
7 years.' You heard that.

8 Quite frankly, having been a lawyer
9 and having tried cases, I tell people all the
10 time in cases like this -- and I appreciate
11 your candor, Mr. Wright, when you said 'we
12 really didn't have any defense.' You didn't.
13 It was just a -- the facts were what they
14 were.

15 When you have those situations,
16 people say 'you know what', -- and, as I say,
17 I don't know how old you are. But the
18 logical process is, 'You know what, twenty-
19 five years may be life for me anyway. I
20 might as well take a chance. Maybe I will
21 get lucky and they won't -- they'll acquit
22 me.'

23 Unfortunately, as Mr. Smiley said,
24 that wouldn't have been the end of the horror
25 show because they would have tried the next

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1 one until they finally got a conviction.

2 Clearly in this case -- I wish we
3 had what Ms. Gay said but -- but there's no
4 question that we had a way of avoiding an
5 LWOP prior to this trial, and he rejected it.

6 Thank you very much but your
7 application fails on all points. If you
8 will, prepare the appropriate Order.

9 MS. WILSON: Thank you, Your Honor.

10 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.

Wm Lloyd Garrison

Charleston, South Carolina
September 5, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SENTENCE

GENERAL SESSIONS COURT

NEGOTIATED SENTENCE

* Only as to
charges, not
as to timeRECOMMENDATION BY
THE STATE

CASE NO.

97

GS-10-

4942

TICKET/WARRANT NO.

F499066

Date of Incident:

Statue No.

The defendant, Lloyd Wright is committed to the State Dept. ofCorrections/County Detention Center/Under Youthful Offender Act for a term of 6 ~~20~~ days/months0 years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of0 days/months/years and/or pay a fine of \$ _____ plus pay/waive costs and assessment asapplicable*, the balance suspended with probation for 5 months/years.Special Conditions: ☐ PTUP☐ _____ days/hours Public Service Employment☐ Obtain GED☐ Attend Voc. Rehab or Job Corps.☒ Substance Abuse Counseling☒ Random Drug/Alcohol testingOther: Consecutive Probation to begin only upon the
completion of any YOA Parole on Indictment # 97-4944

Concurrent with: _____

Consecutive to: 97-GS-10-4944

Restitution total x 3% \$ _____

Amount Weekly/Monthly \$ _____

Public Defender Fund \$ _____

Date: 2/2/98

Resident/Presiding Judge, Ninth Judicial Circuit

INFORMATION ON DEFENDANT

Fine \$ _____
 Cost & Assessment(62%) \$ _____
 Total \$ 100.00
 County(3%) \$ 3.00
 Grand Total \$ 103.00

Age: 18 Race: B
 S.S. No. _____
 Date of Birth: MM/DD/YY M F
 Attorney: J. H. H. H.
 Solicitor: D. O. P. C.
 Court Reporter: H. O. F.

***** ATTEST: A TRUE COPY

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., O.S. & F.C.
 By: [Signature]
 DEPUTY CLERK

CLERK OF COURT
 2144 MELBOURNE
 CHARLESTON, SC



STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Lloyd Wright

AKA:

Race: B Sex: M Age: 23

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#: SC01068717IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:2002-GS-10-1126A/W#: 6883788Date of Offense: 12/17/01S.C. Code §: 94-53-445CDR Code #: 0111017☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: PWID Heroin w/in Proximity of Schoolin violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0111017☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
SolicitorLloyd Wright
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ The Defendant is to be given credit for 2/26/02 days/months/jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: W/ 02-1125 + J/A Parole

SPECIAL CONDITIONS:

Probation☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:\$

§14-1-206 (Assessments 100%).....\$

§14-1-211(A)(1) (Surcharge).....\$ 100.00

§14-1-211(A)(2) (Surcharge).....\$

§56-5-2995 (DUI Assessment).....\$

3% to County (if paid in installments)....\$ 3.00TOTAL.....\$ 103.00[Signature]
Clerk of Court/Deputy ClerkCourt Reporter: [Signature]

White - Clerk

Green - Corrections

PTUP

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

PRESIDING JUDGE

Judge Code: 010110Date: 9/15/02

[Stamp: 010110]

JULIE J. ARMSTRONG (SEAL)
CLERK C.P., GS & FC
DEPUTY CLERK

3c
AG
AT
SS
206

424

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Lloyd Wright, #304199,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-1646

ORDER OF DISMISSAL

BY

2014 JUN 19 AM 9:44
JULIE ARMSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:

The Honorable R. Markley Dennis
Christopher L. Murphy, Esquire
Ashleigh R. Wilson, Esquire
James Smiley, Esquire
Laree Hensley, Esquire
April 15, 2014
Deborah Garrison

Date of Hearing:
Court Reporter:

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 19, 2013. The Respondent made its Return on December 3, 2013. An evidentiary hearing on the matter was convened on April 15, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Christopher L. Murphy, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was James Smiley, Esquire, and Laree Hensley, Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's

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application, the Respondent's Return, and two exhibits submitted by the Respondent¹. The Court notes that at the start of the Applicant's evidentiary hearing, the Applicant made no objection to this post-conviction relief matter being heard by the Honorable R. Markley Dennis who signed an Order substituting James Smiley, Esquire as counsel for the Applicant on the underlying charges challenged in this application for post-conviction relief.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the December 2007 term of the Charleston County Grand Jury for possession with intent to distribute cocaine base- third offense (2007-GS-10-13898) and possession with intent to distribute within proximity of a school (2007-GS-10-13899). He was represented by James Smiley, Esquire, and Laree Hensley, Esquire.

On May 18-20, 2009, the Applicant proceeded to trial and was found guilty. He was sentenced by the Honorable Kristi L. Harrington to two concurrent life sentences.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Lanelle Durant, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Wright, Op. No. 11-UP-363 (S.C. Ct. App. June 30, 2011). The Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court which was denied on January 25, 2013 and the Remittitur was issued thereafter.

¹ State's Exhibit 1- sentencing sheet for Applicant's 1998 conviction for Possession of Cocaine within Proximity of a School (1997-GS-10-4942). State's Exhibit 2- sentencing sheet for Applicant's 2002 conviction for Possession with Intent to Distribute Heroin within Proximity of a School (2002-GS-10-1126).

Amof 12

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to object to use of an incident report that was not filed by the officer.
 - b. Trial counsel failed to present a coherent argument to the judge and jury based on the defense of police fabrication which rendered the Applicant's trial fundamentally unfair.
 - c. Trial counsel failed to challenge the chain of custody on the grounds the State did not lay the proper foundation.
2. Prosecutorial misconduct.
 - a. Violation of Rule 5 and Brady

At the hearing, the Applicant proceeded solely on the allegation of ineffective assistance of counsel for counsel's failure to advise the Applicant that life without parole would be mandatory if the Applicant was convicted after trial. This Court finds no evidence, testimony, or argument was presented at the evidentiary hearing in support of any other allegations raised by the Applicant, therefore, this Court deems all allegations not addressed by the Court in this Order abandoned by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Summary of Testimony

The Applicant was present and testified he met with counsel twice before trial while in jail. He testified he bonded out of jail and hired Lisa Gay, Esquire. He testified he later retained James Smiley, Esquire, to represent him. The Applicant testified he reviewed discovery with trial counsel. The Applicant testified counsel never discussed any defenses with him and he did not have any defense. He testified at trial counsel would argue the chain of custody was not complete.

The Applicant testified he was offered a plea to a 25 year sentence shortly before trial. He testified he now understands strike offenses. He testified he did not know that life without parole was mandatory. He testified his previous attorney- Gay, told him about life without parole and that if he did not plead guilty the State would seek life without parole. He testified he did not speak with trial counsel about life without parole and thought the Court had discretion in sentencing. The Applicant testified he thought he could 10 to 30 years or life without parole. The Applicant testified had he understood life without parole was mandatory he would have taken the plea offer for 25 years.

Also present and testifying was trial counsel- James Smiley, Esquire. Counsel testified he has been practicing exclusively criminal law since 1993. Counsel testified he has known the Applicant for a while. He testified he met with the Applicant when he was first arrested. He testified the Applicant retained Lisa Gay then the Applicant's family later came to him in January 2009 before trial. Counsel testified he was retained to obtain a favorable plea offer for the Applicant.

Counsel testified he met with the Applicant at least six times prior to trial and communicated well with the Applicant. He testified he filed Brady and Rule 5 motions on the

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Applicant's behalf. He testified he reviewed the discovery material received from the State with the Applicant. He testified the key to the Applicant's case was a video of the Applicant selling drugs to an undercover officer. Counsel testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove to convict the Applicant. Counsel testified his investigation in the case included watching the video of the buys and reviewing the discovery from the State. He testified the Applicant did not give him any witnesses or leads to investigate.

Counsel testified he discussed with the Applicant his version of facts which was that he did not recall making the sale. He testified the State's evidence against the Applicant included a video of the sale, identification of the Applicant by an undercover police officer, and testimony from two other agents who heard and saw the buy. Counsel testified the Applicant also had several other pending buys which the State would have taken to trial if the Applicant was found not guilty at trial on this buy. Counsel testified his only defense was to show the jury the State messed up. He testified the Applicant's name was not used in the video so he also planned to argue at trial the Applicant was not the target of the sale.

Counsel testified the Applicant's previous attorney was served with a notice of the State's intention to seek life without parole. Counsel testified that from the beginning the Applicant knew if he was convicted he was facing life without parole because of his prior convictions. He testified received certified copies of the prior convictions from the State and reviewed them with the Applicant. He testified the Applicant's first conviction was a 1997 conviction for possession with intent to distribute cocaine within proximity of a school and his second conviction was a 2002 conviction for possession with intent to distribute heroin within proximity of a school. Counsel testified based on his review of the certified convictions the Applicant was eligible for

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life without parole. Counsel testified he discussed with the Applicant the outcome if he was convicted at trial and he told the Applicant he would get a life sentence. Counsel testified he believed the Applicant was aware of the mandatory nature of the life sentence and that it would be without parole.

Counsel testified the Applicant was offered a plea to a 25 year sentence. He testified the Applicant wanted to plead guilty to a first offense and the State would not agree to that. Counsel testified the Applicant rejected the plea offer and the offer was taken off the table when the Applicant proceeded to trial. Counsel testified he has notes in his file about discussing a 15 year plea offer, but had no indication it was a formal offer from the State. Lastly, counsel testified the Applicant understood he was not in a good position going into trial.

Laree Hensley, Esquire, was also present to testify. Counsel testified she assisted James Smiley, Esquire, during the Applicant's trial. She testified she assisted Smiley with research and note taking. She testified she did not review any discovery or cross-examine any witnesses.

Ineffective Assistance of Counsel

The Applicant alleges counsel was ineffective for failing to advise him of the mandatory nature of a life without parole sentence he would receive if convicted at trial. This Court finds the Applicant has failed to carry his burden of proving counsel's performance was deficient in this regard and that prejudice resulted from counsel's performance. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

performance. See Strickland v. Washington, 466 U.S. 668 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorneys demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds the Applicant failed to carry his burden of proving counsel failed to advise him of the mandatory nature of his life without parole sentence. This Court also finds the Applicant was eligible for a sentence of life without parole based on his two prior drug convictions and counsel's advice to the Applicant of such was proper. In 1998, the Applicant pled guilty to possession with intent to distribute cocaine within proximity of a school (1997-GS-10-4942) and received a six year sentence, suspended to five years probation to be served after the completion of YOA parole on another indictment (State's Exhibit 1). In 2002, the Applicant pled guilty to possession with intent to distribute cocaine within proximity of a school (200-GS-

10-1126) and received a two years sentence (State's Exhibit 2). Pursuant to S.C. Code § 17-25-45(C)(2), both of the Applicant's prior proximity offenses are classified as serious. The convictions challenged by the Applicant in this application are also both serious offense which would constitute a third strike pursuant to S.C. Code § 17-25-45(B).

This Court does not find credible the Applicant's testimony that he was not aware of the mandatory nature of a life without parole sentence based on his prior convictions. This Court finds credible counsel's testimony that he reviewed with the Applicant his prior convictions and told him if he was convicted at trial he would be facing a life sentence. Considering the serious nature of a life sentence, it is unlikely trial counsel or the Applicant's previous counsel did not discuss with the Applicant the serious nature of the mandatory life sentence he was facing. This Court finds the Applicant has failed to carry his burden of proving counsel provided ineffective assistance of counsel.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His

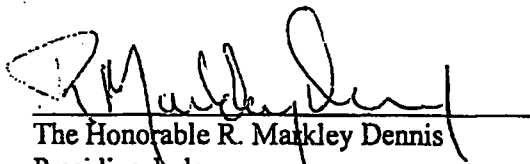
RMW/8

attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of June, 2014


The Honorable R. Markley Dennis
Presiding Judge
9th Judicial Circuit

Moncks Corner, South Carolina.

RECEIVED

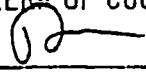
JUN 25 2014

S.C. SUPREME COURT

RMDF/9

FILED

2007 DEC 12 PM 3:44

JULIE STRONG
CLERK OF COURTBY 

DOCKET NO. 2007GS1013899

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

December Term 2007

THE STATE

vs.

LLOYD WRIGHT

DOB: [REDACTED]

B/M

07.6454(06)

Indictment for

Distribution of Cocaine Base within
Proximity of a School

SLB20071010972

WITNESSES

KAREN SPRINGMEYER

Charleston City Police Department

AGENCY CASE NUMBER

0718610

ARREST WARRANT NUMBER

F969615

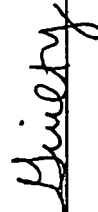
DATE OF ARREST

2007-10-09

ACTION OF GRAND JURY

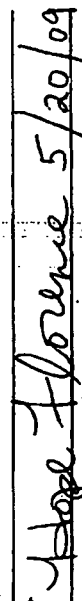
RETURNED
DEC 19 2007Foreperson of Grand Jury
Date: 

VERDICT



Foreperson of Petit Jury

Date:

 5/20/09

INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

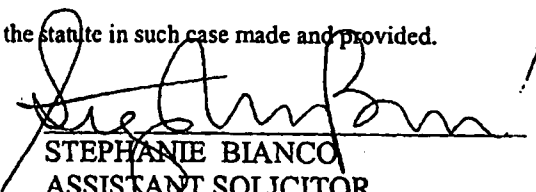
INDICTMENT

At a Court of General Sessions, convened on December 10, 2007 the Grand Jurors of Charleston County present upon their oath:

Distribution of Cocaine Base within Proximity of a School

That in Charleston County, South Carolina, on or about September 19, 2007, the Defendant, LLOYD WRIGHT, unlawfully did possess with intent to distribute, distribute, dispense, sell, purchase, or manufacture, a quantity of cocaine base within a one-half mile radius of the grounds of New Israel School, all in violation of Section 44-53-445, 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.


STEPHANIE BIANCO
ASSISTANT SOLICITOR

