

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Georgetown County

S.C. Supreme Court

Kristi Lea Harrington, Circuit Court Judge

AZIKIWE ARCHIE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELATE CASE NO. 2014-002399

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2007-GS-22-1204

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	Trial Transcript
	)	
Azikiwe A. Archie,	)	February 28, 2011
	)	through
Defendant.	)	March 1, 2011

B E F O R E :

Honorable Steven H. John
Georgetown, County Courthouse
Georgetown, South Carolina

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Circuit Court Reporter

Georgetown County Circuit Court RANDOM STRIKE SHEET

JUDGE NAME : Steven H. John

TRIAL TYPE : Criminal

PANEL ID : 07GS221204

COURTROOM CTR

DESCRIPTION : STATE VS. AZIKIWE A ARCHIE

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST	PL	DEF	GRI	REMARKS
1 Giardina, Donna M	108	W	F	(✓)	(X)	()		
2 Dereef, Willie J R ✓	81	B	M	(✓)	(✓)	()		
3 Caldwell, Jerome T	45	B	M	(X)	()	()		
4 Linen, Floyd M ✓	171	B	M	(✓)	(✓)	()		
5 Skiles, Denny R	249	W	M	(✓)	(X)	()		
6 Moore, David M	193	W	M	(✓)	(X)	()		
7 Brice, Tammy L ✓	33	W	F	(✓)	(✓)	()		
8 Giese, Pamela L	109	W	F	(✓)	(X)	()		
9 Boyd, Isabelle H ✓	30	W	F	(✓)	(✓)	()		
10 Penny, Mary C ✓	209	B	F	(✓)	(✓)	()		
11 Schwandt, Carl T ✓	242	W	M	(✓)	(✓)	()		
12 Bryan, Melanie W ✓	38	W	F	(✓)	(✓)	()		
13 Allison, Sherry L	3	W	F	(✓)	(X)	()		
14 Sumpter, Etrulie ✓	261	B	F	(✓)	(✓)	()		
15 Rivers, Cassandra T	227	B	F	(✓)	(✓)	()		
16 Holmes, Patience ✓	137	B	F	(✓)	(✓)	()		
17 Trappier, Prestean	274	B	F	(X)	()	()		
18 Fowler, Bridget N	97	W	F	(X)	()	()		
19 Keelin, Edward P ✓	151	W	M	(✓)	(✓)	()		
20 Alston, Annadora G	5	B	F	(X)	()	()		
21 Wineglass, Mariette G	294	B	F	()	()	()		excused for du
22 Tatcher, Donna A ✓	265	W	F	(✓)	(✓)	()		
23 Williams, Genelle V	291	W	F	(✓)	(X)	()		
24 Delaney, Douglas M	78	W	M	(✓)	(X)	()		

State v. Archie

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C-4 Question from Jury

19

20

21

22

Voir Dire

5

1 (On the record, February 28, 2011.)

2 (The following takes place in the presence of the jury
3 panel.)

4 THE COURT: All right, ladies and gentlemen, what
5 we're going to do is pick the jury in the case of the State of
6 South Carolina versus Azikiwe A. Archie.

7 Now, the State of South Carolina has charged the
8 Defendant in the indictment, and let me mention something
9 about the indictment. The indictment is merely the document
10 which brings the matter to Court. It is the charge against
11 the Defendant. It is not evidence, can't be considered by
12 anyone as evidence in the case. The matters have to come to
13 court in some way and this is how they come to court.

14 In the charge, in the indictment the State of South
15 Carolina has charged the Defendant with the crime of
16 distribution of cocaine base, that is crack cocaine, that
17 Azikiwe A. Archie did in Georgetown County on or about May 4th,
18 2007, distribute, dispense or deliver or did aid, abet,
19 attempt or conspire to distribute, dispense or deliver a
20 quantity of cocaine base, a controlled substance under the
21 provisions of the Code of Laws of the State of South Carolina,
22 such possession not having been authorized by law and being in
23 violation of the Code of Laws of the State of South Carolina,
24 1976, as amended.

25 Is there any member of the jury panel that would know

Voir Dire

6

1 anything about this, have any information about this case that
2 you need to bring to the Court's attention at this time? If
3 so, please stand.

4 (No response.)

5 THE COURT: All right, the possible or the potential
6 witnesses in this case are Sergeant Chris Geno, Georgetown
7 County Sheriff's Office; Corporal Jason Ward, Georgetown
8 Police Department; Christopher Woodsides; Joyce Whalen,
9 formerly with the Georgetown County Sheriff's Office; Willie
10 Smith, South Carolina Law Enforcement Division; Karonda
11 Williams, formerly with the South Carolina Law Enforcement
12 Division; Selenda Kinard, South Carolina Law Enforcement
13 Division; Nikki Perry, South Carolina Law Enforcement
14 Division; Clint Sawyer, formerly with the Georgetown Police
15 Department; and Azikiwe A. Archie.

16 Is there any member of the jury panel that's related by
17 blood or marriage, close personal friends, acquaintances of
18 any of these potential or possible witnesses that the Court
19 has named? If so, please stand.

20 Yes ma'am, your name and juror number please?

21 MS. WINEGLASS: My jury number is 240 [sic].

22 THE COURT: All right, and your name, please, ma'am?

23 MS. WINEGLASS: Mariette Wineglass.

24 THE COURT: All right, and who is it that you might
25 possibly know?

Voir Dire

7

1 MS. WINEGLASS: Mr. Woodsides.

2 THE COURT: Christopher Woodsides?

3 MS. WINEGLASS: Correct.

4 THE COURT: All right, ma'am, can you give to the
5 State of South Carolina, just assume that Mr. Woodsides is
6 going to be a witness in this case, can you give to the State
7 of South Carolina and the Defendant a fair and impartial
8 trial? Can you be a fair and impartial juror in this case?
9 It's a yes or a no answer.

10 MS. WINEGLASS: No.

11 THE COURT: All right, ma'am, you need to come forward
12 and to talk to me. Counsel, you all come on up here, please.

13 (Whereupon, a bench conference is held with Juror Number
14 294, counsel for the State and counsel for the Defense.)

15 THE COURT: All right, Madam Clerk, I'm going - or Mr.
16 Clerk, I'm going to set her aside from this particular case
17 only; okay? You just go back and have a seat, and your juror
18 number again was? What was it?

19 MS. WINEGLASS: 294.

20 THE COURT: 294, 294, okay, every good. All right,
21 thank you, ma'am. All right, thank you all.

22 MS. COTÉ: Your Honor, does she need to go back down
23 to the jury pool?

24 THE COURT: No, ma'am, just go back and have a seat
25 and - everybody that's not on the case then I'll talk to them

Voir Dire

8

1 at the same time. Thank you very much.

2 All right, is there any member of the jury panel, either
3 you yourself or a member of your immediate family has ever had
4 any matters whatsoever handled by the 15th Circuit Solicitor's
5 Office? That's the prosecuting office that prosecutes cases
6 in Horry and Georgetown counties. If so, please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel,
9 that's either you yourself or a member of your immediate
10 family has ever had any matters handled by the Georgetown
11 County Public Defender's Office? If so, please stand.

12 Yes ma'am, your name and juror number, please?

13 MS. RIVERS: My juror number is juror 227 and my
14 husband is ---

15 THE COURT: No, okay, and just, just tell me your
16 name, please, ma'am.

17 MS. RIVERS: Cassandra Rivers.

18 THE COURT: All right, ma'am, I don't need for you to
19 give me any other information. I just need for you to listen
20 to my questions. Can you give to the State of South Carolina
21 and to the Defendant a fair and impartial trial? Can you be a
22 fair and impartial juror in this case?

23 MS. RIVERS: Yes.

24 THE COURT: Thank you very much, ma'am.

25 All right, yes, ma'am, your name and juror number,

Voir Dire

9

1 please?

2 MS. BRICE: Tammy Brice, Number 33.

3 THE COURT: All right, and was it yourself or a family
4 member?

5 MS. BRICE: Family member.

6 THE COURT: Family member, can you give to the State
7 of South Carolina and to the defense a fair and impartial
8 trial? Can you be a fair and impartial juror in this case?

9 MS. BRICE: Yes, I can.

10 THE COURT: Thank you very much, ma'am.

11 All right, is there - yes, ma'am, okay, well, I've
12 already excused you from this particular case, ma'am, but I
13 appreciate it. Thank you very much. All right, thank you.

14 All right, is there any member of the jury panel that's
15 related by blood or marriage, close personal friends,
16 acquaintances of anybody employed at the 15th Circuit
17 Solicitor's Office, either in Horry or Georgetown Counties?
18 If so, please stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel
21 that's related by blood or marriage, close personal friends,
22 acquaintances of anybody employed in the Public Defender's
23 Office either in Georgetown County or Horry County? If so,
24 please stand.

25 (No response.)

Voir Dire

10

1 THE COURT: Does any member of the jury panel have any
2 kind of personal, political, religious, philosophical belief
3 that you believe would prevent you from being a fair and
4 impartial juror in this case? If so, please stand.

5 (No response.)

6 THE COURT: All right, is there any member of the jury
7 panel that you, yourself, were a former law enforcement
8 officer or you have a current family member who is now in law
9 enforcement or was in the past in law enforcement? If so,
10 please stand.

11 Yes, sir, your name and juror number please?

12 MR. MOORE: David Moore, Number 193.

13 THE COURT: Yes, sir.

14 MR. MOORE: My son-in-law is an FBI agent in
15 Minneapolis.

16 THE COURT: All right, sir, can you give to the State
17 of South Carolina and to the Defendant a fair and impartial
18 trial? Can you be a fair and impartial juror in this case?

19 MR. MOORE: Yes.

20 THE COURT: Thank you very much, sir.

21 Yes, ma'am.

22 MS. ALLISON: Sherry Allison, Number 3. My husband's a
23 retired police officer.

24 THE COURT: All right, and from where, please, ma'am?

25 MS. ALLISON: Fairfax County, Virginia.

1 THE COURT: All right, ma'am, can you give to the
2 State of South Carolina and to the Defendant a fair and
3 impartial trial? Can you be a fair and impartial juror in
4 this case?

5 MS. ALLISON: Yes, I can.

6 THE COURT: Thank you very much, ma'am.
7 Yes, sir in the back.

8 MR. KEELIN: I'm Number 151, Ed Keelin. My dad is a
9 retired police officer.

10 THE COURT: All right, and where from?

11 MR. KEELIN: New York.

12 THE COURT: All right, can you give to the State of
13 South Carolina and to the Defendant a fair and impartial
14 trial? Can you be a fair and impartial juror in this case?

15 MR. KEELIN: Yes.

16 THE COURT: Thank you very much, sir.

17 All right, the next question, ladies and gentlemen, is
18 there any member of the jury panel or a member of your
19 immediate family a member of any kind of victims' rights or
20 law enforcement support organizations? Let me give you a
21 couple of examples. This is not an exhaustive list of any
22 kind but just some examples but such as Mothers Against Drunk
23 Driving or Citizens Against Violent Crime, the South Carolina
24 Law Enforcement Officers Association, the South Carolina
25 Sheriffs Association, just some kind of victims' rights or law

Voir Dire

12

1 enforcement support organization? If so, please stand.

2 (No response.)

3 THE COURT: All right, this next question, ladies and
4 gentlemen, I'm going to ask whether you yourself or a member
5 of your immediate family has ever been the victim of a crime.
6 Now, I am not going to ask you what happened. I do not want
7 you to tell me what happened. The question is going to be
8 straightforward. Was it yourself or a family member and then
9 I'll ask the qualification question. So, is there any member
10 of the jury panel either you yourself or a member of your
11 immediate family ever been the victim of a crime? If so,
12 please stand.

13 Yes, ma'am, right here your name and juror number,
14 please?

15 MS. PRYOR: I'm 221, Annie Pryor.

16 THE COURT: And was it yourself or a family member?

17 MS. PRYOR: Family member.

18 THE COURT: Can you give to the State of South
19 Carolina and to the Defendant a fair and impartial trial? Can
20 you be a fair and impartial juror in this case?

21 MS. PRYOR: No.

22 THE COURT: All right, ma'am, I need for you to come
23 forward and talk to me for just a second, please - counsel, if
24 you all want to come along.

25 (Whereupon, a bench conference was held with Juror Number

Voir Dire

13

1 221, counsel for the State and counsel for the Defense.)

2 THE COURT: All right, thank you very much, ma'am.

3 Have a seat. Thank you very much.

4 All right, yes, ma'am, right here in the middle, please,
5 ma'am.

6 MS. PENNY: Juror Number 209, family member.

7 THE COURT: All right, ma'am, can you give to the
8 State of South Carolina and to the Defendant a fair and
9 impartial trial? Can you be a fair and impartial juror in
10 this case?

11 MS. PENNY: Yes.

12 THE COURT: Thank you very much, ma'am.

13 Yes, ma'am, your name and juror number, please?

14 MS. RIVERS: Cassandra Rivers, Juror Number 227 and
15 it's myself.

16 THE COURT: Can you give to the State of South
17 Carolina and to the Defendant a fair and impartial trial? Can
18 you be a fair and impartial juror in this case?

19 MS. RIVERS: Yes.

20 THE COURT: Thank you very much, ma'am.

21 Yes, ma'am, right here.

22 MS. WILLIAMS: Juror Number 291, Genelle Williams, myself
23 and a family member.

24 THE COURT: Can you give to the State of South
25 Carolina and to the Defendant a fair and impartial trial? Can

Voir Dire

14

1 you be a fair and impartial juror in this case?

2 MS. WILILAMS: Yes.

3 THE COURT: Thank you very much, ma'am.

4 Yes, ma'am, right behind her?

5 MS. TRAPPIER: Juror 274, Prestean Trappier, a family
6 member.

7 THE COURT: Can you give to the State of South
8 Carolina and to the Defendant a fair and impartial trial? Can
9 you be a fair and impartial juror in this case?

10 MS. TRAPPIER: Yes, sir.

11 THE COURT: Thank you very much, ma'am.

12 All right, ladies and gentlemen, I'm going to ask you
13 what I classify as my general or catchall question. Do you
14 know of any reason, have any question in your mind, any doubt
15 in your mind that you believe you cannot give to the State of
16 South Carolina and to the Defendant a fair and impartial
17 trial, that is for any reason whatsoever you believe you
18 cannot be a fair and impartial juror, if so, please stand.

19 (No response.)

20 THE COURT: All right, further questions from the
21 State?

22 MS. COTÉ: No, Your Honor.

23 THE COURT: Further questions from the Defense?

24 MR. AXELROD: No, sir, Your Honor.

25 THE COURT: All right, very good.

Jury Selection

15

1 All right, ladies and gentlemen, what's going to occur is
2 the Clerk of Court in random order is going to call a name. If
3 and when your name is called you will stand up and come
4 forward and you will come basically to a place in the center
5 here in front of the table there and you turn and you face to
6 the back of the courtroom. At that point in time the clerk
7 will inquire of the State to present or excuse the juror. If
8 you are excused by the State you go back and have a seat. If
9 you are presented by the State the clerk will inquire of the
10 Defense to seat or excuse the juror. If you are excused by
11 the Defense, again, you go back and have a seat from whence
12 you came. If you are seated by the Defense the clerk will
13 direct you to go over to the jury box over there and have a
14 seat. If you happen to have any belongings with you, a purse,
15 a book or some other item, please bring that along with you in
16 case you are seated on this jury you can go directly to the
17 jury box.

18 All right, Mr. Clerk, if you would, or Madam Clerk -
19 who's going to - all right, Madam Clerk, if you would, please,
20 ma'am, if you'll just call names in a random order, please,
21 ma'am. Thank you.

22 THE CLERK: Juror Number 108, Donna Giardina.

23 THE COURT: Okay, right about there is great, thank
24 you, ma'am.

25 THE CLERK: What says the State?

Jury Selection

16

1 MS. COTÉ: Please present this juror.
2 THE CLERK: What says the Defense?
3 MR. AXELROD: Please excuse the juror from the trial of
4 this case.
5 THE CLERK: You may return to your seat.
6 Juror Number 81, Willie Dereef, Jr.
7 MS. COTÉ: I'm sorry, Madam Clerk, what was the
8 number again?
9 THE CLERK: 81.
10 MS. COTÉ: Thank you.
11 THE CLERK: What says the State?
12 MS. COTÉ: Please present this juror.
13 THE CLERK: What says the Defense?
14 MR. AXELROD: Swear the juror, please.
15 THE CLERK: Please take a seat in the jury box.
16 Juror Number 45, Jerome Caldwell.
17 What says the State?
18 MS. COTÉ: Please excuse this juror.
19 THE CLERK: You may return to your seat.
20 Juror Number 171, Floyd Linen.
21 What says the State?
22 MS. COTÉ: Please present this juror.
23 THE CLERK: What says the Defense?
24 MR. AXELROD: Please swear the juror.
25 THE CLERK: Please take a seat in the jury box.

Jury Selection

1 Juror Number 249, Denny Skiles.
2 What says the State?
3 MS. COTÉ: Please present this juror.
4 THE CLERK: What says the Defense?
5 MR. AXELROD: Please excuse the juror.
6 THE CLERK: You may return to your seat.
7 Juror Number 193, David Moore.
8 What says the State?
9 MS. COTÉ: Please present this juror.
10 THE CLERK: What says the Defense?
11 MR. AXELROD: Please excuse the juror.
12 THE CLERK: You may return to your seat.
13 Juror Number 33, Tammy Brice.
14 What says the State?
15 MS. COTÉ: Please present this juror.
16 THE CLERK: What says that the Defense?
17 MR. AXELROD: Please swear the juror.
18 THE CLERK: Please take a seat in the jury box.
19 Juror Number 109, Pamela Giese.
20 What says the State?
21 MS. COTÉ: Please present this juror.
22 THE CLERK: What says the Defense?
23 MR. AXELROD: Excuse the juror.
24 THE CLERK: You may return to your seat.
25 Juror Number 30, Isabelle Boyd.

Jury Selection

18

1 What says the State?

2 MS. COTÉ: Please present this juror.

3 THE CLERK: What says the Defense?

4 MR. AXELROD: Please swear the juror.

5 THE CLERK: Please take a seat in the juror box.

6 Number 209, Mary Penny.

7 What says the State?

8 MS. COTÉ: Please present this juror.

9 THE CLERK: What says the Defense?

10 MR. AXELROD: Please swear the juror.

11 THE CLERK: Please take a seat in the juror box.

12 Juror Number 242, Carl Schwandt.

13 What says the State?

14 MS. COTÉ: Please present this juror.

15 THE CLERK: What says the Defense?

16 MR. AXELROD: Please swear the juror.

17 THE CLERK: Please take a seat in the juror box.

18 Juror Number 38, Melanie Bryan.

19 What says the State?

20 MS. COTÉ Please present this juror.

21 THE CLERK: What says the Defense?

22 MR. AXELROD: Madam Clerk, is that Number 38?

23 THE CLERK: Yes.

24 MR. AXELROD: Swear the juror, please.

25 THE CLERK: Please take a seat in the jury box.

Jury Selection

19

1 Juror Number Three, Sherry Allison.
2 What says the State?
3 MS. COTÉ: Please present this juror.
4 THE CLERK: What says the Defense?
5 MR. AXELROD: Please excuse the juror from the trial of
6 this case.
7 THE CLERK: You may return to your seat.
8 Juror Number 261, Etrulie Sumpter.
9 What says the State?
10 MS. COTÉ: Please present this juror.
11 THE CLERK: Any challenges from the Defense?
12 MR. AXELROD: Please swear the juror.
13 THE CLERK: Please take a seat in the jury box.
14 Juror Number 227, Cassandra Rivers.
15 What says the State?
16 MS. COTÉ: Please present this juror.
17 THE CLERK: Any challenges from the Defense?
18 MR. AXELROD: Please swear the juror.
19 THE CLERK: Please take a seat in the jury box.
20 Juror Number 137, Patience Holmes.
21 What says the State?
22 MS. COTÉ: Please present the juror.
23 THE CLERK: Any challenges from the Defense?
24 MR. AXELROD: Please swear the juror.
25 THE CLERK: Please take a seat in the juror box.

Jury Selection

20

1 Juror Number 274, Prestean Trappier.
2 What says the States?
3 MS. COTÉ: Please excuse this juror.
4 THE CLERK: You may return to your seat.
5 Juror Number 97, Bridget Fowler.
6 What says the State?
7 MS. COTÉ: Please excuse this juror.
8 THE CLERK: You may return to your seat.
9 Juror Number 19, Edward Keelin - Juror Number 151, I'm
10 sorry, Edward Keelin.
11 MR. AXELROD: Madam Clerk, that was 151?
12 THE CLERK: Yes.
13 MR. AXELROD: Thank you.
14 THE CLERK: What says the State?
15 MS. COTÉ: Please present this juror.
16 THE CLERK: Any challenges from the Defense?
17 MR. AXELROD: Please swear the juror.
18 THE CLERK: Please take a seat in the jury box.
19 MR. AXELROD: Your Honor.
20 THE COURT: Yes, sir.
21 MR. AXELROD: May we approach, Your Honor?
22 THE COURT: Yes, sir.
23 (Whereupon, a bench conference is held in the presence
24 but out of the hearing of the jury panel.)
25 THE CLERK: Juror Number Five, Annadora Alston.

Jury Selection

21

1 What says the State?

2 MS. COTÉ: Please excuse this juror.

3 THE CLERK: You may return to your seat.

4 THE CLERK: Juror Number 265, Donna Tatcher.

5 What says the State?

6 MS. COTÉ: Please present this juror.

7 THE CLERK: Any challenges from the Defense?

8 MR. AXELROD: Please swear the juror.

9 THE CLERK: Please take a seat in the jury box.

10 THE COURT: One alternate, please, ma'am. It'll be

11 two and one on the alternates.

12 THE CLERK: Juror Number 291, Genelle Williams.

13 What says the State?

14 MS. COTÉ: Please present this juror.

15 THE CLERK: What says the Defense?

16 MR. AXELROD: Please excuse the juror.

17 THE CLERK: You may return to your seat.

18 Juror Number 78, Douglas Delaney.

19 What says the State?

20 MS. COTÉ: Please present this juror.

21 THE CLERK: What says the Defense?

22 MR. AXELROD: Please excuse the juror.

23 THE CLERK: You may return to your seat.

24 Juror Number 76, Xaviera Deas.

25 What says the State?

Instructions by Court

22

1 MS. COTÉ: Please present this juror.

2 THE CLERK: What says the Defense?

3 MR. AXELROD: Swear the juror.

4 THE CLERK: Please take a seat in the jury box.

5 THE COURT: All right, Ms. Deas, you are the alternate
6 in this particular case, ma'am. Thank you.

7 All right, any objections to the jury as empanelled from
8 the State?

9 MS. COTÉ: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. AXELROD: No, sir, Your Honor.

12 THE COURT: All right, very good.

13 All right, ladies and gentlemen of the jury in this
14 particular matter, I am going to ask that you go back in your
15 jury room in just a moment and do one thing for me and that
16 is going to be select your foreperson for this particular
17 jury. Let me tell you very briefly what the foreperson's
18 duties and responsibilities are. If we're here in the
19 courtroom and the jury needs attention to some matter, the
20 witness needs to speak up or the lawyers or whatever it is the
21 foreperson raise their hand, gets the Court's attention, we'll
22 handle the matter, whatever it is. If you're back in the jury
23 room and there is a matter that comes up the jury needs
24 attention to, the foreperson takes out the pen and note
25 provided, writes out a note, signs it, gets it to the bailiff,

1 and again, it'll come to me and we'll handle the matter,
2 whatever that issue might be. Once the evidentiary portion of
3 the trial has been concluded and you've heard the closing
4 arguments of the attorneys and you've heard the law that
5 you're going to apply to the facts as you so find them to be
6 in this case and I send the case to you for your deliberations
7 and your unanimous decision in this particular matter the
8 foreperson's duties and responsibilities change in this
9 regard. The foreperson is acting like the chairman at a
10 meeting to guide the discussions if necessary.

11 Now, the foreperson's voice and vote carries no more
12 weight than any other member of the jury. Everybody's on an
13 equal plane in that regard, but again, if somebody, you know,
14 we need to have somebody in charge, and again if there's some
15 matter that the jury needs attention to, again, the foreperson
16 will need to take out that pad and pen, write out that note
17 and sign it and get it to the bailiff, and again we'll handle
18 the matter, whatever it may be. The final duty and
19 responsibility of the foreperson is once the jury has well and
20 truly deliberated in this case and you have reached your
21 unanimous decision in this particular matter, then the
22 foreperson will take the verdict form that the Court will
23 provide to you and check the appropriate block or write the
24 appropriate word, and thereafter, sign your name as the
25 foreperson indicating that this, indeed, is the unanimous

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1 verdict of the jury in this particular case.

2 With that, I'm going to ask that you go back to your jury
3 room, select your foreperson, knock on the door, let the
4 bailiff know who that foreperson is.

5 Now, Ms. - is it Ms. Deas? Yes, Ms. Deas, as the
6 Alternate you can vote on the foreperson but obviously being
7 the alternate you cannot be the foreperson. All right, so, if
8 you all will go back to the jury room, select your foreperson,
9 knock on the door and let the bailiff know who that is,
10 please. Thank you very much.

11 (Whereupon, the following takes place outside the
12 presence of the jury. Remaining jury panel excused by the
13 Court and given instructions on returning.)

14 THE COURT: All right, Solicitor, you indicated you
15 had a motion in this matter?

16 MS. COTÉ Yes, Your Honor, it's the State position
17 that it's a conflict of interest for Mr. Axelrod to represent
18 this Defendant in this case. Mr. Colvin is the assigned
19 public defender for this case and has been representing him
20 since this charge came into effect in 2007. Mr. Axelrod did
21 not come onto this case until Friday at roll call. He
22 represents the confidential informant involved in this case on
23 a separate charge, criminal domestic violence, second offense.
24 It's the States position that that's a - it's a conflict of
25 interest and we ask that he be removed, conflicted out from

1 this case.

2 THE COURT: All right, Mr. Axelrod, let me hear from
3 you, sir.

4 MR. AXELROD: Your Honor, the only dealings I ever had
5 with Mr. Woodsides, who is the CI, I checked my records. In
6 December of 2010 he was called for roll call on a CDVHAN I
7 believe. He told me that he was working for the police and I
8 had him excused. I checked my notes. That is the only
9 communication I've ever had with that client to my knowledge.
10 I spoke with Ms. West and she considered that it was not a
11 conflict. She appointed Mr. Fox to represent the CI from here
12 on out and also I wasn't even going to do the cross
13 examination of him. Mr. Colvin was going to do the cross-
14 examination. I know of nothing of this man and there's
15 nothing that could influence anything about this case. I
16 could see the State's position if it was a drug case but it's
17 not a drug case. I've only met him, I think, for five
18 minutes, Your Honor, had him excused and had no further
19 dealing with him at all and for, just for the utmost caution
20 Mr. Colvin would do the cross-examination of that person, and
21 at the appropriate time, Your Honor, I have one more point to
22 make to the Court.

23 THE COURT: Go ahead and make it.

24 MR. AXELROD: Your Honor, my willingness to do these
25 trials for Richard has come through and it's been an ongoing

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1 thing that his health has been, has been, you know, hurt a
2 little bit and it's the position of our office that to assist
3 him in the trials would be beneficial to the clients and it's
4 - this has been an ongoing situation.

5 MR. COLVIN: Your Honor, I can say that I did speak
6 with my supervisor, Ms. West, and she told me that she did not
7 think that Mr. Axelrod had a conflict and that she would, in
8 fact, appoint another public defender to represent Mr.
9 Woodsides, who was the CI, and I think she has already done
10 so. I'm sure she's already done so because my assistant
11 served the papers on the solicitor's office.

12 MS. COTÉ: What papers? Regarding Mr. Fox?

13 MR. AXELROD: Appointing Mr. Fox.

14 MR. COLVIN: Notice of representation, yeah.

15 MS. COTÉ: And I also have no letter of
16 representation from Mr. Axelrod stating that he represents
17 this client. I'm concerned about any information that he
18 received in discovery on Mr. Woodsides that he could be
19 passing along to Mr. Colvin in the cross-examination of that
20 client.

21 MR. AXELROD: Your Honor, as an officer of the Court I
22 didn't know who Mr. Woodsides was. When I looked at Mr.
23 Colvin's file on Friday I had them check the name who
24 represented him on a pending charge and I found out it was -
25 it was myself. I wouldn't know him if I saw him and I asked

1 my secretary at work to look at the, to look at the file.
2 There's nothing in the file and she said the only notation she
3 had from roll call was that I had him excused and he was
4 working as a CI and I had him excused. I do not know who he
5 is and there's nothing that I've said to Richard concerning
6 him at all, and I believe that the cross-examination by Mr.
7 Colvin is going to be merely to go over his record. I think
8 that's all that we're going to do. I think just for the
9 impeachment value we're going to ask the CI if he's - if we -
10 when we get the NCIC on its impeachment value. I don't
11 believe there's going to be any other cross-examination.

12 MR. COLVIN: Your Honor, I can tell you as an officer
13 of the court that I have no information from any source
14 whatsoever about Mr. Woodsides other than checking the public
15 index of Georgetown Court. I'm sure that at the appropriate
16 time we'll be given an NCIC on him but we don't have that yet,
17 and of course, it's not required yet but I can tell you that
18 neither through Mr. Axelrod nor anyone else am I privy to any
19 information whatsoever about Mr. Woodsides other than the
20 public record.

21 THE COURT: The only problem I have here is the last
22 part of Rule 1.7, subsection B(4) and that's the one of
23 conflict of interest, each affected client gives informed
24 consent confirmed in writing. So, do you have the written
25 consent of both affected individuals?

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1 MR. AXELROD: No, sir, Your Honor.

2 THE COURT: Seems to be an absolute requirement of
3 Rule 1.7, conflict of interest. It says that, "Except as
4 provided in paragraph B, a lawyer shall not represent a client
5 if representation involves a concurrent conflict of interest.
6 A concurrent conflict of interest exists if," and it goes
7 through several things, "Notwithstanding the existence of a
8 concurrent conflict of interest under paragraph A, a lawyer
9 may represent a client if, one, the lawyer reasonably believes
10 that the lawyer will be able to provide competent and diligent
11 representation to each affected client." I believe that
12 you've indicated so. "Two, representation is not prohibited
13 by law. Three, the representation does not involve the
14 assertion of a claim by one client against another client
15 represented by the lawyer in the same litigation or other
16 proceeding before a tribunal and each affected client gives
17 informed consent, confirmed in writing."

18 MR. AXELROD: Your Honor, I no longer represent that
19 client.

20 THE COURT: I appreciate that. You tell me that. The
21 fact is you do. You have, you know, you've had contact with
22 that client, whatever it is. You all knew this was a problem.

23 MR. AXELROD: Well, that's why we brought it to the
24 Court's attention.

25 THE COURT: And I appreciate that, but knowing it's a

1 problem when it comes up you could easily cure it. You do
2 what the rule tells you to do, "Each affected client gives
3 informed consent confirmed in writing."

4 MR. AXELROD: Your Honor ---

5 THE COURT: That there's nothing, if, and or but about
6 that. It's clear, specific. You've told me you don't have
7 it. I can't let you continue in this case. If you had done
8 so I may very well have considered allowing you to do so under
9 these circumstances that have been presented but the rule is
10 extremely clear, you don't have the information in front of
11 me, you can't do it.

12 MR. AXELROD: I understand, Your Honor, and just for
13 the Court's knowledge I did ask Ms. West for her guidance
14 and she considered it was not a conflict. That's why I
15 proceeded.

16 THE COURT: I appreciate that and I - Ms. West is an
17 extremely competent and very proficient lawyer, but she is not
18 the Court.

19 MR. AXELROD: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 All right, any further matters from the State?

22 MS. COTÉ: Your Honor, just briefly, I would ask that
23 the Defense stipulate to the chain of custody for the drugs.
24 We have given them a verified chain of custody from the South
25 Carolina Law Enforcement Division and we - it's the State's

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1 position that the evidence custodian and the chemist, as well
2 as the officer who put the drugs into evidence is sufficient
3 to testify, but we would ask additionally that they stipulate
4 to the entire chain, and I wouldn't even have to call my
5 evidence custodian.

6 THE COURT: All right, what's the position of the
7 Defense?

8 MR. COLVIN: Your Honor, we would not so stipulate.

9 THE COURT: All right, very good, all right,
10 Solicitor.

11 MS. COTÉ: Thank you.

12 THE COURT: You'll need to call all the witnesses.

13 MS. COTÉ: Yes, Your Honor, there is an
14 identification issue in this case but there's no out-of-court
15 identification in the way of a lineup or a show up or anything
16 of that nature, just the confidential informant identifying
17 the Defendant. He knew each other - they knew each other
18 prior to this. So, it's the State's position that we do not
19 need a Neal versus Biggers hearing in this matter.

20 Additionally, Your Honor, the - just as a coincidence two of
21 the officers involved in this case saw the Defendant get up to
22 go to meet the confidential informant. They just happened to
23 be at the same restaurant and they were able to identify him
24 seeing him there and heading out. They were able to identify
25 him through prior dealings with him in the past. So, in that

1 course or in that case as well it's our position that a Neal
2 versus Biggers does not apply because they did know the
3 witness prior to the out-of-court identification.

4 THE COURT: All right, Mr. Colvin, do you have any
5 belief that there needs to be some kind of identification
6 hearing in this matter?

7 MR. COLVIN: Your Honor, I think that that would be in
8 the best interest of my client and of justice.

9 THE COURT: All right, the - obviously a motion
10 pursuant to Neal versus Biggers is made by the Defense in
11 criminal cases to determine the admissibility of
12 identifications. The standard for determining the
13 admissibility of identification is whether the identification
14 procedure, procedure was so impermissibly suggestive as to
15 give rise to a very substantial likelihood of irreparable
16 misidentification. A criminal Defendant may be deprived of
17 due process of law by an identification procedure that is
18 unnecessarily suggestive and conducive to irreparable mistaken
19 identification. To determine whether the identification is
20 reliable it is necessary to consider the factors set forth in
21 Neal versus Biggers: one, the opportunity of a witness to
22 view the criminal at the time of the crime; two, the witness's
23 degree of attention; three, the accuracy of the witness's
24 prior description of the criminal; four, the level of
25 certainty demonstrated by the witness at the confrontation;

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1 and five, the amount of time between the crime and the
2 confrontation. I don't, based upon what has been told to me
3 there was no identification procedure that was used in this
4 particular matter. Two police officers may have seen the
5 Defendant but we're not talking about an identification
6 procedure. We're not talking about a lineup. We're not
7 talking about photographs. We're not talking about in any way
8 separating the Defendant out and having people trying to
9 identify that particular person as a person who committed some
10 offense in the past. What the officers did was observed the
11 Defendant apparently during the transaction or prior to or
12 immediately prior to the transaction. The CI is not involved
13 in an identification procedure. The CI may know the Defendant
14 and that might be a reason why the CI communicated with the
15 Defendant but it's not an identification procedure. So, I'm
16 not going to hold a Neal versus Biggers hearing on that
17 information. Now, if there's something else, you all bring it
18 to my attention but I don't believe that Neal versus Biggers
19 applies to the facts as presented to me at this point in time.

20 MS. COTÉ: Thank you, Your Honor.

21 MR. COLVIN: Your Honor, I have nothing else but the
22 last test that you mentioned was the length of time between
23 the even and the confrontation.

24 THE COURT: Right, the confrontation being the
25 identification procedure. So, you've got the crime and the

1 length of time between whatever transpired and then the
2 witness going and identifying the Defendant as the person who
3 committed the prior offense. What we're not - that's not what
4 we have here. We have a CI who is saying, "This is what I
5 participated in. This is what took place with me." The
6 officers are saying, "I happened to see this guy going down
7 the street to meet John Doe." We're not talking about these
8 people being witnesses of a prior incident, something that
9 happened in the past and later trying to identify the
10 Defendant as the person that did it. That's what they're
11 talking about the time between the incident and the
12 confrontation, the confrontation being the procedure, whatever
13 it is. So, that's why I will not apply Neal versus Biggers.

14 MR. COLVIN: All right, sir. I had taken that to mean,
15 I guess I was mistaken, the time between the alleged incident
16 and the confrontation in court, and that would be three years
17 and 10 months.

18 THE COURT: Well, it might be but that, that it also
19 has to do between the time of the time that the person was
20 there and then they subsequently identified the person. Okay,
21 but this is not, this is not an identification procedure. So,
22 I'm not going to apply that particular case.

23 MR. COLVIN: Thank you, Your Honor.

24 THE COURT: All right, thank you.

25 Anything further from the State?

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1 MS. COTÉ: Your Honor, I'm just handing Mr. Colvin a
2 copy of the confidential informant's criminal history.

3 THE COURT: All right, very good.

4 MS. COTÉ: And I'll leave it up to the Court, Your
5 Honor, but we could discuss what is impeachable at this time
6 or we can wait until just prior to his testimony.

7 THE COURT: Well, I think Mr. Colvin needs some time
8 to look at it.

9 MS. COTÉ: That's true. I apologize, Your Honor.

10 THE COURT: So, I ---

11 MS. COTÉ: That's, that's all we ---

12 THE COURT: --- I would allow him to, allow him to do
13 so.

14 MS. COTÉ: That's all we have. Thank you.

15 THE COURT: Did the jury pick a foreperson? All
16 right, the foreperson for this particular jury is Tammy Brice
17 and that's Juror Number 33, Tammy Brice, Juror Number 33 is
18 the foreperson.

19 All right, anything further, Mr. Colvin?

20 MR. COLVIN: Your Honor, I have some motions at the
21 proper time, typical motion, for instance, to sequester the
22 witnesses.

23 THE COURT: Is there any objection to sequestration,
24 Solicitor?

25 MS. COTÉ: No, Your Honor.

1 THE COURT: Except for the investigating officer?

2 MS. COTÉ: Yes, Your Honor.

3 THE COURT: All right, very good, so granted.

4 Anything else, Mr. Colvin?

5 MR. COLVIN: Yes, sir, once again, if this is the
6 appropriate time.

7 THE COURT: Yes, sir.

8 MR. COLVIN: In the police incident report there was -
9 somewhere in the discovery there was some mention of the
10 confidential informant allegedly contacting my client by way
11 of telephone and I would ask that any mention of a phone call
12 to the Defendant be disallowed absent any telephone records.

13 THE COURT: All right, at this point in time I'm not
14 going to grant that motion. If you have some objection to a
15 question asked by the State I will be glad for you to bring it
16 up at the time the question is asked.

17 MR. COLVIN: Yes, sir, I was just trying to head it off
18 at the pass.

19 THE COURT: All right, sir, yes, sir.

20 Anything else at this point in time?

21 MS. COTÉ: Nothing from the State, Your Honor.

22 THE COURT: And Mr. Colvin, though, is there anything
23 else, Mr. Colvin, at this point in time?

24 MR. COLVIN: No, sir, not right now. Thank you.

25 THE COURT: All right, very good.

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1 All right, we're going to start back at - why don't we
2 start back at 2:15. At 2:15 let the jury go and tell them to
3 be back in the jury room at 2:15, please, 2:15. All right,
4 thank you very much.

5 OFF THE RECORD

6 (On the record.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right, Solicitor, are you ready to go
10 forward on the matter against Mr. Archie?

11 MS. COTÉ: Yes, Your Honor.

12 THE COURT: All right, Mr. Colvin, you are ready to go
13 forward on the case against Mr. Archie?

14 MR. COLVIN: Yes, Your Honor.

15 THE COURT: All right, very good. Ask the jury to come
16 in, please.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, Ms. Brice, the jury has
20 selected you to be the foreperson of this particular jury;
21 is that correct?

22 MS. BRICE: Yes, sir.

23 THE COURT: All right, very good, and if you would
24 always occupy that particular seat when you come back from the
25 jury room, and, Ms. Deas, if you would always occupy that

1 particular seat when you come back; okay?

2 All right, ladies and gentlemen, as far as the other seating,
3 there is no other assigned seating other than the foreperson
4 and the alternate. So, when you come back from the jury room
5 if you would just fill in the seats wherever it is that you
6 happen to be positioned at that point in time.

7 The first thing that's going to happen is the clerk will
8 administer your oath to you. So, if all of you would please
9 stand at this time.

10 (Whereupon, the jury is sworn by the clerk.)

11 THE COURT: All right, is there any member of the jury
12 that did not affirmatively take the oath as given by the clerk
13 of court? If so, please stand at this time.

14 (No response.)

15 THE COURT: I find the jury has been properly sworn in
16 this particular matter.

17 All right, ladies and gentlemen, I told you at the very
18 beginning that the State had charged the Defendant with a
19 crime and I read to you some allegations that were contained
20 in the indictment. I remind you again that the indictment was
21 merely the charging document, the document by which this
22 matter was brought to court. It's not evidence, can't be
23 considered by anyone as evidence in the case. That will come
24 through the witnesses that come before you and testify under
25 oath. To that charge of distribution of cocaine base or crack

Opening Instructions by Court

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1 cocaine the Defendant has pled not guilty; and therefore, is
2 presumed innocent of the charges. What that means is the
3 burden of proof is now and remains always on the State of
4 South Carolina to prove the Defendant guilty of the crime
5 charged beyond a reasonable doubt. The Defendant has nothing
6 to show to you. The Defendant has nothing to prove to you.
7 The State must bring before you the witnesses and the evidence
8 for you to consider in this matter. It will be your job to
9 look at the facts and evidence that are presented, to find
10 that evidence which convinces you of its truth and then weigh
11 that evidence against the State's burden to prove the
12 Defendant guilty of the crime charged beyond a reasonable
13 doubt. As you sit there today you basically are the judges of
14 the facts of this particular case. I will not indicate to you
15 in any way what I believe the facts of this case are because
16 that's not my job. That's not my responsibility. That's your
17 job. That's your responsibility, to listen to the facts and
18 evidence presented, to weigh the credibility and the
19 believability of the witnesses that come before you on the
20 witness stand. When you think about it and when we're asking
21 you to weigh credibility and believability and I'll remind you
22 about this at the end, this is something you do every single
23 day of your life. When somebody tells you something you
24 automatically judging whether or not you believe them and how
25 do you do that? You use your good common sense, your good

1 judgment that you use in conducting your own everyday affairs.
2 You use that good common sense, apply it to the facts and
3 evidence you hear in this case, find that evidence which
4 convinces you it's true and then you take that evidence and
5 you look at whether or not that evidence proves the Defendant
6 guilty of the crime charged beyond a reasonable doubt, making
7 the State prove to you their particular charge and case.
8 That's their job. That's their responsibility and you must,
9 of course, put them to that.

10 During the course of the trial the attorneys may make
11 certain motions before the Court. They may raise certain
12 issues before the Court. If I rule on them in your presence,
13 I don't send you back to your jury room so I can discuss it
14 more freely with them, please, remember, again, I'm not making
15 any comments on the facts. I am exercising one of my duties
16 over the conduct of the trial, how the trial will be
17 conducted. I'm telling the lawyers how the trial will go
18 forward based on that issue they have brought before me. I'm
19 not making any comments on the facts because again that's your
20 job, that's your responsibility to be the judges of the facts
21 of this case.

22 We're going to have the lawyers give you their opening
23 statements. Remember opening statements and closing
24 statements are not evidence, can't be considered by anybody as
25 evidence in the case. The opening statements are by way of

Opening Instructions by Court

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1 introduction, what they believe that they hope to show you
2 during the course of the trial. The closing arguments are
3 arguments they make to you based upon their view of the
4 evidence that has been presented in this case. During the
5 course of the trial you'll hear from all the witnesses that
6 will be presented, after which when we are done with the
7 arguments I will give you the law that you're going to apply
8 to the facts that you find to be true in this case and then
9 I'll send the case to you for your deliberations and your
10 unanimous decision in this particular matter. I'm going to
11 ask you don't talk about this case until I give it to you at
12 the very end. The reasons for this being, one, if you talk
13 about it before you've heard all the evidence then, you know,
14 you might think something, then the very next witness changes
15 your mind about it but then you've already expressed an
16 opinion and sometimes people find it hard to go back when they
17 have said "X" and now they believe "Y". So, don't discuss the
18 case. Don't talk about it. You'll have all the time you want
19 to talk about it at the very end whatever time you believe is
20 necessary before you come forward with your unanimous
21 decision. So, with that I'm going to turn it over to the
22 lawyers for their opening statements. Solicitor.

23 MS. COTÉ: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, ma'am.

1 MS. COTÉ: The Defendant in this case, Azikiwe
2 Archie, thinks he's above the law. In the State of South
3 Carolina it's illegal to distribute any type of illegal drug.
4 On May 4th, 2007, he did just that when he sold some crack
5 cocaine to a man named Christopher Woodsides. What the
6 Defendant didn't know was that Christopher Woodsides was
7 working for the police as a confidential informant. Now, a
8 confidential informant is the same kind of idea as an
9 undercover officer except he's a civilian. He agreed to work
10 for the police, wear a wire and go buy drugs from the
11 Defendant. He called the Defendant to set up a time and place
12 to meet. They originally agreed to meet at the Ball and Cue
13 Restaurant. They - well, Chris, the confidential informant
14 called him back because he knew too many people there. So,
15 they moved the location and they eventually ended up meeting
16 up at the Money Saver where the Defendant gave Chris some
17 crack cocaine and the CI, Chris Woodsides, paid him for that.

18 Another thing that the Defendant didn't know is that some
19 of the law enforcement officers that were involved in the case
20 happened to be in the same restaurant he was in. So, they saw
21 him take the phone call and walk out the door and head in the
22 direction of the Money Saver. You'll hear from those officers
23 that were involved in that case. You'll hear from Sergeant
24 Geno, Agent Jason Ward, as well as Clint Sawyer, who used to
25 work with the Organized Crime Bureau in Georgetown County but

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1 he's no longer with law enforcement.

2 You'll also hear from a number of witnesses from SLED,
3 the South Carolina Law Enforcement Division. You'll hear from
4 the chemical analyst who actually tested these drugs to make
5 sure it wasn't just a rock-like substance that looked like a
6 drug, but it actually was crack cocaine or cocaine base as
7 it's more technically named.

8 You'll also hear from some other people from SLED who
9 work in the lab who handled the drugs and there'll just be
10 here to testify that the bag remained sealed until it was
11 tested and that it wasn't tampered with in any way. You'll
12 also hear from the only other person involved in that drug
13 buy, the only other person in the Money Saver when this hand-
14 to-hand transaction occurred and that's the confidential
15 informant, Chris Woodsides.

16 My name is Nancy Coté and I'm an assistant solicitor here
17 in Georgetown County. It's our office's job, the 15th Circuit
18 Solicitor's Office, to prosecute crimes that occur in
19 Georgetown and Horry County. The Defendant is here charged
20 today with distribution of cocaine base and I have to prove to
21 you all of the elements of that crime beyond a reasonable
22 doubt. It's the State's burden of proof in each and every
23 criminal case beyond a reasonable doubt, and in this case the
24 State welcomes that burden. I submit to you that after you
25 hear all of the evidence and testimony in this case you will -

Opening Statement by Defense

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1 - we will prove to you beyond a reasonable doubt that this
2 crime did occur and I ask that you after listening to all of
3 the evidence and testimony come back with a verdict that tells
4 Mr. Archie that he's not above the law and that's a verdict of
5 guilty. Thank you.

6 THE COURT: All right, Mr. Colvin.

7 MR. COLVIN: Thank you, Your Honor. If it please the
8 Court?

9 THE COURT: Yes, sir.

10 MR. COLVIN: Ladies and gentlemen, my name is Richard
11 Colvin and I'm the attorney for Azikiwe Archie who is sitting
12 over there. I'm not going to have a whole lot to say to you
13 initially because as Judge John has told you Mr. Archie
14 doesn't have to prove anything. He, he's in here against his
15 will and doesn't have to say a thing. He said he's not
16 guilty. That's why he's having a trial.

17 The Judge instructed you at the conclusion of the case
18 you will be asked to apply what you perceive the facts to be
19 to the law which he will charge you with, but probably the
20 most crucial point in what he's already mentioned is the State
21 is required to prove, as a matter of a fact Ms. Côté mentioned
22 this, the case and each element of the case beyond a
23 reasonable doubt and what does that mean? Beyond a reasonable
24 doubt is a heavy burden. It's - if this were a civil trial
25 where somebody were suing somebody for a car wreck or for a

Opening Statement by Defense

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1 debt owed to them under a contract the standard, and the
2 standard of proof that would be required to be met would be
3 called a preponderance of the evidence. We've all seen the, a
4 statue of Lady Justice. She's blindfolded and has a set of
5 scales in her hands. For something to be proven by a
6 preponderance of the evidence those scales of justice are
7 going to have to be tipped ever so slightly in favor of the
8 Plaintiff, and this is not a civil case, it's about money.
9 This is a criminal case that's about liberty and for that
10 reason those scales of justice have to tilt way over beyond a
11 reasonable doubt.

12 Another way of perhaps illustrating that is if this were
13 a football game and you had just crossed the 50-yard line and
14 you're on the other team's 49 yard line you've met that
15 threshold of preponderance of the evidence, but if you're
16 going to prove something beyond a reasonable doubt it's going
17 to have to be first and goal at the two yard line. That's my
18 analogy but Azikiwe sits there clothed in a cloak of innocence
19 until and unless the State does meet that burden of proving
20 his guilt beyond a reasonable doubt.

21 Now, we're going to hear from a lot of people, the police
22 officers, the SLED agents as she had said, and Mr. Woodsides.
23 I expect Mr. Woodsides is going to be the most important
24 because you're going to have to judge his credibility and
25 you're going to have to judge whether or not he had any bias

1 or motive for testifying as he did. If you do find that he
2 had some bias or motive then that would certainly go to
3 whether or not you believed him and believed him beyond a
4 reasonable doubt.

5 So, thank you for your kind attention and we will
6 certainly on my side of the case limit it to relevant and
7 competent evidence and that's what it takes to convict a man
8 is relevant and competent evidence, not just what somebody
9 says. Thank you very much.

10 THE COURT: All right, Solicitor, your first witness,
11 please, ma'am.

12 MS. COTÉ: Thank you, Your Honor. The State calls
13 Sergeant Chris Geno.

14 THE COURT: Please come around and be sworn, sir.
15 Whereupon, Christopher Geno, was called to the stand,
16 duly sworn by the clerk and testified as follows:

17 MR. GENO: Sergeant Christopher Geno, G-E-N-O.

18 THE COURT: Go ahead, Solicitor.

19 MS. COTÉ: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. COTÉ:

22 Q Sergeant Geno, will you begin by discussing for the jury
23 a little bit about your background and training in law
24 enforcement?

25 A I began in law enforcement when I joined the United

Christopher Geno -- Direct by State

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1 States Marine Corp back in the early nineties. I served four
2 years as a sergeant as a military policeman. Since then I've
3 joined the Sheriff's Office and have worked my way through the
4 ranks up to the rank of sergeant serving as both a patrolman,
5 I served five years in the Organized Crime Bureau as a
6 corporal and have since been promoted to patrol supervisor as
7 a sergeant.

8 Q What was your assignment back on May 4th, 2007?

9 A I was a narcotics agent with the Organized Crime Bureau.

10 Q Will you discuss a little bit about what the Organized
11 Crime Bureau is or was?

12 A The Organized Crime Bureau was a multi-jurisdictional
13 task force between ourselves and the City of Georgetown. We
14 also worked side by side with many federal agencies
15 investigating drug crimes and any other types of organized
16 crimes, stolen motorcycle rings, vehicles, prostitution, any
17 kinds of organized crime.

18 Q With the Organized Crime Bureau were you part of a drug
19 transaction that took place on May 4th, 2007?

20 A Yes, I was.

21 Q Will you please discuss the arrangements that were made
22 for that transaction to occur?

23 A On May 4th, 2007, for that particular drug transaction we
24 did have arrangements with a confidential informant who has
25 been identified as Mr. Woodsides. We got in touch with him.

1 We actually went and picked him up and brought him to the
2 location where we were going to try to do the drug
3 transaction. Once we got to that location myself and Agent
4 Ward, who you guys will meet later, you know, we got the
5 particulars down who we were going to buy from, who was known
6 to the informant "P". He didn't - we knew who his real name
7 was but he was known by a nickname which is, you know, typical
8 in the drug world. Everybody goes by nicknames.

9 The first thing what we do with an informant is we always
10 want to search them, and the reason we search them is, number
11 one, to make sure that they didn't bring any contraband to the
12 buy location. We want to make sure that they don't have any
13 drugs and any of their own money that can be confused with the
14 money that we actually issue them for the drugs. So, I went
15 ahead and we searched him. He didn't have any contraband. At
16 that point Agent Ward went ahead and wired him and I think he
17 can tell you a little bit more. It was a new wire but the
18 reason we use wires is so we can actually monitor the audio of
19 what's going on live time. Somebody can actually hear it from
20 our location, can hear what's going on because we can't be
21 side by side with the informants because all of us that are
22 working in the Organized Crime Bureau we're uniform policemen
23 at some point and may be known by the drug dealers, and
24 obviously, if I'm standing there a drug dealer is not going to
25 sell somebody crack cocaine, whatever it be with me standing

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1 there. So, we can't be there side by side. So we do
2 surveillance through these wires that we can hear and they're
3 actually hidden on an informant's person so they can't be seen
4 for obvious reasons. After he's wired I give him some money
5 that I've actually, you know, written the serial numbers down
6 so we can track that money if we come across it again, I can
7 match them and say, you know, that's the money that we used
8 for that actual transaction. At that point he's sent to the
9 location where it's going to be done and does the deal. After
10 the deal's done he'll come back, meet with us. I'll again
11 search them and the drugs will be turned over and put into a
12 Best bag, which we'll go into more detail about later, and
13 dropped into a secure location.

14 Q Is that, what you just did is that an overview of what
15 generally happens on a ---

16 A That's an overview of what would happen on your regular
17 drug buy.

18 Q And we'll go into a little bit more depth about what
19 happened here. You said you took the CI to the predetermined
20 location. What was that location?

21 A Originally we went to the Ball and Cue. Behind the Ball
22 and Cue there's a small parking lot in the back and it's kind
23 of shaded. If this makes any sense, this would be the front
24 and you can actually go in between the back of the Ball and
25 Cue and that's where we actually park where we were out of,

1 you know, view distance of anybody driving by. Nobody would
2 know we had been back there.

3 Q Okay, and what happened at that point? Did you search
4 him at that point?

5 A Yes, I did.

6 Q And did you find any contraband on him?

7 A No, we didn't.

8 Q Okay, what did you do next?

9 A At that point Agent Ward, like I said, you'll talk to him
10 later, he, he went ahead and put the wire on the CI and got
11 him ready, made sure it was working, made sure it was on.
12 After that was all done he was sent, the CI was sent to the
13 Ball and Cue where we originally thought that this transaction
14 was going to take place. After he left I called another
15 agent that originally wasn't going to be with us. We normally
16 do it with two agents and I called another agent that was
17 working at the time to come pick me up so I could - he could
18 pick me up and take me somewhere where we could watch, you
19 know, and hopefully see the bad guy drive up and see him and
20 go in there. So, another agent came and picked me up and we
21 actually went to a restaurant which was across, the same side
22 of the road, but across Merriman Road, George's, if any of you
23 are from Georgetown are familiar with George's, a great place
24 to eat.

25 Q I'm going to stop you for a just a second, Sergeant Geno.

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1 I'm going to show you what's been pre-marked for
2 identification as State's Exhibit Three. Do you recognize
3 that?

4 A Yes, I do. That's the intersection of Highmarket and
5 Merriman, in the very background with the green awning is the
6 actual Ball and Cue.

7 Q Is that an accurate representation of how that looked
8 back in May of 2007?

9 A Yes, it is.

10 MS. COTÉ: Your Honor, at this time - I'll show it to
11 Defense counsel, but at this time we would seek to introduce
12 State's Exhibit Three into evidence.

13 THE COURT: Any objection?

14 MR. COLVIN: No objection, Judge.

15 THE COURT: All right, it's in evidence without
16 objection.

17 (Whereupon, State's Exhibit Number Three [Photograph]
18 introduced into evidence and appropriately marked.)

19 MS. COTÉ: Beg the Court's indulgence just one
20 moment.

21 THE COURT: Yes, ma'am.

22 MS. COTÉ: May we publish to the jury at this time?

23 THE COURT: Yes, ma'am, you may do so.

24 MS. COTÉ: Thank you.

25 BY MS. COTÉ:

1 Q Sergeant Geno, can you show the jury a little bit in more
2 detail about what you're talking about? Is this the area that
3 you were speaking of?

4 A That's correct.

5 Q And the green awning is that the Ball and Cue?

6 A Yes, ma'am.

7 Q And that's - you were - you dropped him off beside,
8 behind that area?

9 A Behind that area, we did.

10 Q Okay, and where did you go from that point?

11 A From that point Agent Sawyer came and picked me up and we
12 actually - looking at this picture to the right, you can't see
13 it, it is the George's Restaurant, and we actually went inside
14 and sat down at a table inside of George's which has windows
15 that you can look out and see the gas station and a little of
16 the front of the Ball and Cue right here, that restaurant.
17 You can actually look out straight across towards it.

18 Q I'm going to show you what's been pre-marked as State's
19 Exhibit Two. Is that the area that you were speaking of?

20 A Yes, it is.

21 Q Do you recognize this?

22 A That picture actually shows George's and the Money Saver
23 and the side of the Ball and Cue.

24 Q Is this a fair and accurate depiction of how it looked in
25 May of 2007?

Christopher Geno - Direct by State

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1 A Yes, it is.

2 Q Thank you.

3 MS. COTÉ: May we - Your Honor, the State seeks to
4 introduce this into evidence at this time.

5 THE COURT: Any objection?

6 MR. COLVIN: No objection, Your Honor.

7 THE COURT: You may do so.

8 MS. COTÉ: May we publish to the jury?

9 THE COURT: Yes, ma'am, it's in evidence without
10 objection and you may publish.

11 (Whereupon, State's Exhibit Number Two [Photograph]
12 introduced into evidence and appropriately marked.)

13 BY MS. COTÉ:

14 Q So, George's Restaurant is on the right of that picture;
15 is that correct?

16 A That's correct.

17 Q And is that where you went at that point in time?

18 A That is correct.

19 Q And what did you do inside George's?

20 A Well, we sat and we were watching out the window to see
21 if we could see the suspect pull up. It was during the
22 lunchtime hours and Agent Sawyer was with me. We were at a
23 table and we were just waiting for the transaction to take
24 place.

25 Q Okay, and what side of the restaurant were you in?

1 A It's - when you walk in the restaurant there's one door
2 to the front and it's a little glass - it's almost like a
3 booth. You've got to walk through the door and you come in
4 and straight to the back, almost to your left, is the buffet.
5 Looking at the buffet we were to the left of that at a round
6 table with a little walkway between us and the buffet which
7 leads back to the bathrooms.

8 Q Okay.

9 A Which would have been on the left side of the restaurant
10 closest to the gas station.

11 Q Now, who was conducting supervision over the audio that
12 was going on?

13 A Agent Jason Ward.

14 Q Okay, and were you in contact with him at all during this
15 point in time?

16 A He was contacting Agent Sawyer on the phone and they were
17 just kind of giving us details, you know, as it was going
18 along.

19 Q Okay.

20 A Because we could not - we didn't have the audio
21 surveillance with us inside of the restaurant. I mean, it's a
22 fairly large piece of equipment.

23 Q After - at what point - did you move from George's at
24 some point in time?

25 A We did.

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1 Q And why was that?

2 A During the - the actual drug transaction our informant
3 contacted the Defendant in this case and said, "Look, there's
4 too many people in here right now that I know," and ---

5 MR. COLVIN: Objection, Your Honor. This is hearsay.

6 THE COURT: All right, let's rephrase your question,
7 Solicitor.

8 Q Did you move from George's Restaurant at any point in
9 time?

10 A Yes, we did.

11 Q And after, after speaking with Mr. Woodsides was that
12 when you moved?

13 A We didn't speak with him. During the transaction we
14 identified the Defendant as actually being - he stood up while
15 he was on the phone while we were in the restaurant and he was
16 just tables down from us. When he stood up we recognized him
17 as being the bad guy and he left. After he was gone we
18 decided to leave before he came back and figured out that the
19 police were sitting in the same restaurant as him.

20 Q You keep saying bad guy. Is that just sort of a term of
21 art in police? Does that mean he was your suspect?

22 A I - yes, that's correct, the Defendant, the drug dealer,
23 Mr. Archie.

24 Q Okay, thank you.

25 A Sorry.

1 Q Did you ever - what happened after you left George's?
2 Where did you go?

3 A After we left George's the transaction had taken place
4 almost immediately after we left or prior to us leaving and we
5 went back to the meeting spot where the informant came back
6 and met with us. The ---

7 Q Where was that? I'm sorry, where did you meet?

8 A Behind the Ball and Cue.

9 Q Where you originally dropped him off?

10 A That's correct.

11 Q Okay.

12 A And when we got back there I re-searched him. He first -
13 first he gave me the drugs that was given to him by the
14 Defendant.

15 Q How were they packaged?

16 A It was in a - it was like the corner of a sandwich bag
17 and they just twist it off and rip it off. So, it was in like
18 a clear plastic just like a sandwich bag.

19 Q I'm going to show you what's been pre-marked for
20 identification as State's Exhibit One. Do you recognize this?

21 A Yes, I do. Yes, I do.

22 Q Inside that bag is that what the confidential informant
23 gave you on that day?

24 A That's correct.

25 Q And what did you do with it when he gave it to you?

Christopher Geno - Direct by State

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1 A When I'm out in the field, once I'm given the drugs from
2 the buy I secure it, I - we each - we all have these little
3 notebooks and I just put it in a little place where I can zip
4 it where it's not going to get lost. When I get back to the
5 office what we'll do is I'll weigh it and then I'll put it
6 into a Best bag which is what she handed me. After I seal
7 that Best bag it is placed into a locked box at the Sheriff's
8 Office that only the evidence custodian can get into. So,
9 I'll take the drugs and I'll put it into that lock box where
10 then it's taken by the evidence custodian up to SLED and they
11 do their tests on it and whatever else they do with it.

12 Q So, you placed the drugs in the Best bag once you got
13 back to the Sheriff's Office?

14 A That's correct.

15 Q Did you do anything with them in any way besides
16 transferring it from your zippered pouch to the official Best
17 bag?

18 A I weighed it. I put it on a scale and weighed it. Then
19 it went back into the Best bag and then it was sealed.

20 Q Okay, and did you put your initials on it?

21 A That's correct. That's my handwriting on the bag.

22 Q Okay, I'll show it to you one more time. That's your
23 signature?

24 A Yes, it is.

25 Q And you sealed it?

1 A Yes, I did.

2 Q Thank you.

3 After you took possession of the drugs did you do
4 anything else with the confidential informant?

5 A After I took possession of the drugs, like I said, he was
6 searched to make sure that there was no other contraband, he
7 didn't pinch some of the dope for himself, you know, buy it
8 and then take some to keep. So, we searched to make sure he
9 is - has nothing on him just like the way he started.

10 Q Did he have the money that you gave him?

11 A No, no, the money was gone. He paid for the drugs, but
12 no, he didn't have the money. After we searched and made sure
13 everything was good Agent Ward took the wire back off of him
14 and he was paid for making the drug buy, and after that was
15 done he was - he - we let him go. He went home.

16 Q Why do people agree to be confidential informants
17 typically?

18 A It - typically either they have been arrested and have
19 some pending charges and they hope, you know, because of their
20 cooperation that the Solicitor's Office can lessen their
21 sentence or do whatever or they're just paid. They don't have
22 any pending charges and they just - they're just paid money to
23 help us out because there's a lot of times like I mentioned
24 earlier we - I can't - I don't know anywhere in Georgetown
25 where I could go and buy drugs myself. I've been here too

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1 long, arrested too many people, worked narcotics too long.
2 So, we've got to use these informants because they're trusted
3 by the drug dealers. You know, they've dealt with them
4 before. They know how to talk. They know how to do it. So,
5 we use them. It's easier to use them and we just pay them for
6 doing it.

7 Q Then just to clarify, Mr. Woodsides was paid for his work
8 as a confidential informant?

9 A He was a paid informant, that's correct.

10 Q Thank you.

11 After, after you searched Mr. Woodsides did you do
12 anything else in, in this investigation?

13 A After, after that's over I'll do an incident report and I
14 will petition the judge for a warrant, just prove to the
15 judge, say, "Hey, we've got probable cause to make an arrest
16 that this drug transaction did happen," we'll get an arrest
17 warrant and serve it at a later time, and Mr. Archie was
18 arrested at a later date and served with that warrant.

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

20 BY MS. COTÉ:

21 Q When drug transactions take place, and in your experience
22 as a law enforcement officer and listening to these audio
23 buys, is it common for not much to be said when a drug deal is
24 taking place?

25 A That's right. A lot of times when this happens obviously

1 they don't want it to be very public and talk about what they
2 do out loud in front of everybody else because they don't know
3 who's standing around. They don't know, you know, who's
4 listening. So, a lot of times it's very quick. Most -
5 they're not going to sit down and have lunch. They're not
6 going to go to the water park and they're not going to go ride
7 bikes together. They're going to do the deal and be done and
8 a lot of times it's just in passing, boom, boom and it's over
9 with. So, there is and in this case you don't hear the
10 Defendant talking, but you also hear that it happens, it's
11 only a matter of seconds. So, there's not a whole lot of time
12 for talking. You don't want to be seen and they're not going
13 to stand out in the open where everybody can see and call the
14 police on them. So, it happens quick and that's for the most
15 of the buys that we do they are real quick and there's not a
16 whole lot of talking if any.

17 MS. COTÉ: Thank you, Your Honor. I have no further
18 questions for this witness. Please answer any questions Mr.
19 Colvin has.

20 A Sure.

21 THE COURT: Cross examination?

22 MR. COLVIN: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 CROSS EXAMINATION

Christopher Geno - Cross by Defense

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1 BY MR. COLVIN:

2 Q Good afternoon, Sergeant Geno.

3 A Good afternoon.

4 Q Sergeant Geno, you had mentioned two classifications of
5 confidential informants. You said there was some that you
6 outright paid and there's some who were trying to get
7 favorable treatment, perhaps for pending charges they may have
8 had?

9 A That's correct.

10 Q Which category did Mr. Woodsides fall in?

11 A At the, at the time he was a paid informant.

12 Q How much did you pay him?

13 A Probably 40 or \$50. I can't really remember that day.

14 Q Did he come to you or did you go to him?

15 A I want to say he came to us. I didn't really have any
16 dealings with him before that. He actually may have talked to
17 somebody else at the Sheriff's Office and they contacted me
18 and/or maybe one of the other agents that worked there. I
19 don't remember who it was that signed him up but we ended up -
20 I ended up dealing with him most of the time.

21 Q You didn't trust him; did you?

22 A I don't trust anybody to start with, but after he does,
23 you know, some things and he can show he's trustworthy, yes, I
24 do trust them. I trust him enough to get a warrant for this
25 guy's arrest.

1 Q But didn't you just say that after this alleged
2 transaction took place that you searched him to make sure that
3 he hadn't kept some of the illegal drugs for himself?

4 A That's correct. Well, I'd search them regardless. It's
5 our policy, and regardless if I trusted him with my life or if
6 I didn't trust him at all I still would have searched him
7 either way, but that's our policy.

8 Q So, is that just a matter of policy or your own personal
9 opinion ---

10 A Uh-huh.

11 Q --- the reason to search them is because you don't trust
12 them.

13 A I'd search them because it's our policy.

14 Q But the policy is there because he can't be trusted;
15 right?

16 A I don't - that might be what it says, but regardless I'm
17 going to search him.

18 Q Yes, sir.

19 A But it's - I mean, that could be maybe why the policy is
20 put in place, but irregardless, yeah, we're going to search
21 them.

22 Q But that would make sense; wouldn't it?

23 A It makes perfect sense.

24 Q It makes sense because we can't trust these guys because
25 they're either working something off or they're paid. So,

Christopher Geno - Cross by Defense

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1 let's make sure.

2 A I'm sure. It's in the policy because obviously it's
3 happened before in the past. That's why it's in there.

4 Q Okay, you, you entered into an agreement with this
5 particular person. I don't know if it was you personally who
6 entered into this agreement or one of the other agents, but
7 let me show you something and ask if you're familiar with
8 this.

9 A Uh-huh, I'm familiar with it.

10 Q And what is that?

11 A It's just an informant cooperating individual agreement.

12 Q And in it it specifies certain conditions and
13 requirements of the informant.

14 A That's correct.

15 Q All right, now, without going through each and every one
16 of those, you indicate in there, and I'm going to try to say
17 this as fairly as I can, that you can't promise the guy
18 anything for helping you with the drug case ---

19 MS. COTÉ: Objection, Your Honor, the attorney is
20 testifying.

21 MR. COLVIN: I can go down each and every one of those
22 paragraphs or I can summarize it.

23 THE COURT: Well, I'm going to allow the question. Go
24 ahead.

25 MS. COTÉ: Thank you, Your Honor.

1 A We don't promise anybody anything.

2 Q Right.

3 A And it's ---

4 Q But you do tell them that they may get favorable
5 treatment by the Solicitor. You even testified to that today;
6 didn't you?

7 A Yeah, that's correct. It's not up to me. It's totally
8 up to the Solicitor and they are familiar with that when they
9 agree with this agreement.

10 Q But would it be fair to say that they expect some
11 favorable treatment?

12 A I don't know about expect, but they hope to get it.

13 Q Well, isn't that what you testified to earlier that ---

14 A Yeah, well, he was a paid informant. So, he was just
15 expecting to get money and that's what we do, we give it to
16 him. He was, he was not pending charges at the time we dealt
17 with him, but people who are pending charges, heck yeah,
18 they're hoping to get some help.

19 Q But you know that he does have pending charges now?

20 A I don't know about now.

21 Q You don't know about now?

22 A I haven't worked narcotics in over two years. So, I
23 haven't - I don't know if he does or not, no.

24 Q You don't know one way or the other?

25 A Right now, no, I don't.

Christopher Geno - Cross by Defense

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1 Q Okay.

2 A At that time he didn't.

3 Q All right, all right.

4 A And he was paid for that, so, I don't know if this would
5 have any bearing on whatever charges he has now anyways.

6 Q Well, you think he was paid 40 or \$50. That's not an
7 awful lot of money to engage in such risky behavior; is it?

8 A That's what we normally pay them. I mean, if they agree
9 to do it, if I could pay them more, I'd pay them more, but
10 here's police officers all over the place if anything goes
11 bad, so.

12 Q But honestly speaking, most of these guys have been in
13 trouble before; haven't they?

14 A Most of them, yes.

15 Q And that's why they really do it; isn't it? As a matter
16 of a fact if they hadn't been in trouble they wouldn't even
17 have the contacts to do this; would they?

18 A That's correct.

19 Q Right, sir, let me direct your attention to numbered
20 paragraph 12 there and would you read that, please?

21 A "I shall give a sworn, complete and detailed statement
22 identifying all my suppliers of drugs as well as other persons
23 known to me who are involved in illegal drug activity."

24 Q And that was the confidential informant who made that
25 promise; right?

1 A That's correct.

2 Q Did he fulfill that promise? Did he name everybody who
3 had ever been involved with illegal, illicit drug activity?

4 A It's hard for me to tell. I mean, if he hadn't told me
5 about it there's no way of me knowing.

6 Q Did he tell any - did he give you any names?

7 A He did give us names. That's how we came across this
8 guy.

9 Q Do you know about how many names he gave you?

10 A No. It was several, and you know, it wasn't all at the
11 beginning. As time went by he, you know, come, come by more
12 names, you know, as time passed. We didn't meet this guy and
13 all this wasn't done in one day. I mean, as time goes by
14 because of the people he hung out with and people he spoke to
15 he came up with other names.

16 Q All right, sir, now, Sergeant Geno, you didn't observe
17 this transaction as an eyewitness; did you?

18 A No, I was not.

19 Q Okay, so, despite what you may have seen and what you
20 might have done isn't it true that you are relying on Mr.
21 Woodsides to be, you know, to factually furnish you with the
22 information?

23 A That's correct, along with the wire, which gives an
24 accurate depiction of what happened that day. I mean, you can
25 hear - the wire didn't lie. I mean, everything that's on the

1 wire actually happened and was monitored by another agent.

2 So, yes, what Mr. Woodsides did along with the wire, that's

3 why we use the wire because it, you know, it bolsters your

4 case ---

5 Q All right.

6 A --- and the wire, like I said, the wire doesn't lie. You

7 can't change what happened on the wire.

8 Q Right, well, I expect we'll hear from that later on.

9 A That's correct.

10 Q Now, you gave him marked money with which to make the

11 transaction.

12 A The serial numbers are copied down. They are not - it's

13 not marked in any way. There's no - we don't have any special

14 pens or anything.

15 Q No, but you knew, you knew - you gave him two \$20 bills

16 and a \$10 bill and you had the serial numbers for those bills;

17 right?

18 A Correct.

19 Q Did you recover those bills?

20 A I don't think we did, not unless - the only way - most of

21 the time when you recover a bill is if it's a buy-bust. This

22 particular occasion wasn't a buy-bust. As you guys know, if

23 you go to the ATM and get a \$20 bill you're going to spend it.

24 You're not going to hang on to it for weeks or months. You're

25 going to go spend it, and in this case I'm assuming that's

1 what happened, but no, we did not recover our money when we
2 made the arrest, which very rarely do we because when you get
3 money you turn around and spend it.

4 Q Well, if you were not making a - what you call a buy-
5 bust, why did you bother to mark the money? You know, why did
6 you bother to write down the serial numbers?

7 A You never know. We always write down the serial numbers.
8 I mean, he might have had it. Most of the time, no, they
9 don't have it, but in some cases he may have it.

10 Q Okay.

11 A So that we use that for identification purposes. It's -
12 in this particular case he did not.

13 Q So, you cannot say that you ever recovered any money from
14 Mr. Archie that had those serial numbers on them?

15 A I can tell you that, no, we did not recover any of that
16 money.

17 Q All right, and you've had about three years and ten
18 months to do that? I mean, this was May 4th, 2007, this
19 incident that's alleged to have happened.

20 A Well, we're not actively trying to recover \$50 for the
21 crack cocaine we bought from them. I mean that money is - we
22 used to buy and it's gone.. It's ---

23 Q Well, I thought that did go to your, to your proof. You
24 would have used that as proof if you had recovered that money;
25 isn't that correct?

Christopher Geno - Cross by Defense

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1 A Well, there's, there's no way for us to find it. If he
2 spent it I don't know where he spent it. There's no way for
3 us to recover it.

4 Q No, but as soon as this confidential informant came back
5 to you ---

6 A Uh-huh.

7 Q --- and you were there in close proximity, why couldn't
8 you go ahead and arrest the man at that point?

9 A Well, we could have.

10 Q Well, why didn't you?

11 A Because we didn't want to burn our informant. We didn't
12 want them to know right away who the informant was because you
13 can use an informant for multiple buys, and in that case we
14 didn't want him to know - if we would have arrested him right
15 away it would have been painfully obvious, which it is now
16 anyways, but if we would have done it right then and there he
17 would have known who the informant was and then every other
18 drug dealer in Georgetown would have known that he was working
19 for the police and he would have been no good to us.

20 Q Well, in hindsight, though, as far as making the case
21 against Mr. Archie wouldn't it have been better to burn your
22 informant at that time rather than three years and ten months
23 later?

24 A I don't believe so.

25 Q Okay, thank you very much.

1 A Yes, sir.

2 Q So, to recap, you've never bought any drugs from Mr.

3 Archie and you've never seen him buy drugs, sell drugs?

4 A You mean myself?

5 Q Yeah, you.

6 A No, I have never bought drugs from him.

7 Q And you've not seen him sell drugs; have you?

8 A No, I have not.

9 Q All right, thank you very much.

10 A Yes, sir.

11 THE COURT: Any redirect, Solicitor?

12 MS. COTÉ: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. COTÉ:

15 Q Sergeant Geno, did you ever have any problems with Chris

16 Woodsides when he was working for you as a confidential

17 informant?

18 A No, I have not.

19 Q Did you find him to always be trustworthy?

20 A Yes, I have.

21 Q Thank you. No further questions.

22 THE COURT: All right, you may step down, sir.

23 A Thank you, Your Honor.

24 THE COURT: Your next witness, Solicitor?

25 MS. COTÉ: Your Honor, the State calls Corporal Jason

Jason Ward - Direct by State

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1 Ward.

2 Whereupon, Jason Ward was called to the stand, duly sworn
3 by the clerk and testified as follows:

4 THE CLERK: Please state your name for the record.

5 MR. WARD: Jason Ward.

6 THE COURT: All right, Solicitor.

7 DIRECT EXAMINATION

8 BY MS. COTÉ:

9 Q Corporal Ward, where are you employed?

10 A I'm employed with the Georgetown Police Department.

11 Q Will you discuss for the jury your background and
12 training in law enforcement?

13 A Yes, ma'am, I've got 13 and a half years with the
14 Georgetown Police Department, been doing that 13 and a half
15 years. I spent eight years in the narcotics division, and
16 prior to the eight years in narcotics I spent about just under
17 a year in criminal investigations, and through the 13 years
18 I've had a lot of specialized, specialized training in the
19 narcotic field. Since I was there so long that's where most
20 of my classes took place was in that division.

21 Q What was your assignment back on May 4th, 2007?

22 A I was assigned to the Organized Crime Bureau task force,
23 which is a joint task force between the city police
24 department's narcotics unit and the Georgetown Sheriff's
25 Office narcotic unit.

1 Q Were you, were you part of a controlled drug buy on May
2 4th, 2007?

3 A Yes, ma'am, I was.

4 Q Will you discuss for the jury how you came to be involved
5 in that drug buy?

6 A Yes, ma'am, Agent Geno, he was the lead agent on the
7 case, said he had a controlled buy to go make, asked if I
8 would go help him out. You know, we don't do it by yourself,
9 everybody, you know, we have a team. So, we went and picked
10 up his informant at the informant's residence, went back and
11 met in the - met in the spot and the spot was behind the Ball
12 and Cue Restaurant, which is located on Highmarket Street. We
13 met behind there at which time Agent Geno, you know, searched
14 him and issued the money and I was in charge of placing the
15 wire on the informant.

16 Q Who was the informant to buy drugs from on that day?

17 A Chris Woodsides.

18 Q Who was Chris Woodsides to buy drugs from?

19 A He was to buy from, from Azikiwe Archie.

20 Q What was Mr. Archie's nickname?

21 A Pops or "P".

22 Q After you placed the wire on him can you discuss how you
23 wired him up?

24 A Yes, ma'am, you know, when you're, when you're dealing
25 with a wire I can explain it to you just so you'll know it's

Jason Ward - Direct by State

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1 not - it's kind of - it was one of the new wires, we had just
2 gotten it. It was about the size of a quarter and has two
3 wires coming out the back. One's an antenna and one's a
4 microphone. I actually stuck the device in his back pocket.
5 He had his shirttail out. So, I run the antenna part of the
6 small of his back, taped it on and ran the microphone around
7 under his arm and taped it to the front of his chest, and then
8 from there you just cut it on and it records it and it records
9 to a digital device and then you go back after the controlled
10 buy is completed and you go back, plug it into your, into your
11 computer and it downloads. Then you can burn it on a CD at
12 that time.

13 Q Now, after you wired him up what happened?

14 A Once I wired him up Agent Geno and myself and Agent
15 Sawyer we sent him to the location, to the buy location and
16 then Agent Geno and Agent Sawyer left to go do surveillance
17 and I stayed and I monitored the Keil unit which is the box
18 that we have where I can hear what's going on. So, if
19 anything were to happen, if the CI were to get in trouble, you
20 know, if we needed to go in extract him or anything like that
21 nature I would have been able to made the call to let the guys
22 know to go get him if he'd got in trouble or just basically
23 monitored to kind of keep where it's going because a lot of
24 times you start something somewhere and then some, you know,
25 it's going to end up somewhere else. That's just how it goes

1 sometimes.

2 Q Where were you sitting while you were monitoring the
3 audio?

4 A I was monitoring, I was behind the Ball and Cue
5 Restaurant. So, I was within a half a block of the informant.

6 Q Were you able to listen to the entire course of events
7 that day?

8 A Yes, ma'am, I was.

9 Q And were you keeping Sergeant, Sergeant Geno and Agent
10 Sawyer up to date on what was happening?

11 A Yes, ma'am, you know, when he got to the Ball and Cue I
12 called and I let him know, yeah, he's at the Ball and Cue and
13 there was some phone conversations where the buy actually
14 changed place. The buy went from the Ball and Cue, then it
15 went over to the Money Saver. That's when I informed them
16 that, you know, the buy was now going to go down at the Money
17 Saver.

18 Q And after you heard the buy being completed what
19 happened?

20 A Once the buy was completed the informant came back, met
21 back with me. Agent Geno and Agent Sawyer came back and met
22 back at our location and at which time I took the wire off the
23 informant.

24 Q And what did you do with that, the wire?

25 A I took it back - I downloaded it to the, downloaded it to

Jason Ward - Direct by State

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1 the computer and burn it on a disc and at which time Agent
2 Geno took control of the disc and entered it into evidence.

3 MS. COTÉ: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 MR. COLVIN: Your Honor, I object. I think that these
6 witnesses were supposed to be sequestered and ---

7 MS. COTÉ: Your Honor, this is my lead investigating
8 officer.

9 THE COURT: I said in, in - except in the
10 circumstances of the lead investigator. The State always is
11 allowed one to stay with them the whole time.

12 MR. COLVIN: Okay, thank you. I didn't realize that
13 ---

14 THE COURT: All right, sir.

15 MR. COLVIN: --- he was the lead, but thank you.

16 THE COURT: Thank you, sir.

17 MR. COLVIN: I understand.

18 BY MS. COTÉ:

19 Q When the confidential informant, Mr. Woodsides, came back
20 to the predetermined location at the Ball and Cue what did he
21 have in his possession?

22 A He had in his possession crack cocaine, two separate
23 rocks.

24 Q And who did he turn possession of those over to?

25 A To Agent Geno.

1 MS. COTÉ: Your Honor, I have nothing further from
2 this witness. Please answer any questions Mr. Colvin may
3 have.

4 A Yes, ma'am.

5 THE COURT: Cross examination.

6 MR. COLVIN: Thank you, Your Honor, may it please the
7 Court?

8 CROSS EXAMINATION

9 BY MR. COLVIN:

10 Q Good afternoon, Agent Ward.

11 A Mr. Colvin, how are you?

12 Q I'm fine, thank you.

13 A Good.

14 Q You didn't see Mr. Archie sell any drugs; did you?

15 A No, sir.

16 Q Thank you, sir. That's all.

17 THE COURT: Anything on redirect, Solicitor?

18 MS. COTÉ: No, Your Honor.

19 THE COURT: All right, you may step down, sir. Do you
20 wish the witness to be excused?

21 MS. COTÉ: Yes, please excuse this witness.

22 THE COURT: All right, any objection?

23 MR. COLVIN: No, Your Honor.

24 THE COURT: All right, you're released from your
25 subpoena and may go back to your regular duties, sir.

Clint Sawyer - Direct by State

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1 A Thank you, sir.

2 THE COURT: All right, your next witness, Solicitor,
3 please?

4 MS. COTÉ: Thank you, Your Honor. The State calls
5 Clint Sawyer to the stand.

6 THE COURT: All right.

7 Whereupon, Clint Sawyer was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: State your name for the record.

10 MR. SAWYER: Clint Sawyer.

11 DIRECT EXAMINATION

12 BY MS. COTÉ:

13 Q Mr. Sawyer, where are you currently employed?

14 A With GrifTan, Incorporated.

15 Q Do you have a history of being involved and employed by
16 law enforcement?

17 A Yes, ma'am, I do.

18 Q Will you please discuss for the jury your background,
19 training and former employment in law enforcement?

20 A Okay, I was hired by the City Police Department in 1999,
21 December of 1999. I worked there until December of 2009.
22 From October of 2002 till June of 2009 or the first of July of
23 2009 I worked with the Organized Crime Bureau, Drug Task Force
24 Team that included the City of Georgetown and Georgetown
25 County Sheriff's Department.

1 Q As part of your duties with the Organized Crime Bureau
2 did you take place in a - in monitoring a controlled buy back
3 on May 4th, 2007?

4 A Yes, ma'am, I did.

5 Q How did you come to be involved in that drug transaction?

6 A I was called by Agent Geno to assist him on a controlled
7 buy that they had already lined up in Georgetown in the city
8 limits.

9 Q And where did you first report?

10 A I met with them behind the Ball and Cue located on
11 Highmarket Street in Georgetown.

12 Q Who all was there when you first reported to that
13 location?

14 A Agent Geno and Agent Ward.

15 Q And had the confidential - was the confidential informant
16 there at that point in time?

17 A Yes, ma'am.

18 Q And where did you go at that point in time?

19 A After they secured and wired the CI, myself and Agent
20 Geno went to George's Restaurant, which is at the corner of
21 Merriman Road and Highmarket Street, right across the street
22 from the Money Saver.

23 Q Why did you pick that location?

24 A We wanted to have a location where we could observe the
25 area around the Money Saver and the Ball and Cue. We knew

Clint Sawyer - Direct by State

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1 that's where the transaction was supposed to take place and we
2 were just trying to get in place where we may be able to see
3 it with our own eyes.

4 Q I'm going to show you what's been pre-marked as State's
5 Exhibit Five and I'm going to ask you do you recognize this?

6 A Yes, ma'am, I do.

7 Q Is that an accurate depiction of how that location looked
8 on May 4th, 2007?

9 A Yes, ma'am, it is. Other than I think the - there's been
10 some paint work done at the, at the Money Saver but everything
11 else looks exactly as it was in 2007.

12 Q Thank you.

13 MS. COTÉ: Your Honor, I'll show this to Mr. Colvin.

14 THE COURT: All right.

15 MR. COLVIN: No objection, thank you.

16 MS. COTÉ: Your Honor, the State would seek to
17 introduce State's Exhibit Five into evidence at this time.

18 THE COURT: Any objection?

19 MR. COLVIN: No objection.

20 THE COURT: All right, sir, State's Five is in
21 evidence without objection.

22 (Whereupon, State's Exhibit Number Five [Photograph]
23 entered into evidence and appropriately marked.)

24 MS. COTÉ: May we publish to the jury at this time?

25 THE COURT: You may do so.

1 BY MS. COTÉ:

2 Q All right, Mr. Sawyer, is the restaurant to the right and
3 I'll give you this if you want to refer to it, the restaurant
4 to the right of the screen is that where you and Sergeant Geno
5 were located?

6 A Yes, ma'am, it is.

7 Q And can you show or describe where you all were in the
8 restaurant?

9 A We were located in the restaurant where we could look out
10 of the window that's underneath this green awning right here
11 which overlooks the parking lot of the Money Saver.

12 Q I apologize. We're having a little technical error.

13 A That's a different ---

14 Q Yeah.

15 A --- photograph there.

16 Q It's - hang on - it's number six on the computer. Thank
17 you. All right, can you describe, is that George's Restaurant
18 to the right of the screen where you and Geno were?

19 A Yes, ma'am, it is.

20 Q All right, and where were you sitting inside that
21 restaurant?

22 A We were positioned at a table where we could see out of
23 the window that's -- there's a blue car parked in front of the
24 window ---

25 Q Where there's a green awning?

Clint Sawyer - Direct by State

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1 A --- and a green awning over the top of it, we were
2 looking out of those, those windows towards the parking lot
3 where the white van is parked at.

4 Q Okay, and that's looking out onto the Money Saver parking
5 lot?

6 A That's correct.

7 Q And what if anything happened inside that restaurant?

8 A While myself and Agent Geno were in the restaurant we
9 observed Mr. Archie stand up while talking on his cell phone,
10 exit George's Restaurant and walk across Merriman Road into
11 the Money Man or Money Saver parking lot and go inside the
12 business.

13 Q And the - when you saw him get up and exit George's
14 Restaurant was that at the approximate time he was supposed to
15 meet the confidential informant?

16 A Yes, ma'am.

17 Q How were you able to identify Mr. Archie? Did you
18 recognize him?

19 A Yes, ma'am, I recognized his face from previous
20 encounters in the community.

21 Q Did you see anybody else that was involved in this drug
22 buy around the area of the Money Saver?

23 A Yes, ma'am, I saw the confidential informant in the
24 parking lot of the Money Saver as well.

25 Q Did you see him enter the building?

- 1 A Yes, ma'am, I did.
- 2 Q And where did you first see him?
- 3 A The informant?
- 4 Q Yeah, around the Money Saver.
- 5 A I don't know if you have a picture that shows it. This
- 6 picture doesn't show it but it's the corner towards the Ball
- 7 and Cue.
- 8 Q To the left side on this, like further to where, further
- 9 to the left of where it says gas on the top of the building?
- 10 A Correct.
- 11 Q And you saw him enter through the front doors of that
- 12 Money Saver?
- 13 A Yes, ma'am, I did.
- 14 Q And where did you see Mr. Archie enter?
- 15 A Through the front door as well.
- 16 Q Thank you. I have no further questions.
- 17 THE COURT: Cross examination?
- 18 MR. COLVIN: Thank you, Your Honor.
- 19 CROSS EXAMINATION
- 20 BY MR. COLVIN:
- 21 Q Good afternoon, Mr. Sawyer. How you doing?
- 22 A I'm fine, sir.
- 23 Q All right, you say you're no longer in law enforcement?
- 24 A No, sir, I'm not since December of 2009.
- 25 Q Thank you. I didn't realize that. I hope your new

Clint Sawyer - Cross by Defense

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1 career is going well for you.

2 A Thank you.

3 Q Mr. Sawyer, I started to call you Agent Sawyer but that
4 would have been past tense. You didn't see Mr. Archie sell
5 any drugs; did you?

6 A No, sir, I only saw him in the restaurant and walk across
7 the street and go to the Money Saver. That's - I didn't
8 actually see a hand to hand.

9 Q In fact, when you were in law enforcement you probably
10 participated in a lot of cases like this; didn't you?

11 A Yes, sir.

12 Q Okay, isn't it - I don't want to say customary or at
13 least a normal practice, you had mentioned that you saw Mr.
14 Archie talking on his cell phone, then he stood up and left
15 the restaurant; isn't that correct?

16 A Yes, sir.

17 Q Isn't it a very normal practice, perhaps even policy that
18 you subpoena phone records?

19 A No, sir.

20 Q It's not? Well, if you had subpoenaed the phone records
21 couldn't you ascertain whether or not there was a phone call
22 between the confidential informant and the suspect?

23 A Yes, sir, you could, but they had a recording of the
24 telephone conversation with the subject's voice on it. I
25 mean, it was already established that it was him.

1 Q Well, how, how is it established it was him?

2 A Through the telephone call that we had recorded.

3 Q All right, but that telephone call didn't tell you what
4 phone number was being called or called from; did it?

5 A No, sir.

6 Q So, you don't really know whether that was Mr. Archie or
7 not on one of the telephones; do you?

8 A I can't tell you that Mr. Archie was - when I saw him
9 with the phone to his head whether or not he was talking to
10 the informant or not, no, sir, I can't tell you that.

11 Q And there's nothing on this recording that would tell you
12 that that was Mr. Archie on the telephone; was it?

13 A I don't think they have his voice on the - it was a one-
14 sided telephone call.

15 Q So, you got no phone number either outgoing or incoming
16 and he's not ID'd on the, on the recorded conversation.

17 A We didn't subpoena his phone records, I mean.

18 Q So, all you really have to go on is Mr. Woodsides' word?

19 A Correct.

20 Q Thank you, sir.

21 THE COURT: Anything on redirect, Solicitor?

22 REDIRECT EXAMINATION

23 BY MS. COTÉ:

24 Q After you saw Mr. Archie leave the building and go to the
25 Money Saver approximately the time that the drug buy was

Clint Sawyer - Redirect by State

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1 supposed to occur and after, through you all's investigation
2 did you feel it was necessary to subpoena the phone records
3 based on the information that you had?

4 A No, ma'am, not from, I mean, I had received a call from
5 Agent Ward letting me know where the deal was going to be and
6 that it was going to happen pretty soon and that was around
7 the same time that I saw Mr. Archie on the phone and leave and
8 go over there. I didn't feel like there was any reason that
9 we would need phone records. I felt pretty, pretty certain
10 that that was the call.

11 Q Thank you. No further questions.

12 THE COURT: All right, sir, you may step down, sir.
13 Do you wish the witness to be excused?

14 MS. COTÉ: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. COLVIN: None, Your Honor.

17 THE COURT: All right, sir, you're released from your
18 subpoena and may go back to your regular activities. Just
19 leave those with the - you can just leave them right there and
20 then the bailiff will give them to the court reporter. Thank
21 you.

22 All right, Solicitor, your next witness, please, ma'am?

23 MS. COTÉ: Thank you, Your Honor, the State calls
24 Christopher Woodsides.

25 THE COURT: All right, sir, if you'd please come up

1 front to be sworn, sir, right up here next to the bailiff.

2 Whereupon, Christopher Woodsides was called to the stand,
3 duly sworn by the clerk and testified as follows:

4 THE CLERK: Please state your name for the record.

5 MR. WOODSIDES: Chris Woodsides.

6 THE COURT: All right, Solicitor.

7 DIRECT EXAMINATION

8 BY MS. COTÉ:

9 Q Mr. Woodsides, did you work for the police as a
10 confidential informant back in 2007?

11 A Yes, I did.

12 Q What benefit did you receive from that work?

13 A None really, I was paid.

14 Q Paid?

15 A Uh-huh.

16 Q Did you work as a CI on May 4th, 2007?

17 A Yes, ma'am.

18 Q Did you meet with any members of law enforcement on that
19 day?

20 A I did.

21 Q How did that first come about?

22 A I called Agent Geno and we - him and Mr. Ward we all
23 three met at the Ball and Cue.

24 Q Did they - how did you get to the Ball and Cue?

25 A I rode with Agent Geno and Agent Ward.

Christopher Woodsides - Direct by State

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1 Q And then you all all met up together and stood outside
2 the Ball and Cue; is that right?

3 A Yes, ma'am.

4 Q Okay, and what happened outside the Ball and Cue?

5 A We kind of discussed everything and Agent Ward put a wire
6 on me and ---

7 Q Where was the wire located?

8 A Kind of in the small of my back and just run the wire up
9 to your chest.

10 Q Okay, and who were you scheduled to buy drugs from
11 on that day?

12 A The Defendant.

13 Q Mr. Archie?

14 A Mr. Archie.

15 Q What did you know Mr. Archie as?

16 A Pops or "P".

17 Q And did you call him?

18 A Yeah.

19 Q And what did you, what did you say to him on your initial
20 phone call?

21 A Could I get some dope pretty much.

22 Q And then after you met with law enforcement in the back
23 of the Ball and Cue where did you go from there?

24 A I stayed at the Ball and Cue for a few minutes and then
25 we - I had called him back and he said to meet him at Money

- 1 Saver.
- 2 Q Okay, and did you - did you go outside the Ball and Cue
3 at any point before you went to Money Saver?
- 4 A Yes, ma'am, I did. We had made a couple of different
5 phone calls, you know, and at one time we was just going to
6 meet on the side of Ball and Cue, but you know ---
- 7 Q And then you ended up going to the Money Saver; is that
8 right?
- 9 A Yes, ma'am.
- 10 Q Did you talk to him on the phone once you reached the
11 Money Saver?
- 12 A I did.
- 13 Q What did you say to him at that point or what did he say
14 to you?
- 15 A I had asked him where he was at and he said he was in the
16 bathroom.
- 17 Q Okay, and where did you go then?
- 18 A To the bathroom.
- 19 Q And what happened inside the bathroom?
- 20 A I gave him \$40 and he gave me some crack cocaine.
- 21 Q And how was that crack cocaine packaged?
- 22 A In a clear corner of a bag.
- 23 Q I'm going to show you what's been pre-marked as State's
24 Exhibit One. Do you recognize that?
- 25 A Yes, ma'am.

Christopher Woodsides - Direct by State

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1 Q And is that how - is that the packaging and the drugs?

2 A Yes, ma'am.

3 Q I'm also going to show you what's been pre-marked for
4 identification as State's Exhibit Four. Do you recognize
5 that?

6 A Yes, ma'am.

7 Q Is that how it appeared on the day in May 2007?

8 A Besides the new paint job?

9 Q Yeah.

10 A That's - yes, ma'am.

11 Q It's an accurate representation of how it looked?

12 A Uh-huh.

13 THE COURT: You need to say yes or no.

14 A Yes, sir.

15 MR. COLVIN: Thank you. I've seen that.

16 MS. COTÉ: Okay.

17 Your Honor, the State would seek to introduce Exhibit
18 Four into evidence.

19 THE COURT: Any objection?

20 MR. COLVIN: No objection, Judge.

21 THE COURT: All right, sir, in evidence without
22 objection.

23 (Whereupon, State's Exhibit Number Four [Photograph]
24 admitted into evidence and appropriately marked.)

25 MS. COTÉ: May we publish to the jury, Your Honor?

1 THE COURT: Yes, ma'am.

2 MS. COTÉ: Thank you.

3 BY MS. COTÉ:

4 Q Chris, is this the Money Saver where you met the

5 Defendant that day?

6 A Yes, ma'am.

7 Q And where did you enter the building?

8 A Right here at the front door.

9 Q Under the three red dots?

10 A Yes, ma'am.

11 Q And where was the bathroom located?

12 A When you go into the front door you make an immediate

13 left and it's at the back, the back corner.

14 Q Do you remember what the Defendant was wearing that day?

15 A No, ma'am, I don't recall.

16 Q Do you remember - was it - what was the weather like that

17 day?

18 A It was, it was warm. It was pretty hot outside.

19 Q Was it sunny or rainy?

20 A It was sunny.

21 Q After he gave you the drugs where did you go from there?

22 A I walked out of the front door at Money Saver and turned

23 actually back to my right to go back to the Ball and Cue.

24 Q And did you meet with law enforcement at that time?

25 A Yes, ma'am.

1 Q And what did they do at that point?

2 A They, of course, got the drugs from me and searched me
3 and got the wire back.

4 Q I'm going to show you, I'm going to show you what's been
5 pre-marked as State's Exhibit Seven. Do you recognize this?

6 A Yes, ma'am.

7 Q Have you listened to the contents of this CD before
8 coming to court here today?

9 A Yes, ma'am.

10 Q Was it an accurate representation of the conversation or
11 the things that happened on May 7th - May 4th, 2007?

12 A Word for word.

13 Q Had it been altered in any way?

14 A No, ma'am.

15 Q Were you aware that you were being recorded?

16 A Yes, ma'am.

17 MS. COTÉ: Your Honor, the State would seek to
18 introduce Exhibit Seven into evidence at this time.

19 THE COURT: Any objection, Mr. Colvin?

20 MR. COLVIN: No objection.

21 THE COURT: All right, sir, it's in evidence without
22 objection. You may proceed.

23 (Whereupon, State's Exhibit Number Seven [CD] admitted
24 into evidence and appropriately marked.)

25 MS. COTÉ: Your Honor, may we publish this to the

1 jury at this time?

2 THE COURT: You may do so.

3 MS. COTÉ: Thank you.

4 BY MS. COTÉ:

5 Q Chris, I'm going to try to ask you a few questions as
6 we're listening to it so you can help explain to the jury
7 what's happening at what points on the tape.

8 MR. COLVIN: Your Honor, I would object to that. The
9 tape speaks for itself.

10 THE COURT: Well, I'll - what she has said so far is
11 not objectionable. If you have an objection to a particular
12 question that the Solicitor asks then I'll be glad to hear you
13 at that point in time. Thank you, sir. Go ahead.

14 (State's Exhibit Number Seven played in open court.)

15 Q What's happening now?

16 A We're getting the wire in place.

17 Q Where are you going now?

18 A I'm actually walking into Ball and Cue.

19 Q Did you go in the front door on Highmarket Street?

20 A Yes, ma'am.

21 Q Is that the traffic we're hearing?

22 A Yes, ma'am.

23 THE COURT: Solicitor, I can't hear your question.

24 Why don't you just wait?

25 MS. COTÉ: Okay.

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1 THE COURT: Either stop it and ask your question or
2 wait, please.

3 MS. COTÉ: If it's agreeable to the Court that I can
4 stop it then that's fine.

5 THE COURT: Yes, ma'am.

6 MS. COTÉ: Thank you.

7 BY MS. COTÉ:

8 Q Was the traffic we're hearing is that traffic on
9 Highmarket Street?

10 A It is.

11 Q And did you enter through the main entrance on Highmarket
12 Street?

13 A Yes, ma'am.

14 Q Okay, thank you.

15 (State's Exhibit Number Seven played in open court.)

16 Q Where are you sitting right now?

17 A At the, at the bar shortly after you walk through the
18 front door.

19 Q And what are you doing at this point?

20 A Just waiting.

21 Q What are you waiting for?

22 A Waiting on Mr. Archie to show up.

23 Q Okay.

24 (State's Exhibit Number Seven played in open court.)

25 Q And so, what we just heard you say or was that your voice

- 1 we just heard?
- 2 A Yes, ma'am.
- 3 Q And who are you talking to at that point?
- 4 A Mr. Archie.
- 5 Q And what did he say to you then?
- 6 A He said he would meet me at Ball and Cue.
- 7 Q Okay.
- 8 (State's Exhibit Number Seven played in open court.)
- 9 Q Okay, what just happened there?
- 10 A I had called him back to get him to meet me outside
- 11 because, you know, as you could hear, I knew quite a few
- 12 people in there, you know.
- 13 Q And did he agree to that?
- 14 A Yes, ma'am.
- 15 (State's Exhibit Number Seven played in open court.)
- 16 Q Now, we just heard sort of a squeaking noise. Was that -
- 17 what, what was that? Have you gone outside at this point?
- 18 A Yeah, that was the front door at the Ball and Cue.
- 19 Q And now - and where did you walk to?
- 20 A Right there on the side of the building.
- 21 Q So, when you're looking at the front of the Ball and Cue
- 22 are you on the right side of the building or the left side of
- 23 the building?
- 24 A It would be the left side.
- 25 Q Okay.

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1 (State's Exhibit Number Seven played in open court.)

2 Q Now, did he - was that him that just called you again?

3 A Yes, ma'am.

4 Q And what did he tell you at this point?

5 A Told me just to meet him at the Money Saver.

6 Q Did he ever tell you where he was coming from?

7 A No, ma'am.

8 Q Okay.

9 (State's Exhibit Number Seven played in open court.)

10 Q All right, did he call you at that point or did you call
11 him?

12 A I called him.

13 Q And what were you trying to find out?

14 A Where exactly he was at.

15 Q Were you in the Money Saver at that point?

16 A Yes, I was.

17 Q And were you able to see him?

18 A No.

19 Q And so, you - did you place a phone call to him?

20 A Yes, I did.

21 Q And what did you learn from that phone call?

22 A He said he was in the bathroom.

23 Q Okay.

24 (State's Exhibit Number Seven played in open court.)

25 Q That squeak, what's that squeaky noise?

- 1 A That's the bathroom door.
- 2 Q Are you entering the bathroom at that point in time?
- 3 A Uh-huh.
- 4 Q Okay.
- 5 (State's Exhibit Number Seven played in open court.)
- 6 Q And have you left the bathroom at this point?
- 7 A Yes, ma'am.
- 8 Q And has the drug transaction taken place?
- 9 A Yes, ma'am.
- 10 Q And was anybody else in the bathroom with the two of you?
- 11 A No, ma'am.
- 12 (State's Exhibit Number Seven played in open court.)
- 13 Q Where are you? What's happening at this point?
- 14 A I'm walking back to meet Agent Geno.
- 15 Q Are you walking on Highmarket Street?
- 16 A Yes.
- 17 Q Okay.
- 18 (State's Exhibit Number Seven played in open court.)
- 19 Q And did you go back into the Ball and Cue?
- 20 A No, ma'am.
- 21 Q Did you go straight back to meet with law enforcement?
- 22 A Yes, ma'am, I walked around.
- 23 Q Okay.
- 24 (State's Exhibit Number Seven played in open court.)
- 25 Q What was happening at the end of the recording?

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1 A Actually I was being searched and getting the wire
2 removed.

3 Q And what did you bring back to them?

4 A Crack cocaine.

5 Q And did you - you - did you know Mr. Archie prior to this
6 day?

7 A Some, somewhat.

8 Q And did you know his phone number?

9 A Yes.

10 Q Do you have current pending criminal charges?

11 A Yes, I do.

12 Q Have you been promised anything regarding those in
13 exchange for testifying here today?

14 A Definitely not.

15 Q Do you see the - well, did you meet with anybody else
16 during the whole time period while you were gone and while you
17 were on the wire besides Mr. Archie?

18 A No, ma'am.

19 Q If there was anybody else in that bathroom with you such
20 as an agent with the Organized Crime Bureau do you think that
21 drug deal would have gone down?

22 A What you mean, undercover?

23 Q Of if Sergeant Geno was in there with you?

24 A I would very seriously doubt it.

25 Q Do you see the person you bought drugs from on May 4th,

1 2007, in the courtroom here today?

2 A Yes, ma'am.

3 Q Will you please describe him for the court reporter?

4 A It's the Defendant.

5 Q What's he wearing?

6 A Khaki shirt, blue jeans and boots.

7 Q And that's the person you bought crack cocaine from?

8 A Yes.

9 Q All right, thank you.

10 MS. COTÉ: No further questions, Your Honor.

11 THE COURT: Cross examination?

12 MR. COLVIN: Thank you, Your Honor. May it please the
13 Court?

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION

16 BY MR. COLVIN:

17 Q Good afternoon, Mr. Woodsides, how are you?

18 A Pretty good.

19 Q Mr. Woodsides, so far in your testimony have you told the
20 truth about everything?

21 A Yes, sir.

22 Q Are you sure?

23 A Yes, sir.

24 Q And you're sure about everything you've testified to
25 today?

- 1 A Yes, sir.
- 2 Q There's nothing inaccurate about anything you've said?
- 3 A No, sir.
- 4 Q Okay, are you a full-time confidential informant or a
- 5 part-time confidential informant?
- 6 A Well, I don't do it no more.
- 7 Q How many times have you done it?
- 8 A I think twice.
- 9 Q Twice? You don't do it anymore?
- 10 A No, sir.
- 11 Q Well, what made you stop doing it?
- 12 A I just, just didn't - decided not to do it no more.
- 13 Q What made you decide to do it in the first place?
- 14 A I was planning on going into law enforcement.
- 15 Q And they paid you money to do this?
- 16 A Yes, sir.
- 17 Q How much did they pay you?
- 18 A To be honest with you I can't remember.
- 19 Q You don't remember that? Well, what is your occupation
- 20 now?
- 21 A I work in the paper mill.
- 22 Q And how long have you been working there?
- 23 A About eight months.
- 24 Q Eight months? All right, May 4th of 2007 was about three
- 25 years and ten months ago. What were you doing for the three

1 years after May 4th, 2007?

2 A Work-wise?

3 Q Yeah, what was your job?

4 A I installed hardwood floors.

5 Q You installed hardwood floors for three years?

6 A Yes, sir.

7 Q And you left doing that and started working in the paper
8 mill?

9 A Yes, sir.

10 Q All right, now, isn't it true that Sergeant Geno, Agent
11 Ward and former Agent Sawyer I'm sure they told you that they
12 could not make you any specific promises in exchange for your
13 cooperation in making this buy for them; right?

14 A Exactly, yes, sir.

15 Q But they did indicate to you that the Solicitor may give
16 you favorable treatment because of your honest, accurate
17 participation; isn't that true?

18 A No.

19 Q It's not true?

20 A No.

21 Q So, you have no expectation of any reward because of your
22 testimony here today?

23 A Sir, I didn't have pending charges back then.

24 Q But you do now? You do have pending charges now.

25 A Yes, sir.

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1 Q In this very same court, General Sessions Court,
2 Georgetown County?

3 A That's correct.

4 Q And that case has not yet come up?

5 A Exactly.

6 Q But it will be coming up?

7 A Yes, sir.

8 Q And you're saying that you don't expect any favorable
9 treatment in that case because of what you're doing here
10 today?

11 A No favorable treatment whatsoever.

12 Q Okay, let me show you this piece of paper. I think
13 that's the agreement that you made with law enforcement when
14 you decided to go into the confidential informant business;
15 right?

16 A Yes, sir.

17 Q Do you see down there number 12? You were supposed to
18 tell on anybody you knew that had ever done drugs; isn't that
19 correct?

20 A Yes, sir.

21 Q Did you do that?

22 A Yes, sir.

23 Q You told on everybody you knew that had ever done drugs?

24 A I just told you I done it twice.

25 Q No, no, I'm talking about but that says not just as far

1 as being a confidential informant, that you were supposed to
2 tell the police anybody that you knew who had been involved in
3 illicit drug activity. Doesn't it say that?

4 A That's correct.

5 Q Did you do that?

6 A I did.

7 Q You told them everybody you ever smoked ---

8 MS. COTÉ: Objection, Your Honor, asked and answered.
9 He's asked this question three times and he's answered him.

10 THE COURT: I'm going to allow it. I appreciate it.
11 I'm going to allow it one more time, Mr. Colvin.

12 MS. COTÉ: Thank you.

13 Q Have you told on everybody that you ever smoked marijuana
14 with?

15 A No, sir.

16 Q Had you ever smoked marijuana with people?

17 A Yes, sir.

18 Q How many people?

19 A A few.

20 Q I mean, more than a dozen?

21 A No.

22 Q More than half a dozen?

23 A Maybe.

24 Q All right, and how many names did you give the police?

25 A I give them a few.

1 Q A few?

2 A Uh-huh.

3 Q But not all; did you?

4 A Some, some - a name would come up and I'd, I'd let them
5 know.

6 Q But that's not what you had promised to do in that
7 agreement; is it? Read number 12.

8 A It says, "I shall give a sworn, complete and detailed
9 statement identifying all my suppliers of drugs as well as
10 other persons known to me who are involved in illegal drug
11 activity."

12 Q And you didn't do that; did you?

13 A Yeah, I did.

14 Q You gave them the name of everybody, not just your
15 enemies, but also your friends that you, that you knew who did
16 drugs?

17 A I don't have no friends that do drugs.

18 Q At that time you did; didn't you?

19 A I had acquaintances.

20 Q All right, and you gave them the names of all those
21 acquaintances?

22 A Yeah.

23 Q And how many was it?

24 A I don't know, four or five.

25 Q And so, you only know four or five people in your life

1 that have ever been involved with illicit drugs?

2 A Yeah, pretty much. I don't hang out with those type of
3 people.

4 Q Well, apparently you were able to buy drugs from people;
5 right?

6 A Yeah.

7 Q So, the only people you knew were the people who sold
8 drugs?

9 A No, sir. I mean I know Mr. Archie. He sold me drugs.

10 Q Now, you had told me earlier that all your testimony here
11 today has been truthful and that you're sure that you've
12 testified truthfully on everything.

13 A Yes, sir.

14 Q You testified that you paid \$40 for the drugs today; is
15 that correct?

16 A Yes, sir.

17 Q I'm going to show you a piece of paper that purports to
18 have your signature on it. Does that have your signature on
19 it?

20 A Yes, sir, it does.

21 Q And what does it say?

22 A It says, "I, Chris Woodsides, called and met with 'P' at
23 Money Saver in the restroom and purchased crack cocaine for
24 the amount of \$50."

25 Q For how much?

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1 A \$50.

2 Q Well, which time are you lying? Are you lying there or
3 are you lying today?

4 A Sir, it's been years ago. I knew it was either 40 ---

5 Q Which time are you lying?

6 A --- or \$50.

7 Q You told me you were sure of your answers today.

8 MS. COTÉ: Objection, Your Honor.

9 THE COURT: Rephrase your question, Mr. Colvin.

10 MR. COLVIN: All right.

11 BY MR. COLVIN:

12 Q On May the 7th you said that you wrote a statement to the
13 police that you had paid \$50 for these drugs.

14 A That's my statement.

15 Q All right, so, that's true. You did say that \$50 you
16 paid for the drugs?

17 A Yeah, it's right there in black and white.

18 Q All right, and today you testified that you paid \$40 for
19 the drugs.

20 A It's been three years ago and some change like he just
21 said.

22 Q But I asked you specifically ---

23 THE COURT: Mr. Colvin, Mr. Colvin, please let him
24 answer the question, then you can follow up with another one,
25 please. Thank you, sir.

1 Q Excuse me, sir. Please finish your answer.

2 A I said it's been three years ago. You know, I can't
3 exactly remember. I know it was either 40 or \$50 and right
4 there is my statement with my signature.

5 Q Well, didn't I ask you if you were sure that the
6 testimony you had given today was accurate?

7 A Yeah.

8 Q And you said you were sure?

9 A Yes, sir.

10 Q Well, both of those can't be true; can they?

11 A Well, I, you know, I made a mistake about the money.
12 Just everything else I've said though today is true.

13 Q Do you have the same cell phone today that you had May 4th
14 of 2007?

15 A No, sir, I don't.

16 Q Were you ever asked for your cell phone records by the
17 police?

18 A No, sir.

19 Q Do you have any cell phone records that could show that
20 you actually had a telephone conversation with Mr. Archie?

21 A No, sir.

22 Q So, what we have to rely on is your saying that that was
23 Mr. Archie in that conversation with you?

24 A Yes, sir, that and the testimony of the other officers.

25 Q And what was that testimony?

1 A I wasn't in here.

2 Q Well, then, how do you know?

3 A Well, I know that they've testified. What was said I
4 have no clue. I was not in the courtroom.

5 Q Well, then you don't know that there's anything other
6 than your word that that was Mr. Archie; do you?

7 A Ask me that question again.

8 Q I say you don't know that - you don't have anything other
9 than your word to show that that was Mr. Archie on the
10 telephone with you; do you?

11 A No, sir.

12 Q Were you using crack cocaine at the time you did ---

13 A No, sir.

14 Q --- this controlled buy?

15 A No, sir.

16 Q You didn't use it?

17 A No, sir.

18 Q Had you ever used it?

19 A No, sir.

20 Q Never used crack?

21 A I've used cocaine.

22 Q Used cocaine but not crack.

23 A Exactly.

24 Q Do you still use cocaine?

25 A No, sir.

1 Q When did you quit?

2 A A little more than three years ago.

3 Q But you used it after you did this transaction?

4 A No, sir. I told you I was trying to go in law
5 enforcement. Why would I be doing drugs and try to jeopardize
6 my career?

7 Q Well, I don't know why you were doing drugs at all. So,
8 I can't answer that question for you, but you were using
9 cocaine at some point.

10 A Yeah, before ---

11 Q And marijuana?

12 A Yes, sir.

13 Q Any other drugs?

14 A No, sir.

15 Q And - but you don't use drugs now?

16 A No, sir.

17 Q Are you still trying to get in law enforcement?

18 A No, sir.

19 Q What happened?

20 A I got pending charges.

21 MR. COLVIN: Your Honor, if you would indulge me just
22 one second ---

23 THE COURT: Yes, sir.

24 MR. COLVIN: --- I'd like to confer with my client.

25 THE COURT: Yes, sir.

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1 MR. COLVIN: Thank you.

2 BY MR. COLVIN:

3 Q Mr. Woodsides, how do you know Mr. Archie?

4 A I can't really remember how I met up with him.

5 Q You don't remember how you met him? Well, how did you

6 get his phone number?

7 A He gave it to me.

8 Q Why?

9 A To buy drugs.

10 Q How many times did you buy drugs from him?

11 A Probably - well, that one time with Agent Geno.

12 Q That's the only time?

13 A Yeah, I knew, knew other people that bought drugs, drugs

14 from him.

15 Q You knew other people?

16 A Yeah.

17 Q How many?

18 A I think one or two.

19 Q Did you tell on them?

20 A I didn't have to. They got arrested.

21 Q So, you never told on them.

22 A Huh-uh.

23 Q Even though you had agreed in your agreement with the

24 police that you would tell on everybody you knew?

25 A He was already arrested.

1 Q Well, the agreement didn't say that you have to say
2 people who had not yet been arrested; did it?

3 A Well, if he's in jail ---

4 MS. COTÉ: Objection, Your Honor. It's been asked
5 and answered at least five times at this point now.

6 THE COURT: Mr. Colvin, I think you've covered that
7 issue.

8 MR. COLVIN: I'm unclear. What has been asked and
9 answered five times?

10 THE COURT: Mr. Colvin, all I'm telling you is I
11 believe you have covered the issue. Thank you, sir.

12 MR. COLVIN: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MS. COTÉ: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. COTÉ:

17 Q First of all, Chris, did you give that written statement
18 about the \$50, did you give that back in 2007?

19 A Yes, ma'am.

20 Q Did you give it the same day that the incident occurred?

21 A Yes, ma'am, shortly thereafter we made the transaction.

22 Q And if you wrote then that it was \$50 as opposed to \$40
23 that you said today would you go with what you originally said
24 in that statement since it happened so close to the time?

25 A Yes, ma'am.

1 Q Okay, the person that you called on - back in May '07 was
2 that the person - well, the person that you intended to call
3 was that the same person that met you at the Money Saver?

4 A Yes, ma'am.

5 Q And was that the Defendant?

6 A Yes, ma'am.

7 Q Thank you. I have no further questions.

8 THE COURT: Anything on those questions, Mr. Colvin?

9 MR. COLVIN: No, Your Honor.

10 THE COURT: You may step down, sir.

11 A Thank you.

12 THE COURT: Do you wish the witness to be excused?

13 MS. COTÉ: Yes, Your Honor.

14 THE COURT: Any objection?

15 MR. COLVIN: None.

16 THE COURT: All right, sir, you're released from your
17 subpoena and may go back to your regular activities, sir.

18 A Thank you.

19 THE COURT: All right, we're going to take a short
20 break, ladies and gentlemen. If you want to go back to your
21 jury room and I'll call you out in about ten minutes or so,
22 please.

23 Thank you. Everyone else remain seated, please, till the
24 jury retires.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: Anything else from the State at this point
3 in time?

4 MS. COTÉ: No, Your Honor.

5 THE COURT: From the Defense right now?

6 MR. COLVIN: Not right now.

7 THE COURT: All right, very good. Thank you, sir.

8 OFF THE RECORD

9 (On the record.)

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Solicitor, could you come up here just a
13 second, Mr. Colvin.

14 (A bench conference is held.)

15 MS. COTÉ: Thank you, Your Honor.

16 THE COURT: All right, with that are you ready to go
17 forward, Solicitor?

18 MS. COTÉ: Yes, Your Honor.

19 THE COURT: And Mr. Colvin?

20 MR. COLVIN: Yes, Your Honor.

21 THE COURT: All right, very good.

22 All right, ask the jury to come in, please, ma'am.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: All right, Solicitor, your next witness,

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1 please, ma'am?

2 MS. COTÉ: Thank you, Your Honor. The States calls
3 Nikki Perry.

4 THE COURT: All right.

5 Whereupon, Nikki Perry was called the stand, duly sworn
6 by the clerk and testified as follows:

7 THE CLERK: Thank you. Please be seated. Please
8 state your name for the record.

9 MS. PERRY: Nikki Perry, P-E-R-R-Y.

10 THE COURT: All right, Solicitor.

11 MS. COTÉ: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. COTÉ:

14 Q Ms. Perry, where are you employed?

15 A I'm currently employed with the South Carolina Law
16 Enforcement Division commonly known as SLED.

17 Q How long have you worked there?

18 A I have been employed with SLED since June 2nd of 2006.

19 Q What's your job title at SLED?

20 A I'm a forensic technician in the evidence control
21 department at the lab.

22 Q What are some of your duties and responsibilities as a
23 forensic technician?

24 A We log in, package and transfer evidence submitted to the
25 lab for forensic analysis.

1 Q I'm going to show you what's been marked as State's
2 Exhibit One in this case. Were you involved in the processing
3 of that bag?

4 A I was.

5 Q And can you please discuss for the jury your involvement?
6 How did it first come into your possession?

7 A The forensic scientists up in our drug analysis
8 department would have notified someone in my department, in
9 this case it was me, that he requested several items of
10 evidence. I would go to our drug evidence intake storage
11 which is a locked area within another sealed evidence room and
12 retrieve that item and then I would place it in my custody and
13 then I would transfer it to the custody of the forensic
14 scientists.

15 Q Do you have information as to who placed it in the
16 evidence room before you got it out?

17 A According to my chain of custody, forensic technician
18 Selena Kinard placed it in the temporary evidence room, drug
19 evidence intake storage which is the area that I retrieved the
20 item from.

21 Q How did the bag appear when you retrieved it from the
22 evidence storage room?

23 A Items of evidence in evidence control room are always
24 sealed. So, the item would have been sealed when I retrieved
25 it to transfer custody to someone else.

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1 Q And how did you know what item of evidence you were
2 looking for and what evidence you were going to retrieve?

3 A Each piece of evidence that is in our evidence room has a
4 bar code. Each case has a bar code with a lab number and an
5 item number. So, the forensic scientist would have let me
6 know that he needed a specific lab number, an item number and
7 then I would go into that area and pull that specific lab
8 number and item number so that I may transfer it to his
9 custody.

10 Q Did that item appear to have been altered or tampered in
11 any way when you received it?

12 A No, ma'am.

13 Q And what did you do with it after you took it out of the
14 evidence room?

15 A I then placed it into my custody and then I would have
16 transferred custody to forensic scientist Willie Smith and
17 he's in our drug analysis department.

18 Q Did you open the bag or tamper with it in any way while
19 it was in your possession?

20 A No, ma'am.

21 Q And you took it straight from the evidence room to Willie
22 Smith?

23 A That is correct.

24 Q Is that the extent of your contact with that piece of
25 evidence?

1 A Yes, ma'am.

2 Q Thank you.

3 MS. COTÉ: I have nothing further from this witness.

4 THE COURT: All right, cross examination, Mr. Colvin?

5 MR. COLVIN: Thank you, Your Honor. If it pleases the
6 Court?

7 THE COURT: Yes, sir.

8 CROSS EXAMINATION

9 BY MR. COLVIN:

10 Q Good afternoon, Ms. Perry. How are you?

11 A Good afternoon. I'm well, thank you.

12 Q Ms. Perry, I understand - let me repeat this and make
13 sure I've got it right. You took this bag out of intake
14 storage where it was stored, the evidence was stored and you
15 took it and you gave it to Mr. Smith; is that right?

16 A That is correct.

17 Q And you didn't tamper with it?

18 A No, sir.

19 Q Right, but you don't really know what happened, you know,
20 who handled it before it went into intake storage; do you?

21 A No, sir.

22 Q And you don't know who might have handled it after you
23 gave it to Mr. Smith.

24 A No, sir.

25 Q So, your whole involvement was to take it from point A to

1 point B, point B being Mr. Smith?

2 A That is correct.

3 Q And you didn't know anything before A or after B?

4 A That is correct.

5 Q Thank you, Ms. Perry.

6 MR. COLVIN: That's all.

7 THE COURT: Any redirect?

8 MS. COTÉ: No, Your Honor.

9 THE COURT: All right, thank you, ma'am.

10 Do you wish the witness to be excused?

11 MS. COTÉ: Yes, please.

12 THE COURT: Any objection?

13 MR. COLVIN: None, Your Honor.

14 THE COURT: All right, ma'am, you're released from

15 your subpoena and may go back to your regular activities.

16 A Thank you.

17 THE COURT: All right, thank you.

18 All right, ladies and gentlemen, except for, I believe,
19 one extremely short witness the remaining witnesses will be
20 coming to us from Columbia. We did not know exactly how long
21 or where we would be in the development of this case; and so,
22 they're going to be here tomorrow morning. So, we're going to
23 stop for today. I'm going to have you come back tomorrow
24 morning at nine a.m. I'd like you to be back in your jury
25 room at nine a.m. We'll reconvene and start the case again at

1 that point in time.

2 No, I told you you all aren't supposed to be talking
3 about this case. So, when you go home and you see your
4 husband, wife, boyfriend, girlfriend, person down the street,
5 you can't talk about this case because unintentionally they'll
6 tell you their opinion about this case. They don't have one.
7 Don't discuss it with them. Don't allow anybody to discuss it
8 with you. To do so would be a violation of your oath, and I
9 know you're not going to do that. I'll see you back tomorrow
10 morning nine a.m. Thank you very much.

11 OFFICER: Excuse me, Judge.

12 THE COURT: Yes, sir.

13 OFFICER: She says she's got a question.

14 THE COURT: No, ma'am, you need to write it out and
15 then the foreperson has to give it to me. I can't speak to
16 you. The foreperson has - should have a notepad in the, in
17 the jury room.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: I guess we'll wait and see until - wait
21 and see what she has to say.

22 Will you check with her and make sure she's writing that
23 note out?

24 Ma'am, ma'am, were you writing out a note for the Court?

25 MS. HOLMES: She told me to come sit in here until she

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1 come.

2 THE COURT: Who? Go find out what's going on, please.

3 Is that the note?

4 BAILIFF: Yeah, she's here. She had ---

5 THE COURT: Okay, all right, okay.

6 Let me see the note.

7 Ms. Holmes, why didn't you tell me about this this
8 morning?

9 MS. HOLMES: Because, because when you ---

10 THE COURT: You're on the jury now. You're on a case
11 now. Then was the time to tell me, not when you're already
12 picked to be a juror on a case.

13 MS. HOLMES: Well, I listened to the stuff and you said
14 full time, I'm part time.

15 THE COURT: Mr. Colvin, Solicitor, you all come up
16 here, please.

17 MS. COTÉ: Yes, Your Honor.

18 THE COURT: You all read the note.

19 (Whereupon, a bench conference is held.)

20 THE COURT: Ms. Holmes, obviously the rest of this
21 trial is not going to take much longer. I expect we'll be
22 done in the morning, the case will be submitted to the jury
23 for their deliberation and their unanimous decision. If you
24 finish out your jury duty in this particular case and then I
25 excuse you will that help?

1 MS. HOLMES: Yeah, may I have an excuse with it, too,
2 please, sir?

3 THE COURT: Oh, you can certainly get it from the
4 clerk's office. They will provide you with all the written
5 information you need that you were actually on jury duty.
6 There's no question about that. That you all - you just make
7 sure you get with the clerk's office before you leave. You
8 know, when you're excused by the Court you get with the clerk,
9 the clerk's representative and they will give you the written
10 information indicating you were on jury duty and the person to
11 call back if somebody needs to check back and call back to the
12 clerk's office they'll give you that number so that it can be
13 verified if somebody needed to verify it; okay?

14 MS. HOLMES: Okay.

15 THE COURT: So, what we'll do is we'll have you serve
16 and then when you're done with your service in this case I'll
17 excuse you for the balance of the week; all right?

18 MS. HOLMES: Yes, sir.

19 THE COURT: All right, thank you, ma'am I appreciate
20 it very much.

21 MS. HOLMES: Thank you.

22 THE COURT: I'll see you back tomorrow morning nine
23 a.m. then. Thank you.

24 All right, we'll be back tomorrow morning nine a.m.

25 MS. COTÉ: Thank you, Your Honor.

1 MR. COLVIN: Thank you, Your Honor.

2 OFF THE RECORD

3 (On the record, March 1, 2011.)

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: All right, Mr. Colvin, Ms. Coté, for some
7 reason, Juror Number 227 has not come back this morning. We
8 don't know what the reason is. The clerk's tried to
9 communicate by phone and get no - gets no answer. It's about
10 9:12. Obviously I instructed them to be here at nine o'clock.
11 Everybody's here but that particular juror. My intention is
12 to go forward with the case and substitute in the alternate
13 for the juror that is not here. Is there anything the State
14 would like to say about that?

15 MS. COTÉ: No, Your Honor.

16 THE COURT: Mr. Colvin?

17 MR. COLVIN: I hate to lose a juror, Your Honor, but I
18 don't think there's anything that can be done about it and
19 that's why we have alternates.

20 THE COURT: All right, very good. Yes, sir.

21 All right, ask the jury panel to come out, and if she
22 does happen to come just have her sit in the back and we'll
23 just talk to her whenever it is that she shows up, all right,
24 and if she doesn't show up then obviously we'll have to get
25 the assistance of the sheriff's office to go out and find her

1 and bring her in.

2 (Whereupon, the following takes place in the presence of
3 the jury.)

4 THE COURT: All right, good morning, ladies and
5 gentlemen, as you see for some reason, and at the present time
6 we don't know why, we're obviously getting some assistance in
7 finding out, one of the jurors has not returned, Juror Number
8 227, Ms. Cassandra Rivers. With that we intend to go forward
9 with this case. That is the purpose that we have alternates.
10 So, Ms. Deas, if you want to move over one seat you are now
11 substituted in the place of the missing juror, Ms. Rivers.
12 She is removed from this case, and you will sit as one of the
13 12 members of the jury in this particular case, and obviously,
14 will be charged with the responsibility of discussing the
15 matter with the - all the other members of the jury at the end
16 of the case when I give it to everyone for their deliberations
17 to come up with a unanimous decision at that point in time.

18 All right, anything further as to that particular issue
19 from the State?

20 MS. COTÉ: No, Your Honor.

21 THE COURT: From the Defense?

22 MR. COLVIN: Nothing, Your Honor.

23 THE COURT: All right, very good. All right,
24 Solicitor, your next witness, please, ma'am?

25 MS. COTÉ: Thank you, Your Honor. The State calls

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1 Joyce Phillips to the stand.

2 THE COURT: All right.

3 All right, Ms. Phillips, if you'd come right on up here
4 where the bailiff is, please, ma'am. Thank you.

5 Whereupon, Joyce Phillips Whalen was called to the stand,
6 duly sworn by the clerk and testified as follows:

7 THE CLERK: Please State your name for the record.

8 MS. WHALAN: Joyce Phillips Whalen.

9 THE COURT: Go ahead, Solicitor.

10 MS. COTÉ: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. COTÉ:

13 Q Ms. Whalen, where are you from originally?

14 A I'm from Georgetown County.

15 Q Have you lived here all your life?

16 A Yes, ma'am, I have.

17 Q Are you familiar with the Money Saver located on
18 Highmarket Street?

19 A Yes, ma'am, I am.

20 Q Do you know if that location is in Georgetown County?

21 A It is in Georgetown County.

22 Q Thank you.

23 At some point were you employed with the Georgetown
24 County Sheriff's Office?

25 A Yes, ma'am, I was.

1 Q Are you still employed there?

2 A No, ma'am, I'm not.

3 Q Where are you currently employed?

4 A Georgetown County School District.

5 Q Where - what was your position when you were with the
6 Sheriff's Office?

7 A I was evidence clerk.

8 Q How long were you in that position?

9 A I was there for two years, a little over two years.

10 Q I'm going to show - oh, what - during what time period
11 was that?

12 A I was in evidence June, I'm sorry, November of '05 to
13 March of '08.

14 Q I'm going to show you what's been marked for
15 identification as State's Exhibit One.

16 Do you recognize that item?

17 A Yes, ma'am, I do.

18 Q How did you first come into contact with that bag or that
19 exhibit?

20 A Whenever an officer has any type of evidence they take it
21 to the Sheriff's Office and put it in some type of envelope or
22 bag or whatever the case may be. In this case it was a Best
23 bag which is used for narcotics to turn over evidence to SLED,
24 and this was put in a evidence bag and dropped in the drug
25 drop box which is at the Sheriff's Office and once it's put in

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1 the drop box, which is locked, I would use a key to get into
2 that box to get the evidence out to process it and take it to
3 SLED.

4 Q Who else besides you has access to that drug drop box?

5 A No one. Bill Pierce was my supervisor. He had access to
6 the key but I was the main one over evidence who had a key to
7 the boxes.

8 Q Okay, so, you - did you remove this item from the drug
9 drop box?

10 A Yes, ma'am, I did.

11 Q And what did you - what condition was it in when you
12 pulled it out of the drug drop box?

13 A It was sealed in a Best bag.

14 Q Can you describe a Best bag for the jury?

15 A Sure, a Best bag is basically a brown envelope that is
16 from SLED and it comes with a plastic bag that you fill out
17 with a tamper-resistant seal on it. It also has four or five
18 different forms for chain of custody and to put the
19 description of the evidence. Once you fill out all that
20 paperwork and you put the evidence, which in this case was
21 drugs, once you put it in that bag and you seal it it is
22 tamper resistant and you cannot get that bag open.

23 Q When you pulled out the bag what condition was it in?

24 A It was sealed.

25 Q Did you alter it or tamper with it in any way while it

1 was in your possession?

2 A No, ma'am, I did not.

3 Q Did you make any notation on the actual Best bag?

4 A No, ma'am, in this case you just put the chain of custody
5 on the paperwork.

6 Q And what did, if anything, did you do with that Best bag?

7 A I processed it. I entered it into the system as far as
8 putting the information in the computer, describing what it
9 is, I issued a number for it to have so that I would know
10 where the evidence is kept in the evidence locker rooms. Once
11 I did all that and filled out the chain of custody I myself
12 took it to SLED for them to process.

13 Q What date did you take it to SLED?

14 A I took this package to SLED on June the 1st of 2007.

15 Q And who did you give it to?

16 A I gave it to Karonda Williams. She was the clerk who
17 took the evidence.

18 Q And once again, did you alter that Best kit or the drugs
19 or tamper with it in any way while it was in your possession?

20 A No, ma'am, I did not.

21 Q Thank you. I have no further questions for this witness.

22 THE COURT: All right, Mr. Colvin.

23 MR. COLVIN: Thank you, Your Honor. If it please the
24 Court?

25

CROSS EXAMINATION

Joyce Phillips Whalen - Cross by Defense

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1 BY MR. COLVIN:

2 Q Good morning, Ms. Whelan, how are you?

3 A Good morning. Good, how are you?

4 Q Fine, thank you.

5 Ms. Whelan, the way I understand your job or what was
6 your job it was just to make sure that nobody had tampered
7 with the evidence and that it was properly transferred from
8 the Sheriff's Office to SLED; is that right?

9 A That is correct.

10 Q So, you don't really have any personal knowledge of where
11 those drugs came from to begin with; do you?

12 A No, sir, not other than what the officer puts on the
13 chain of custody.

14 Q Right, but you don't know of your own personal knowledge
15 whether they started with me or with anybody in this courtroom
16 of your own personal knowledge?

17 A No, sir.

18 Q It's not part of your job; is it?

19 A No, sir, that's not.

20 Q Thank you very much, Ms. Whelan.

21 A Uh-huh.

22 MR. COLVIN: That's all I have.

23 THE COURT: Any redirect?

24 MS. COTÉ: No, Your Honor.

25 May this witness be excused?

1 THE COURT: Any objection?

2 MR. COLVIN: None, sir.

3 THE COURT: All right, ma'am, you're released from
4 your subpoena, may go back to your regular activities.

5 A Thank you.

6 THE COURT: Thank you, ma'am.

7 All right, Solicitor, your next witness, please, ma'am.

8 MS. COTÉ: Thank you, Your Honor. The State calls
9 Karonda Williams.

10 THE COURT: All right.

11 All right, Ms. Williams, if you want to come on right up
12 here next to the bailiff, please, ma'am.

13 Whereupon, Karonda Williams was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Thank you. Please have a seat. State
16 your name for the record.

17 MS. WILLIAMS: Okay, Karonda Williams.

18 THE COURT: Go ahead, Solicitor.

19 MS. COTÉ: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. COTÉ:

22 Q Ms. Williams, where are you currently employed?

23 A I am currently employed at the South Carolina Department
24 of Health and Environmental Control.

25 Q At some point were you employed at the South Carolina Law

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1 Enforcement Division or SLED?

2 A Yes.

3 Q When were you employed there?

4 A I was employed with the South Carolina Law Enforcement
5 Division as of February the 17th, 2006.

6 Q And when did you stop working there?

7 A April, April 16th, 2008.

8 Q Thank you. What was your job title at SLED?

9 A I was a forensic technician for the evidence control
10 department.

11 Q What were your responsibilities as a forensic technician?

12 A As a forensic technician in the evidence department we
13 were responsible for intake. We received all the evidence
14 from various agencies across the State. The evidence was then
15 most times prepackaged, assigned a lab number so that it could
16 be tracked throughout the lab in the various departments.

17 Q I'm going to hand you what's been marked for
18 identification as State's Exhibit One. I want you to look at
19 it and tell me if you recognize it.

20 A In our department we recognize container numbers and
21 according to my chain of custody this lab number L707842 I can
22 identify it.

23 Q Were you involved in processing that item of evidence?

24 A Yes.

25 Q And will you discuss for the jury what role you played in

1 processing that?

2 A As an evidence technician what happens is when the
3 officer comes in and brings in what is called the Best kit it
4 actually arrives in our department inside of a manila
5 envelope. We then open the envelope and we review the package
6 to make sure it hasn't been tampered with or anything because
7 if it had we do not accept tampered Best kits. So, we would
8 have returned it to the agency.

9 Q Who did you receive it from?

10 A According to my chain of custody, Ms. Joyce Phillips.

11 Q What if anything did you do with the bag after you
12 received it?

13 A Once we receive the evidence we then assign a lab number
14 which is this L7 number. Then we put that evidence, once we
15 label it and give the officer a copy of the receipt showing
16 that they submitted the evidence to us, then we put this
17 evidence inside of a locked area in the drug intake section.

18 Q And was that, after you put it in the locked intake
19 cabinet was that the extent of your involvement with that item
20 of evidence?

21 A Yes.

22 Q And again, did you, did you tamper with it or alter it in
23 any way while it was in your possession?

24 A No.

25 Q Thank you.

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1 MS. COTÉ: I have no further questions from this
2 witness.

3 THE COURT: All right, Mr. Colvin.

4 MR. COLVIN: Thank you, Your Honor. May it please the
5 Court?

6 CROSS EXAMINATION

7 BY MR. COLVIN:

8 Q Good morning, Ms. Williams.

9 A Good morning.

10 Q Ms. Williams, did you drive from Columbia today?

11 A Yes, sir.

12 Q And that's where you live? Did they pay you mileage?

13 A No, sir.

14 Q Are they going to?

15 A I have no idea, sir.

16 Q Okay, but it's okay with your present employer for you to
17 get off and come here to the beach today; huh?

18 A Yes, sir.

19 Q All right. Your work would not tell you the original
20 source of that material; would it?

21 A Can you repeat the question?

22 Q You know that you got that from Ms. Phillips; right?

23 A Correct.

24 Q But you don't really know the history of that particular
25 substance prior to Ms. Phillips giving it to you; do you?

1 A Correct.

2 Q So, you can't say that the Defendant here today ever had
3 that drug?

4 A No, sir.

5 Q Thank you, ma'am.

6 THE COURT: Any redirect?

7 MS. COTÉ: No, Your Honor. May this witness be
8 excused?

9 THE COURT: Any objection?

10 MR. COLVIN: No objection, Judge.

11 THE COURT: All right, Ms. Williams, you are released
12 from your subpoena and may go back to your regular duties.
13 Thank you very much, ma'am.

14 A Thank you.

15 THE COURT: All right, Solicitor, your next witness,
16 please, ma'am.

17 MS. COTÉ: Thank you, Your Honor. The State calls
18 Selena Kinard.

19 THE COURT: All right.

20 All right, Ms. Kinard, if you want to come all the way up
21 here right next to the bailiff over here, please, ma'am.
22 Thank you. Just right on over there.

23 Whereupon, Selena Kinard was called to the stand, duly
24 sworn by the clerk and testified as follows:

25 THE CLERK: Thank you. Please be seated.

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1 Please state your name for the record.

2 MS. KINARD: Selena Kinard.

3 THE COURT: Go ahead, Solicitor.

4 MS. COTÉ: Thank you.

5 DIRECT EXAMINATION

6 BY MS. COTÉ:

7 Q Ms. Kinard, where are you employed?

8 A I am employed with the South Carolina Law Enforcement
9 Division, also known as SLED.

10 Q How long have you been employed with SLED?

11 A Since June 4th of 2007.

12 Q What is your position there?

13 A I am a forensic technician within the evidence control
14 department.

15 Q What do you do as a forensic technician?

16 A As a forensic technician we intake evidence from all
17 agencies across the state. We log that evidence into our
18 computer system and we house that evidence in our evidence
19 room before analysis as well as after analysis.

20 Q I'm going to show you what's been marked as State's
21 Exhibit One for identification, and I'm going to ask you to
22 take a good look at it and see if you recognize that item.

23 A I do recognize the item based on the yellow label that is
24 affixed to it that has our lab number as well as the item
25 number.

1 Q Were you involved in processing that item?

2 A If I may refer to my chain, please.

3 On July 2nd of 2007 I put that evidence into my custody,
4 and at the time we were renovating our evidence room. So, I
5 moved it from the current evidence room to a temporary
6 evidence room in a locked area and that is where I transferred
7 it to on July the 2nd of 2007.

8 Q How did that item appear when it came into your
9 possession?

10 A At that time it was before analysis, so before the
11 forensic scientist had a chance to analyze it. So, it would
12 have actually been in an envelope with this inner plastic bag,
13 which is sealed as tamper evident and that would have been
14 inside the envelope with a different label affixed to it but
15 with the same lab number.

16 Q Aside from moving it from one room to the other did you
17 alter it or tamper with that item in any way?

18 A No, I did not.

19 Q And did you move it from one locked room to another
20 locked room?

21 A Yes, that's correct.

22 Q And did it appear to have been altered with or tampered
23 with when you received it out of the initial locked room?

24 A No.

25 Q And did you have any further connection to that item?

Selena Kinard - Cross by Defense

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1 A I did. On October the 26th of 2007 I actually returned it
2 to the agency, Georgetown County Sheriff's Office, Joyce
3 Phillips with Georgetown.

4 Q Do you have information as to who placed it in the room
5 that you got it out of on July 2nd?

6 A Karonda Williams.

7 MS. COTÉ: That's all I have, Your Honor. I have
8 nothing further from this witness.

9 THE COURT: All right, cross examination.

10 MR. COLVIN: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. COLVIN:

13 Q Good morning, Ms. Kinard, how are you?

14 A Good morning, good.

15 Q Did you drive from Columbia today?

16 A Yes, sir.

17 Q Good, okay, are you being paid mileage for that?

18 A No, we do not get paid for mileage.

19 Q But you do get paid to be here, it's part of your job.

20 A Yes, our normal pay.

21 Q Thank you, fine.

22 A Uh-huh.

23 Q And you don't know whether or not the Defendant in this
24 case has ever had those materials or not; do you, of your own
25 personal knowledge?

1 A No, sir, I do not.

2 Q Thank you, ma'am.

3 A You're welcome.

4 THE COURT: Any redirect?

5 MS. COTÉ: Just briefly for clarification.

6 THE COURT: Yes, ma'am.

7 REDIRECT EXAMINATION

8 BY MS. COTÉ:

9 Q Were you paid anything additional by the Solicitor's

10 Office to come here and testify today?

11 A Oh, no, ma'am.

12 Q As part of your job working for SLED do you have to go to

13 different courts and testify?

14 A Yes, ma'am, I do. As soon as I leave here I have to go

15 to a different one, so, yes, ma'am.

16 Q All right, thank you. Nothing further.

17 A Okay.

18 THE COURT: Do you wish the witness to be excused?

19 MS. COTÉ: Yes, please, Your Honor.

20 THE COURT: Any objection?

21 MR. COLVIN: None, Judge.

22 THE COURT: All right, ma'am, you're released from

23 your subpoena. You may go back to your other duties, please.

24 A Thank you.

25 THE COURT: Thank you very much, ma'am.

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1 All right, Solicitor, your next witness, please?

2 MS. COTÉ: Thank you, Your Honor.

3 The State calls Willie Smith.

4 THE COURT: All right, Mr. Smith, if you want to come
5 on up front next to the bailiff, please, sir. Thank you.

6 Whereupon, Willie C. Smith, III, was called to the stand,
7 duly sworn by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated.

9 Please state your name for the record.

10 MR. SMITH: It's Willie C. Smith, III.

11 THE COURT: Go ahead, Solicitor.

12 MS. COTÉ: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. COTÉ:

15 Q Mr. Smith, where are you employed?

16 A South Carolina Law Enforcement Division, also known as
17 SLED.

18 Q How long have you worked at SLED?

19 A For ten years and eight months.

20 Q What's your job title there?

21 A I'm a special agent, criminalist, forensic scientist.

22 Q Will you please explain your educational background for
23 the jury?

24 A I have degrees in biology and chemistry, bachelor of
25 science degrees from the University of South Carolina. I have

1 attended the Criminal Justice Academy to become a sworn law
2 enforcement officer in the State of South Carolina and I've
3 taken additional graduate course work for the purposes of drug
4 analysis.

5 Q What is forensic chemical analysis?

6 A Where forensic chemical analysis are, forensics analysis
7 is just a process where identify substances at a molecular
8 level.

9 Q Do you chemically analyze substances to determine if that
10 substance is a narcotic or a non-narcotic type of drug?

11 A Yes, we use presumptive and we use confirmatory tests.

12 Q Approximately how many of these chemical analyses do you
13 perform a week?

14 A It all depends on the type of cases I get in a week. I
15 have done over 8000 cases as an analyst at SLED.

16 Q Have you ever testified in court before?

17 A Yes, I have testified in state and federal court 52
18 times.

19 Q Have you ever been qualified as an expert in the field of
20 forensic chemical analysis?

21 A Yes, I have, all the 52 times I testified.

22 MS. COTÉ: Your Honor, at this time the State offers
23 Willie Smith as an expert in chemical analysis.

24 THE COURT: Do you wish to voir dire the witness as to
25 his qualifications?

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1 MR. COLVIN: Your Honor, I would stipulate that Mr.
2 Smith is an expert.

3 THE COURT: All right, sir, very good. I'm going to
4 qualify Mr. Smith to give his opinion in the field of forensic
5 drug analysis. You may proceed, Solicitor.

6 Q Thank you, Your Honor. I'm going to show you what's been
7 marked for identification at this point as State's Exhibit
8 One. Did you perform analysis on any evidence involved in
9 this case that we're here for today?

10 A Yes, I did.

11 Q And do you recognize that item in your hand?

12 A Yes, I recognize this evidence because it's in a heat-
13 sealed pack and it has where I write the laboratory number -
14 well, let me start over. SLED has a Best evidence sample
15 submit testing procedure in which we receive evidence and the
16 way we receive evidence is in a heat-sealed pack that's tamper
17 indicative. I receive the evidence in this packet and every
18 time I receive the evidence I write the SLED laboratory number
19 on it, that it was sealed and intact the date that I did my
20 analysis on this case right here.

21 Q And who did you receive it from?

22 A I went and picked up this evidence on September 28th,
23 2007, from Nikki Perry in the evidence department of SLED.

24 Q What condition was it in when you received it once again?

25 A It was in a sealed packet that we give these agencies to

1 submit evidence to SLED.

2 Q Would you have accepted it if it had been tampered with
3 in any way?

4 A If the evidence was tampered with, I would not do any
5 analysis to it. I would return it to the agency and inform
6 them that I would not do any analysis on it.

7 Q Did you notate that in any effect on that, on that
8 package?

9 A No, I did not.

10 Q Did you notate - is there any, any indication that you
11 personally had that in your possession on the actual packet?

12 A Well, on the actual packet it shows that when I received
13 this evidence to do analysis on it, when I open it up I
14 examine the packet and it says sealed intact on October 1st,
15 2007, to indicate that the evidence had not been tampered with
16 and I was able to do my analysis on it.

17 Q On what date did you actually receive it from Ms. Smith,
18 Nikki Perry, I'm sorry.

19 A Nikki Perry, on September 28th, 2007, I ---

20 Q Sorry, and I apologize. Continue.

21 A I picked up the evidence, the heat-sealed pack or the
22 Best bag that you see here that's sealed up from the SLED log-
23 in department.

24 Q And what day did you actually analyze that item?

25 A The actual date that I analyzed this item was October 1st,

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1 2007, and it's still sealed at the bottom with my initials and
2 the date when I completed my analysis on this on October 1st,
3 2007.

4 Q When you actually analyzed that packet, when you received
5 that packet, what did you do with it?

6 A What I did with it is I take the evidence out, in this
7 case I did a chemical test and I did a confirmatory test to
8 identify the substance on a molecular level.

9 Q And what were the results of that test?

10 A The results of this test was found to be cocaine base
11 crack found 0.48 grams and it's a Schedule II drug.

12 Q Outside of testing, did you tamper with that substance or
13 alter it in any way?

14 A No, I did not.

15 Q Did you perform any other analysis on that particular
16 item?

17 A Just a chemical test and Infrared spectroscopy was my
18 confirmatory test.

19 Q So, you did one test, just to clarify, you did one
20 chemical test and then you did a confirmation test to make
21 sure the first test was correct?

22 A Well, the chemical test, it's to identify which group it
23 belongs to. It shows that it belongs to a "caine", some form
24 of a "caine" group. The confirmatory test identified it on a
25 molecular level which I compared it with a known standard from

1 a manufacturer so that I can identify it that it was a 100
2 percent match of it.

3 Q Thank you.

4 MS. COTÉ: Your Honor, at this time the State would
5 seek to introduce Exhibit One into evidence.

6 THE COURT: All right, any objection to State's One
7 coming into evidence at this time?

8 MR. COLVIN: Yes, sir, I would object on the ground
9 that there has not been a complete chain of custody shown.

10 THE COURT: All right, the Court would allow it into
11 evidence over the objection of the State [sic], the Court
12 finding that a proper chain has been found in this matter.
13 All right.

14 MS. COTÉ: Thank you, Your Honor.

15 (Whereupon, State's Exhibit Number One [Best Bag]
16 admitted into evidence and appropriately marked.)

17 MS. COTÉ: May I approach the witness? I apologize.

18 THE COURT: Yes, ma'am.

19 BY MS. COTÉ:

20 Q Can you hold this up for the jury and explain what these
21 individual packaging and there's a couple things in that bag
22 and if you can show them what they're looking at.

23 A All right, inside here, the way I received this evidence
24 was a plastic bag that contained a rock substance and which
25 you will see it in here. What I did with it, I took it out,

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1 did my - took out some sample, and after I took out my sample
2 for my chemical test and my confirmatory test, I repacked it
3 in a Ziploc bag, and this is the actual sample that's left
4 over.

5 Q There appears to be a little piece of cellophane or
6 something like that in there. Was that the original packaging
7 that the drugs were in?

8 A That is the original plastic bag. The Ziploc bag is the
9 bag that I repacked it in.

10 Q And there's some writing on that, on both bags it
11 appears. What is that?

12 A That is correct. Every time I touch an item for a case,
13 I always put the lab number and my initials on the item that
14 show that I handled the evidence, and in both these cases it
15 shows where I handled the plastic bag and also on the new bag,
16 Ziploc bag that I repacked the evidence in has my initials and
17 the laboratory number and the item number that corresponds to
18 this evidence.

19 Q And while that item was out of the locked drug evidence
20 room was it in your possession and your custody at all times?

21 A Yes, it was.

22 MS. COTÉ: Thank you, Your Honor. I have no further
23 questions.

24 THE COURT: All right, Mr. Colvin, cross examination.

25 MR. COLVIN: Thank you, Your Honor. May it please the

1 Court?

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. COLVIN:

5 Q Good morning, Mr. Smith.

6 A Good morning.

7 Q So you're the drug tester?

8 A That is correct. I'm a chemical analyst.

9 Q All right, 8000 times you've tested drugs?

10 A I've tested over 8000 cases. There were some cases had
11 multi items. So, it actually is more items in the cases.

12 Q Yes, sir, and you drove here from Columbia this morning?

13 A That is correct.

14 Q All right, Mr. Smith, I'm going to show you something and
15 ask you if you can recognize this.

16 A This is a copy of a SLED electronic chain of custody.

17 Q Does that appear to be a genuine copy and accurate to the
18 original?

19 A That is correct.

20 Q All right, what confuses me somewhat, Mr. Smith, is
21 there's one instance in there on the second page I think where
22 it says that you received that package on October the 1st of
23 '07. Isn't that correct?

24 MS. COTÉ: Your Honor ---

25 A That is ---

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1 MS. COTÉ: I apologize for interrupting you, Mr.
2 Smith. I'm going to object to him reading from the chain of
3 custody. He's not the person that generated that chain of
4 custody.

5 THE COURT: I appreciate that, but I'm going to allow
6 the questions to be asked and if the witness can answer, he
7 can answer. If he does not have the knowledge, then he will
8 so inform the - Mr. Colvin.

9 MS. COTÉ: Yes, Your Honor, thank you.

10 A It's actually a simple explanation for this right here.

11 Q I beg your pardon?

12 A There's a simple explanation for this right here.

13 Q That's all I'm asking for.

14 A Right, whenever we generate an item, I received the
15 evidence on September 28th. When I went into the system when I
16 did my analysis on the item, to create a new item it creates a
17 new date for that item, but it's still in my custody for the
18 evidence. So, the October 1st date that you see on here, as I
19 explained before and that you can see here on the heat-sealed
20 pack, that's when I actually did my analysis for this case and
21 created the item for this case.

22 Q And when was that?

23 A October 1st, 2007.

24 Q All right, now, doesn't it also show you receiving that
25 item on October the 4th, 2007?

1 A It - it shows this item on October 4th was placed into
2 temporary storage. That's where I took the evidence back down
3 to the log-in department so they can return it to the agency
4 that it belongs to.

5 Q Okay, do you see a name on that list Amy Stevens?

6 A Yes, I do see Amy Stevens on here.

7 Q And what was her role in the chain of custody?

8 A The only part that Amy Stevens play in the role of chain
9 of custody, after I did my analysis and it's still sealed in
10 this package right here, I give her this sealed packet back
11 into our log-in department so she can return it to the officer
12 once the officer comes in to pick up the evidence.

13 Q And you haven't seen that evidence before today since
14 October the 4th of 2007; have you?

15 A I haven't seen this evidence since October 4th of 2007,
16 that is correct, but there is one thing I'd like to indicate.
17 It is still in the same condition from when I did my analysis
18 on it and it has it's sealed with my name, the date and the
19 initials from me. So, this evidence has not been tampered
20 with since I did my analysis back on October 1st, 2007.

21 Q Okay, the work that you did, there's nothing about the
22 work that you did that would indicate who the original owner
23 of that material was; is there?

24 A The only information I know about this case is the
25 information that the officer provided to me.

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1 Q So, you have no personal knowledge and none of the tests
2 that you performed could place that originally in the hands of
3 any particular person?

4 A The only thing I know about this case is the information
5 that the officer provided with this case.

6 Q So, and so, all you really did was find out whether or
7 not it was a drug?

8 A That is correct.

9 Q Not, not where it originated, and nothing about your test
10 would prove where it originated; would it?

11 THE COURT: Why don't you rephrase your question? I'm
12 not sure he understands.

13 Q Can you identify from your test the original owner of
14 that material? From your test, not from what you were told.

15 A No, I cannot identify the original owner from the testing
16 that I did. All I do is a molecular test to identify exactly
17 what the substance is.

18 Q Okay, and once again, did you give that bag to Amy
19 Stevens?

20 A Yes, I did.

21 Q You did. And that's the last time you saw it until
22 today?

23 A That is correct.

24 Q Thank you, Mr. Smith. I don't have any further
25 questions.

1 THE COURT: All right, redirect?

2 MS. COTÉ: Yes, Your Honor.

3 MR. COLVIN: Amy Stevens I meant to say, not Smith.

4 You're Mr. Smith. Beg your pardon.

5 THE COURT: All right, go ahead.

6 REDIRECT EXAMINATION

7 BY MS. COTÉ:

8 Q We've got a lot of names going on Mr. Smith, sorry. Just
9 to clarify, when Amy Stevens handled that evidence, had you
10 already tested it?

11 A Yes, I did.

12 Q And had you already determined that that rock-like
13 substance was cocaine base?

14 A Yes, and it's still in the same condition from when I did
15 my testing back on October 1st, 2007.

16 Q All right, thank you. Nothing further from this witness.

17 THE COURT: All right, all right, do you wish the
18 witness to be excused, Solicitor?

19 MS. COTÉ: Yes, Your Honor, please.

20 THE COURT: Any objection to the witness being
21 excused, Mr. Colvin?

22 MR. COLVIN: No, Your Honor.

23 THE COURT: All right, sir, you are released from your
24 subpoena. You may go back to your regular activities.

25 A Thank you, Your Honor.

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1 THE COURT: Thank you, sir.

2 All right, Solicitor, your next witness?

3 MS. COTÉ: Your Honor, at this time the State of
4 South Carolina rests its case.

5 THE COURT: All right, very good.

6 All right, Mr. Colvin, do you have certain matters of the
7 law that you need to take up with the Court at this point in
8 time?

9 MR. COLVIN: Yes, Your Honor, I do.

10 THE COURT: All right, very good.

11 All right, ladies and gentlemen, there are certain
12 matters of law that I have to take up outside your presence.
13 If you would go to your jury room, I will call you back out
14 just as quickly as I can. Thank you very much.

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

17 THE COURT: All right, Ms. Rivers, Cassandra Rivers,
18 yes, ma'am, you want to stand up, please? You want to come up
19 here, right up between the two benches, please, ma'am.

20 Ms. Rivers, you were supposed to be here at nine o'clock
21 and you weren't. What's the problem?

22 MS. RIVERS: Both of my parents live with me and I had
23 an emergency with one of them this morning.

24 THE COURT: All right, ma'am, what I've done is
25 removed you from this particular case since we needed to get

1 started. What I'm going to have you do is stay with us in the
2 courtroom until the jury returns a verdict. At that point in
3 time, you'll be excused, but until they return a verdict,
4 you'll stay with us in the courtroom. Thank you very much.

5 All right, Mr. Colvin, motions on behalf of the Defense?

6 MR. COLVIN: Yes, sir. Judge, to begin with, I would
7 like to make a record with respect to the chain of custody if
8 you don't mind.

9 THE COURT: Yes, sir.

10 MR. COLVIN: There would appear to be a gap in the
11 chain of custody. Mr. Smith testified that he gave it to Amy
12 Stevens. Amy Stevens has not testified. According to what I
13 was given in my discovery, the drugs went from Amy Stevens
14 back to Selena Kinard and from Selena Kinard to Joyce
15 Phillips, who is now Joyce Phillips Whalen, who did testify,
16 but Amy Stevens is the missing link.

17 THE COURT: All right, sir.

18 MR. COLVIN: And for that reason I think that we have a
19 broken chain in the custody and that that's why I object to
20 the admissibility.

21 THE COURT: All right, very good. All right,
22 Solicitor, the response of the State, please, ma'am.

23 MS. COTÉ: Your Honor, it's the State's position that
24 the chain only needs to be proven through the time that the
25 drugs are analyzed by the chemist and that's the issue with

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1 everything's intact and we can prove that the drugs were not
2 tampered with in any way up to the point that they were tested
3 and the analyst actually confirmed that it's in the same
4 condition now as it was the last he had it and we've proved
5 that it went from Joyce Phillips to Karonda Williams to Selena
6 Kinard to Nikki Perry and then to the analyst, Willie Smith,
7 who actually tested the drugs and all those links ahead of him
8 proved that they had not - the drugs had not been tampered
9 with before they came into his possession.

10 THE COURT: All right.

11 MS. COTÉ: So, the State's position that the chain
12 was proven.

13 THE COURT: All right, as the Court of Appeals and the
14 South Carolina Supreme Court have indicated that fungible
15 items such as drugs or blood samples are not readily
16 identifiable and can be tampered with, the party offering such
17 items into evidence must establish a chain of custody as far
18 as practical. When the analyzed substance is passed through
19 several hands, the evidence must not leave it to conjecture as
20 to who had it and what was done with it between the taking and
21 the analysis. While the party offering the evidence need not
22 negate all possibility of tampering, a complete chain of
23 custody tracing possession of the substance from the time it
24 is taken to the time of final analysis must be established as
25 far as practical. The identity of the persons who have

1 handled the evidence must be established.

2 Regarding the - in this particular matter, I do find that
3 any evidence as to whether or not the one particular person in
4 the chain after the analysis was done is not objectionable to
5 as far as the matter not being allowed in evidence in this
6 particular case, a complete chain of custody was shown by the
7 State of South Carolina from the seizure of the drugs, from
8 the time they went from the Defendant to the CI to the police
9 officer through the various parties, through to South Carolina
10 Law Enforcement Division to all of their particular matters.
11 The testing was done by the recognized expert that the Court
12 qualified. The drugs were tested and proved to be crack
13 cocaine. They were sealed in a manner. The person that did
14 the testing testified today in court that the drugs are in and
15 the container is in the same condition that it was in the last
16 time he observed them and he sealed the matters on October 4th,
17 2007. They are in the same exact condition as they were on
18 October 4th, 2007; therefore, the objection is overruled and
19 denied. Thank you very much.

20 Further motions on behalf of the Defense?

21 MR. COLVIN: Yes, sir. Judge, I would first of all
22 renew my prior motions, and I think one of my prior motions
23 was that I had asked that the State not be able to question
24 Mr. Woodsides or anybody about a cell phone conversation
25 without some proof, independent proof such as a telephone

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1 bill, and that motion was denied by Your Honor. I would renew
2 that motion.

3 I would renew my objection to your granting the State's
4 motion to have Mr. Axelrod ---

5 THE COURT: Well, let's deal with them one at a time.
6 Regarding the motion as to the questioning of the State as to
7 telephone conversation, I find that was proper evidence in
8 this matter and your objection is denied.

9 All right, your next matter.

10 MR. COLVIN: Yes, sir, I do feel I have the duty to
11 renew these motions, Judge.

12 THE COURT: Yes, sir, I understand it, but I want to
13 deal with them one at a time rather not then ---

14 MR. COLVIN: Yes, sir, well, as I said I would renew my
15 motion that where I objected to the Court granting the State's
16 motion to have Mr. Axelrod removed from the case for conflict
17 of interest.

18 THE COURT: All right, sir, I would renew my previous
19 ruling in this matter. I find that there was a matter that
20 had not been resolved. Mr. Axelrod was not able to assist
21 you. I find there's been no prejudice to the Defendant. You
22 have done everything that the - so far that the Court would
23 expect a Defense attorney to do in this particular matter; and
24 therefore, I do not find there are any reasons to change my
25 ruling and respectfully deny your motion. Anything further?

1 MR. COLVIN: Your Honor, at this time, I would make a
2 motion for a directed verdict of acquittal based on a lack of
3 sufficient evidence.

4 THE COURT: All right, sir, very good. All right,
5 regarding a directed verdict motion, the Defendant is entitled
6 to a directed verdict when the State fails to produce evidence
7 of the offense charged. I am concerned with the existence of
8 evidence, not with weighing it, not with judging credibility
9 and believability, that is for the jury. If there's any kind
10 of direct evidence or substantial circumstantial evidence that
11 reasonably tends to prove the guilt of the accused then the
12 matter is properly submitted to the jury for their
13 determination. I find that the evidence in this matter, if so
14 believed by the jury, and again, that is their job to judge
15 credibility and believability, but there is more than
16 sufficient evidence in the record that is properly before the
17 jury if they so believe it to find the Defendant guilty of the
18 crime charged beyond a reasonable doubt; and therefore,
19 respectfully decline to grant your motion for a directed
20 verdict.

21 Further motions on behalf of the Defense?

22 MR. COLVIN: Not at this time, thank you for hearing me
23 out, Your Honor.

24 THE COURT: All right, thank you very much, sir.

25 All right, is your client prepared at this point in time

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1 for me to question him regarding his constitutional rights to
2 testify in this particular matter, Mr. Colvin?

3 MR. COLVIN: Yes, sir, he is prepared to answer your
4 questions.

5 THE COURT: All right, very good. All right, Mr.
6 Archie, if you'd please stand up and, Mr. Clerk, if you would
7 place him under oath please.

8 (Whereupon the Defendant is placed under oath by the
9 Clerk of Court).

10 THE COURT: All right, Mr. Archie, now at this point
11 in time, I'm going to explain to you certain of your
12 constitutional rights. If at any point in time you don't
13 understand what we're talking about or you've got a question,
14 I need for you to stop me and to indicate that you don't
15 understand or you've got a question. You can talk to your
16 attorney, raise your hand, but in some way I need for you to
17 indicate that you've got a question or don't understand. Are
18 we in agreement there?

19 MR. ARCHIE: Yes, sir.

20 THE COURT: All right, very good.

21 We've reached the stage of the trial where you can
22 present your defense. The State has rested its case. So, you
23 have the right to put on a Defense. You also have the right
24 at this point in time to claim the protection given to you by
25 the Fifth Amendment to the constitution of the United States

1 of America and that states that no person shall be compelled
2 in any criminal case to be a witness against themselves. That
3 means that nobody can make you testify in this case. You can
4 testify if you want to. It's your choice, but nobody can make
5 you testify. You understand that?

6 MR. ARCHIE: Yes, sir.

7 THE COURT: All right, sir, now, in this particular
8 matter, if you decide to testify, you're going to be subject
9 to same rules that all the other witnesses that have testified
10 in this case, such as you'll be examined or questioned by your
11 attorney, you'll be cross examined or asked questions by the
12 State's attorney as to any matters, the facts that the Court
13 deems relevant in this case. You understand that?

14 MR. ARCHIE: That's this case or ---

15 THE COURT: Yes, sir. It - just regarding this case.
16 Now, we'll go onto something else, but you understand that
17 part of it?

18 MR. ARCHIE: Yes, sir.

19 THE COURT: All right, also, if you've got any
20 convictions involving dishonesty or false statement or if
21 you've got convictions for crimes that are punishable by
22 imprisonment for more than one year and the Court determines
23 the probative value or the value of admitting that evidence to
24 test your credibility and believability outweighs any
25 prejudice to you, the State's going to be asked - be able to

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1 ask you whether or not you've been convicted of those
2 particular crimes. Do you understand that?

3 MR. ARCHIE: Yes, sir.

4 THE COURT: All right, Solicitor, are there any
5 matters that I've just talked about that you would expect to
6 ask the Defendant about?

7 MS. COTÉ: Yes, Your Honor, he does have a conviction
8 for second degree kidnapping in 2007. He also has a
9 distribution of cocaine charge in 2000 and another
10 distribution of crack cocaine charge in 2003. He also has a
11 hit and run with property damage and the State's position with
12 that one, while it doesn't carry more than a year, it is
13 dishonest to leave the scene. So, it's the State's position
14 that that would be a crime of dishonesty.

15 THE COURT: All right, Mr. Colvin, anything you want
16 to say to the Court about those particular matters?

17 MR. COLVIN: Your Honor, it is my belief based on my
18 training and experience that the drug convictions should be
19 excluded under Lyle and its progeny as being more prejudicial
20 than probative.

21 THE COURT: All right, Solicitor ---

22 MS. COTÉ: Yes, Your Honor.

23 THE COURT: --- what I would require regarding the
24 drug conviction since they are the same or similar to the
25 crime for which the Defendant is on trial here, that you would

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1 be allowed to ask the Defendant on those two particular
2 matters whether or not he was convicted of a felony offense on
3 that particular date and time, not to identify it as a drug
4 case, but that he was convicted of a felony.

5 MS. COTÉ: Yes, Your Honor.

6 THE COURT: As to the matter of kidnapping, that is
7 not related. I would allow you to ask that and then the other
8 matter I do find it to be, leaving the scene of an accident, I
9 do find that to be a crime of dishonesty and I would allow you
10 to ask the Defendant about that.

11 So, Mr. Archie, what'll happen is if you want to testify
12 what the State will be allowed to do is ask you if you were
13 convicted of kidnapping on that certain date, if you were
14 convicted of a felony those two times that you were convicted
15 of distribution, one of crack cocaine, one of cocaine, the
16 State will be allowed to ask you that the - were you convicted
17 of a felony on that particular day. They will not be allowed
18 to name that it's a drug conviction but that you were
19 convicted of a felony and of the leaving the scene. If you
20 admit that you are convicted of those particular matters on
21 that particular date and time, then that ends the State's
22 questioning of you. If you would deny that you were convicted
23 of those particular crimes, then I would allow the State to
24 explore it a little further to see whether or not they can
25 prove that you were convicted of those particular matters on

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1 that date and time. Do you understand me?

2 MR. ARCHIE: Yes, sir.

3 THE COURT: All right, and I want the record clear to
4 find that I have conducted a balancing test. I do find that
5 the probative value of admitting this evidence with the
6 qualifications that I have set forth outweighs any prejudice
7 to Mr. Archie because it is proper for the jury in judging
8 credibility and believability to find out about prior
9 convictions and in their job in judging credibility and
10 believability I think that's important; therefore, I'm
11 allowing it after conducting the balancing test and weighing
12 the value as against the prejudice to Mr. Archie.

13 All right, Mr. Archie, if you decide to testify, it's got
14 to be your decision, freely made, voluntarily made with the
15 knowledge, you know, of the protection of the Fifth Amendment
16 and of the matters that we just talked about just a little bit
17 earlier. If you decided not to testify, I'll instruct the
18 jurors they can't give that fact any consideration whatsoever.
19 I'll tell them they can't talk about it in the jury room,
20 that it's not part of this particular case, it can't come up
21 in making a decision in this particular case. Do you
22 understand that?

23 MR. ARCHIE: Yes, sir.

24 THE COURT: All right, it being left entirely up to
25 you to decide whether or not do you want to testify, do you

1 have any questions that you need to ask at this point in time?

2 Do you want to talk to your attorney?

3 MR. ARCHIE: I just want to ask one question to make
4 sure ---

5 THE COURT: All right, sir, go ahead and ask Mr.
6 Colvin first please, sir.

7 (Mr. Colvin and Mr. Archie confer.)

8 THE COURT: All right, sir, I don't need for you to
9 tell me what you and your attorney talked about, but whatever
10 question you had, did Mr. Colvin answer that for you?

11 MR. ARCHIE: Yes, he did.

12 THE COURT: All right, sir, do you understand
13 everything we've talked about now?

14 MR. ARCHIE: Yes, sir.

15 THE COURT: All right, do you wish to testify in this
16 particular case?

17 MR. ARCHIE: No, sir.

18 THE COURT: All right, thank you very much. You can
19 have a seat. Thank you.

20 All right, Mr. Colvin, will there be any other witnesses
21 that the Defense would have in this particular matter besides
22 Mr. Archie?

23 MR. COLVIN: No, Your Honor.

24 THE COURT: All right, would you like then - I'll have
25 you rest your case in front of, in front of the jury, but at

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1 this point in time would you like to rest your - rest
2 the defense so that you can renew your motions at this
3 point in time so we don't have to send the jury in and out
4 again?

5 MR. COLVIN: Yes, sir.

6 THE COURT: All right, sir.

7 MR. COLVIN: That makes sense. I do rest my case at
8 this time.

9 THE COURT: All right, sir.

10 MR. COLVIN: And I do renew my motions ---

11 THE COURT: All right, sir.

12 MR. COLVIN: --- my motion to exclude the evidence, my
13 motion to - regarding the phone calls, my motion regarding the
14 exclusion of - wasn't my motion ---

15 THE COURT: Of Mr., of Mr. Axelrod.

16 MR. COLVIN: I oppose the State's motion ---

17 THE COURT: Right, sir.

18 MR. COLVIN: --- and it did not go my way and I object
19 to that and I renew it.

20 THE COURT: All right, and renew the directed verdict
21 motion.

22 MR. COLVIN: Yes, sir, thank you, I do renew that
23 motion, too.

24 THE COURT: All right, very good. All right, sir.
25 Regarding all those motions, since we have just previously

1 talked about those, I'm not going to go through all the
2 analysis again. I'm just going to reaffirm my previous
3 rulings that we just made in this particular matter.
4 Respectfully decline to grant your motions, and we'll proceed
5 on in this particular matter.

6 Now, since - we'll take a short break, but since the
7 Defense did not introduce any evidence, obviously, the -
8 regarding the closing arguments, it will be the responsibility
9 of the State to open and to have their argument in full and
10 then the Defense will have the last argument before the jury
11 in this particular matter.

12 MR. COLVIN: Your Honor, I would like to make one
13 statement ---

14 THE COURT: Yes, sir.

15 MR. COLVIN: --- to protect my record ---

16 THE COURT: Yes, sir.

17 MR. COLVIN: --- to make the record.

18 THE COURT: Yes, sir.

19 MR. COLVIN: It is my belief that Rule Six requires
20 that the chain of custody be complete not only to Mr. Smith
21 but also back to this courtroom. I think that it - each
22 person who handles that evidence must, according to Rule Six,
23 either testify or - I think that the language of Rule Six is
24 "a certified or sworn statement signed by each successive
25 person having custody of the evidence" and I think that's

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1 what's missing.

2 THE COURT: All right, sir.

3 MR. COLVIN: And I just wanted that for the record.

4 Thank you.

5 THE COURT: All right, sir, very good.

6 Solicitor, any statement you want to make to - regarding
7 that particular motion?

8 MS. COTÉ: Your Honor, I believe that the - I believe
9 it was the Court of Appeals' case that you Stated previously
10 that you cited is appropriate and they took into consideration
11 all of these matters when they determined that the reliability
12 of the chain needs to be examined up to the point that the
13 drugs were analyzed, and additionally, our chemist that did
14 testify here today did testify that it was in the same
15 condition that it was when it left him as it was today when he
16 examined it at the courthouse. So, I believe that the chain
17 and the reliability of that chain was established.

18 THE COURT: All right, in this particular matter the
19 Court does find that - I find that the chain of custody was
20 established as far as practical in this particular matter,
21 that whether or not a particular witness testified, there is
22 evidence that there was no break in the chain, that the
23 matters are in the courtroom in the same condition that they
24 were in at the same - the last time that they were sealed and
25 packaged by the chemical analyst, Mr. Smith, from SLED saw

1 them on October 4th, 2007; and therefore, I find that the
2 requirements of Rule Six and the chain of custody have been
3 met in this particular matter and respectfully decline to
4 grant your motion in that particular regards.

5 MR. COLVIN: Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Colvin.

7 All right, let's take a break for about five, ten minutes
8 or so, and you all get organized and then we'll come back in
9 and we'll start on with the closing arguments and then the
10 charge and give it to the jury for their decision. All
11 right?

12 MR. COLVIN: Judge, you did want me to rest my case
13 prior to that in front of the jury, right?

14 THE COURT: Yes, sir, when we call - when we come
15 back, we'll rest the case and I'll tell them and I'll just
16 tell them that the evidence has ended, the case isn't over,
17 that we're going to have the closing arguments, talk to them
18 just real briefly, then we'll go into the closing arguments.
19 State'll give theirs, you'll give yours and I'll charge them
20 the law and then we'll submit it to the jury, but we will
21 certainly do that when we come back in.

22 MR. COLVIN: Thank you, Judge.

23 THE COURT: All right?

24 MS. COTÉ: Thank you.

25 THE COURT: Thank you all very much.

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1 OFF THE RECORD

2 (On the record.)

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right, Solicitor, you ready to go
6 forward?

7 MS. COTÉ: Yes, Your Honor.

8 THE COURT: All right, Mr. Colvin?

9 MR. COLVIN: Yes, sir.

10 THE COURT: All right, ask the jury to come in please,
11 ma'am.

12 (Whereupon the following takes place in the presence of
13 the jury).

14 THE COURT: All right, Mr. Colvin?

15 MR. COLVIN: Thank you, Your Honor. I realize it's the
16 Defense's time to go forward, and at this time since my client
17 has nothing to prove, that the burden is on the State and not
18 my client, the Defense rests.

19 THE COURT: All right, very good, sir.

20 All right, all right, ladies and gentlemen, you have
21 heard all the evidence in this particular case. There will be
22 no other evidence presented in this particular matter, but the
23 case is not over with. What we have remaining are the closing
24 arguments of the attorneys and then I'm going to give you the
25 law that you're going to apply to the facts that you find to

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1 be true in this particular matter. Now, please remember what
2 I told you at the very beginning, the closing arguments aren't
3 evidence, can't be considered by you as evidence. They're
4 important. They're each side's summation to you of what they
5 believe the evidence has shown to you during the course of the
6 trial. Remember, of course, that you are the ultimate judges
7 of the facts of this particular case. So, with that, we'll
8 turn it over to the attorneys for the closing arguments.
9 Solicitor?

10 MS. COTÉ: Thank you, Your Honor.

11 THE COURT: Yes, ma'am.

12 MS. COTÉ: Azikiwe Archie is a salesman. He's not
13 the kind of guy though that's going to sell you CDs or shoes
14 or even a new car. The merchandise he's selling is illegal
15 crack cocaine. I ask that you look at all of the evidence
16 that we've heard in the past day and a half as pieces of a
17 puzzle, pieces of a puzzle that fit together to reveal a
18 bigger picture.

19 First pieces of the puzzle we heard from were the law
20 enforcement officers in the case, Sergeant Geno, Corporal Ward
21 and Clint Sawyer, who's formerly with law enforcement and he's
22 since left and gone on to do other things. First you heard
23 from Geno and he gave us an overview of how these undercover
24 operations take place. They get in touch with the
25 confidential informant. The confidential informant calls

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1 somebody he knows he can buy drugs from. They set up the drug
2 buy. They go to the location. They place a wire on the
3 Defendant [sic] and then send them in to meet with the seller.
4 Then one of the officers monitors that audio to make sure
5 everything's going right, that nothing's going wrong, the
6 confidential informant isn't in danger and there's usually
7 some other people monitoring things from another location and
8 he told - and Geno told you that's what happened in this case.

9 He, he and Clint Sawyer went to George's Restaurant
10 because they knew it was nearby where the Ball and Cue was
11 located where the buy was supposed to take place. Maybe they
12 were hoping they could see the Defendant drive by, but what
13 they saw was just a coincidence and a happy coincidence for
14 them because they were able to see way more than they ever
15 thought they were going to. Jason Ward stayed behind. He was
16 still behind the Ball and Cue doing surveillance, listening to
17 that audio as it played out, and he was able to keep Geno and
18 Sawyer up to date on what was going on, what locations they
19 were going to because things were changing.

20 And you heard Sawyer testify, the last officer that
21 testified, he told you that he had known the Defendant in the
22 past and he was able to identify him when they saw him get up
23 in the restaurant. About the same time that the buy was
24 supposed to be going on, about the same time that Ward had
25 told him that the buy was moving to the Money Saver, which is

1 right next to George's Restaurant, and they saw the Defendant
2 get up, phone to his ear and head out the door. They were
3 sitting by a window that looked out onto the Money Saver
4 parking lot and you'll have those pictures back in the jury
5 room with you. You'll be able to see how close everything is
6 to each other and the window that they looked out onto the
7 Money Saver parking lot, and he told you that he saw not only
8 the Defendant walk in the Money Saver, but he saw the
9 confidential informant, Chris Woodsides, walk into that Money
10 Saver.

11 The next piece of the puzzle you heard from was the
12 actual confidential informant, Chris Woodsides. Now, he told
13 you essentially the same thing about - that the officers told
14 you about how everything was set up. They picked him up at
15 his house, brought him to the Ball and Cue and he told you
16 that he went in the Ball and Cue, was wearing the wire and he
17 started looking around and seeing - he knew some people in
18 there. So, he didn't want to be doing a drug deal in front of
19 people he knew. So, he went outside and called the Defendant
20 and said, "Hey, meet me outside, I know too many people here."

21 Then the Defendant called him, said, "Let's meet at the
22 Money Saver." Probably since we know he was at George's, he
23 didn't want to walk all the way down to the Ball and Cue, he
24 just wanted to walk next door to the Money Saver, get his
25 money and go about his way.

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1 So, the Defendant went to the Money Saver and he told you
2 he got there, he looked around, he didn't see the Defendant.
3 So, he called him again and he said, you know, "Where are
4 you," looking for him and he told him he was in the bathroom
5 and so he went into the bathroom. He told you he was the only
6 other person in there and he knew him because he had told you
7 he had bought from him in the past and he had his phone number
8 from the past. So, the person he called was the person that
9 showed up, this Defendant, and he identified him for you in
10 the courtroom, yes, that's the person he bought from.

11 The next piece of the puzzle you heard from was the
12 actual audio from the wire the Defendant was wearing, and this
13 helped corroborate what the Defendant told you. You could hear
14 on the wire. You could hear the background, you could hear
15 the wire first being set up and you could hear him in the Ball
16 and Cue. You heard the plates rattling. You actually heard a
17 waitress say, "Can I get you anything," and he actually
18 ordered a water while he was sitting in there. Then you hear
19 him call the Defendant, tell him that he knows people. You
20 hear the door open and him go outside. You hear him
21 whistling. He's waiting, waiting for the Defendant. Then he
22 finally gets the phone call to go to the Money Saver and you
23 hear him walking down the street, going in the Money Saver and
24 you hear him call the Defendant, "Where you at," and says the
25 bathroom and I think the - you actually hear the CI echoing,

1 "Bathroom," and then he goes in there and you hear that door
2 open and just as he says he went in the bathroom and I asked
3 him, "What's that noise?" He said, "Going in there, meeting
4 the Defendant," and you didn't hear much when they were
5 together and Geno told you that's normal. These drug buys
6 happen fast and drug dealers are weary of people wearing
7 wires. So, they're not going to say much, but Chris Woodsides
8 testified to you that he went in there, bought the drugs, gave
9 him \$50. He originally said 40, but when he was reminded of
10 his statement, when his mind was fresher four years ago, yes,
11 it was 50, just \$10 off anyways, but it was \$50 and he came
12 out and both - well, think about - after you think about all
13 those pieces of the puzzle and also today we heard from a
14 bunch of people from SLED, and I know that was a little
15 tedious hearing from all those forensic technicians, but one
16 thing I have to prove to you is that those drugs, that
17 evidence wasn't tampered with in any way. So, we've proved to
18 you that it went from one hand - one evidence custodian, one
19 forensic technician to the other until it reached the hands of
20 Willie Smith, the last witness who told you how he took the
21 bag that had not been tampered with, that had a heat seal on
22 it, how he took the drugs out and performed the test on it and
23 it reveled that it wasn't just a rock-like substance that
24 looked like crack cocaine, it actually was crack cocaine.

25 Now, think about all these pieces of the puzzle and think

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1 about how they fit together. We know a drug transaction
2 occurred because we heard the officer say that they searched
3 Chris before he went in to do the drug buy, he didn't have any
4 drugs on him and they gave him \$50 and they came back to him.
5 They met with him afterwards. He didn't have \$50 anymore and
6 he had drugs on him. He didn't find those drugs on the floor,
7 ladies and gentlemen, and throw his money down. A drug buy
8 happened and he bought drugs from that man, the Defendant, and
9 we have Geno and Sawyer in George's Restaurant that we talked
10 before. They saw both the Defendant and the confidential
11 informant walk into the Money Saver, further corroborating
12 what the CI tells you happened and what we're hearing
13 happening on the wire.

14 All of the pieces of the puzzle fit together. The
15 Defendant left the Money Saver at - or the George's Restaurant
16 at the exact moment that this drug buy was supposed to happen,
17 went in the Money Saver right when - right before the
18 Defendant - or right before the confidential informant went
19 in, wasn't a coincidence. He was going there to sell drugs.

20 We know Christopher Woodsides, our confidential informant
21 in this case, is not perfect. We heard from the officers that
22 drug dealers sell to people they know and people they trust
23 and Chris Woodsides was hanging out with some of the wrong
24 people. He told you that and that includes the Defendant. He
25 had bought from the Defendant in the past and the Defendant

1 had given him his phone number in the past.

2 MR. COLVIN: Your Honor, I object. As a matter of a
3 fact, the testimony was the opposite of that.

4 THE COURT: All right, Solicitor, you will confine
5 yourself to the testimony as presented in this case. The last
6 statement by the Solicitor is stricken from the record, and
7 ladies and gentlemen of the jury, you will disregard it. You
8 will not consider that in this particular matter. Thank you
9 very much. You may ---

10 MS. COTÉ: I apologize if I misstated ---

11 THE COURT: You may ---

12 MS. COTÉ: --- anything.

13 THE COURT: --- continue on, Solicitor.

14 MS. COTÉ: Thank you, I apologize if I misstated
15 anything. It's not my intention to mislead you, and if you
16 have a question about anything that was said, that's an
17 opportunity you have in the jury room, you can ask that the
18 court reporter play back some of the testimony that you heard.
19 Another option you'll have in the jury room, you can ask that
20 we play back the audio recording of the buy if that's
21 something also you're interested in listening to as you begin
22 your deliberations.

23 I ask you to use your common sense when you're
24 deliberating. That's a very important tool you have as
25 jurors. That's not something you had to check at the door

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1 when you took your oath. You can use your common sense. Ask
2 yourselves what we've learned. One, I mean, we have an audio
3 recording that matches what the confidential informant was
4 saying, and then we have eyewitnesses who see them entering
5 the building where the drug deal was to occur, and the
6 confidential informant meeting back up with them with drugs in
7 his pocket.

8 As you know, the Defendant is here charged with
9 distribution of cocaine base, and as we talked about before, I
10 have the burden of proof in this case. The State in all
11 criminal cases has to prove beyond a reasonable doubt that the
12 Defendant committed this offense. Now, a reasonable doubt,
13 the Judge will discuss this with you further when he gives you
14 his charges, and if anything I say at all about the law
15 contradicts with what he says, follow what he says as he's the
16 judge of the facts, but reasonable doubt is not proof beyond
17 any or all doubt. It's proof that leaves you firmly convinced
18 of the Defendant's guilt, and I submit to you that we have -
19 the State has proven this beyond a reasonable doubt, and I ask
20 that after you go back in the jury room and talk about all the
21 testimony and evidence you've heard and seen in the past day
22 and a half, that you come back with a guilty verdict for our
23 salesman, Azikiwe Archie, the salesman with the illegal
24 merchandise. Thank you.

25 THE COURT: All right, Mr. Colvin, your closing

1 argument, please, sir.

2 MR. COLVIN: Thank you, Your Honor, may it please the
3 Court?

4 Ladies and gentlemen, when I first spoke to you yesterday
5 afternoon, I told you that this case was going to hinge on the
6 credibility of Christopher Woodsides. Each of the law
7 enforcement officers, that would be Sergeant Geno and Agent
8 Ward and former Officer Sawyer, each of them testified that
9 they did not see Azikiwe Archie sell any drugs to Christopher
10 Woodsides. I think you probably recall that testimony. As a
11 matter of a fact, I think it was Sergeant Geno who testified
12 that he searched Mr. Woodsides to see if he had kept some of
13 the drugs for himself instead of turning all of them in that
14 he supposedly had bought from Mr. Archie. He searched him
15 because he didn't trust him.

16 He also testified, Sergeant Geno did, that they had
17 furnished money where they took down the serial numbers so
18 they could prove what happened. Of course, nothing came of
19 that. They, they might as well not have even recorded the
20 numbers because they didn't, they didn't go and try to find
21 the money. So, once again, they're relying on the word of
22 Christopher Woodsides. They didn't even bother to check Mr.
23 Woodsides' cell phone records or Mr. Archie's cell phone
24 records, a very simple thing to do. They could have confirmed
25 whether or not Mr. Woodsides actually called Mr. Archie or

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1 not. They did not confirm that and it was certainly within
2 their power. That was admitted on the stand. So, we've got
3 no cell phone records. We've got no recorded serial numbers
4 on the money. So, none of that did any good.

5 You heard the conversation on the DVD or whatever you
6 call these things, what are these CDs, I guess. You heard
7 that. I don't think you heard anything on there that would
8 identify Mr. Archie, but it identified Mr. Woodsides, and he
9 was talking to somebody, but there was nothing whatsoever that
10 I heard that would identify Mr. Archie. So, the serial
11 numbers didn't do any good. The cell phone records, we don't
12 have them. Wearing the wire didn't even do any good. I mean,
13 you couldn't do anything to identify - couldn't tell anything
14 to identify Mr. Archie.

15 The Judge is going to instruct you on the law, and as Ms.
16 Côté said, I'm going to echo her thoughts, if I misstate
17 something, certainly it's going to be the Judge that you
18 listen to and not me as far as burden of proof and some of
19 these other definitions such as reasonable doubt. Nobody can
20 be convicted in this state except upon competent evidence and
21 beyond a reasonable doubt. I believe that Judge John will
22 tell you that any doubts that you may have should be resolved
23 in favor of the Defendant.

24 You may recall that I didn't try to trick Mr. Woodsides.
25 I gave him at least two opportunities. I said, "Are you

1 absolutely certain that your testimony has been not only
2 truthful, but accurate," and twice he said, "I'm sure.
3 Everything I said has been truthful and accurate." Well, we
4 found out that was not the case. We found out that he either
5 misspoke or lied about the amount of money on one occasion or
6 the other and he admitted that one of those two things
7 happened but he wasn't correct. He wasn't truthful and he
8 wasn't accurate and I gave him ample opportunity to reexamine
9 what he had testified to.

10 Mr. Woodsides testified that he had smoked marijuana and
11 that he had used cocaine, but he also testified that it was
12 part of his agreement with law enforcement when he was going
13 to be a snitch, confidential informant, whatever, part of his
14 agreement was that he would give up the names of everybody who
15 had engaged in illicit drug activity. He told you that he
16 knew two or three names, that he gave them two or three names.
17 Do you believe that? Do you believe that you smoke marijuana
18 and do cocaine and you only know two to three people, that
19 you're in a position to buy drugs as a confidential informant,
20 but you only know two or three people who have ever engaged in
21 illicit drug activity? He read the precise words. In fact, I
22 asked Mr. Geno, Sergeant Geno to read the precise language and
23 Mr. Woodsides and what they said was ---

24 MS. COTÉ: Objection, Your Honor, that document that
25 he is reading from is not in evidence.

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1 MR. COLVIN: I can comment on ---

2 THE COURT: I'm going to allow Mr. Colvin, he asked
3 the question. I'm going to allow him to comment on the
4 evidence. If you think his comments are improper, I'll hear
5 you at that point in time. You may proceed, Mr. Colvin.

6 MS. COTÉ: Okay, thank you.

7 MR. COLVIN: All I intend to do is quote precisely what
8 Sergeant Geno and Christopher Woodsides recited reading from
9 this paper, his agreement, "I shall give a sworn, complete,
10 complete and detailed statement identifying all of my
11 suppliers of drugs as well as other persons known to me who
12 are involved in illegal drug activity." Do you think he
13 really did that? Do you think he gave a complete turning over
14 of all of the names including his friends? No, he was
15 probably selective about that.

16 So, now, you might recall, I believe it was Sergeant Geno
17 who testified something to the effect, and once again, if I'm
18 mistaken, rely on your memories or as Ms. Coté said if you
19 need to have something replayed, but it's my recollection that
20 Sergeant Geno had said that depending on his level of
21 cooperation that he may get some favorable treatment on
22 pending drugs charges or pending charges, I take that back. I
23 don't know that it ever came out and I don't believe it's a
24 drug charge that he has pending. I misspoke myself just then,
25 but he did say he had pending charges and he also said that he

1 expects no favorable treatment in exchange for his testimony
2 today.

3 My question to you is why is he here? Why is he here at
4 three years and ten months after May the 4th of 2007 testifying
5 at all? He told you he'd given up any hopes of being a law
6 enforcement office. He told you that he does have pending
7 charges that he's going to have to face in this courtroom, but
8 he told you he doesn't expect any favorable treatment. Do you
9 believe that?

10 You know, someone once told me that if you want to know
11 which way the wind is blowing you don't look at the trunk of
12 the tree. It's not going to move. You look at the leaves and
13 you look at the small limbs and twigs, that's how you find out
14 which way the wind is blowing, not looking at the trunk. We
15 already know that he wasn't truthful about the money. I
16 suspect that he was not truthful about the number of people
17 that he had obligated himself to turn in. He said he only
18 knew two or three. It's kind of hard to believe that he was
19 not expecting some favorable treatment for what he did in
20 testifying against Mr. Archie. That's which way the wind's
21 blowing. These are the leaves that are blowing around. He's
22 not truthful. He's not a truthful person. He's not a person
23 who can be believed. This goes back to what we started with
24 yesterday afternoon. I told you it's going to rest on his
25 credibility because the officers didn't see it. They said

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1 they didn't see it. SLED, all those people came over here
2 today just to say, "Yep, that was less than a half a gram of
3 cocaine," but they also testified that they can't say that Mr.
4 Archie ever had it. They just know that they got it from
5 people in this chain of custody, one handing it to the other
6 and all they can do is say, "Yep, it's cocaine, or cocaine
7 base," 48 one-hundredths of a gram, less than half a gram and
8 that's what they were here for, but none of them could say
9 that Mr. Archie ever had it, not one of them.

10 I want to talk to you a little bit about the burden of
11 proof. You know, we talked a little bit about these scales
12 that are on my tie. Those are the scales of justice. If it's
13 a civil case, you've got to be tipped ever so slightly, 51
14 percent. We talked about beyond a reasonable doubt meaning
15 first and goal at the two yard line, not just across the 50-
16 yard line. It's a heavy burden, and the only way that the
17 State can carry that burden is if you believe beyond a
18 reasonable doubt what Christopher Woodsides says.

19 Ladies and gentlemen, I believe - I mean, Ms. Cote
20 talked about the reasonable doubt a little bit. She said that
21 it was a doubt for which you could give a reason I think. I
22 probably misquoted her, but there are many ways of explaining
23 what a reasonable doubt is. One way that I've heard many
24 courts explain it, and once again it will be Judge John's
25 instruction to you, but many judges often charge the jury that

1 a reasonable doubt is a doubt that would cause you to hesitate
2 to act. Now, my question to you is if you had an important
3 decision to make and you had to rely on the word of
4 Christopher Woodsides, would you hesitate to act? If he was
5 going to take your children or your grandchildren to the water
6 slide or to the beach or anywhere else, would you hesitate to
7 act if he said, "I'll take good care of your children,
8 everything will be fine." Do you trust the man? If you don't
9 trust him, you have a reasonable doubt. He has shown that
10 he's untrustworthy.

11 You are entitled to judge his credibility, which is his
12 believability, based on his demeanor. You all watched him as
13 he testified, and I know you had to check your cell phones at
14 the door, but like Ms. Côté said, nobody checked their common
15 sense at the door. Your common sense is what, based on all of
16 your life experience, allows you to make a decision or
17 determination whether or not somebody is a believable person,
18 a credible person. You saw his demeanor. I've tried to point
19 out what I think are problems that he has with credibility,
20 you know, his - whether or not he lived up to his agreement
21 with the police, whether or not he turned over all of the
22 people that he should have when he promised to, whether or not
23 he was expecting favorable treatment. He had said he was
24 absolutely certain about the money, turned out to be that
25 wasn't the case. You can't believe him.

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1 Once again, I'm asking you why is this man showing up
2 three years and ten months after this alleged incident if he's
3 not expecting something in return, which he said he wasn't.
4 Chris is a liar. That's plain and simple ---

5 MS. COTÉ: Objection, Your Honor. He can't vouch for
6 the witness in that way.

7 THE COURT: Mr. Colvin ---

8 MS. COTÉ: And that's the second time he said it.

9 THE COURT: Thank you, all right.

10 Ladies and gentlemen of the jury, the last comment by Mr.
11 Colvin is improper. You'll disregard it and you will not
12 consider it in your discussions and decision in this matter.
13 Thank you very much. You may continue, sir. Thank you very
14 much.

15 MR. COLVIN: Judge, to rephrase that, it's up to you to
16 decide whether or not he's believable. It's up to you to
17 decide whether or not you would hesitate to act based on the
18 word of Christopher Woodsides.

19 Ladies and gentlemen, Christopher Woodsides is a walking,
20 talking, breathing, living reasonable doubt. He is the only
21 person who has testified through direct knowledge that Mr.
22 Archie sold him a half a gram of crack almost four years ago.
23 The only person who had actual, direct knowledge of that.
24 Christopher Woodsides could have been playing these policemen
25 like a radio. He could have, he could have bought that crack

1 when he was at the Ball and Cue and then said, "Okay, now I'm
2 going to move over to the money man because I see too many
3 people that I know over here," and he could have bought it
4 right there at the Ball and Cue. We don't know that he
5 didn't. We have to take his word for it and you have to judge
6 how good his word is. Chris could have been devious enough so
7 that when he saw Mr. Archie coming into the Money Saver, he
8 says, "Ah, here's somebody I can pin it on right here." You
9 don't know that he didn't. You can't believe that he bought
10 the drugs from Mr. Archie.

11 You took an oath before this case ever started. It's a
12 solemn oath and it's an oath that you would follow the
13 instructions of Judge John which he's going to give you in
14 just a few minutes here, I promise, and you would at this very
15 moment the whole time this trial's been going on, I think he
16 told you to begin with you were supposed to presume the
17 innocence of Mr. Archie. Like I said, he's been draped in a
18 cloak of innocence since he walked in this courtroom and that
19 presumption of innocence remains with him until such time, if
20 it should happen, that you decide that, no, beyond a
21 reasonable doubt, the State has proved its case. We don't
22 think that's happened. He is still presumed to be innocent.
23 You will be instructed to resolve any doubts in his favor.
24 You will be instructed by the Judge as to what reasonable
25 doubt is and to what, what the burden of proof is, you know,

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1 beyond a reasonable doubt.

2 I'm just going to ask you to - each of you be true to
3 your oath. Everybody's vote counts the same. Everybody's
4 entitled to his or her own opinion and nobody can question
5 your opinion. It's you who has been asked to decide who we
6 believe and who we don't believe, what we believe and what we
7 don't believe. That is not going to be taken from you by
8 anybody, not by the foreperson of this jury or anybody. Each
9 of you is entitled to your opinions, so don't go along to get
10 along. Observe your oath. Be true to it and return what I
11 think is the appropriate verdict in this case, not guilty,
12 because the State has not proven beyond a reasonable doubt
13 based on the word of Christopher Woodsides that Mr. Archie is
14 guilty. They have not proven that. Thank you. Let me - one
15 more thing, I said you probably wouldn't trust him with your
16 children or your grandchildren, you probably wouldn't trust
17 him with your dog or your cat, to feed your dog or your cat if
18 you were out of town. Would you? Thank you.

19 THE COURT: All right, ladies and gentlemen, it's now
20 my responsibility to give you the law that you're going to
21 apply to the facts as you so find them to be. The facts and
22 the evidence in this matter came from the witness stand and
23 the documents that were introduced in the evidence. That's
24 where the evidence resides in this particular matter and it's
25 your job to find that evidence which convinces you of its

1 truth.

2 I told you at the very beginning that I would not
3 indicate to you in any way what I believe the facts and the
4 evidence in this case are and I believe that I have stuck with
5 that. If you came into this pre - in this courtroom with any
6 preconceived ideas of what the law is, what it ought to be,
7 what it should be, what you hope it would be, you'll disregard
8 that. You will take the law as I now give it to you and apply
9 it to the facts that you find to be true in this particular
10 matter.

11 I told you at the very beginning that one of your jobs
12 and duties in this matter was to judge the credibility and
13 believability of witnesses that have testified before you in
14 this particular matter. In doing so, you can believe the
15 testimony of one witness against several or several against
16 one. You can believe a portion a particular witness's
17 testimony and disregard the remaining portion of it. If
18 you've got a good and sound reason for doing so, you could
19 disregard in its entirety the testimony of a particular
20 witness.

21 Now, how do you judge the credibility or believability of
22 the witnesses? You look at whether or not that witness has
23 exhibited to you any kind of interest, motive, bias, prejudice
24 that they might have in giving you the testimony they gave you
25 from the witness stand. Obviously, you consider the

Charge

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1 opportunity for knowledge. How did they come about that
2 information that they gave you from the witness stand?
3 Regarding this particular matter, your objective, ladies and
4 gentlemen, is to find the truth and then to weigh that
5 evidence you find to be true against the State's burden to
6 prove the Defendant guilty beyond a reasonable doubt. You
7 don't have any friends to reward. You don't have any enemies
8 to punish. Your verdict can't be the result of any kind of
9 passion, prejudice or sympathy. It's got to be an examination
10 of the facts and evidence in this case. Find the evidence
11 that convinces you to be true and then weigh that evidence
12 against the State's burden to prove the Defendant guilty
13 beyond a reasonable doubt.

14 In this case, I qualified one witness to give his opinion
15 in this matter. Sometimes they're called expert witnesses.
16 We normally don't allow people to give their opinions. They
17 must testify as to what they actually know, what they actually
18 saw, what they heard, what took place in their presence. Some
19 witnesses by their training, expertise, knowledge in a
20 particular field, we may allow them to give their opinion.
21 Just because I qualified someone to give their opinion doesn't
22 give them any special status. You weigh all the evidence the
23 same. You look at all the evidence the same and judge their
24 credibility and believability.

25 Two types of evidence are presented in virtually every

1 single case that's presented and in this case there's no
2 difference. They're called direct and circumstantial evidence.
3 Now, direct evidence, that's the testimony of a person who
4 asserts or claims to have actual knowledge of a fact.
5 Circumstantial evidence is proof of a chain of facts
6 indicating the existence of a fact. The law doesn't make any
7 distinction between direct or circumstantial evidence. You
8 look at all the evidence the same. You weigh all the evidence
9 the same. You find that evidence which convinces you of its
10 truth.

11 The Defendant in this case did not testify. I tell you,
12 I instruct you and emphasize to you the fact the Defendant did
13 not testify is not a factor in this case. It may not be used
14 by you in any way in making your decision in this case. You
15 may not talk about it in the jury room. It is not part of
16 this case. Every Defendant, no matter what crime they may be
17 charged with, has the constitutional right to remain silent
18 and the assertion of that right cannot be used against them in
19 any way.

20 The burden of proof, as I've told you, always is and
21 remains on the State of South Carolina to prove the Defendant
22 guilty beyond a reasonable doubt. The Defendant pled not
23 guilty to the crimes and that puts the burden of proof on the
24 State. The Defendant is presumed innocent of the crimes until
25 and if you find the State has produced to you sufficient

Charge

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1 evidence which convinces you of its truth and you find that
2 the State has proved the Defendant guilty beyond a reasonable
3 doubt by that evidence you find to be true in this particular
4 matter. That presumption of innocence didn't end at the
5 trial, the start of the trial. It hasn't ended now. It only
6 ends when or if you find the State has produced to you
7 sufficient evidence which convinces you of its truth and which
8 you believe that the State has proved to you the guilt of the
9 Defendant beyond a reasonable doubt.

10 Reasonable doubt, a kind of doubt that would cause an
11 ordinary, reasonable person to hesitate to act. Proof beyond
12 a reasonable doubt is proof that leaves you firmly convinced
13 of the Defendant's guilt. Now, there are very few things we
14 can know with absolute certainty, and the law doesn't require
15 the State of South Carolina to give you that kind of proof.
16 What is required is that based upon your consideration of the
17 evidence, if you are firmly convinced that the Defendant is
18 guilty of the crime charged, you must find the Defendant
19 guilty. On the other hand, based upon your view of the
20 evidence, if you are not firmly convinced the Defendant is
21 guilty of the crime charged, you must give the Defendant the
22 benefit of the doubt and find him not guilty.

23 The Defendant in this particular matter is charged with
24 the crime of distribution of cocaine base. The State has to
25 prove beyond a reasonable doubt that the Defendant distributed

1 cocaine base. Distribute means to deliver or to attempt to
2 transfer a drug other than by administering or dispensing like
3 a doctor. Deliver means to actually or attempt to transfer a
4 drug. A transfer can involve an exchange for money, a barter
5 or a gift. There does not have to be anything given in
6 exchange for drugs for a transfer to constitute distribution.

7 That, ladies and gentlemen, is the law that you're going
8 to apply to the facts that you find to be true in this
9 particular case. Now, the Court has prepared for you a
10 verdict form to aid you in writing your unanimous verdict in
11 this particular matter and it's very straightforward. It's
12 got the caption of the case. It's got distribution of cocaine
13 base, on the charge of distribution of cocaine base, we, the
14 jury, by unanimous consent, find the Defendant, got two
15 choices. I've put one before the other, obviously you don't
16 assign anything to that, not guilty or guilty.

17 Now, Madam Forelady, when your jury well and truly
18 deliberates this case and reaches its unanimous decision, you
19 check the appropriate block, whichever one it is, whichever
20 one the verdict is that everybody agrees to and then you sign
21 your name and put today's date and you knock on the door and
22 let the bailiff know that you've reached a unanimous verdict
23 in this particular matter.

24 Now, I've said unanimous, I don't how many times I've
25 said it. It means exactly what you think it means. It means

Charge

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1 twelve-zero. It's doesn't mean eleven-one, ten-two, any
2 combination thereof. Whatever verdict you arrive at, whatever
3 it is, everybody has to agree. It has to be twelve-zero,
4 everybody agrees that's their verdict.

5 So, what I'm going to have you do is go back to your jury
6 room. Do not begin your deliberations until the bailiff hands
7 to you the evidence and the verdict form. When the bailiff
8 hands to you the evidence and the verdict form, then you may
9 begin your deliberations.

10 Madam Forelady, please take your jury to the jury room.
11 Thank you very much.

12 (Whereupon, the following takes place outside the
13 presence of the jury).

14 THE COURT: All right, additions, deletions,
15 exceptions to the charge from the State?

16 MS. COTÉ: None from the State, Your Honor.

17 THE COURT: From the Defense?

18 MR. COLVIN: No objections or ---

19 THE COURT: All right, sir, very good.

20 MR. COLVIN: --- to your charge, thank you.

21 THE COURT: All right, thank you, sir.

22 All right, if you would, Solicitor and Mr. Colvin, you
23 all come up and look at the exhibits and make sure we've got
24 the right exhibits and then the bailiff will take them into
25 the jury room and then we'll be at ease till the jury needs

1 us.

2 MS. COTÉ: We've actually already examined the
3 evidence, Your Honor, and approved it. So, it can go on in.

4 THE COURT: All right, very good.

5 MS. COTÉ: Thank you.

6 THE COURT: All right, Madam Bailiff, if you will take
7 all the exhibits and the verdict form into the jury and tell
8 them to begin their deliberations, please.

9 All right, as said we'll be at ease till the jury needs
10 us then. Thank you very much.

11 MS. COTÉ: Thank you, Your Honor.

12 (Deliberations begin at 11:10 a.m.)

13 OFF THE RECORD

14 (On the record.)

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

17 THE COURT: All right, Solicitor, do you have that
18 information?

19 MR. HIXSON: I do, Your Honor.

20 THE COURT: All right.

21 MR. HIXSON: Do you want to put a caption on this case,
22 Your Honor, or you're already - just what do you want for the
23 record.

24 THE COURT: We're in the matter of the State of South
25 Carolina versus Mr. Azikiwe A. Archie and some matter has come

Juror Questioned

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1 to the Court's attention regarding whether or not a juror who
2 is sitting on this particular case truthfully answered
3 questions posed by the Court to all jurors when they were
4 sworn or before they were sworn in this particular case when
5 they were selected for this particular case.

6 All right, Solicitor, be glad to hear from you.

7 MR. HIXSON: Your Honor, it's come to our attention
8 that the individual in question, I'm not sure of the juror's
9 name or the juror's number, Your Honor.

10 THE COURT: All right, well we need to put that on the
11 record.

12 MS. COTÉ: I believe it's juror and if Ms. Hurley can
13 correct me, it's Juror 137. Is that correct?

14 THE COURT: What's the juror's name?

15 MS. COTÉ: It's Patience ---

16 THE COURT: Patience Holmes.

17 MS. COTÉ: --- Holmes.

18 THE COURT: Patience Holmes, all right, very good.

19 MR. HIXSON: Your Honor, it has come to our attention
20 after the jury was sent out to deliberate by Your Honor that
21 Ms. Holmes has a child in common with Levar Reed. Mr. Reed
22 was before the Court on January 22 - on January 27th, Your
23 Honor, in front of Your Honor, and he entered a guilty plea on
24 that day, January 27th, 2011, to a distribution of marijuana or
25 other controlled substances, zero to ten years, second offense

1 penalty, Your Honor. That was 2010-GS-22-847. Mr. Reed was
2 accompanied by several females, and we believe one of those
3 individuals - it was a rather contentious guilty plea outside
4 the courtroom, Your Honor. Julian Hanna represented him at
5 that time. I went down, per Your Honor's request, pulled that
6 file, took a look at it. I have the copies of the sentencing
7 sheet with Your Honor's signature on the bottom to
8 substantiate that.

9 THE COURT: All right, sir.

10 MR. HIXSON: Upon review of the file, and additionally
11 we have during one of our roll call meetings, there is a note
12 from Mr. Reed that claims that he needed to be excused from
13 roll call because he was at the hospital with his fiancée
14 with child. We excused him based on
15 that, and in that Mr. Reed is calling this lady in question
16 his fiancée. We think that probably would about come as close
17 as possible to Your Honor's voir dire questions relating to
18 close family members.

19 THE COURT: All right, very good. All right, do you
20 have that copy of the sentencing sheet?

21 MR. HIXSON: I do, Your Honor.

22 THE COURT: All right, can we make a copy of this
23 document, please?

24 MR. HIXSON: May I approach, Your Honor? Your Honor,
25 may I approach - know that this document, just show the Court

Juror Questioned

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1 this excuse that I was referring to in case that helps Your
2 Honor at all.

3 THE COURT: All right. All right, well let's - this
4 is one of your documents. Is that correct, Solicitor?

5 MR. HIXSON: That's correct, Your Honor.

6 THE COURT: All right, let's make a copy of this one,
7 also.

8 MR. HIXSON: Your Honor, I merely submit that to the
9 Court to indicate that it certainly appears this juror would
10 have been aware of these circumstances in court.

11 THE COURT: All right, very good. I understand that.
12 Madam Court Reporter, we're going to mark these as Court's
13 Exhibit, both those documents, yes, ma'am, the other one, just
14 as separate Court Exhibits.

15 (Court's Exhibit Number Two [Work/School Excuse] and
16 Court's Exhibit Number Three [Plea Sheet - Reed] appropriately
17 marked.)

18 THE COURT: All right, we have marked in the record as
19 Court's Exhibit Number Two the work/school excuse document
20 regarding Georgetown Memorial Hospital and then the Court
21 Exhibit Three is the copy of the guilty plea sheet of Mr.
22 Levar Markee Reed.

23 All right, what I'm going to need to do is question the
24 juror under oath as trying to get to the bottom of these
25 circumstances. So, Madam Bailiff, if you would go to the jury

1 room and ask Juror Patience Holmes, Juror Number 137, to come
2 out and tell the forelady that they must stop their
3 deliberations. There can be no deliberations while Ms. Holmes
4 is out of the jury room.

5 (Juror Number 137, Patience Holmes, enters courtroom.)

6 THE COURT: All right, Ms. Holmes, if you'd come
7 around here, please, ma'am. All right, right there is good.
8 All right, now, ma'am, you are Juror Number 137, Patience
9 Holmes. Is that correct, ma'am?

10 MS. HOLMES: Yes, sir.

11 THE COURT: All right, very good. I'm not sure how
12 many questions I need to ask you. I'll start off with one and
13 that's - will lead to see if I need to ask you any other
14 questions.

15 Do you know an individual by the name of Levar Markee
16 Reed?

17 MS. HOLMES: Yes, sir.

18 THE COURT: All right, and what relation is Mr. Reed
19 to you?

20 MS. HOLMES: My baby's father.

21 THE COURT: All right, ma'am, and are you all engaged?

22 MS. HOLMES: No.

23 THE COURT: All right, when was the baby - the baby
24 that he is the father for, when was that baby born?

25 MS. HOLMES: In

25 MS. HOLMES: The last date that he came in.

1 THE COURT: All right, and would that have been on
2 January 27th of this year, 2011?

3 MS. HOLMES: I know it was in January, the end of
4 January, so, I guess.

5 THE COURT: All right, and that's when he came before
6 the Court and matter of a fact he came in front of me.
7 Correct?

8 MS. HOLMES: Yes, sir.

9 THE COURT: And he pled guilty to the crime of - was
10 that possession with intent to distribute or distribution,
11 Solicitor?

12 MS. COTÉ: It was actually possession with intent to
13 distribute ---

14 THE COURT: Possession with ---

15 MS. COTÉ: --- according to the indictment.

16 THE COURT: --- possession with intent to distribute
17 marijuana second offense. Is that correct?

18 MS. HOLMES: I guess, yes.

19 THE COURT: Ma'am?

20 MS. HOLMES: Yes, sir.

21 THE COURT: All right, and you were in the courtroom
22 while that took place?

23 MS. HOLMES: Uh-huh.

24 THE COURT: Is that a yes or a no?

25 MS. HOLMES: Yes, sir.

Juror Questioned

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1 THE COURT: All right, very good.

2 I asked at the very beginning and I believe the question
3 was, and obviously the record would indicate, but I, in
4 thinking back on it, I believe the question was is there any
5 member of the jury panel that's related by blood or marriage,
6 close personal friends of anybody that has had any matters
7 handled in any way by the Fifteenth Circuit Solicitor's Office
8 covering Horry and Georgetown Counties. You remember all
9 those questions I asked of the panel?

10 MS. HOLMES: Yeah, I thought it was immediate family.

11 THE COURT: All right, so you didn't stand up and tell
12 me?

13 MS. HOLMES: No, because I thought you said immediate
14 family.

15 THE COURT: All right, all right, so, you didn't think
16 the fact that he is the father of your child establishes some
17 kind of relationship between you and him?

18 MS. HOLMES: As far as immediate family, I look at it
19 as a brother, sister, mother, father. I ain't figured on my
20 baby father I'm going to stand up because it has something to
21 do with him, me and him don't have close relations like that,
22 I mean.

23 THE COURT: Well, you obviously had to have extremely
24 close relations to have a child; correct?

25 MS. HOLMES: But afterwards, sir, it wasn't nothing

1 like that.

2 THE COURT: Does he pay child support?

3 MS. HOLMES: No.

4 THE COURT: Does he visit the child?

5 MS. HOLMES: Yeah.

6 THE COURT: So, you have some contact with him?

7 MS. HOLMES: Yeah, we have contact.

8 THE COURT: All right, have you talked about this

9 situation in any way with any member of the jury in this jury

10 room?

11 MS. HOLMES: No.

12 THE COURT: Have you brought it up in any way?

13 MS. HOLMES: No.

14 THE COURT: All right, are you using that experience

15 in any to make your decision in this particular case?

16 MS. HOLMES: No.

17 THE COURT: All right, how do you feel about the

18 Solicitor's Office and how they prosecuted Mr. Reed?

19 MS. HOLMES: I mean, it was fair.

20 THE COURT: All right, weren't there some issues

21 before the guilty plea took place? Weren't there some ---

22 MS. HOLMES: Between him. I had it and I didn't have

23 anything to do with that. If anything, I was rooting for him

24 to go forward and get everything out the way. I never went

25 against any rulings that you all made towards him.

Juror Questioned

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1 THE COURT: All right, so, you weren't involved in the
2 discussions in any way with the Solicitor's office?

3 MS. HOLMES: No, I was not around when - well, with the
4 Solicitor when she talked to the family it was only to see if
5 he could - if she could push the court date back until I had
6 the baby.

7 THE COURT: Okay.

8 MS. HOLMES: But other than that, I didn't have any
9 dealings with the whole sentencing or ruling or anything like
10 that.

11 THE COURT: All right, you understand my instructions
12 that that situation cannot in any way effect your decision in
13 this case. Do you understand that?

14 MS. HOLMES: Yes, sir.

15 THE COURT: All right, it can't impact it in any way.
16 Can you stand there in front of me right now and remember
17 you're under oath and violation of that could subject you to a
18 criminal violation, going to the Department of Corrections.
19 You understand that?

20 MS. HOLMES: Yes.

21 THE COURT: Sir - I mean, ma'am, yes or no?

22 MS. HOLMES: Yes, sir.

23 THE COURT: All right, so, you are telling me as you
24 stand here and in your deliberations in this particular case
25 that involves Mr. Archie it will not affect your decision in

1 any way whatsoever?

2 MS. HOLMES: No, I don't believe it would.

3 THE COURT: I'm sorry, I don't understand your answer.

4 MS. HOLMES: No, sir; no, sir.

5 THE COURT: It's not going to affect your decision in
6 any way?

7 MS. HOLMES: No, sir, that's a whole different
8 situation.

9 THE COURT: All right, and you don't have any feelings
10 one way or another as against the Solicitor's Office in this
11 particular matter involving Mr. Archie?

12 MS. HOLMES: No.

13 THE COURT: All right, ma'am.

14 Further questions from the State?

15 MS. COTÉ: No further questions at this time, Your
16 Honor.

17 THE COURT: Mr. Colvin, do you have any questions that
18 you would like to ask?

19 MR. COLVIN: No, Your Honor, thank you.

20 THE COURT: All right, all right, I'm going to
21 instruct you, Ms. Holmes, that again you obviously cannot use
22 that situation involving Mr. Reed to affect your decision in
23 any way in deciding the case against Mr. Archie. You
24 understand that; correct?

25 MS. HOLMES: Yes, sir.

Juror Questioned

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1 THE COURT: And you are under obligation not to reveal
2 or talk about that situation at all in, any kind of mention at
3 all to any other member of the jury that's in the jury room.
4 Do you understand that?

5 MS. HOLMES: Yes, sir.

6 THE COURT: And you're telling me you have not done
7 that. You have not talked about that particular case.

8 MS. HOLMES: No, you can ask them, sir, I haven't
9 mentioned anything about that.

10 THE COURT: All right, I'm speaking with you, okay.
11 I'm taking your answers as you give them to me. You know, I
12 respect the answers that you've given to me, but I have an
13 obligation to make sure that we're dealing with the facts of
14 this particular case and nothing else impacts this case other
15 than the facts of this particular case and you understand
16 that?

17 MS. HOLMES: Yes, sir.

18 THE COURT: All right, very good. All right, thank
19 you, ma'am. You can go back and have a seat with the jury.
20 Remember you can't talk about this. Thank you, ma'am.

21 (Juror 137, Patience Holmes, exits courtroom.)

22 THE COURT: All right, Solicitor, let me hear from
23 you.

24 MS. COTÉ: Your Honor, I don't think that either side
25 in this case can have a fair trial with her on the jury. So,

1 the State would move for a mistrial at this point. I
2 appreciate the questions Your Honor asked her regarding
3 this topic, but based on her reluctance to answer these
4 questions pertaining to her relationship to a former Defendant
5 of the prosecutor's office, as well as the questions involving
6 child care and school that she failed to answer yesterday that
7 came before the Court yesterday afternoon, I don't believe
8 she's a reliable juror and I don't believe she can be
9 impartial towards the State. Obvious that - it's obvious that
10 she still has a relationship with the Defendant who was
11 sentenced in front of Your Honor just a short month ago. She
12 named her after him, as well as she did come to court
13 with him and witness the proceedings that occurred between her
14 - the father of her child, the Solicitor's Office and Your
15 Honor and I just don't think that there's any way that she can
16 be impartial in this proceeding before Your Honor today.

17 THE COURT: All right, Mr. Colvin?

18 MR. COLVIN: Thank you, Your Honor. Judge, I oppose
19 the motion for a mistrial. During the break, I checked with
20 the court reporter and Ms. Hurley tells me that she had
21 checked the testimony and that the voir dire - not testimony,
22 but your voir dire and I think she said specifically you said
23 have you or a member of your immediate family ever been
24 prosecuted by the Solicitor. I think that was the specific
25 language according to Ms. Hurley and I think that she did

1 answer that question truthfully and I believe that any
2 violation of the spirit of that voir dire has been addressed
3 and handled by your curative instructions to her and your
4 questioning of her and I would oppose a mistrial being
5 granted.

6 THE COURT: All right, sir.

7 Madam Court Reporter, did you look it up?

8 (Court Reporter and Court confer.)

9 THE COURT: Thank you, ma'am. The test to determine
10 whether sound grounds exists for declaring of a mistrial after
11 a jury is sworn is whether the mistrial was dictated by a
12 manifest necessity or the ends of public justice, the latter
13 being defined as the public interest in a fair trial
14 designated to end in just judgment. Manifest necessity is not
15 a standard that can be applied mechanically or without
16 attention to the particular problem confronting the trial
17 judge. Further, the word necessity is not to be interpreted
18 literally. Rather there need only be a high degree of
19 necessity in order to conclude that a mistrial is appropriate
20 under the circumstances. Whether a mistrial is mandated by a
21 manifest necessity is a fact of specific inquiry. Barring
22 further evidence to be presented in this matter, the Court is
23 not going to declare a mistrial in this particular matter.

24 All right, Solicitor, are you prepared to play the audio?

25 MS. COTÉ: Yes, Your Honor, the audio - the actual CD

1 is in with the jury, but the system has been set up and we'll
2 just need the bailiff to ---

3 THE COURT: To secure the CD ---

4 MS. COTÉ: Yes, sir.

5 THE COURT: All right, Madam Bailiff, ask the entire
6 panel to come out to - into the courtroom to and occupy their
7 seats, please, ma'am.

8 (Whereupon, the following takes place in the presence of
9 the jury at 12:22 p.m.)

10 THE COURT: All right, Madam Forelady, you, on behalf
11 of the jury, had sent a note to the Court detailing certain
12 questions. I will tell you as to the questions you asked,
13 those are fact-related questions. I instruct all the members
14 of the jury, you have heard all the evidence in this case.
15 You must base your decision, your unanimous decision based on
16 the evidence that has been presented in this case and from no
17 other source. You cannot rely on anything that is outside of
18 the facts and evidence in this case. You must make your
19 decision on the facts and the evidence that have been
20 presented, not any other extraneous matters that are not in
21 the record. So, the questions you asked cannot be answered by
22 the Court.

23 As to the audio, we'll be glad to play that for you if
24 that is the request of the jury. Is that the request of the
25 jury at this time to play the audio?

Question from Jury

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1 FORELADY: Yes, Your Honor.

2 THE COURT: All right, we need Mr. Bailiff, if you'll
3 go in and get that particular CD. You all have got the
4 exhibits in there. So, we'll need to get that from the jury
5 room.

6 All right, if you would hand that to the Solicitor, Mr.
7 Bailiff, so she can put it in the computer, please.

8 (State's Exhibit Number Seven played in open court.)

9 THE COURT: All right, Madam Forelady, that's the
10 entirety of the audiotape that we've replayed. So, I'd ask
11 you to go back to your jury room and resume your
12 deliberations. The Clerk of Court has ordered lunch for you
13 all. I expect it to come sometime after one o'clock. I'm not
14 sure exactly when, but whenever it comes you all just sit and
15 enjoy that. You might want to take a short break and enjoy
16 lunch and then resume your deliberations. All right?

17 Everyone else remain seated. Thank you very much.

18 (Whereupon, the following takes place outside the
19 presence of the jury).

20 THE COURT: Mr. Bailiff, will you secure that CD from
21 the Solicitor and give it back to the jury, please, sir?

22 We'll be at ease till the jury needs us. Thank you very
23 much.

24 MS. COTÉ: Thank you, Your Honor.

25 OFF THE RECORD

1 (On the record. Question from Jury at 2:10 p.m.)

2 THE COURT: All right, let's go to Mr. Colvin. The
3 jury has asked to have replayed for them the testimony of
4 Officer Geno; and so, as I understand it, the Court Reporter's
5 prepared to do that. So, I'm going to call the jury back in
6 to have that played back for them. The State ready?

7 MS. COTÉ: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. COLVIN: Yes, Your Honor.

10 THE COURT: All right, very good. Ask the jury to
11 come back in, please.

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right, Madam Forelady, I have got your
15 note that you, on behalf of the jury, would like to have the
16 testimony of Officer Chris Geno replayed again. Is that
17 correct?

18 FORELADY: Yes, sir.

19 THE COURT: All right, very good.

20 All right, Madam Court Reporter, if you would please
21 start with that, and one second before we do that, we're here
22 at your convenience. So, if we get to a point in the
23 testimony and you know that's what you wanted to hear and you
24 don't - certainly you can hear every single word of the
25 examination and the cross examination. I'm not telling you

Question from Jury

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1 that. You can hear as much of it or as little of it as you
2 want to. You all are the judge of that. So, if at any point
3 in time you want to stop, all you have to do is just raise
4 your hand and let us know. Okay? All right, thank you,
5 ma'am.

6 (Testimony of Christopher Geno played in open court. Playback
7 began at page 45 line 22 and ended at page 56, line 17.)

8 THE COURT: All right, Madam Court Reporter, can you
9 stop? All right, and that would be the testimony that you
10 would like to hear, Madam Forelady?

11 FORELADY: Yes, sir.

12 THE COURT: All right, very good, all right, if you
13 would go back to your jury room and reconvene. Thank you,
14 ma'am.

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

17 THE COURT: All right, we'll be at ease till the jury
18 needs us again. Thank you very much.

19 MS. COTÉ: Thank you, Your Honor.

20 OFF THE RECORD

21 (On the record. Verdict reached at 2:47 p.m. The
22 following takes place outside the presence of the jury.)

23 THE COURT: All right, very good, we have a verdict in
24 the State of South Carolina versus Azikiwe A. Archie.

25 All right, counsel, Solicitor, and Mr. Colvin, I

1 understand the jury has reached a verdict in the matter of -
2 regarding Mr. Archie. Is the State ready to receive it?

3 MS. COTÉ: Yes, Your Honor.

4 THE COURT: And the Defense?

5 MR. COLVIN: Yes, Your Honor.

6 THE COURT: All right, and this is something I do in
7 every single criminal case, I will just tell anyone assembled
8 or who has an interest in this particular matter that we have
9 obviously asked this jury to do a very difficult thing, that
10 is to arrive at a unanimous verdict regarding the charge as
11 against Mr. Archie. Whatever the verdict is, I do not know
12 what the verdict is, but whatever the verdict is it shall be
13 received with respect and silence. If for some reason you are
14 not able to follow this Court order and these instructions by
15 the Court you may leave the courtroom now. If you stay you
16 are bound by these instructions and this Court order. If you
17 violate them you will be detained by the Georgetown County
18 Sheriff's Deputies and a hearing will be held to see whether
19 or not the Court will hold you in contempt of court and send
20 you to the Department of Corrections for a period up to one
21 year. If anyone wishes to leave please do so at this time.

22 All right, ask the jury to come out, please.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: All right, Madam Forelady, has your jury

Verdict

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1 reached a verdict in this particular matter?

2 FORELADY: Yes, Your Honor.

3 THE COURT: All right, could you hand the verdict form
4 to the bailiff, please, ma'am? Thank you.

5 Thank you, ma'am.

6 (Court reviews verdict form.)

7 THE COURT: All right, Mr. Clerk, you may publish the
8 verdict.

9 THE CLERK: Would the Defendant please stand.

10 (Complies with request.)

11 THE CLERK: Indictment number 2007-GS-22-1204, the
12 State of South Carolina versus Azikiwe Archie, on the charge
13 of distribution of cocaine base, we, the jury, by unanimous
14 consent, find the Defendant guilty.

15 THE COURT: Very good.

16 All right, ladies and gentlemen of the jury, if this is
17 your verdict, if you would so indicate by raising your right
18 hand at this time.

19 (All jurors raise right hand.)

20 THE COURT: All right, I find every member of the jury
21 has affirmed their verdict by raising their right hand. Does
22 the State wish the jury polled?

23 MS. COTÉ: No, Your Honor.

24 THE COURT: Does the Defense wish the jury polled?

25 MR. COLVIN: Yes, Your Honor.

Polling of Jury

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1 THE COURT: All right, very good.
2 Mr. Clerk, if you would poll the jury at this time,
3 please, sir.
4 THE CLERK: As I call your name would you please stand
5 as I pose this question to you?
6 Ms. Tammy Brice, is this your verdict?
7 MS. BRICE: Yes.
8 THE CLERK: And is it still your verdict?
9 MS. BRICE: Yes.
10 THE CLERK: Thank you.
11 Mr. Willie Dereef, is this your verdict?
12 MR. DEREEF: Yes.
13 THE CLERK: And is it still your verdict?
14 MR. DEREEF: Yes.
15 THE CLERK: Thank you.
16 Mr. Floyd Linen, is this your verdict and is it still
17 your verdict?
18 MR. LINEN: Yes.
19 THE CLERK: Thank you.
20 Ms. Isabelle Boyd, is this your verdict?
21 MS. BOYD: Yes.
22 THE CLERK: And is it still your verdict?
23 MS. BOYD: Yes.
24 THE CLERK: Thank you.
25 Ms. Mary Penny, is this your verdict?

Polling of Jury

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1 MS. PENNY: Yes.

2 THE CLERK: And is it still your verdict?

3 MS. PENNY: Yes.

4 THE CLERK: Thank you.

5 Mr. Carl - help me with the last name.

6 MR. SCHWANDT: Schwandt.

7 THE CLERK: I'm sorry?

8 MR. SCHWANDT: Schwandt.

9 THE COURT: Schwandt.

10 THE CLERK: Is this, is this your verdict and is it

11 still your verdict?

12 MR. SCHWANDT: Yes.

13 THE CLERK: Thank you.

14 Ms. Melanie Bryan, is this your verdict?

15 MS. BRYAN: Yes.

16 THE CLERK: And is it still your verdict?

17 MS. BRYAN: Yes.

18 THE CLERK: Thank you.

19 Ms. Etrulie, Etrulie, can you help me with that, please?

20 MS. SUMPTER: Etrulie Sumpter.

21 THE CLERK: Etrulie Sumpter, is this your verdict?

22 MS. SUMPTER: Yes.

23 THE CLERK: And is it still your verdict?

24 MS. SUMPTER: Yes.

25 THE CLERK: Thank you.

1 Ms. Patience Holmes, is this your verdict?
2 MS. HOLMES: Yeah.
3 THE CLERK: And is it still your verdict?
4 MS. HOLMES: Yeah.
5 THE CLERK: Thank you.
6 Mr. Edward Keelin, is this your verdict?
7 MR. KEELIN: Yes.
8 THE CLERK: And is it still your verdict?
9 MR. KEELIN: Yes.
10 THE CLERK: Thank you.
11 Ms. Donna Thatcher, Thatcher, is this your verdict?
12 MS. TATCHER: Yes.
13 THE CLERK: And is it still your verdict?
14 MS. TATCHER: Yes.
15 THE CLERK: Thank you.
16 Ms. Xaviera Deas, is this your verdict?
17 MS. DEAS: Yes.
18 THE CLERK: And is it still your verdict?
19 MS. DEAS: Yes.
20 THE CLERK: Thank you.
21 Your Honor, the jury has been polled.
22 THE COURT: All right, very good. The jury having
23 been polled and affirmed their verdict, is there anything
24 further as to the jury from the State of South Carolina?
25 MS. COTÉ: No, Your Honor.

Polling of Jury

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1 THE COURT: As to the jury from the Defendant?

2 MR. COLVIN: No, Your Honor.

3 THE COURT: All right, very good.

4 Ladies and gentlemen, as your presiding judge and
5 resident judge and administrative judge of this particular
6 term I appreciate the hard work that you've put into this
7 case. If any of you are in a relationship you understand it's
8 difficult at some times to get two people to agree to
9 anything. So, to get 12 people to agree in any particular
10 matter we understand is a difficult process and I appreciate
11 what we ask you to do in this particular matter. I am pleased
12 to tell you that your jury service for this particular week is
13 now ended. We are certainly not done with criminal court.
14 All the other matters will be handled in a non-jury fashion,
15 but this is the last matter regarding criminal court and the
16 civil jury that Judge Cottingham picked satisfies his needs.
17 I want to thank you for your service. You earned an exemption
18 for three years from coming back to circuit court jury duty
19 and with that you are now excused. Thank you very much.

20 (Jury exits courtroom.)

21 THE COURT: All right, Mr. Colvin, any motions on
22 behalf of the Defense?

23 MR. COLVIN: Yes, Your Honor.

24 I would at this time renew all my previous motions, and
25 at this time I would make a motion for a new trial and that

1 motion is based specifically on the fact that Mr. Axelrod not
2 only participated in jury selection, he is the person who
3 actually made the peremptory challenges, and I believe that
4 the record would reflect that. It was only after he had
5 participated by making the peremptory challenges that the
6 State had made a motion to exclude him from participation in
7 the trial. I think, Your Honor, that has fatally flawed this
8 trial and requires a new trial because the jury selection
9 process is certainly a critical stage in the trial.

10 THE COURT: All right, sir, anything from the State on
11 that particular issue?

12 MS. COTÉ: Your Honor, we brought that to the
13 Court's, Mr. Axelrod's situation that we had a motion
14 regarding it to the Court's attention and Your Honor took that
15 into consideration and still chose to go forward with jury
16 selection at that point, assuming that you weighed all sides
17 of that when you took that into consideration. Mr. Axelrod
18 only became part of this case last Friday after it's been
19 pending since 2007. So, he has little to no role in the
20 actual preparation of this case.

21 THE COURT: All right, the - regarding Mr. Axelrod's
22 participation, the Defendant, you, Mr. Colvin, Mr. Axelrod
23 were fully aware of the State's motion prior to picking of the
24 jury. When the jury was picked Mr. Axelrod may have made
25 certain statements regarding the acceptance or the excusal of

Motions

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1 the jury but those were made in consultation, based upon the
2 Court's observance, with you and with the Defendant, the full
3 participation of the - all persons present at the table. I
4 find there is no prejudice to the Defendant. I find that the
5 selection was made with the participation of the Defendant in
6 this particular matter; and therefore, respectfully decline to
7 grant your motion.

8 Further motions and regarding the other motions that you
9 had that you had previously announced I reaffirm those prior
10 rulings in this matter and respectfully decline to grant those
11 motions in respect to your motion for a new trial. The motion
12 for a new trial is the one to be made to test the sufficiency
13 of evidence, and in this particular matter it is not my -
14 within my purview or my ability to change a verdict if the
15 Court disagreed with the verdict. I do not disagree with this
16 particular verdict, but I do find specifically that there is
17 competent evidence that sustains the jury verdict in this
18 matter. I find that there was more than sufficient evidence
19 if so believed by the jury and it must have been believed by
20 the jury to arrive at their verdict, that would cause the jury
21 to convict the Defendant of the crimes charged beyond a
22 reasonable doubt. There was more than sufficient evidence in
23 the record which would sustain the jury's verdict. I
24 respectfully decline to grant your motion for a new trial.

25 Thank you very much.

Motions

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1 MR. COLVIN: Your Honor ---

2 THE COURT: Any further motions on behalf of the
3 Defense?

4 MR. COLVIN: No further motions, Your Honor.

5 THE COURT: All right.

6 MR. COLVIN: But it is not my purpose to argue after
7 you have ruled.

8 THE COURT: All right, sir.

9 MR. COLVIN: But I would like to make - point out one
10 thing to protect myself on the record and to make the record
11 clear, but please, I'm not trying to be argumentative but
12 merely to point out that I think that the basis for your
13 excluding Mr. Axelrod was under the Code of Professional
14 Responsibility, and the, the meat of the matter was that he
15 owed his loyalty to Mr. Woodsides, and that I think that puts
16 Mr. Archie in a bad position when, when you ruled specifically
17 because he owed his loyalty to Mr. Woodsides that Mr. Axelrod
18 had participated in the case. Now, while it is true that I
19 knew that the State may move to have him removed from the case
20 that had not been done at that point. It was merely
21 speculation that they may, in fact, do that, they had not done
22 it.

23 THE COURT: All right, sir.

24 MR. COLVIN: I had not been served with any motion.

25 THE COURT: All right, and I appreciate that. We also

Motions

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1 need to state for the record that prior to this jury being
2 sworn in this matter the Court ruled on a motion by the State
3 and excluded Mr. Axelrod prior to the jury being sworn. You
4 did not at that point in time when you had the opportunity to
5 do so object to Mr. Axelrod's participation in this matter.
6 You did not raise it to the Court. You have now only raised
7 it when there is a verdict that has been rendered against the
8 Defendant in this matter when you had the full and complete
9 opportunity before the jury was sworn, before there could be
10 any possible problem with this matter, then you had the
11 opportunity to raise it. You did not do so. Again, I state
12 the Defendant fully participated in the selection process.
13 You participated in it. The Defendant participated in it.
14 The jury was sworn with that participation. It was a jury
15 that the Defendant did not object to. The Defendant raised no
16 issues with that jury panel before the jury was sworn. I
17 respectfully again deny your motion. Thank you very much.
18 Take the Defendant away.

19 MR. COLVIN: Your Honor, he hasn't been sentenced yet.

20 THE COURT: I'm sorry. All right, hold on a second.

21 Are you ready to go forward with the sentencing at this
22 point in time, Solicitor?

23 MS. COTÉ: Yes, Your Honor.

24 THE COURT: All right, is the Defense ready to go
25 forward with sentencing at this time?

1 MR. COLVIN: Yes, sir.

2 THE COURT: All right, very good. All right, well,
3 we'll do that.

4 All right, let me hear from you, Solicitor.

5 MS. COTÉ: Your Honor, at this time I'm handing up a
6 sentencing sheet as well as two certified copies of the
7 Defendant's prior conviction, prior drug convictions. The
8 first is 2002-GS-22-530, possession with intent to distribute
9 crack cocaine, and the other is 2000-GS-22-904, distribution
10 of cocaine. The first is for distribution of crack cocaine,
11 I'm sorry, and the second is for distribution of cocaine, and
12 those have both been certified as true and correct copies by
13 our Clerk of Court.

14 THE COURT: All right, and you've given copies of
15 those to Mr. Colvin?

16 MS. COTÉ: No, I do not believe I have.

17 MR. COLVIN: I haven't gotten copies yet.

18 MS. COTÉ: I'll make copies.

19 MR. COLVIN: But I, I, I saw those.

20 THE COURT: All right, let's make, let's make copies
21 right now, please.

22 MS. COTÉ: Thank you.

23 I apologize for the delay, Your Honor.

24 THE COURT: That's all right.

25 MS. COTÉ: Here are the certified copies for the

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1 Court and I am handing certified copies of those copies to Mr.
2 Colvin.

3 MR. COLVIN: Thank you very much, Ms. Coté.

4 MS. COTÉ: Thank you.

5 THE COURT: Is there anything further from the State?

6 MS. COTÉ: Yes, Your Honor, Mr. Archie does have some
7 other convictions. He has that 2000 distribution of cocaine,
8 for which he received three years suspended to 270 days
9 followed by three years probation. Then in 2002 he had a hit
10 and run with property damage and then in 2003 distribution of
11 cocaine base second for - he received a five-year sentence for
12 that, as well as a hindering officers charge that same year.
13 He also has a 2008 North Carolina conviction for second degree
14 kidnapping. Based on his prior convictions with drugs and as
15 well as other crimes the State would ask for a deviation above
16 the mandatory minimum in the range of 20 years.

17 THE COURT: All right, Mr. Colvin, let me, let me hear
18 from you, sir.

19 MR. COLVIN: Thank you, Your Honor, if it please the
20 Court.

21 Judge, Azikiwe Archie is 27 years old, lives here in
22 Georgetown. Seated here in the audience is his mother. I
23 think she's pretty distraught, and also his fiancée. Azikiwe
24 is the father of one child and he believes that he has one on
25 the way.

1 Judge, I would remind the Court that this matter occurred
2 almost four years ago, three years and ten months just about
3 to the day. Mr. Archie has had one conviction since that time
4 and that was in North Carolina and that was for a second
5 degree kidnapping which he apparently served a very short
6 sentence on that because he's been back in town for a couple
7 of years.

8 Once again I would ask you to consider that this was less
9 than a half a gram of crack cocaine for fifty bucks, and I
10 would ask you consider the relatively small amount of drugs
11 involved, the length of time since this incident, three years
12 and ten months ago. I would ask that you institute the
13 minimum sentence.

14 THE COURT: All right, sir.

15 MR. COLVIN: I don't know if Mr. Archie or anybody
16 wants to address the Court on his behalf or not. Is there
17 anything you'd like to say to the Court, Mr. Archie?

18 MR. ARCHIE: Not really.

19 THE COURT: All right, sir, thank you very much.

20 All right, Solicitor, can you tell me the date of the
21 2000 drug offense, please?

22 MS. COTÉ: Yes, sir, the, the incident date or the
23 court date?

24 THE COURT: No, no, ma'am, the date that Mr. Archie
25 appeared before Court?

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1 MS. COTÉ: September 28th, 2000.

2 THE COURT: September 28th, 2000?

3 MS. COTÉ: Yes, sir.

4 THE COURT: All right.

5 MS. COTÉ: That's what his NCIC reflects.

6 THE COURT: All right, and ---

7 MR. COLVIN: Judge, he says that's when he got out.

8 MR. ARCHIE: That's the date that I was released.

9 THE COURT: All right, let's look at this one. Well,
10 it's the same date because he got a sentence of 270 days. He
11 was given credit for jail time. The date of the sentencing
12 date is September 28, 2000, based upon the certified copy of
13 the records of the Georgetown County Clerk of Court's Office.
14 That's in 2000-GS-22-904 and says the Defendant is committed
15 to the State Department of Corrections determinate term of
16 three years. Provided upon the service of 270 days, the
17 balance is suspended with probation for three years. The
18 Defendant is given credit for 170 days of jail time and that's
19 on September 28, 2000.

20 MR. COLVIN: Yes, sir, it would appear that he had
21 maxed out his sentence there, the active sentence by the time
22 he came to court. That does appear to be what happened.

23 THE COURT: All right, the reason I'm asking this is
24 44-53-470 defines second or subsequent offense. Subsection
25 four says, "For an offense involving a controlled substance

1 other than marijuana pursuant to this article the offender has
2 at any time been convicted of a second or subsequent violation
3 of a controlled substance offense provision other than
4 marijuana," and then it goes on, then subsection B, "If a
5 person is sentenced to confinement as a result of a conviction
6 pursuant to this article the time period specified in this
7 section begins on the date of the conviction or the date the
8 person is released from confinement imposed for the
9 conviction, whichever is later." The reason I'm asking the
10 question is is this distribution of cocaine third or second?
11 The sentencing date for the one you're relying on,
12 distribution of cocaine, is September 28, 2000. Now, he got
13 three years probation. I'm trying to find a case that may
14 very well say that probation is confinement, but if he got out
15 on September 28, 2000, today is March 1st, 2011.

16 MS. COTÉ: Your Honor, but it was the State's
17 understanding that we use the incident date as being the
18 catalyst for the ten years for the prior.

19 THE COURT: "If a person is sentenced to confinement
20 as a result of a conviction pursuant to this article the time
21 period specified in this section begins on the date of the
22 conviction or on the date the person is released from
23 confinement imposed for the conviction, whichever is later."
24 He was convicted of this offense this date.

25 MS. COTÉ: Correct.

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1 THE COURT: He pled guilty on September 28, 2000.
2 Now, he got three years probation. If the three years
3 probation - again, I'm going to need to look at this case,
4 says probation is confinement that goes within the time
5 period. If not, it's not a third offense.

6 MS. COTÉ: Well, wouldn't it be the time period from
7 the time that this incident occurred?

8 THE COURT: Is that what the section says?

9 MS. COTÉ: That's ---

10 THE COURT: It doesn't say from the time that the
11 thing occurred. It says, "If a person is sentenced to
12 confinement as a result of a conviction pursuant to this
13 article the time period in this section begins on the date of
14 the conviction or on the date the person is released from
15 confinement imposed for the conviction, whichever is later."
16 That's what it says, 44-53-470, "Second or subsequent offense
17 defined".

18 PROBATION OFFICER BLAKELY: If I may interject
19 something, Your Honor, his probation - he actually went to the
20 Department of Corrections for six days and his probation began
21 on October the 6th of 2000.

22 THE COURT: And when did he end his probation?

23 PROBATION OFFICER BLAKELY: His probation was revoked.
24 He had been absconded for - let me go back because I went to
25 the Department of Corrections website.

1 THE COURT: All right, very good.

2 PROBATION OFFICER BLAKELY: Let me go back to mine real
3 quick, sir.

4 THE COURT: All right, very good.

5 MR. COLVIN: Your Honor, I would just interject the
6 ordinary meaning of confinement would certainly be at odds
7 with probation.

8 PROBATION OFFICER BLAKELY: Yes, sir, his probation was
9 actually revoked on October the 5th of 2003.

10 THE COURT: All right, and he went to the Department
11 of Corrections then on that particular offense?

12 PROBATION OFFICER BLAKELY: Yes, sir.

13 THE COURT: All right, do you have when he got
14 released on that just out of ---

15 PROBATION OFFICER BLAKELY: Yes, sir, I'll have to go
16 back to that website.

17 THE COURT: But he got revoked in 2003?

18 PROBATION OFFICER BLAKELY: Yes, sir.

19 THE COURT: All right.

20 PROBATION OFFICER BLAKELY: He got revoked October -
21 well, excuse me, May the 23rd of 2003. He was revoked May the
22 23rd of 2003.

23 THE COURT: All right, thank you, ma'am.

24 MR. COLVIN: Your Honor, with respect to that,
25 violation of probation is a separate offense and that's what

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1 he would have been incarcerated for, a separate offense of
2 violation of probation. I don't think that that would toll
3 the time.

4 THE COURT: All right, regarding this particular
5 matter I do find that probation is confinement because it is a
6 restriction of a person's freedom. I do further find that the
7 Defendant was revoked on - while he was on probation. The
8 matter went back to the original sentence that was imposed as
9 against Mr. Archie; therefore, he falls within the definition
10 of a third offense.

11 The - I saw on the sentencing sheet, Solicitor, you all
12 indicate that the minimum sentence in this matter was 15
13 years. As you know, the code section was reformed to have
14 cocaine base to be the sentence and third offense be the same
15 sentence as cocaine. When the legislature reforms a sentence
16 and lessens the sentence you cannot be punished, you get the
17 benefit of any beneficial change to the Defendant, even though
18 the date of the offense, the minimum sentence was 15 years.
19 When the law change you get the benefit of any beneficial
20 change. So, the minimum sentence in this particular matter is
21 ten years regarding distribution of cocaine base, third
22 offense, and that's what I am sentencing him under that, that
23 the sentence ranges from ten to 30 years and/or a fine up to
24 \$50,000, so the record is clear on that.

25 MS. COTÉ: Thank you, Your Honor.

1 THE COURT: I just note for the record the sentence
2 regarding distribution second is between five and 30 years,
3 the minimum sentence being five up to 30 years, the maximum
4 sentence on both of them being the same.

5 All right, regarding 2007-GS-22-1204, the State of South
6 Carolina, County of Georgetown versus Azikiwe A. Archie,
7 regarding distribution of cocaine base, third offense, the
8 sentence of the Court is the Defendant is committed to the
9 State Department of Corrections determinate term of 15 years.
10 The Defendant is given credit for the time he has already
11 served. Thank you very much.

12 MS. COTÉ: Thank you, Your Honor.

13 MR. COLVIN: Your Honor, one more matter, and this is
14 really to protect me, I think I might need to voice an
15 objection to your finding that it was a third degree rather
16 than a second - I mean, a third offense rather than a second
17 offense.

18 THE COURT: And I appreciate that. I am finding it as
19 a third offense. As to the practical effect as to Mr. Archie
20 there is no practical effect. I gave him a sentence of 15
21 years. It's well within the range of five to 30 on the
22 second, and 10 to 30 on the third. The practical effect to
23 Mr. Archie is of no consequence. I believe the proper
24 sentence in this matter was 15 years. Whether it was a second
25 or a third that was the proper sentence in this particular

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1 matter and the Court so sentenced him regarding that
2 particular issue but your objection is noted for the record.
3 Thank you very much.

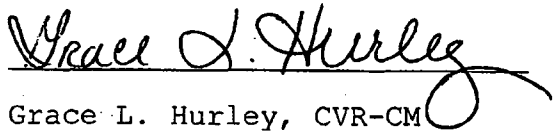
4 MR. COLVIN: Thank you, Your Honor.

5 (Adjourned.)
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Azikiwe A. Archie, held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on February 28, 2011, through March 1, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM

Official Reporter

May 31, 2011.

FORM 5

STATE OF SOUTH CAROLINA)

County of Georgetown)Azikiwe ARCHIE, #269814)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2013-CP-22-00572APPLICATION FOR
POST-CONVICTION RELIEFALMA Y. WHITE
CLERK OF COURT

2013 JUN -5 AM 10:28

FILED
GEORGETOWN COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections / Perry Correctional Institution; 430 Oaklawn Road; Pelzer, South Carolina 29942.
2. Name and location of Court which imposed sentence Georgetown County General Sessions; 401 Cleland Street; Georgetown, South Carolina 29442.
3. Name(s) of co-defendant(s) (if any) none.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-22-1204 / Distribution of Cocaine Base.
 - (b) _____

2013 JUN 5
-2013

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 1, 2011 / 15-years.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 20, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate Case No. 2011-187506
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel . see attached.
- (b) Ineffective Assistance of Counsel . see attached.
- (c) Ineffective Assistance of Appellate Counsel . see attached.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- Whether counsel failure to timely object and motion to quash the indictment where the solicitor was the sole witness before the grand jury constituted ineffective assistance?
- (a) Whether trial counsel were ineffective in failing to communicate the States initial seven-year plea offer to applicant?
- (b) Was appellate counsel ineffective in failing to raise and brief the issue of the trial judge error in admitting the crack cocaine into evidence, because the State failed to prove a sufficient chain of custody?
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO.
- (d) any other petitions, motions or applications in this or any other Court? NO.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance of Counsel/Court of Common Pleas proper for issue.
 - (b) Ineffective Assistance of Counsel/Court of Common Pleas proper for issue.
 - (c) Ineffective Assistance of Appellate Counsel/Court of Common Pleas proper for issue.
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. Richard Colvin, Public Defender / 401 Cleland Street - P.O. Box 2898 / Georgetown, South Carolina 29440.
 - ii. Breen Richard Stevens, Appellate Defender; S.C. Comm. on Indigent Defense / Post Office Box 11589 / Columbia, South Carolina 29211-1589.
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. arraignment / plea of not guilty / trial by jury / sentencing.
 - ii. direct appeal / Anders brief.
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction, sentence and fine.

Reversed.

Reversed and Remanded.

20. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA)

County of Georgetown)

VERIFICATION

I, Azikiwe Archie, #269814, 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.

Azikiwe Archie

SWORN to and subscribed before me this 31st
day of May, 2013.

Nancy M. Michael (L.S.)
Notary Public

My Commission Expires: 1-23-2023

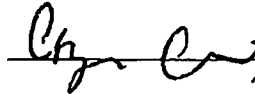
FILED
GEORGETOWN COUNTY, S.C.
2013 JUN -5 AM 10:29
ALMA Y. WHITE
CLERK OF COURT

2013-CP-22-00572

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Azikiwe Archie #269814, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
31st day of May, 2013.


Notary Public

My Commission Expires: 1-23-2023

FILED
GEORGETOWN COUNTY, S.C.
2013 JUN -5 AM 10:30
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Georgetown)

In The Court of Common Pleas

2013-CP-22-00512

Azikiwe ARCHIE, #269814)
Applicant,)

VS.)

STATE of South Carolina)
Respondent.)

ATTACHMENT TO
POST-CONVICTION RELIEF
APPLICATION
JAY WHITE
CLERK OF COURT
FILED
GEORGETOWN COURT, S.C.
2013 JUN -5 AM 10:34

NOW comes the above-referenced, APPLICANT, to state concisely the grounds on which I base my allegation(s) that I am being held in custody unlawfully, and state concisely and in the same order the facts which support each of the grounds as follows:

I.

WHETHER COUNSEL FAILURE TO TIMELY OBJECT AND MOTION TO QUASH THE INDICTMENT WHERE THE SOLICITOR WAS THE SOLE WITNESS BEFORE THE GRAND JURY CONSTITUTED INEFFECTIVE ASSISTANCE?

On May 4, 2007, the Georgetown County Sheriff's Office-Organized Crime Bureau conducted a drug transaction buy for cocaine base ("crack") with a confidential informant (buyer) to be obtained from the applicant. Tr. p. 46, line 18 - tr. p. 58, line 18. On May 23, 2007, Applicant was arrested by arrest warrant for Distribution of Cocaine Base, first offense, § 44-53-375(B)(1) [J-510455]. The Applicant was indicted on November 14, 2007 for Distribution of Cocaine Base (44-53-375(B)) by the Grand Jury of Georgetown County. Applicant was tried on February 28 - March 1, 2011, before a judge and jury for distribution of cocaine based, third offense. Applicant was convicted and sentenced to imprisonment for fifteen years.

The applicant bears the burden to prove allegation(s) in a PCR. Butler v. State, 286 S.C. 441, 234 S.E.2d 813 (1985), cert. denied, 474 U.S. 1094, 106 S.Ct. 869, 88 L.Ed.2d 908 (1986). To prove ineffective assistance of counsel, the applicant must show trial counsel's performance fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 88 L.Ed.2d 674 (1984); Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, supra.

The sufficiency of an indictment is not a matter of subject matter jurisdiction, and thus cannot be raised at anytime. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (S.C. 2005) ("[s]ubject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct

concepts." (emphasis added). An objection to the sufficiency of the indictment must be made before the jury is sworn as provided by section 17-19-90 of the South Carolina Code of Laws. An objection to the sufficiency of the indictment made after the jury is sworn is untimely. Gentry, 363 S.C. at 101-02, 610 S.E.2d at 499.

Here, in this case, trial counsel performance fell below an objective standard of reasonableness because the Solicitor's Office served counsel with a copy of the indictment on November 16, 2007 and clearly depicting that the sole witness before the grand jury on November 14, 2007 were Solicitor, J. Gregory Hembree, for the Georgetown County Sheriff's Office. Trial counsel did not object and moved to quash the indictment before the jury was sworn on February 28, 2011 satisfies the first prong of Strickland v. Washington.

In State v. Capps, 276 S.C. 59, 275 S.E.2d 872 (1981), supra, a majority of this Court strongly disapproved of the practice of a solicitor appearing as the sole witness before a grand jury unless no other practice alternative was available (emphasis added), but did not prohibit the practice. Chief Justice Lewis dissented in that case, stating that an indictment should not be based solely on the testimony of a solicitor. He reasoned that considering the authoritative nature of the relationship between a solicitor and the grand jury, the lone testimony of the solicitor as a representative of the State would be too potent to allow as the general rule.

In State v. Dawkins, 297 S.C. 386, 377 S.E.2d 298 (1987), it was held that quashing the indictment was unnecessary based on the facts of that case. However, the holding in Capps was reiterated and prosecutors were again cautioned to avoid the practice of appearing as the sole witness before the grand jury.

Because of the uncertainty and confusion that is taking place at all levels of the judiciary regarding this issue, the South Carolina Supreme Court in State v. Anderson, 439 S.E.2d 835 (1993) held that "we take this opportunity to explicitly prohibit the practice of prosecutors appearing as the sole witness before the grand jury." Id. at 836. Further stating, "As with any creation of a new liability where formerly there was none, this rule must be applied prospectively." citing (Douglas v. Florence General Hospital, 273 S.C. 716, 259 S.E.2d 117 (1979)).

In Williams v. McKie, 2012 WL 6915256 (D.S.C. 2012) (The indictments list Investigator Lesley Bryant as a witness).

The case of State v. Anderson are strikingly similar to the facts in this present case in Archie v. State, and trial counsel failure to object prejudiced his client by allowing the State to proceed to trial on an indictment where the Supreme Court clearly prohibit the practice of Solicitor's appearing as the sole witness before the grand jury. And, not having the motion to quash the indictment considered by the lower court, as well as, the appellate court's. Also, a probability that the indictment could have been dismissed had trial counsel objected and made to motion to quash, and prevented applicant from going through a jury trial in being convicted and sentenced to fifteen years imprisonment. It is believed Archie has carried his burden of the second prong of Strickland v. Washington to establish prejudice by counsel failure to object.

II.

WHETHER TRIAL COUNSEL WERE INEFFECTIVE IN FAILING TO COMMUNICATE THE STATE'S INITIAL SEVEN-YEAR PLEA OFFER TO APPLICANT?

On May 4, 2007, the Organize Crime Bureau of Georgetown County Sheriff's Office conducted a drug transaction buy with a confidential informant (buyer) to obtain cocaine based ("crack") from the applicant.

The Solicitor's Office from Nancy G. Côté, Assistant Solicitor on February 11-12, 2010 sent to trial counsel an plea offer for seven-years for Distribution of Cocaine Base, 2nd offense, and which applicant must accept the offer by February 19, 2010 or it is considered rejected and the State will not make the offer again. Should the applicant accept the offer, he or she must enter the plea before or during the February 22, 2010 term of court. On the written plea offer stated: "Please review the offer with your client, sign and date as indicated below, and return to me no later than February 19, 2010." (emphasis added). Trial counsel for assistance to my defense(s) never communicated this offer to applicant. Then, on February 28-1, 2011, a trial by jury were held for applicant and resulted in a conviction for Distribution of Cocaine Base, third offense and sentenced to fifteen years imprisonment at hard labor.

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). The Court has held that a defendant has the right to effective assistance of counsel during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E. 2d 146 (1996), overruled on other grounds by Jackson v. State, 312 S.C. 95, 535 S.E. 2d 926 (2000). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Arb. v. Côté, 372 S.C. 318, 331, 642 S.E. 2d 510, 596, cert. denied, --- U.S. ---, 1285 S.Ct. 370, 169 L.Ed. 2d 247 (2007).

To prevail on his claim of ineffective assistance of counsel, Applicant is required to prove that 1) trial counsel's performance fell below an objective standard of reasonableness and 2) but for counsel's errors, there is a reasonable probability the result at trial would have been different. Strickland v. Washington, supra; Johnson v. State, 325 S.C. 182, 480 S.E. 2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, supra.

The Supreme Court in Davie v. State, 381 S.C. 601, 675 S.E. 2d 446 (S.C. 2007) believe an adoption of a rule that counsel's failure to convey a plea offer constitutes deficient performance would be consistent with the majority of other state and federal jurisdiction. The theory underlying these decision is that such conduct constitutes under unreasonable performance under the prevailing professional standards established by the American Bar Association or state-specific ethical rules of conduct. Pursuant to these professional standards, counsel is required to fully communicate with the client so that the client can make an informed decision regarding any proposals by the State. (citations omitted); see also State v. Smalls, 613 S.E. 2d 754 (S.C. 2005) (specific stating that the defendant is check the box he chooses and then sign the sentencing sheet).

Turning to the facts of the instant case, to find that trial counsel's failure to convey the State's initial plea offer to Applicant constituted deficient performance. Because counsel failed to make any attempt to protect Applicant's interests regarding this significantly lower sentence, to conclude counsel's performance fell below the prevailing professional norms and, thus, constituted ineffective assistance.

Given to finding that trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, the question becomes whether Applicant was prejudiced by this deficient performance. The most difficult question of the analysis because a definitive method of evaluating the prejudice prong does not appear to exist in our state or other jurisdictions. Although most state courts follow the traditional, two-part Strickland test, differences appear to arise in what type of evidence must be presented to establish prejudice.

A case-by-case approach is most consistent with State v. Davie and effectively achieves the ultimate goal of assessing whether but for counsel's error a defendant would have accepted

the State's proposed plea bargain and that he would have benefited from the other. Because presumed prejudice is reserved to very limited situations, a defendant must show actual prejudice. See Nance v. Ozmint, 367 S.C. 547, 552, 626 S.E.2d 878, 880 (2006) ("Absent [three narrow circumstances of presumed prejudice identified in U.S. v. Aron, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984)], defendants must show actual prejudice under Strickland").

Applying these principles to the facts of the instant case, to conclude that Applicant has proven he was prejudiced by trial counsel's error. Initially, to conclude that the difference in the sentence Applicant received and the plea offer is proof of prejudice. In reaching this conclusion for several reasons. First, the solicitor and trial counsel both acknowledged that the State originally offered a seven-year sentence in exchange for Applicant guilty plea. Secondly, trial counsel admitting that he failed to communicate this offer to Applicant. Thirdly, both trial counsel and Applicant testify that had this offer been communicated Applicant would have accepted the plea agreement. Finally, had Applicant accepted the original offer, he would have received a significantly lower sentence than the fifteen-year sentence that was imposed.

Based on the foregoing, that counsel performance fell below the objective standards in failing to communicate the State's seven-years plea offer to Applicant. And, that Applicant would have accepted the seven-years offer, an offer that was eight years less than what Applicant received that has proven that he was prejudiced by counsel's error.

III.

WAS APPELLATE COUNSEL INEFFECTIVE IN FAILING TO RAISE AND BRIEF THE ISSUE ON THE TRIAL JUDGE ERRED IN ADMITTING THE CRACK COCAINE INTO EVIDENCE BECAUSE THE STATE FAILED TO PROVE A SUFFICIENT CHAIN OF CUSTODY?

Christopher Woodsides purchased cocaine base "crack" from Archie while acting as a confidential informant for the Organized Crime Bureau (OCB), a division of the Georgetown County Sheriff's Office.

On May 4, 2007, Woodsides paged Archie from the vehicle of OCB to arrange the drug buy. Archie called back and agreed to meet Woodsides at the convenient store called Money Saver. An officer searched Woodsides prior to the drug transaction and fitted him with a wire. Woodsides purchased drugs from Archie at the store in the bathroom and returned to the location behind the restaurant of Ball and Cue. Tr. p. 85, line 9 - tr. p. 97, line 8.

Woodsides testified at trial that after he got the drugs from Archie and going to meet the officer's with the drugs stated, "They, of course, got the drugs from me (emphasis added)." Tr. p. 89, line 21 - tr. p. 90, line 2. The Solicitor asked Woodsides did the drugs appears the same? Woodsides stated, "Besides the new paint job." Tr. p. 86, line 22 - tr. p. 88, line 10.

Agent Jason Ward testimony at trial state the CI after the drug buy met back with him, and later with Agents Chris Geno and Clint Sawyer. The CI had two separate rocks (cocaine base - "crack") in his possession and turned them over to Agent Geno. Tr. p. 73, line 18 - tr. p. 74, line 25.

Agent Chris Geno testified that the CI handed him the drugs that was in the corner of a sandwich bag that had been twist off and rip off. Tr. p. 55, lines 1-18. Agent Geno removed the drugs from the best bag, the sandwich bag and put it on the scale and weighed it, and back into the best bag. Then placed in a locked box awaiting evidence custodian to take it to SLED for their processing stages. Tr. p. 55, line 22 - tr. p. 56, line 19.

On June 1, 2007, evidence clerk, Joyce Phillips Whalen, took the drugs to SLED and given to Karonda Williams, forensic technician and she place it in the drug evidence intake storage. Tr.p. 122, line 13 - tr.p. 125, line 17; Tr.p. 128, line 8 - tr.p. 129, 21.

On July 2, 2007, forensic technician, Selena Kinard, retrieved the drugs from one locked room and placed into another locked room. Tr.p. 132, line 12 - tr.p. 134, line 6.

On September 28, 2007, forensic technician, Nikki Perry, testified that she took the drugs from the temporary evidence room and took them to forensic scientist, Willie Smith. Apparently, kept the drugs from September 28, to October 1, 2007. Tr.p. 112, line 19 - tr.p. 114, line 23. See also, SLED Chain of Custody two pages (Accordingly, Willie Smith had the drugs in his possession from September 28, 2007 to October 4, 2007). See, e.g., Tr.p. 138, line 11 - tr.p. 140, line 3; Tr.p. 142, lines 19-21.

On October 4, 2007 at 14:23 (2:23pm), forensic technician, Amy Stevens supposedly received the drugs from Willie Smith and placed in the temporary evidence room at SLED but did not testified at trial. Opposed to Willie Smith saying that Amy Stephens give the drug back to the officer of the county it came from. Tr.p. 145, lines 7-12.

On October 26, 2007, forensic technician, Selena Kinard, testified that she was the person who returned the drugs to Joyce Phillips of the Georgetown County Sheriff's Office. Tr.p. 133, line 25 - tr.p. 134, line 3.

At trial, on February 28 to March 1, 2011, Applicant ("ARCHIE") objected to the introduction of the evidence bag containing the cocaine base "crack". Applicant argued the chain of custody had not been established. The trial court overruled the objection and admitted the drugs into evidence. Tr.p. 141, lines 4-16. See also, Tr.p. 149, line 6 - tr.p. 151, line 19; Tr.p. 161, line 19 - tr.p. 163, line 4.

The jury found Archie guilty of Distribution of Cocaine Base, third offense. The trial judge sentenced Archie to fifteen years in prison. A direct appeal followed.

The appellate counsel of the South Carolina Commission on Indigent Defense (SCCID) filed an Anders brief on Applicant behalf that were unanimously denied.

Applicant argues the trial judge erred in admitting the crack cocaine into evidence because the state failed to prove a sufficient chain of custody. Applicant contend the chain of custody is incomplete and has not been established pursuant to Rule 6(b), SCRCrimP and this issue was properly preserved for appellate review.

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (to be effective appellate counsel must give assistance of such quality as to make appellate proceedings fair); Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990) (appellate counsel must provide effective assistance but need not raise every nonfrivolous issue presented by the record). In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." Strickland v. Washington, 466 U.S. 668, 685, 696, 104 S.Ct. 2052, 2063, 2069, 80 L.Ed.2d 674, 692, 699 (1984). First, the burden of proof is upon applicant to show that counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. Second, the applicant must prove that he or she was prejudiced by such deficiency to the extent of there being a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland v. Washington, *supra*. Accord Smith v. State, 309 S.C. 413, 424 S.E.2d 480 (1992).

A complete chain of evidence, tracing possession from the evidence's initial control to its final analysis, must be established as far as practicable. State v. Carter, 344 S.C. 419, 544 S.

E. 2d 835(2001). A missing link in a chain of custody creates an issue of admissibility. *Id.* If a substance has passed through multiple custodians, it must not be left to conjecture concerning who had the evidence and what was done with it between the taking and the analysis. *State v. Joseph*, 328 S.C. 352, 491 S.E.2d 275 (Ct. App. 1997).

The State presented the testimony of the first (Geno), second (Phillips-Whalen), third (Williams), fourth and eighth (Kinard), fifth (Perry) and sixth (Smith, III) links in the chain of custody. However, the State did not provide testimony from the intervening link (Amy Stephens) in the chain. Stephens received the evidence on October 4, 2007, from the forensic scientist (Smith, III) but the record does not indicate when or how Stephens came into possession of the evidence. Smith's testimony, while it explained his receipt of the evidence from Perry, did not provide for the whereabouts of the evidence for September 28 to October 4 the interval Perry, Smith or Stephens possessed it. Moreover, Woodsides stated about the drugs being them that he got from Archie, "Besides the new paint job" (emphasis added), and could not explain what [the State] had done with the evidence.

As an alternative to presenting the testimony of the intervening custodians, the State could have utilized Rule 6(b), SCR Crim P, to establish the chain of custody. See *State v. Joseph*, 328 S.C. 364, 491 S.E. 2d at 281 (stating Rule 6 does not supplant the general law governing chain of custody requirements but provides an alternate means of establishing a chain of custody). This rule allows for the admission of sworn statements in lieu of the appearance of chain of custody witnesses and provides that:

a certified or sworn statement signed by each successive person having custody of the evidence that he or she delivered it to the person stated is evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court provided: (1) the statement contains a sufficient description of the substance or its container to distinguish it; and (2) the statement says the substance was delivered in substantially the same condition as when received.

Rule 6(b), SCR Crim P.

There is no dispute that the State did not submit the testimony of each individual who handled the evidence nor did the State comply with Rule 6(b). Also, the drugs were different and not the same from May 4, 2007 to the trial date(s) of the case against Archie. The trial court, however, allowed the introduction despite the missing link in the chain and the alteration, tampering, or substitution because the State demonstrated that the evidence was the same by the time Smith received it for analysis. This was error. The only insight into the handling of the evidence by Stephens is ~~their~~ possession of the bag at some point in time by the SLED chain of custody sheet. The evidence's whereabouts is unaccounted for between September 28 to October 4, 2007. While the chain of custody "need not negate all possibility of tampering," the State is required to show that the chain is complete. *Carter*, 344 S.C. at 424, 544 S.E. 2d at 837. Moreover, it would not have been impracticable for the State to have called each custodian to testify or for the State to have submitted sworn statements from the custodians under the procedures of Rule 6(b), SCR Crim P. See *State v. Cobb*, 310 S.C. 518, 426 S.E. 2d 306 (1992) (stating the party offering evidence is required to establish, at least as far as practicable, a complete chain of evidence). Custodial signatures on an evidence bag or typewritten list to establish an adequate

chain of custody where the custodians do not provide testimony under oath or produce sworn statements pursuant to Rule 6(b), SCR Crim P. Thus, the trial court erred in admitting the crack cocaine into evidence and the trial court abuse of discretion occur in admitting the drugs in evidence over the State's witness (Woodsides) that the drugs are not the same by stating, "Besides the new paint job." State v. Hatcher, 392 S.C. 86, 708 S.E.2d 750 (S.C. 2011).

Here, the first element of Strickland is clearly met as the case law of this state is to the effect an abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. And, trial counsel objected before the admission of the evidence into evidence. Accordingly, counsel of appellate assistance was deficient in failing to raise this issue.

The standard established by Strickland is that the defendant must establish by a reasonable probability that the result of the proceeding would have been different. Strickland, supra; Egits v. Lucey, supra; Smith v. State, 309 S.C. 413, 424 S.E.2d 480, 481 (1992) (petitioner must prove there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different"). See also People v. Griffin, 178 Ill.2d 65, 221 Ill. Dec. 838, 687 N.E.2d 820 (1997) (defendant who contends appellate counsel rendered ineffective assistance, e.g., by failing to argue issue, must show that failure to raise issue was objectively unreasonable and that, but for this failure, defendant's conviction or sentence would have reversed).

Given that each of the Court's cases and Rule 6(b), SCR Crim P., have held the trial judge erred in admitting the crack cocaine into evidence because the State failed to prove a sufficient chain of custody and it is abuse of discretion to admit evidence with proof of alteration, tampering, or substitution, it is patent that if counsel had raised the issue on direct appeal, Archie would have been entitled to a reversal of the admission of the drugs into evidence and of his conviction. Accordingly, Archie has met his burden of demonstrating both that appellate counsel's performance was deficient and that, but for the deficient performance, the result of his appeal would have been different. Patrick v. State, 349 S.C. 203, 562 S.E.2d 609 (S.C. 2002); Southerland v. State, 524 S.E.2d 833 (S.C. 1999).

AziKiwe Archie #269814
Perry Corr. Inst. Q2-B-09
430 Oaklawn Rd.
Pelzer, S.C. 29669

RE: POST-CONVICTION RELIEF APPLICATION

DEAR HONORABLE CLERK,

PLEASE FIND THE ORIGINAL COPY OF APPLICANT'S PCR APPLICATION WHICH IS TO BE CLOCK STAMPED AND FILED WITH THIS COURT. IN ADDITION, PLEASE FORWARD UNTO ME A CLOCK STAMPED COPY FOR MY OWN PERSONAL FILE.

YOUR ASSISTANCE IN THIS MATTER WOULD BE HIGHLY APPRECIATED.
I THANK YOU IN ADVANCE!

S/n Archie C

Date: 5.31.13

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Azikiwe Archie, #269814,

) Case No. 2013-CP-22-572
)

Applicant,

)

v.

)

RETURN

)

State of South Carolina,

)

)

Respondent.

)

)

)

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed June 5, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In November 2007, the Georgetown County Grand Jury indicted Applicant for distribution of cocaine base, third or subsequent offense (2007-GS-22-1204). Richard F. Colvin, Esquire, represented Applicant. On February 28, 2011, Applicant proceeded to trial before the Honorable Steven H. John and a jury. On March 2, 2011, the jury found Applicant guilty as indicted. Judge John sentenced Applicant to fifteen (15) years imprisonment.

Applicant filed a timely notice of appeal. Breen R. Stevens, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on February 20, 2013. State v. Archie, Op. No.

¹ Anders v. California, 386 U.S. 738 (1967).

2013-UP-075 (S.C. Ct. App. filed February 20, 2013). The remittitur was returned to the circuit court on March 15, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel."
 - a. "Whether counsel failure to timely object and motion to quash the indictment where the solicitor was the sole witness before the grand jury constituted ineffective assistance of counsel?"
 - b. "Whether trial counsel were ineffective in failing to communicate the State's initial seven-year plea offer to applicant?"
2. "Ineffective Assistance of Appellate Counsel."
 - a. Was appellate counsel ineffective in failing to raise and brief the issue of the trial judge erred in admitting the crack cocaine into evidence because the State failed to prove a sufficient chain of custody?"

Applicant also included with his application an attachment further explaining these allegations.

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, 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.

Respondent further submits Applicant's allegation of ineffective appellate counsel is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 526; Strickland, 466 U.S. at 687.

When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

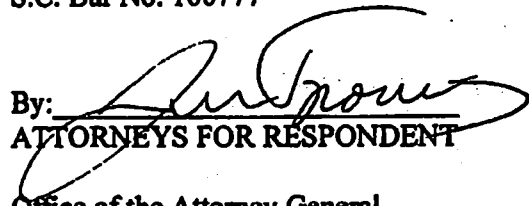
Respectfully submitted,

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Attorney General

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By: 
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Telephone: (803) 734-3737

May 20, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2013-CP-22-572

AZIKIWE ARCHIE, #269814

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan M. Shaffer, Esquire
1928 Barnwell St.
Columbia, SC 29201

DATED this 20TH day May, 2014.


Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN) CASE NO.: 2013-CP-22-572

AZIKIWE ARCHIE,)
)
 APPLICANT,)
)
VS.)
)
STATE OF SOUTH CAROLINA,)
)
 RESPONDENT.)

)

POST CONVICTION RELIEF HEARING

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Georgetown County Courthouse
Georgetown, South Carolina
on Friday, August 29, 2014, Commencing at 9:13 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

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MARKED/ADMITTED

PLAINTIFF'SPlaintiff's Exhibit Number 1
[Discovery Request Receipt]

7 /

Plaintiff's Exhibit Number 2
[Memo dated 2/11/10]

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DEFENDANT'SDefendant's Exhibit Number 1
[Response to Anders Brief]

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August 29, 2014

PROCEEDINGS

THE COURT: Are you Mr. Archie?

MR. ARCHIE: Yes, ma'am, I am.

THE COURT: Could you state your full name for the record? I don't want to mispronounce your first name.

MR. ARCHIE: Azikiwe Archie.

THE COURT: Azikiwe Archie. All right.

Mr. Archie, you are here on your application for post conviction relief. You were not transported yesterday so we continued your case until today. Mr. Shaffer is your attorney. Are you prepared to go forward at this time?

MR. SHAFFER: Yes, Your Honor. Well, I'm prepared to go forward. The one thing I would like to put on the record is whether or not he wants to waive a potential possible conflict and whether it is a conflict. The attorney I work for now is going to be a part of this case and actually helped picked the jury. And then Judge John had said that Mr. Axelrod could not be a part of the case after the jury was picked and then essentially relieved him from the case, based off of another conflict.

He has -- I don't believe any other grounds that he raises address Mr. Axelrod. Specifically, it

MIA PERRON, CVR-CM-M

-5-

Archie vs. State of South Carolina
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August 29, 2014

1 wasn't named in the -- he wasn't named in the
2 application and I don't think any of them specifically
3 address them. Obviously, he's the second chair on the
4 case and not lead counsel.

5 THE COURT: Mr. Archie --

6 Let's place him under oath.

7 -- you can stand right there. If you'll just
8 raise your right hand.

9 [Whereupon, Mr. Archie is duly sworn by the
10 clerk of court as follows: do you solemnly swear or
11 affirm that the testimony you are about to give will
12 be the truth, the whole truth, and nothing but the
13 truth, so help you God]

14 THE WITNESS: Yes, ma'am.

15 THE CLERK OF COURT: State your name, please.

16 MR. ARCHIE: Azikiwe Archie.

17 THE COURT: Mr. Archie, do you understand what
18 Mr. Shaffer just told me?

19 MR. ARCHIE: Somewhat, yes, ma'am.

20 THE COURT: So apparently Mr. Shaffer is now
21 working for the attorney that helped select your jury
22 but then Mr. Axelrod did nothing further. None of the
23 allegations that you have alleged in your application
24 pertain to Mr. Axelrod, and so Mr. Shaffer wanted to
25 bring that to the Court's attention. Are you ready to

Archie vs. State of South Carolina
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1 go forward on this matter here today?

2 MR. ARCHIE: No, ma'am.

3 THE COURT: And why not?

4 MR. ARCHIE: I haven't really had enough time to
5 go over my case with my attorney.

6 THE COURT: Well, we have all day today, so I'm
7 going to allow you a few more minutes.

8 Mr. Shaffer, you just let me know when you're
9 ready.

10 MR. SHAFFER: Yes, Your Honor, I will.

11 THE COURT: Thank you.

12 [Whereupon, a recess is taken from 9:16 to
13 9:37 a.m.]

14 [Whereupon, Plaintiff's Exhibit Number 1 is
15 marked by the court reporter]

16 [Whereupon, Plaintiff's Exhibit Number 2 is
17 marked by the court reporter]

18 THE COURT: Are we ready, Mr. Shaffer?

19 MR. SHAFFER: Yes, Your Honor.

20 THE COURT: Are you ready, Mr. Archie?

21 MR. ARCHIE: Yes, ma'am.

22 THE COURT: Call your first -- what grounds are
23 we going forward here on today?

24 MR. SHAFFER: We have three that are on the
25 application fairly clearly stated. One involves the

Archie vs. State of South Carolina
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1 indictment, the solicitor testifying in the
2 indictment; there's one that involves an un-conveyed
3 plea offer; and then ineffective assistance of
4 appellate counsel for failure to raise the issue of
5 the chain of custody.

6 THE COURT: Are you prepared to go forward on
7 those here today, Mr. Thomas?

8 MR. THOMAS: The State is prepared, Your Honor.

9 THE COURT: Mr. Archie, you were sentenced to
10 fifteen years; is that correct?

11 MR. ARCHIE: Yes, ma'am.

12 THE COURT: Were any charges dismissed, Mr.
13 Thomas? Do you recall?

14 MR. THOMAS: I'm not aware, Your Honor. There
15 might have been.

16 MR. SHAFFER: I think there was one charge from
17 about three years prior to this.

18 THE COURT: And so, Mr. Archie, you understand
19 that should I grant your conviction -- your
20 application for post conviction relief, the case
21 doesn't go away. It simply goes back to the
22 solicitor's office and they will make a determination
23 whether or not to try you again, or something else.
24 Do you understand?

25 MR. ARCHIE: Yes, ma'am.

Archie vs. State of South Carolina
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1 THE COURT: So you're facing a potential of ten
2 to thirty. You were sentenced to fifteen years in
3 March of 2011. Your max-out date I show in Turbeville
4 is 2023. You understand that fifteen years is less
5 than thirty?

6 MR. ARCHIE: Yes, ma'am.

7 THE COURT: You still wish to go forward here
8 today?

9 MR. ARCHIE: Yes, ma'am.

10 THE COURT: You understand the benefits of going
11 forward here today, as well as the potential
12 consequences?

13 MR. ARCHIE: Yes, ma'am.

14 THE COURT: Thank you.

15 All right. Mr. Shaffer, call your first
16 witness.

17 MR. SHAFFER: The applicant calls Richard
18 Colvin.

19 [Whereupon, Mr. Colvin comes forward]

20 THE BAILIFF: Put your stuff down there and put
21 your left hand -- and turn around.

22 [Whereupon, Mr. Colvin is duly sworn by the
23 clerk of court as follows: do you solemnly swear or
24 affirm that the testimony you are about to give will
25 be the truth, the whole truth, and nothing but the

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1 truth, so help you God]

2 THE WITNESS: I do.

3 THE CLERK OF COURT: State your name, please.

4 THE WITNESS: I'm Richard Colvin. C-O-L-V-I-N.

5 THE CLERK OF COURT: Okay. You may have a seat.

6 [Whereupon, Mr. Colvin takes the witness stand]

7 MR. SHAFFER: Good morning, Mr. Colvin.

8 THE WITNESS: Good morning.

9 MR. SHAFFER: How are you doing, sir?

10 THE WITNESS: Fine. Thank you.

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25 - - -

Richard Colvin
Direct Examination by Mr. Shaffer
August 29, 2014

RICHARD COLVIN,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. SHAFFER:

Q. You represented Azikiwe Archie; correct?

A. Yes, sir.

Q. Were you appointed or retained?

A. I was a full-time public defender and I was appointed.

Q. Now,, when did you work at the public defender's office?

A. I don't know the exact dates. But let me tell you --

Q. Yes, sir.

A. -- a secret. Prior to the State going to the circuit-wide defender system, I worked as a contract public defender. We had a public defender board here in Georgetown that hired people to represent indigent defendants. And so I was one of those people. I was not full time, but I was a regular contract employee.

When the public defender circuit-wide defender system went into effect, I was hired as a full-time public defender for the Georgetown office for the Fifteenth Circuit, which includes Horry and Georgetown. And I don't

Richard Colvin
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1 remember exactly when that was, but I know that my last
2 day on the job was April 13th of 2012.

3 Q. And do you recall when you had -- when you
4 started representing Mr. Archie?

5 A. No, I do not. And please allow me to explain.

6 Q. Yes, sir.

7 A. There is apparently a chronic and systemic
8 problem with the Fifteenth Circuit defender retaining case
9 files. When I became aware of this PCR application, I
10 came -- I was retired as -- I had retired as a public
11 defender back in April of 2012.

12 On June the 25th of this year, I came to the
13 courthouse and I spoke with the administrative employee of
14 the public defender's office, a woman named Chella
15 [phonetic]. I don't know her last name. She had worked
16 for me as my assistant prior to my retirement. I told
17 her that I had been PCR'd and that I needed the file for
18 Mr. Archie. She told me that the file was in storage in
19 Conway, which is the main office of the Fifteenth Circuit
20 defender, but that she would get it for me.

21 Well, I didn't hear anymore from Chella for
22 quite a while, matter of fact, the entire month of July.
23 So on August the 4th I sent an e-mail to Ms. Orrie West
24 [phonetic], who is the circuit defender. She was my boss.
25 And I told her that I needed the case file for Mr. Archie,

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1 and that Chella had told me that it was in storage, and I
2 asked if she could retrieve it for me. On that same day,
3 Ms. West e-mailed me back and said that, yes, that the
4 file is in storage and that she would have Joey, J-O-E-Y,
5 retrieve it for me.

6 Well, I didn't hear anything for a week,
7 apparently, or so. And on August the 13th I received an
8 e-mail from the Fifteenth Circuit defender's office, from
9 an individual named Joseph Donahue, and he told me that
10 their records recovery had been unable to locate the file.
11 On that same day I e-mailed him back and I said please
12 continue to search for the file because I will need it for
13 this hearing, it will have information that is pertinent
14 to the case both, you know, for Mr. Archie's benefit and
15 for my own.

16 Well, on August the 15th when I didn't hear
17 anymore about my file, I e-mailed Mr. Thomas at the
18 Attorney General's office and I told him in that e-mail
19 what I have just told you about my efforts to retrieve
20 this file and how they had been unsuccessful, and I asked
21 him if he could possibly subpoena the file from them,
22 Fifteenth Circuit defender. He e-mailed me back and said
23 that if they couldn't find it for me, they probably
24 couldn't find it for him, either, but that he would indeed
25 call them and ask them to look again. And so far, nobody

Richard Colvin
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1 has been able to come up with this file.

2 I have found out from speaking with Mr. Fox and
3 with Mr. Goude [phonetic] here, during this session of PCR
4 hearings, that they have had the same problem of not being
5 able to get files retrieved from the Fifteenth Circuit
6 defender.

7 So that is the reason that I am not going to be
8 able to answer some of your questions, one of which was
9 when I first, you know, met with Mr. Archie.

10 Q. But it's safe to say that you would have taken
11 notes about that; correct?

12 A. I took notes about, you know, all transactions
13 or communications with clients or the prosecutor's office.
14 You know, that's part of -- that's what a file is.

15 Q. Yes, sir.

16 And you actually took notes on this case since
17 you found out about the PCR hearing, as well?

18 A. I reviewed the material that was sent to me by
19 Mr. Thomas, you know, which was the application for PCR
20 and the transcript of the file, and I have gleaned a
21 little bit of information from that but not very much that
22 would be pertinent to the issues that have been raised
23 here.

24 Q. Yes, sir.

25 Now, the dates that you listed, those obviously

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1 are on the notes as well; right?

2 A. [No response]

3 Q. I mean, you have a notepad. And I'm just saying
4 that for the record, that you do have a notepad in front
5 of you with the dates on it; correct?

6 A. Well, I thought that in the interest of time and
7 convenience that I would chronologically list my efforts
8 to retrieve this file because, frankly, I don't want to
9 take the heat for losing a file that I have not lost.

10 Q. Yes, sir. I understand that. And I understand
11 that it was in the custody of the Fifteenth Circuit public
12 defender, as well.

13 Tell me this. During the course of -- do you
14 recall whether Mr. Archie was in jail, or not, prior to
15 trial? Was he out on bond?

16 A. My recollection is that there was a long time
17 between my appointment to Mr. Archie's case and it
18 actually coming to trial, and I believe that for part of
19 that time he may have been incarcerated elsewhere after I
20 was appointed but before the trial. But I believe that I
21 visited him at the Georgetown County Detention Center.
22 But just when, I cannot tell you because I don't have my
23 file.

24 Q. Yes, sir.

25 And do you recall him calling you on the phone

Richard Colvin
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1 at all whenever -- do you recall him speaking with you
2 over the phone about this case?

3 A. I do not recall that specifically, but I do not
4 doubt it because the calls from the jail for the most part
5 just to the general public are charged. There is a rather
6 high fee charged to the recipient of the phone call.
7 However, because of the special arrangement that I had as
8 a contract attorney for Georgetown County, the phone calls
9 from the detention center to me were free. So I
10 frequently did get calls at my office from people who were
11 at the detention center, and it's highly conceivable that
12 I would have gotten a call from Mr. Archie. But I do not
13 recall specifically that. I don't doubt it, but I don't
14 recall it.

15 Q. And at some point you had decided to allow
16 someone to assist you with the case -- Mr. Axelrod -- is
17 that correct?

18 A. I remember, frankly, from reading the
19 transcript, that there was -- he had, for some reason,
20 taken an interest in the case and he wanted to help me try
21 the case, as I recall.

22 But most of that was triggered by my reviewing
23 the transcript. I didn't have a really independent memory
24 of that because that trial would have been three and a
25 half years ago.

Richard Colvin
Direct Examination by Mr. Shaffer
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1 Q. Yes, sir.

2 And do you know about -- do you recall about how
3 long before the trial he would have gotten involved in the
4 case?

5 A. I don't know.

6 MR. THOMAS: Your Honor, I'm going to object to
7 the relevance of Mr. Axelrod's involvement in this.

8 THE COURT: What is the relevance?

9 MR. SHAFFER: Your Honor, I just wanted to know
10 whether -- why exactly he had gotten involved. Under
11 the contract system, it seemed a little odd to me and
12 that's the reason I was asking about it.

13 THE COURT: All right. Move on.

14 MR. SHAFFER: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Q. [Mr. Shaffer] Do you have any independent
17 recollection of what plea offers were made and the plea
18 negotiations between you and the State?

19 A. I do recall an offer having been made, you know,
20 from my independent recollection. And I believe that the
21 offer was not the seven years that Mr. Archie complained
22 of but I believe it was the three years because I --

23 Q. Okay. There was a three-year offer that was
24 made?

25 A. As I recall. And once again, if I had my file I

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1 would have exactly when I was extended that offer. I
2 would probably have it in writing if I had the file.

3 I would also have a notation of when I discussed
4 it with Mr. Archie, when and where I discussed it with
5 him, and I would have a notation of whether or not he
6 rejected or accepted it.

7 Q. Why would you have written all that down?

8 A. Because I can't remember everything. That's why
9 you write things down.

10 Q. Yes, sir.

11 A. I mean, I think it's very important to make a
12 record.

13 Q. Do you recall any seven-year offer being made in
14 the case?

15 A. I seem to recall after Mr. Archie rejected --

16 And once again, this is from my memory and I
17 cannot tell you that it's going to be perfect after this
18 length of time and the many, many cases that I have had.
19 But this was a trial that I found especially upsetting
20 because Mr. Archie was exposed to a lengthy prison
21 sentence on a very, very bad set of facts. It was a
22 confidential informant alleged to have purchased a very
23 small amount of crack cocaine. The confidential informant
24 was a paid informant. And it was a buy that was not
25 observed by any police officers. So the jury had to rely

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1 solely on the word of this Mr. Woodsides, who was the
2 confidential informant.

3 That notwithstanding, I thought that the
4 potential risk of being convicted and the bad consequences
5 of facing up to thirty years in prison was not worth the
6 gamble of going to trial when he could have had a much-
7 reduced sentence or a smaller sentence.

8 But like I say, as I recall, he was first
9 offered three years and he rejected that. And after that
10 the prosecutor, who was a Ms. Choady here in Georgetown,
11 offered another plea offer of a range between three and
12 seven. I remember working the case pretty hard with her
13 trying to get an offer that he would take, because I
14 thought that it was a very low-level, street-level crime
15 that should not be punishable by what he was exposed to.

16 Q. Now, but you don't recall a specific offer --

17 Well, tell me this. Around what time was that
18 offer made? How long prior to trial?

19 A. For the reasons I have enumerated, I do not
20 know.

21 Q. Yes, sir.

22 And the trial was February 11th, 2011; is
23 that -- I mean, February 28th, 2011; is that correct?

24 A. I know that only from having reviewed the
25 transcript and the application for PCR. I cannot

Richard Colvin
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1 independently verify that because I don't have the file.

2 Q. Yes, sir.

3 Now, if you could -- isn't your standard
4 practice whenever you spoke with a client to give them a
5 copy of their discovery?

6 A. I'm sorry. I didn't hear you.

7 Q. Do you give a copy of your -- was it your
8 standard practice to give a copy of the discovery to your
9 client?

10 A. That is my standard practice, yes.

11 Q. Do you have any independent recollection of
12 whether you did that here in this case or when you would
13 have done it?

14 A. I don't know. I can say this: that there was
15 one bit of discovery that I was unable to share with
16 Mr. Archie, other than to let him hear it, and that --
17 there was some -- an audiotape made of the transaction. I
18 don't think the audiotape revealed a whole lot. But I do
19 recall going over that tape, by playing it on a portable
20 tape recorder, at the detention center with Mr. Archie.
21 But I was unable to leave him a copy and he had no device
22 on which to play it if I had.

23 So I would say that I furnished him all
24 discovery other than the audiotape, and I reviewed that
25 with him.

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1 Q. And that's based off of your standard practice?
2 You believe that?

3 A. My standard practice and my limited recollection
4 of three and a half years ago.

5 Q. Now, did you see a problem with the indictment
6 in this case?

7 A. No, I did not.

8 I do know that the applicant has alleged that
9 only the solicitor appeared before the grand jury. As we
10 all know, I'm not even privy to when the grand jury meets.
11 But the indictment specified and stated that the witnesses
12 were from the Georgetown county sheriff's department,
13 whereas Mr. Archie has, you know, alleged that the only
14 witness was the solicitor.

15 So I can only go by the face of the indictment
16 and take it at face value, since I was not there, was not
17 aware of when it was meeting. I'm sure I would not have
18 been invited. And it says that the witnesses were from
19 the sheriff's department.

20 Q. Now, you had -- when you went to trial, what was
21 your strategy going forward with your trial?

22 A. Once again, relying on my imperfect memory, it
23 was just that Mr. Archie denied having sold the drugs to
24 this confidential informant and so we should do nothing
25 other than attack the credibility of the confidential

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1 informant. And I reviewed the transcript and I know that
2 I pretty thoroughly attacked his credibility. I talked
3 about his bias, you know, trying to work off charges.
4 That's what confidential informants do. I talked about
5 the fact that he had been paid, the fact that -- there was
6 nothing to bolster his testimony. They marked the money
7 with which to make the buy, but they never recovered any
8 money so it didn't do them any good to mark the money.

9 Anyway, I suppose that the best strategy we
10 could employ would be to attack the credibility of the --
11 really, the only witness. Because as I recall, and the
12 transcript will bear out, no officer observed any
13 transaction. They all -- the whole case relied on whether
14 or not the jury believed Mr. Christopher Woodsides. And I
15 thought that there were plenty of reasons to doubt his
16 credibility, and I tried to point those out to the jury.

17 Q. And do you remember making an objection to the
18 chain of custody?

19 A. I do. Seems like it was pursuant to Rule 6. I
20 think that -- and I still feel -- that there was a --

21 Q. Missing link?

22 A. -- a missing link in the chain. And I argued
23 that vocifically to Judge John, as I recall, and I think
24 the transcript would show that.

25 Q. Yes, sir.

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1 And in that -- with that missing-link witness,
2 there was actually a time period there where the --
3 basically a two-week period where you couldn't account for
4 what exactly happened with the drugs, right, or where they
5 were at?

6 A. I don't know.

7 But I know that it was certainly my intention to
8 try to prevail at the trial court on my argument that that
9 evidence should be excluded. And having failed in that
10 regard, I'm certain that I preserved the issue for appeal.

11 Q. Yes, sir.

12 A. That was part of my intention, certainly.

13 Q. Did you -- after filing the notice of appeal,
14 did you have any involvement in the appeal after that?

15 A. No further involvement.

16 Q. And Mr. Stevens, Breen Stevens, his trial
17 attorney -- I mean, his appellate attorney, he didn't have
18 -- he didn't contact you concerning this case?

19 A. Not that I recall.

20 MR. SHAFFER: May I approach, Your Honor?

21 THE COURT: You may.

22 Q. [Mr. Shaffer] Mr. Colvin, I'm showing you
23 what's been pre-marked as Plaintiff's Exhibit 1 and 2 or
24 Applicant's Exhibit 1 and 2. Do you recognize those
25 documents?

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1 A. Well, I'm looking at some unsigned documents,
2 but I've certainly seen documents of this nature before.
3 They were standard plea offers that would be, you know,
4 extended by the prosecutor's office. Sometimes you would
5 get an offer that was oral and sometimes you would have
6 it, you know, memorialized in a writing.

7 But once again, these documents, if they had
8 actually been given to me, would be in my file. But this
9 is a standard plea offer form.

10 Q. But you can't independently verify whether those
11 documents are true and accurate? Do they appear to be
12 true -- I mean, do they appear to be what the solicitor
13 would have given you?

14 A. Well, typically they would be signed. Well,
15 actually, no, they're not. This is typical of a plea
16 offer that would be given to me in writing.

17 Q. And then there is a place for you to sign
18 whether you want to accept or reject on one of them? I
19 think it's 2. Or perhaps it's 1.

20 A. Well, it doesn't say on here that you reject it.
21 It says that you have to check either trial or guilty
22 plea, and there's a space to be signed by both the
23 attorney and the defendant.

24 Now, I do notice that what you have handed me
25 said that the offer had to be accepted by February of

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1 2010. Now, the trial was not for more than a year after
2 that.

3 Q. Do you have any independent recollection of why
4 that would be, why that time period?

5 A. No.

6 As I told you before, I think that at some of
7 the time during my appointment and before it went to
8 trial, that Mr. Archie may have been incarcerated
9 elsewhere besides Georgetown.

10 Q. Did you ask for -- did you ever ask for a
11 continuance or anything else?

12 A. I don't recall.

13 Q. If you would, sir, look at the document --

14 MR. SHAFFER: Approach?

15 THE COURT: You may approach.

16 Q. [Mr. Shaffer] -- the document that's
17 Plaintiff's Exhibit 1 for the purposes of identification.
18 There is a stamp at the bottom of that document; correct?

19 A. Yes.

20 Q. And that says February 12, 2010; correct?

21 A. Correct.

22 Q. Does that appear to be a stamp that was used in
23 your office, or have you ever seen a stamp like that?

24 A. [No response]

25 Q. Is it similar to a stamp that was used in your

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1 office?

2 A. I don't remember having a stamp like that in my
3 office. But I'm not the one who would have stamped it, so
4 I can't say for sure.

5 Q. Okay.

6 A. Now, another thing I notice here, this
7 particular exhibit says PCR number 2.

8 Q. Yes, sir.

9 And that obviously would not have been on there;
10 correct?

11 A. I don't know.

12 But my question is is this the second time that
13 he has had a PCR hearing?

14 Q. No, sir, it is not.

15 A. Do you know what that means?

16 Q. I know -- I would guess that it means issue
17 number 2. And I'm not assuming that you would have put
18 that on there, or anyone else would have put that on
19 there, prior to -- after -- prior to his trial. I'm
20 assuming that somebody put that on there afterwards
21 because issue number 2 in his PCR is related to the --

22 A. Okay. I just -- I didn't know. I thought that
23 maybe there had been another PCR hearing that I didn't
24 recall.

25 But, no. You had asked me. I don't know if

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1 that stamp originated in my office or elsewhere. I do --

2 Q. You can't say for sure?

3 A. -- not know.

4 Q. From looking at everything except the PCR number
5 2 on those two documents, are they consistent with what
6 the solicitor would have offered -- I mean, consistent
7 with an offer from the solicitor's office?

8 A. It is typical of their form.

9 Q. Okay. So it would be safe to say that it
10 appears to be a true and accurate depiction of what a
11 solicitor's offer would be?

12 A. Yes.

13 MR. SHAFFER: Court's indulgence.

14 [Whereupon, Mr. Shaffer and Mr. Archie confer]

15 Q. [Mr. Shaffer] Do you recall Mr. Archie ever,
16 after trial, requesting a complete copy of his file?

17 A. I don't recall.

18 Q. Would that have been handled by you, or someone
19 else at the public defender?

20 A. Well, if he had asked me for a complete copy of
21 his file, I would expect that I would have asked my
22 assistant, Chella, to make a copy and get it to him. But
23 I have no specific recollection of that having happened.
24 But I doubt that I would have physically made the Xerox
25 copies, but I think that my office would have complied

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1 with any request to do so.

2 MR. SHAFFER: The Court's indulgence.

3 [Whereupon, Mr. Shaffer and Mr. Archie confer]

4 MR. SHAFFER: No further questions.

5 THE COURT: Mr. Thomas?

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CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Colvin, could you I guess briefly give us a brief overview of your experience practicing criminal law? Just a snapshot of it.

A. All right. Just a thumbnail sketch.

I was admitted to the bar in 1982 and my first job was in Kershaw County where I worked -- I was in private practice there. But one of the jobs that I had was as a public defender, part-time public defender, and I also took criminal cases.

In 1992, I was suspended from the practice of law because of an indiscretion on my part unrelated to my practice. And even though I was eligible to be reinstated before that, I worked at other jobs.

And so I practiced criminal law pretty much from '82 to '92. And then there was a hiatus between '92 and it might have been 2003. I can't remember. But about 2003 I resumed practicing law. And that was when I had the contract with the public defender board, here in Georgetown, practicing mainly criminal law.

And when they went to the circuit-wide defender system, then I was a full-time criminal lawyer as a full-time public defender so -- and that would have been -- I think I was a full-time public defender for about three or

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1 four years.

2 I've had a lot of criminal cases in my life,
3 yes.

4 Q. And I know you don't recall the specific number
5 and when and all, when and how many times you met with Mr.
6 Archie, but you do recall you met with him some?

7 A. Sure.

8 Q. Do you feel like you had enough meetings with
9 him to prepare this case for trial?

10 A. Yes.

11 I don't recall ever going into a trial not being
12 prepared.

13 Q. And you said you had some recollection of
14 sharing with him at least -- you know you sat down with
15 him and went over the tape of the CI?

16 A. I know that.

17 And I know that it is my practice to communicate
18 all plea offers.

19 Q. Well, let me ask you about that. Do you have
20 any -- you've thrown out this number of three years, so
21 you have some independent recollection of a three-year
22 offer?

23 A. Yes, I do.

24 Q. And as far as that offer goes, do you remember
25 whose decision it -- you communicated that offer to him;

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1 do you remember that?

2 A. Yes.

3 Q. And do you remember whose decision it was to
4 decline that offer?

5 A. It is always the client's decision to decline or
6 accept any plea offer.

7 Now, I certainly would -- you know, am there to
8 advise, but it's always ultimately the client's decision.
9 No different than it's the client's decision whether or
10 not to testify. A lawyer can advise and counsel, but that
11 is always the client's decision.

12 Q. And you said there was also another offer for a
13 range?

14 A. Once again, as I recall.

15 And you know why I can't tell you specifically,
16 because I don't have my file.

17 Q. And, again, I mean, again, that would have been
18 his decision to decline that?

19 A. Always.

20 Q. So based upon your recollections or your review
21 of things, was this a case that you were looking for a
22 plea offer on? You were trying to advise him to maybe
23 take a plea offer?

24 A. I thought the three-year offer was certainly one
25 that he should have accepted. I think that he made a bad

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1 choice. Mr. Archie was fairly young at that time and
2 perhaps a little bit too optimistic about his chances at
3 trial. But --

4 Q. So is this -- was this a case where he indicated
5 to you that he wanted a trial on this, he didn't want to
6 plead guilty to it?

7 A. Right. Or else there wouldn't have been a
8 trial.

9 I have no incentive to have a trial if the
10 client doesn't want one.

11 Q. And as far as -- do you remember -- was -- that
12 three-year offer, was that early on in the process or was
13 that towards -- closer towards trial? I mean, when was
14 that?

15 A. After the -- it was closer towards trial.

16 As a matter of fact, the document, the exhibit
17 that was handed to me by Mr. Shaffer is a seven-year offer
18 and that was back in February of 2010. And I believe that
19 the three-year offer came closer to the trial time. And
20 also the three to seven. Once again, it's in my memory
21 and I can't verify it through my written notation.

22 Q. So let's talk about the facts of the case, I
23 guess. Did anything change factually from the time you
24 first got the file to the day of trial? I mean, was there
25 any new developments in the case?

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1 A. Not that I recall.

2 I recall it was a -- just a -- what I call a
3 confidential informant case. You know, I've already
4 enumerated some of the problems that I thought that the
5 prosecution had for the case. And I did the very best job
6 I could of trying to point out these deficiencies at the
7 time of trial. And I know that from having reviewed the
8 transcript.

9 MR. THOMAS: Thank you, Mr. Colvin. That's all
10 I have for you.

11 THE COURT: Mr. Shaffer?

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Richard Colvin
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REDIRECT EXAMINATION

BY MR. SHAFFER:

Q. Was it the standard practice office at the time to convey offers in writing to you and have your clients sign them?

A. That was typical, yes.

Q. Do you know -- do you have any independent recollection of ever signing anything rejecting the three-year offer? Do you know if it was in writing?

A. I don't have those records and I have no recollection.

Q. At any point, have you told -- have you told anyone -- up until now, have you actually told Mr. Archie that you did not have a copy of the file anymore?

A. I didn't know that I didn't have -- I haven't had a copy of the file since February the 13th of 2011. That was the -- no, excuse me -- 2012, the last day that I wrote to the public defender.

I have not heard from Mr. Archie since the day of this trial. And I had no way of knowing that the Fifteenth Circuit defender's office was unable to locate the file.

Q. Yes, sir.

A. So I couldn't tell him that when I didn't know that. And I haven't spoken with him or communicated with

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1 him in any manner.

2 Q. You had indicated on the record -- perhaps it
3 was in the record -- that you had had some health problems
4 and that's why Mr. Axelrod had become involved?

5 MR. THOMAS: I'm going to object, Your Honor.
6 That's outside the scope of my cross-examination.

7 THE COURT: Sustained.

8 MR. SHAFFER: And, Your Honor, it would go for
9 impeachment, as well, because he had previously
10 explained another possible reason for why Mr. Axelrod
11 would have been involved.

12 THE COURT: Move on, counsel.

13 MR. SHAFFER: Thank you.

14 THE WITNESS: I don't mind answering the
15 question.

16 THE COURT: If you want to answer the question,
17 answer the question.

18 Q. [Mr. Shaffer] Yes, sir.

19 A. I have, indeed, had some health problems. I
20 can't recall exactly when but at some time when I was the
21 public defender, I had a stroke. Matter of fact, I had a
22 stroke while I was performing my duties, as public
23 defender in the family court, representing a juvenile.
24 But I don't recall if that was prior to this trial or
25 subsequent to it.

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1 Q. And you wouldn't recall anything about whether
2 or not Mr. Axelrod would be involved?

3 MR. THOMAS: Renew the objection.

4 MR. SHAFFER: I'll move on, Your Honor. I
5 apologize.

6 THE COURT: Thank you.

7 MR. SHAFFER: No further questions, Your Honor.

8 THE COURT: Mr. Thomas?

9 MR. THOMAS: Nothing further.

10 THE COURT: You may step down. Thank you.

11 THE WITNESS: Thank you.

12 [Whereupon, Mr. Colvin is excused and exits the
13 witness stand]

14 THE COURT: Call your next witness.

15 MR. SHAFFER: Applicant calls Azikiwe Archie.

16 [Whereupon, Mr. Archie comes forward]

17 THE CLERK OF COURT: Judge, do you need me to
18 swear him in again?

19 THE COURT: No. He's already been sworn in.

20 [Whereupon, Mr. Archie takes the witness stand]

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Azikiwe Archie
Direct Examination by Mr. Shaffer
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1 AZIKIWE ARCHIE,
2 Having Been Previously Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q. Mr. Archie, where are you currently -- where do
7 you currently reside?

8 A. At Turbeeville Correction.

9 Q. So you're in SCDC custody right now?

10 A. Yes, sir.

11 Q. Is this your first time in SCDC custody?

12 A. No, sir, it's not.

13 Q. Your previous -- how many times have you been in
14 SCDC custody before this?

15 A. Twice.

16 Q. And how long did you spend both those times?

17 A. All together, almost three years.

18 Q. And were they both for drug charges?

19 A. Yes, sir.

20 Q. Did you go to trial prior to this trial?

21 A. No, sir.

22 Q. So in your previous ones you pled guilty; right?

23 A. Yes, sir.

24 Q. Now, if you could, sir, when you were initially
25 arrested for this, do you recall when that was? Or around

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1 the time?

2 A. It was May the 4th, 2007.

3 Q. And in 2007, how long did you stay in jail? Did
4 you wait until trial?

5 A. No, sir.

6 I bonded right out. I had a 15,000-dollar bond.
7 I paid the bondsman ten percent. I bonded right out.

8 Q. So you were out of jail?

9 A. Yes, sir.

10 Q. Okay. Did you ever meet with your attorney,
11 Mr. Colvin, in jail?

12 A. No, sir.

13 I didn't stay in long enough for him to visit me
14 in the county.

15 Q. But you did meet with Mr. Colvin; correct?

16 A. Yes, sir, I did. His office.

17 Q. You met with him on a regular basis?

18 A. Yeah. We met quite a few times.

19 Q. In his office?

20 A. Yes, sir.

21 Q. Did you call him on the phone?

22 A. Yes, sir. He --

23 Q. Did he ever call you on the phone?

24 A. -- called me, too. Yes, sir.

25 Q. So y'all spoke a good bit about this case?

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1 A. Yeah. We spoke a lot about this case.

2 Q. Throughout your representation -- or his
3 representation of you, did he ever convey a plea offer to
4 you?

5 A. No, sir.

6 Q. And when did you first learn about a plea offer?

7 A. The day of my trial.

8 Q. What offer did you learn about the day of your
9 trial?

10 A. I was told about a three-year plea offer that
11 the solicitor -- that she offered me and said that my
12 attorney turned down my plea offer saying that I wasn't in
13 there for a plea, I was in there for a bond.

14 Q. Okay. And that was -- you said that that was
15 the day of --

16 A. My trial.

17 Q. -- your trial?

18 A. Right.

19 Q. So the solicitor told you that she had offered
20 it at that time?

21 A. Right.

22 She said she offered it to me and my attorney
23 turned it down because he said -- he stated that I wasn't
24 in there for a plea, I was in there about a bond.

25 And I was in the -- still in the holding cell.

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1 I never came into the courtroom. He just came in and
2 tried to get the bench warrant up off me.

3 Q. There was a bench warrant out there for you?

4 A. Right. It was a bench --

5 Q. So you had be re-locked up at some point?

6 A. Yeah. I got expedited [sic] to the state of
7 North Carolina.

8 Q. So there was a bench warrant, and then you got
9 extradited to North Carolina. How long did you stay in
10 jail that time, approximately?

11 A. I was in Georgetown, and North Carolina came and
12 expedite [sic] me. And that's when they put the bench --
13 the judge put the bench warrant on me being -- not with me
14 running, no flight risk, just because I was expedited
15 [sic] out of the state.

16 And he said when I came back into the state,
17 then they would lift the bench warrant back off but as
18 long as I was out of the state in North Carolina custody
19 they was going to leave the bench warrant on me until I
20 returned.

21 Q. How long, whenever you returned from North
22 Carolina, were you in Georgetown County?

23 A. I sat in Georgetown -- when I came back, it took
24 them about twenty-eight days to get it off me, get the
25 bench warrant off me, and they actually put another bond

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1 on me. Had to re-bond out again.

2 Q. Did you have a chance to meet with Mr. Colvin at
3 that time when you were in Georgetown County?

4 A. No, sir. I met with Mr. Colvin when I got out.

5 Q. Now, you remember him telling you about how much
6 time you were facing; right?

7 A. Yes, sir.

8 Q. How much time were you facing?

9 A. Ten to thirty.

10 Q. And you remember him going over some of the
11 discovery with you; correct?

12 A. Yeah.

13 We listened to a CD of the recording that it was
14 supposed to been the transaction about.

15 Q. And you remember -- you remember going to trial.
16 What did he tell you your defense was going to be if you
17 went to trial?

18 A. He said that we had a great chance of winning
19 trial because there was no real case, just the fact of the
20 informant getting on the stand and testifying that he
21 bought it from me, and none of the agents witnessed the
22 buy, and no one had had no pictures or no -- I wasn't on a
23 recording or nothing, they didn't get marked money off me
24 or nothing, nothing they sold. So he said we had a good
25 chance of beating the case anyway.

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1 Q. And approximately how long from the time you
2 went -- you got appointed to Mr. Colvin -- or Mr. Colvin
3 got appointed to you, about how long did he represent you,
4 total, until trial? Approximately. I know you can't give
5 me a specific day, but --

6 A. He was my attorney for the whole time I was on
7 this charge.

8 Q. So basically from your arrest date until --

9 A. Yeah.

10 Q. He's the first attorney that got appointed, so
11 he got appointed fairly soon after your arrest; is that
12 right?

13 A. Yeah. I got appointed -- yeah. A couple
14 months, about two months, after my arrest.

15 Q. And you were arrested around 2007; correct?

16 A. May of 2007. Yes, sir.

17 Q. And during that time period that he represented
18 you was there any times that, you know, you couldn't
19 contact him for any reason?

20 A. No, sir.

21 Q. What about when you were in North Carolina? Did
22 you contact him then?

23 A. I still contacted him when I was in North
24 Carolina.

25 Q. Do you recall around what time you were in North

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1 Carolina?

2 A. I left -- I got expedited [sic] from Georgetown
3 on May the 28th or 29th of 2007. It was around Memorial
4 Weekend, sir.

5 Q. Okay. So that was back in 2007.

6 A. It was in 2007.

7 Q. Were you back in Georgetown County in 2010?

8 A. Yes. I was already back out in 2010.

9 Q. Do you recall around 2010 him conveying a plea
10 offer to you?

11 A. No, sir.

12 Q. He said that he didn't convey any plea offer to
13 you. When you found out that there was a three-year offer
14 from the solicitor, what did you -- what did you do? Did
15 you want to take that offer?

16 A. I asked her to allow me to accept the three-year
17 plea offer, and she told me that she had already put it on
18 the table and I turn -- and my attorney turned it down so
19 she wasn't going to put it back up there and she felt like
20 me turning down the three-year plea, being that I already
21 had prior drug charges, was my way of trying to feel like
22 I was above the system or better than the law. And she
23 said she wasn't putting it back up there and I was going
24 to trial.

25 Q. Prior to trial, did you have a complete copy of

MIA PERRON, CVR-CM-M

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1 your discovery in the case?

2 A. No, sir.

3 I didn't get my motion of discovery until I
4 started my direct appeal process when I got to Perry
5 Correctional Institution.

6 Q. So how did you obtain a copy of your motion for
7 discovery?

8 A. I wrote to Mr. Colvin's office and asked him for
9 a copy.

10 Q. And did they send you a copy of it?

11 A. Yes, sir, they did.

12 MR. SHAFFER: May I approach?

13 THE COURT: You may.

14 Q. [Mr. Shaffer] I'm showing you what's been
15 marked Plaintiff's 1 and 2 for the purposes of
16 identification. Did you review both of those documents?

17 A. Yes, sir.

18 Q. Do they appear to be what was sent to you from
19 your attorney?

20 A. Yes, sir. That's the actual copy that came in
21 my Rule 5.

22 Q. I notice on one of them it says PCR number 2 on
23 it.

24 A. That's my second issue that I raised when I was
25 doing a PCR. I wrote that on there.

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1 Q. So you wrote PCR number 2 on there?

2 A. Yeah. That was --

3 Q. Outside of it saying PCR number 2, does it
4 appear to be a true and accurate copy of what was sent to
5 you from Mr. Colvin's office?

6 A. Yes, sir. That's the copy that came to me.

7 Q. Prior to the date that that was sent to you from
8 Mr. Colvin's office, had you ever seen that before?

9 A. No, I never saw that paper before.

10 MR. SHAFFER: Your Honor, at this time we would
11 actually move to admit the Plaintiff's Exhibit 1 and 2
12 essentially to show what was conveyed to him after he
13 was convicted.

14 MR. THOMAS: I'm just going to object on
15 authentication grounds, Your Honor. He's not the
16 person that created that document --

17 THE COURT: I agree.

18 We don't know that that was the document that
19 was given to him for this particular case; is that
20 correct, Mr. Shaffer?

21 MR. SHAFFER: Your Honor, I think that there is
22 nothing in the record that would say that the
23 solicitor actually gave that to Mr. Colvin. All I'm
24 saying is that it appears to be an offer and that
25 offer was given from Mr. Colvin to my client.

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1 THE COURT: Let me see the document.

2 [Whereupon, Mr. Shaffer proffers documents to
3 the Court]

4 THE COURT: Thank you.

5 [Whereupon, the Court reviews documents]

6 THE COURT: You've had both Mr. Colvin and
7 Mr. Archie testify. I'm not going to allow it.

8 Plaintiff's 1 and 2 not into evidence. You may
9 continue.

10 MR. SHAFFER: Your Honor, can you mark those as
11 Court's Exhibits just to make sure that they are
12 preserved properly?

13 THE COURT: They are marked properly for the
14 purposes --

15 MR. SHAFFER: I understand --

16 THE COURT: They are marked properly for the
17 purposes that I believe you need them for.

18 Thank you. Please continue.

19 MR. SHAFFER: Thank you, Your Honor.

20 Q. [Mr. Shaffer] Upon learning about the -- upon
21 receiving your discovery, you filed a PCR application;
22 correct?

23 A. Yes, sir.

24 Q. What were the allegations that you made in your
25 PCR application?

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1 A. The first one was -- I put in that my trial
2 lawyer timely objected a motion to squash [phonetic] the
3 indictment; and then I did the issue whether trial counsel
4 ineffective in failing to communicate the initial seven-
5 year plea; and for my appellate counsel, ineffective in
6 failing to raise the brief issue on the chain of custody.

7 Q. Now, if you could go to issues 1 and 2. We
8 won't talk about your appellate counsel right now. But in
9 issue 1 and 2, did you ever tell Mr. Colvin in issue one
10 not to challenge the indictment?

11 Have I ever told him -- could you repeat the question?

12 Q. Did you tell him, prior to trial, to challenge
13 the indictment?

14 A. No, sir.

15 Q. Did you have a copy of that prior to the trial?

16 A. Copy of the indictment?

17 Q. Yes.

18 A. No, sir.

19 Q. Tell me this. Had a seven-year offer been made
20 to you, would you have accepted it?

21 A. Yes, sir.

22 Q. Had a three-year offer been made to you, would
23 you have accepted it?

24 A. Yes, sir.

25 Q. Going through your motion for discovery, did you

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1 ever see any written documentation about a three-year
2 offer?

3 A. No, sir.

4 Q. By motion for discovery I mean what Mr. Colvin
5 had sent you.

6 A. No, sir.

7 Q. Did you ever see any written documentation of a
8 three to seven year offer in the --

9 A. No, sir.

10 Q. -- discovery?

11 A. No, sir.

12 Q. By discovery I mean what Mr. Colvin had given
13 you. You understood that when you answered the question?

14 A. You said a three- to seven-year plea?

15 Q. Yes, sir.

16 A. No, sir.

17 Q. But you do believe that there was a seven-year
18 written offer; right?

19 A. When I received my motion discovery, yeah.

20 Q. Now, if you could, concerning issue number 3:
21 did you have any communication with your appellate counsel
22 on this case?

23 A. We talked about maybe twice.

24 Q. Did you ever mention you wanted him to brief the
25 chain of custody issue?

Azikiwe Archie
Direct Examination by Mr. Shaffer
August 29, 2014

- 1 A. Yes, I did.
- 2 Q. How do you talk with your appellate counsel?
- 3 A. On the phone.
- 4 Q. On the phone? Was he inclined to brief that
- 5 issue?
- 6 A. He actually asked to be removed from my case.
- 7 Q. Through the Anders process; correct?
- 8 A. Yes, sir.
- 9 Q. But he did not brief that issue that you ruled
- 10 on?
- 11 A. No, he didn't brief the issue.
- 12 Q. He briefed another issue; right?
- 13 A. Yes, sir.
- 14 Q. Prior to filing a brief, you had asked him to
- 15 brief that issue?
- 16 A. Yes, sir.
- 17 Q. Given the fact that you had been up the road
- 18 before -- and by up the road, I mean SCDC -- do you think
- 19 you would have accepted a plea offer for three or seven
- 20 years or a range of three to seven if it had been conveyed
- 21 to you?
- 22 A. I would have taken either one of the offers
- 23 because I already had two prior convictions. I wouldn't
- 24 even -- I wouldn't have turned down no three years at all,
- 25 or seven.

Azikiwe Archie
Cross-Examination by Mr. Thomas
August 29, 2014

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Mr. Archie, you said you and Mr. Colvin spoke all the time?

A. Yeah, we spoke a good bit of times.

Q. And yet in all those conversations, at no point did he tell you that the State was extending you any kind of plea offer?

A. No, sir, he didn't.

Q. You never thought to ask him, well, Mr. Colvin, I would like a plea offer? Did you ever tell him that?

A. No.

My case was -- being that I didn't go to trial for three years and ten months, I didn't really think I was even -- I didn't even really thought I had a case left. I thought --

Q. Let me repeat that question so you can pick it up.

Did you ever tell Mr. Colvin to go find you a plea offer, to go ask --

A. No, sir, I didn't.

Q. -- for a plea offer? You didn't?

A. No, sir.

Q. And you said you found out about this three-year offer the day of trial?

Azikiwe Archie
Cross-Examination by Mr. Thomas
August 29, 2014

1 A. Yes, sir.

2 Q. Did you ever think to tell the judge or
3 somebody, hey, judge, no, I don't want to go to trial, I
4 want to -- I want to plea, I want to plea here?

5 A. The solicitor told me that my plea was no longer
6 on the table. I asked her for the plea. She told me that
7 it was no longer on the table.

8 [Whereupon, Defendant's Exhibit Number 1 is
9 marked by the court reporter]

10 Q. [Mr. Thomas] You said your appellate counsel
11 filed and Anders brief; is that correct?

12 A. Yes, sir, he did.

13 Q. Did you have an opportunity to reply to that
14 Anders brief?

15 A. Yes, sir, I did.

16 Q. You did?

17 MR. THOMAS: Can I approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 Q. [Mr. Thomas] I'm going to show you what has
21 been marked as Defendant's Exhibit Number 1. Can you take
22 a look at that and tell me if you recognize it?

23 [Whereupon, the witness reviews documents]

24 A. Yes, sir.

25 Q. [Mr. Thomas] And that's your signature at the

Azikiwe Archie
Cross-Examination by Mr. Thomas
August 29, 2014

1 bottom of every page?

2 A. Yes, sir.

3 Q. And what is that document?

4 A. This is my response to my appellate's Anders
5 brief.

6 MR. THOMAS: Your Honor, at this time I would
7 move to admit Defendant's Exhibit Number 1 into
8 evidence.

9 THE COURT: Mr. Shaffer?

10 MR. SHAFFER: No objection, Your Honor.

11 THE COURT: Defendant's 1 into evidence without
12 objection.

13 [Whereupon, Defendant's Exhibit Number 1 is
14 admitted into evidence by the Court]

15 Q. [Mr. Thomas] Mr. Archie, if you could, could
16 you turn to page -- it's little I, little I, little I.
17 It's really the third page from the back one. And could
18 you tell us what your second issue on appeal was that you
19 briefed in this brief?

20 A. The court erred in admitting the drugs in this
21 case over the defense counsel objection, that the State
22 chain of custody --

23 THE COURT: Slow down just a little bit and
24 louder. Speak out so she can hear you.

25 A. The trial court erred by admitting the drugs

Azikiwe Archie
Cross-Examination by Mr. Thomas
August 29, 2014

1 into this case over defense counsel objection, that the
2 State chain of custody on the drugs was incomplete.

3 MR. THOMAS: Thank you, Mr. Archie. That's all
4 the questions I have.

5 THE COURT: Mr. Shaffer?
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Azikiwe Archie
Redirect Examination by Mr. Shaffer
August 29, 2014

REDIRECT EXAMINATION

BY MR. SHAFFER:

Q. You had said that you didn't think that you had a case going -- that was going forward. What exactly did you mean by that? You know, in 2010, your case was three years old. What did you mean by you didn't really think there was a case that was going forward?

A. Because I was -- I was going to roll call almost every -- well, every two, three months I was going to roll call, they started roll call. But they kept telling me, we'll call you when we get -- when we need you to come to court, we'll just -- we'll send you a subpoena. And I was informed that at one point they couldn't even find the informant for like two years or something.

Q. But despite that fact, if you had been offered the three or seven years or three-to-seven range, would you have taken one of those plea offers?

A. Yes, sir.

MR. SHAFFER: No further questions.

THE COURT: Mr. Thomas?

MR. THOMAS: Nothing further.

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Azikiwe Archie
Examination by the Court
August 29, 2014

EXAMINATION BY THE COURT

Q. Mr. Archie, you indicated you had a conversation with the solicitor asking for a three year --

A. Yes, ma'am.

Q. When was that?

A. This was trial -- the day of trial.

Q. The day of trial?

A. Yes, ma'am.

Q. And you spoke to the solicitor or your attorney spoke to the solicitor?

A. Me, my attorney and my solicitor were in the little conference room.

Q. This attorney right here? Mr. Colvin?

A. Mr. Colvin.

THE COURT: Mr. Shaffer, any questions based only upon my questions?

MR. SHAFFER: None for this witness, Your Honor.

THE COURT: Mr. Thomas?

MR. THOMAS: Nothing based on your follow up, no, ma'am.

THE COURT: You may step down. Thank you, Mr. Archie.

[Whereupon, Mr. Archie is excused and exits the witness stand]

THE WITNESS: Thank you.

Azikiwe Archie
Examination by the Court
August 29, 2014

1 THE COURT: Thank you.

2 MR. SHAFFER: Your Honor, is there any way I

3 could call Mr. Colvin a second time to --

4 THE COURT: You can call him again. Sure, Mr.

5 Shaffer. Let's call him back up.

6 Thank you for staying, Mr. Colvin. You must

7 have known.

8 MR. SHAFFER: Thank you, Your Honor.

9 THE COURT: You are still under oath.

10 Mr. Shaffer?

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FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

Richard Colvin
Further Direct Examination by Mr. Shaffer
August 29, 2014

RICHARD COLVIN,

Having Been Previously Sworn,
was Examined and Testified as Follows:

FURTHER DIRECT EXAMINATION

BY MR. SHAFFER:

Q. Mr. Colvin, you had -- would it be -- well, how many cases have you tried with Ms. Cote [phonetic]? Is it Cote? Is that the -- Cote?

A. Ms. Cote is how I pronounce it. But I don't know how many cases I've had with her or how many trials.

Q. Do you think -- but you've dealt with her -- did you deal with her on a regular basis?

A. Yes, I did.

Q. This wasn't the only time?

A. No. She had other people to prosecute and I had other people that I represented.

Q. Do you think it would be normal for her to speak to a client with you present the day of trial?

A. It's not unprecedented.

Q. Okay.

A. But I don't have a specific recollection of meeting with her and Mr. Archie.

Q. And you have gotten a chance to see Plaintiff's Exhibit 1 and 2 --

A. Yes.

Richard Colvin
Further Direct Examination by Mr. Shaffer
August 29, 2014

1 Q. -- for purposes of identification. Based off --
2 and you've read those; correct?

3 A. Yes.

4 Q. Based off of that, do you -- based off of
5 reviewing those two documents, do you believe that a
6 seven-year offer was made at one point?

7 A. I do believe that one was made.

8 MR. SHAFFER: Okay. No further questions.

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Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

FURTHER CROSS-EXAMINATION

BY MR. THOMAS:

Q. Just so I'm clear here, Mr. Colvin: whatever plea offer was made, a three year, a three to seven, a seven, you would have communicated -- you did communicate any plea offer you got from the State to Mr. Archie?

A. I believe that I have never failed to communicate a plea offer.

Q. And it's your recollection of this case that any plea offer you would have conveyed to him, he would have declined; correct? You would have gone to trial?

A. My recollection is that I communicated the offer and he rejected the offer.

That is my recollection. We have discussed the caveats.

MR. THOMAS: Thank you, Mr. Colvin. I appreciate it.

No further questions, Your Honor.

THE COURT: You may step down. And you are now free to go. You may leave the courthouse.

THE WITNESS: Maybe I had better. Thank you very much.

THE COURT: Have a great afternoon.

THE WITNESS: Have a safe trip to Charleston.

THE COURT: I will. Thank you.

Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

1 [Whereupon, the witness is excused and exits the
2 witness stand]

3 THE COURT: Anything else? Any other witnesses?

4 MR. SHAFFER: Nothing from the applicant, Your
5 Honor.

6 THE COURT: And I just made that assumption,
7 Mr. Thomas, because there's nobody else left in the
8 courtroom.

9 MR. THOMAS: That will be fine.

10 THE COURT: I'll be happy to hear arguments --
11 or if you wish to articulate them in a more formal
12 order -- at this time, Mr. Shaffer.

13 MR. SHAFFER: Your Honor, just briefly, I think
14 that -- and I'm happy to articulate them more fully.

15 But in this situation I think that, you know --
16 I certainly think Mr. Colvin is doing his best to give
17 us his version of what happened, but I think there are
18 some issues, especially with, you know, how long he
19 had been in jail and where things happened and when
20 they happened. And obviously he didn't have a copy of
21 the file, so he wasn't able to address everything
22 specifically.

23 But, Your Honor, I think that especially -- you
24 know, that there was a -- you know, he had said that
25 there was an offer that was conveyed, you know. And

Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

1 there were three offers that he said he believed were
2 conveyed, Your Honor. I think that saying, well, I
3 normally do it in my normal course of practice is not
4 the same as saying definitively I didn't do -- I did
5 do it. And I think he ultimately definitively said
6 that he offered -- he made one of the offers and that
7 was the three-year offer. I think that's what he
8 definitively said he did.

9 Your Honor, obviously it's a credibility issue
10 and I can lay that out more fully in a formal order.

11 THE COURT: All right.

12 MR. SHAFFER: Thank you.

13 THE COURT: Mr. Thomas, do you wish to address
14 me at this time or do you want to wait for the orders?

15 MR. THOMAS: I'll just say that I believe the
16 testimony is clear. I mean, Mr. Colvin brought up the
17 three years on his own. The defendant wasn't willing
18 to take a three-year offer. I don't see any evidence
19 here that he would have been willing to take a seven-
20 year offer, if that was even conveyed to him. Again,
21 Mr. Colvin's testimony speaks for itself.

22 THE COURT: All right. We'll just stick with
23 the September 15th.

24 Again, I understand, especially for you,
25 Mr. Thomas, you have an inordinate amount of proposed

Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

1 orders, but just let me know -- put September 15th --
2 and Mr. Shaffer, if you need any additional time.

3 Just for the record, and so that there is no
4 misunderstanding, once you mark the exhibits they
5 become a part of the record, even though they are not
6 introduced, so I don't need to change them to anything
7 that they were not already marked. So they are part
8 of the record.

9 Y'all have a wonderful day.

10 Mr. Archie, I'm taking this matter under
11 advisement. And what that means is that you're not
12 going to get a ruling here today. Mr. Shaffer is
13 going to have a long time to sit and articulate and
14 think out all of the legal reasons as to what happened
15 here today and present to me an order that he wants
16 for me to sign granting your post conviction relief.
17 So I'm giving him some additional time to work even
18 harder on your case.

19 So once I get that order, I look at it. And I
20 usually try to turn those around in about ten days.
21 So you're looking at my ruling within thirty days. Do
22 you have any questions, Mr. Archie?

23 MR. ARCHIE: No, ma'am. Thank you for your
24 time.

25 THE COURT: You have a great afternoon. And

Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

1 thank you. You've been so kind and courteous here in
2 court today. Have a safe trip back to Turbeeville.

3 MR. ARCHIE: Thank you.

4 THE COURT: Thank you.

5 [HEARING CONCLUDES AT 10:47 A.M.]
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Richard Colvin
Further Cross-Examination by Mr. Thomas
August 29, 2014

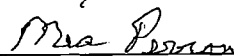
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

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 PCR Hearing held before the Honorable Kristi L. Harrington, on August 29, 2014.

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 16th day of January, 2015.



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

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

STATE OF SOUTH CAROLINA,)

VS.)

AZIKIWE A. ARCHIE,)

FILE: 22232-1)

IN THE COURT OF GENERAL SESSIONS

ACKNOWLEDGEMENT OF RECEIPT
OF ADDITIONAL DISCOVERY
DOCUMENTS

TO: RICHARD F. COLVIN, ATTORNEY FOR DEFENDANT

PURSUANT TO YOUR DISCOVERY REQUEST, ENCLOSED PLEASE FIND THE FOLLOWING
ADDITIONAL DOCUMENTS RELATIVE TO THE ABOVE REFERENCED MATTER:

EVIDENCE FURNISHED BY THE STATE:

PAGES

1. Plea Offer

1 page

PCR #2

PLEASE NOTE: THE FOLLOWING EVIDENCE IS ALSO AVAILABLE UPON REQUEST AND BLANK
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PLEASE ACKNOWLEDGE RECEIPT OF COPIES OF THE ABOVE DOCUMENTS AT THE
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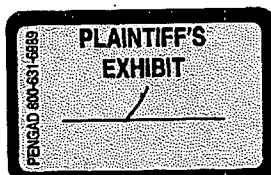
GEORGETOWN, SOUTH CAROLINA

ATTORNEY FOR DEFENDANT

DATE: FEBRUARY 11, 2010

NANCY G. COTE, ASSISTANT SOLICITOR

FEB 12 2010



State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



Francis A. Humphries, Jr.
Deputy Solicitor

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Robert B. Bryan
Deputy Solicitor

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J. GREGORY HEMBREE
Solicitor

DATE: February 11, 2010
TO: Richard F. Colvin, Esquire
FROM: Nancy G. Cote', Assistant Solicitor
RE: State vs. Azikiwe A. Archie Case # 22232-1

Pending Charge(s) Dist. of Cocaine Base, 3rd Offense Warrant(s) J510455

Upon reviewing the above referenced case(s) the State makes the following offer regarding the disposition of the charge(s):

If the Defendant will plead guilty to: Distribution of Cocaine Base, 2nd Offense

The State offers the following: 7 years.

The Defendant must accept the offer by February 19, 2010 or it is considered rejected and the State will not make the offer again. Should the defendant accept the offer, he or she must enter the plea before or during the February 22, 2010 term of court. Please review the offer with your client, sign and date as indicated below, and return to me no later than February 19, 2010. Please call me at 545-3189 if I may be of service.

DEFENDANT'S RESPONSE

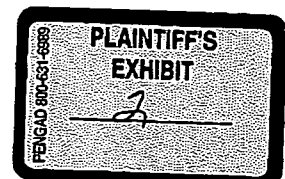
TRIAL _____ GUILTY PLEA _____

Attorney's Signature _____

Date: _____

Defendant's Signature _____

Date: _____



The mission of the Fifteenth Circuit Solicitor's Office is to uphold the
public's trust in the pursuit of justice and enforcement of the law.

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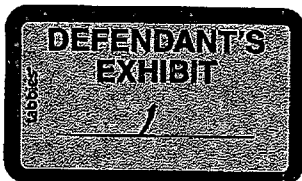
STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Steven H. John, Circuit Court Judge

The State, ... Respondent,
v.
Azikiwe Archie, ... Appellant.

APPELLANT RESPONSE TO ANDERS BRIEF

Azikiwe Archie
Perry C.I. / Q3-A204
430 Oaklawn Road
Pelzer, SC 29669



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ATTORNEY GENERALS
OFFICE

SC Attorney General
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MAY 14 2012

Referred to

Answered

J. Elliott

Appl. Cw

TABLE OF AUTHORITIES

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State v. Edward, 228 S.C. 324 (1955)	11
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State v. Justus, 392 S.C. 416, 709 S.E.2d 668 (2011)	2
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Zuck v. Alabama, 588 F.2d 436 (5th Cir. 1979)	3

RULES

South Carolina Rules of Professional Conduct, Rule 1.7, et seq.	2, 4
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CONSTITUTIONAL PROVISIONS

South Carolina Constitution, Article I, § 14	8
South Carolina Constitution, Article I, § 3	8
United States Constitution, Amendment VI	2, 4, 5
United States Constitution, Amendment XIV	8

STATEMENT OF ISSUES ON APPEAL

Did trial court err by removing Appellant's second-chair counsel based on Rule 1.7 of the Rules of Professional Conduct after the jury was selected, yet unsworn, where a state witness was formerly represented by that attorney on an unrelated matter?

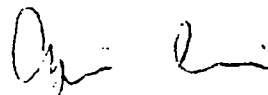
Did trial court err by admitting the drugs in this case over defense counsel's objection that the State's chain of custody on the drugs was incomplete?

Did the trial court err by denying Appellant's motion for directed verdict of acquittal when there was no substantial or circumstantial evidence to prove Appellant's guilt?

STATEMENT OF THE CASE

Appellant, Azikiwe A. Archie, was indicted by the Georgetown County Grand Jury on November 14, 2007, for distribution of cocaine base. (Tr. p. 5, lns. 14-16; Indictment) Appellant's case proceeded to trial from February 28 through March 1, 2011, before the Honorable Steven H. John and a jury. Appellant was represented by Richard Colvin (Colvin) and Stuart Axelrod. Representing the State were Nancy Cote and Scott Hixson. (Tr. p. 1)

The jury found Appellant guilty as charged. (Tr. p. 208, lns. 11-14) The trial court determined the conviction constituted a third drug offense and sentenced Appellant to fifteen years imprisonment. (Tr. p. 25, lns. 18-24)



ARGUMENT I

THE TRIAL COURT ERRED BY REMOVING APPELLANT'S SECOND-CHAIR COUNSEL BASED ON RULE 1.7 OF THE RULES OF PROFESSIONAL CONDUCT AFTER THE JURY WAS SELECTED YET UNSWORN WHERE A STATE WITNESS WAS FORMERLY REPRESENTED BY THAT ATTORNEY ON AN UNRELATED MATTER.

Initially the State made a motion before the jury was selected or sworn. In spite of the defense not being formerly served with said motion to remove second-chair counsel, the trial court was aware of the motion, but chose to allow the trial proceedings to begin. (Tr. pp. 213-215) After the jury was selected, but before it was sworn, the State activated its motion to remove Appellant's second-chair counsel from the case. The basis of the State's motion was that counsel also represented Christopher Woodsides in an unrelated matter, and Woodsides was the Confidential Informant (C.I.) that the State sought to utilize as a witness in Appellant's trial. (Tr. pp. 24, ln. 16 - 25, ln. 1)

Counsel acknowledged that he formerly represented Woodsides in a limited capacity, but was removed by the circuit public defender from that case. Specifically, counsel indicated the Woodsides matter was an unrelated case and that he met with Mr. Woodsides once at a roll-call for five minutes [fn.1]. Counsel further indicated that he had no knowledge of any specifics of Woodsides' unrelated case, and the file had no material about it. (Tr. p. 25, lns. 4-19)

Counsel had no prior knowledge of being assigned to Woodsides' (CDVHAN) case until he inquired about the identity of

Woodsides' attorney of record during preparation for Appellant's trial. To his surprise, he was listed. (Tr. pp. 26, ln. 21 - 27, ln. 4)

After learning this fact, the circuit public defender reassigned the case to another assistant public defender in the office. (Tr. pp. 26, lns. 5-11; 28, lns. 18-19; 29, lns. 12-15) Additionally, out of an abundance of caution, counsel stated he was not going to cross examine Woodsides in the event Woodsides testified in Appellant's case even though the only impeachment information about Woodsides', known by Appellant's attorneys, was what was contained in the "Public Index of Georgetown Court." (Tr. pp. 25, lns. 19-22; 27, lns. 5-20)

Regardless, the trial court relied upon Rule 1.7(B)(4) of the South Carolina Rules of Professional Conduct (SCRPC) and granted the State's motion to remove counsel from the remainder of Appellant's case. Specifically, the Court determined a conflict of interest was present and that counsel had not produced an informed consent in writing from Woodsides permitting counsel to represent Appellant. (Tr. pp. 27, ln. 21 - 29, ln. 18)

Appellant's remaining attorney objected to the trial court's ruling at the close of evidence, and again after the jury returned its verdict. (Tr. pp. 160 & 212-214)

An accused has the constitutional right to the assistance of counsel in a criminal trial. U.S. Const., Amend. VI; Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792 (1963). This right is guaranteed by the Sixth Amendment and is a fundamental right. Argersinger v. Hamlin, 407 U.S. 29-33, 92 S.Ct. 2006, 2008-2010 (1972). Although a motion to relieve counsel is addressed to the trial court's discretion, the Court's decision is subject to scrutiny under the abuse of discretion standard. State v. Justus, 392 S.C. 416, 418, 709 S.E.2d 668, 670 (2011).

In the present case, the State sought to relieve counsel from the accused's defense. "In light of the fundamental nature of the Sixth Amendment right to counsel and the prosecutor's duty to

seek justice, the State must exercise caution in this area." Id. 392 S.C. at 419, n.7, 709 S.E.2d at 670, n.7.

For this reason, it is the threat of an actual conflict that justifies the State's effort to deprive an accused of his counsel; hypothetical or speculative conflicts are insufficient.

Different considerations are at play when an accused seeks to relieve his or her counsel..." Id. An actual conflict of interest is present when:

"...A defense attorney places himself in a situation inherently conducive to divided loyalties.... If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client."

Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984) (quoting Zuck v. Alabama, 588 F.2d 436, 439 (5th Cir. 1979)).

Prejudice is presumed only if it is demonstrated "that counsel actively represented conflicting interests and that an actual conflict of interests adversely affected his [the] lawyer's performance." State v. Sterling, 377 S.C. 475, 479, 661 S.E.2d 99, 101 (2008). Further, "To the extent an attorney is acting under a conflict of interests in the pre-indictment stage,... the actual conflict of interest must persist into the post-indictment stage before a court will presume prejudice." Id. 377 S.C. at 479-80, 661 S.E.2d at 101.

In the case at bar, the very first error the trial court made, was to make its ruling that second-chair counsel should be removed because he was "presently" representing the State's confidential informant; i.e., that Woodsides was second-chair counsel's actual client. This was not the case. So therefore,

no "consent" from Woodsides was needed in order for second-chair counsel to represent Appellant.

In other words, no actual conflict of interest was present between counsel's prior limited representation of Woodsides, and present representation of Appellant. Counsel's representation of Woodsides was terminated before Appellant's trial began. Further, the State never indicated Woodsides' case was ever indicted by the time counsel's representation was terminated. In fact, the only known procedural aspect of Woodsides' case was that he had a roll call appearance in December 2014; yet, we do not know whether it was the first or second appearance, let alone whether the State had taken any action on Woodsides' case by indicting him for CDVHAN by the time counsel was relieved from that case prior to Appellant's trial. Additionally, counsel readily indicated that he never knew of any information regarding Woodsides' case. As such, prejudice cannot be presumed against the State's case by counsel's continued representation of Appellant because no actual conflict of interest was present. See, e.g., Sterling, 377 S.C. at 479-480, 661 S.E.2d at 101.

Moreover, the trial court's reliance upon Rule 1.7 SCRPC was misplaced. As stated by the Supreme Court, "[d]uties owed to a former client are not controlled by the Rules of Professional Conduct." Spence v. Wingate, 395 S.C. 148, 161, 716 S.E.2d 920, 927 (2011). Yet, the trial court here refused to permit counsel to remain on the defense because he had not complied with the written consent requirement of Rule 1.7(B)(4) [fn.2]. Therefore, the fact that counsel did not produce a signed written consent form from both Woodsides and Appellant is irrelevant; simply stated, the law controlling the present matter falls within the ambit of the Sixth Amendment and applicable South Carolina case law, not the Rules of Professional Conduct. Accordingly, the

trial court's ruling to remove counsel was erroneous, as it was predicated on a misapplication of law.

Appellant was also prejudiced by the trial court's erroneous removal of counsel; counsel was an integral part of the defense. For instance, it was counsel that led voir dire and jury selection on behalf of Appellant, not Colvin. (Tr. pp. 14, ln. 23 - 22, ln. 11)

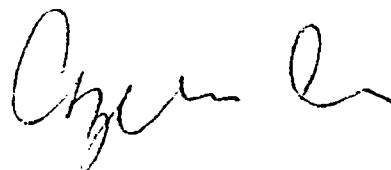
Second, as counsel explained to the trial court, his participation in trials with Colvin was necessitated by Colvin's health:

"Your honor, my willingness to these trials for [Colvin] has come through and it's been an ongoing thing that his health has been ... hurt a little bit and it's the position of our office that to assist him in the trials would be beneficial to the client's and it's -- this has been an ongoing situation."

(Tr. pp. 25, ln. 24 - 26, ln. 4)

Therefore, the trial court's erroneous removal of counsel, in violation of Appellant's Sixth Amendment rights, effectively stripped the defense of an integral member whose participation was critical to the stability and management of the defense. As a result, Appellant was prejudiced by the trial court's erroneous removal of counsel.

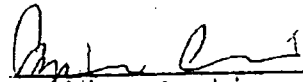
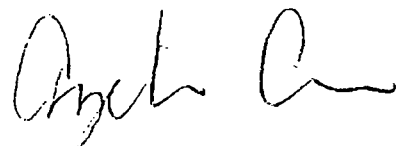
The Sixth Amendment does more than require the state's to appoint counsel for indigent defendants; the right to counsel prevents the states from conducting trials at which persons who face incarceration must defend themselves without adequate legal assistance. Cuyler v. Sullivan, 446 U.S. 335 (1980) and its progeny.



CONCLUSION

For the foregoing reasons, Appellant respectfully requests reversal of his conviction, and remand for new trial.

Date:

5.2.12
Greenville County
Azikiwe Archie
Perry C.I. / Q3-A204
430 Oaklawn Road
Pelzer, SC 29669

ARGUMENT II

THE TRIAL COURT ERRED BY ADMITTING THE DRUGS IN APPELLANT'S CASE OVER THE OBJECTION OF DEFENSE COUNSEL THAT THE STATE'S CHAIN OF CUSTODY ON THE DRUGS WAS INCOMPLETE.

Defense counsel's first objection about the state's chain of custody being incomplete was basically ignored by the trial. (Tr. p. 141, lns. 8-13) There was a discussion about the dates concerning the drugs with special agent, Criminalist, Forensic Scientist, Willie Smith. (Tr. pp. 142, ln. 25 - 147). At the close of the State's case, defense counsel made a motion to the court to be permitted to make a record concerning his chain of custody objection.

Defense counsel explained there was a gap in the State's chain of custody:

- (1) Mr. Willie Smith testified that he gave it to Amy Stevens.
- (2) Amy Stevens has not testified.
- (3) According to defense counsel discovery -- the drugs went from Amy Steven back to Selena Kinard and from Kinard to Joyce Phillips, who is now Joyce Phillips-Whalen. Amy Stevens is the missing link.

Defense counsel said these were his reasons for objecting to the admissibility of the drugs. (Tr. pp. 149, ln. 5 - 153, ln. 20) The State's position was that the chain of custody only needed to be proven through the time that the drugs were analyzed by the chemist. (Tr. p. 150, lns. 1-12)

Once again, defense counsel motions the court concerning the State's chain of custody. Counsel stated it was his belief that Rule Six of the SCR CrimP, requires that the chain of custody be complete not only to Mr. Smith (Willie Smith) but also back to this court room. Defense counsel believes each person who handles the evidence must, according to Rule Six (6), either

testify or, according to the language of Rule Six, present a; "certified or sworn statement signed by each successive person having custody of the evidence." Defense counsel stated this is what's missing. (Tr. pp. 161, ln. 19 - 162, ln. 1)

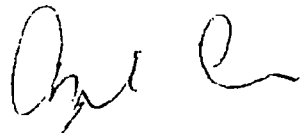
Pursuant to South Carolina law; Rule 6 of the South Carolina Rules of Criminal Procedure; and United States Supreme Court precedent, the trial court erred in admitting the drugs in Appellant's case.

Rule 6(B) SCRCrIMP

A certified or sworn statement, signed by each successive person having custody of the evidence, was needed for the complete chain of custody and its admission into Appellant's trial.

Appellant contends that his South Carolina and United States constitutional rights to due process of law and the right to confront and cross-examine his accusers were violated. See, Crawford v. Washington, 541 U.S. 34 (2004); Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009); and Bullcoming v. New Mexico, 131 S.Ct. 2705 (2011).

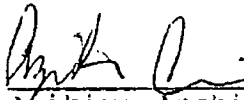
In South Carolina, a party offering into evidence, fungible items such as drugs or blood samples must establish a chain of custody as far as practicable. See, e.g., State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992); Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957); and State v. Johnson, 318 S.C. 194, 456 S.E.2d 442 (Ct.App. 1995), cert. denied (December 8, 1995). Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable. State v. Williams, 291 S.C. 290, 376 S.E.2d 773 (1989); Johnson, 318 S.C. at 196, 456 S.E.2d at 443. See also, State v. Chisolm, 355 S.C. 175, 584 S.E.2d 401 (S.C.App. 2003); rehearing and cert. denied. (i.e., necessity for all custodians to testify or produce a sworn statement).

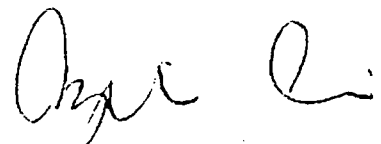


CONCLUSION

For the foregoing reasons, Appellant should receive a new trial.

Date: 5.2.12
Greenville County


Azikiwe Archie
Perry C.I. / Q3-A204
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Pelzer, SC 29669



ARGUMENT III

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT OF ACQUITTAL WHEN THERE WAS NO DIRECT OR INDIRECT EVIDENCE TO PROVE APPELLANT'S GUILT.

The State's case in chief depended on the sole testimony of their confidential informant (C/I) allegedly being truthful.

This case was supposed to be an undercover controlled buy, with the use of marked money with audio and video surveillance. Nobody actually saw the Appellant sell the C/I any drugs. Sgt. Geno and Agent Ward did not see the Appellant sell their C/I any drugs. Neither agent recovered the buy money, which was marked from the Appellant. They never even attempted to confirm that the call the C/I made was actually to the Appellant. Instead, they chose to just believe the C/I. The A/V tape from the wire the C/I was wearing proved to be useless in the way of evidence that Appellant committed any kind of crime.

Before the State had the opportunity to bring in the cell phone call made by the C/I, allegedly to the Appellant, defense counsel objected to its introduction without some proof; independent proof, such as a phone bill. The court denied the motion and allowed the State to prejudice Appellant by bringing in evidence they had no proof of. (Tr. p. 151, ln. 20 and pp. 167-168)

The State could not even produce circumstantial evidence that Appellant actually sold the C/I any drugs. Appellant was seen at a public restaurant, where an undercover buy happened to be going down, and then he left the public establishment and went in the direction of another one. The fact that some narcotic agents were in the same public establishment and recognized Appellant, was far from witnessing any crime being committed.

These facts can not even be said to say Appellant was merely present at the scene of a crime, because no crime at no time had been committed in the sight of these officers.

Appellant was not even arrested at the alleged crime scene, even though the C/I was wearing a wire and this whole undercover buy was being tape recorded. This incident took place on May 4, 2007. Appellant was arrested weeks later for this crime (May 23, 2007).

The State is required to prove every element of the crime for which an accused is charged. Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979); In re Winship, 397 U.S. 358, 364 (1970). Mere suspicion alone is insufficient to send the case to the jury. There must be substantial evidence which reasonably tends to prove the guilt of the accused. State v. Edward, 298 S.C. 272, 275 (1989), cert. denied at 493 U.S. 895, 110 S.Ct. 241; State v. Littlejohn, 228 S.C. 324, 329 (1955).

CONCLUSION

For the foregoing reasons, Appellant should receive a new trial.

Date: 5-2-12
Greenville County


Azekiwe Archie
Perry C.I. / Q3-A204
430 Oaklawn Road
Pelzer, SC 29669

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Steven H. John, Circuit Court Judge

The State, ... Respondent,

v.

Azikiwe Archie, ... Appellant.

PROOF OF SERVICE

I, Azikiwe Archie, certify that I have this day served Appellant's Response to Anders Brief; upon the South Carolina Court of Appeals; by submitting one (1) original and one (1) copy of the same in the U.S. Mail (by and through the Percy Correctional Institution legal mail system). The following parties have been served at the below addresses:

SC Court of Appeals
Jenny A. Kitchings, Clerk
Post Office Box 11629
Columbia, SC 29211

SC Office of Attorney General
Salley W. Elliot
Post Office Box 11549
Columbia, SC 29211

SWORN AND SUBSCRIBED TO before me, this

Last day of May, 2012

Steven T. Melander

Notary Public for South Carolina

My Commission Expires: January 7, 2016

Azikiwe Archie
Perry C.I. / Q3-A204
430 Oaklawn Road
Pelzer, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Azikiwe Archie, #269814,

) Case No. 2013-CP-22-572

Applicant,

)

)

)

v.

)

)

State of South Carolina,

)

)

Respondent.

)

ORDER OF DISMISSAL

ALMA Y. WHITE
CLERK OF COURT

2014 OCT 20 AM 10:47

FILED
GEORGETOWN COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 5, 2013. Respondent received the application from the Georgetown Clerk of Court on February 10, 2014, and made a timely Return on or about May 20, 2014. The Court convened an evidentiary hearing into the matter on August 29, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Richard F. Colvin, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Georgetown County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. In November 2007, the

Georgetown County Grand Jury indicted Applicant for distribution of cocaine base, third or subsequent offense (2007-GS-22-1204). Richard F. Colvin, Esquire ("trial counsel"), represented Applicant. On February 28, 2011, Applicant proceeded to trial before the Honorable Steven H. Jolin and a jury. The jury found Applicant guilty as indicted. On March 1, 2011, Judge John sentenced Applicant to fifteen (15) years in the State Department of Corrections with credit for time served.

Applicant filed a timely notice of appeal. Breen R. Stevens, Esquire ("appellate counsel"), of the Office of Appellate Defense perfected the appeal with the filing of an *Anders*¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on February 20, 2013. *State v. Archie*, Op. No. 2013-UP-075 (S.C. Ct. App. filed February 20, 2013). The remittitur was returned to the circuit court on March 15, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel."
 - a. "Whether counsel failure to timely object and motion to quash the indictment where the solicitor was the sole witness before the grand jury constituted ineffective assistance?"
 - b. "Whether trial counsel were ineffective in failing to communicate the State's initial seven-year plea offer to applicant?"
2. "Ineffective Assistance of Appellate Counsel."
 - a. "Was appellate counsel ineffective in failing to raise and brief the issue of the trial judge erred in admitting the crack cocaine into evidence because the State failed to prove a sufficient chain of custody?"

¹ *Anders v. California*, 386 U.S. 738 (1967).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Trial counsel testified he was a full time public defender for several years when he was appointed to Applicant's case. He recalled a significant delay between his appointment and trial based on Applicant's incarceration in another state. Trial counsel did not recall specifically how many meetings he had with Applicant, but felt he was prepared to go to trial. He did recall sharing the tape of the drug buy with applicant. Trial counsel testified the Solicitor initially offered to allow Applicant to enter a plea in exchange for a three (3) year sentence. Trial counsel testified Applicant was facing a significant sentence if convicted at trial, and advised Applicant to accept the plea. Trial counsel recalled Applicant rejecting the plea offer. He also recalled Applicant rejecting a second offer to enter a plea in exchange for a range of three (3) to seven (7) years. Plea counsel adamantly maintained he conveyed these plea offers to Applicant and Applicant made the decision to reject them. Trial counsel also testified he did not see anything wrong or out of the ordinary with the indictment. He testified the indictment lists the Georgetown County Sheriff's Office as the witness that presented the indictment to the grand jury.

Applicant testified he had two prior incarcerations for drug offenses. He recalled meeting with trial counsel quite a few times. Applicant testified he did not learn of the three year offer

until trial. He testified trial counsel rejected the plea offer without consulting with him. He further testified he never learned of an offer for a three (3) to seven (7) year range. Applicant testified he would have accepted either offer. However, on cross-examination, Applicant admitted he never approached trial counsel about attempting to negotiate a plea offer. He also admitted he never spoke up on the record about the three (3) year offer he learned of at trial.

Applicant testified he did not receive a complete copy of discovery until he arrived at the Department of Corrections. However, he recalled listening to the tape of the drug buy prior to trial. He testified trial counsel advised him they had a good case and could win at trial. Applicant admitted he never discussed any challenge to the indictment with trial counsel. However, he did testify he spoke with appellate counsel about challenging the ruling on the chain of custody objection. On cross-examination, Applicant admitted he raised the challenge to the chain of custody in his *pro se* response to the *Anders* brief.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing *Griffin v. Martin*, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." *Id.* at 442, 334 S.E.2d at 814 (citing *Strickland v. Washington*, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Id.* (citing *Strickland*, 466 U.S. at

687; *Turner v. Bass*, 753 F.2d 342 (4th Cir. 1985); *Marzullo v. Maryland*, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. *Id.* at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. *Id.* Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, any 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." *Id.* at 117-18, 386 S.E.2d at 625.

1. Failure to Move to Quash the Indictment.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to move to quash the indictment because the Solicitor was the sole witness before the grand jury.² A presumption of regularity attaches to grand jury proceedings. *Pringle v. State*, 287 S.C. 409, 410-11, 339 S.E.2d 127, 128 (1986) (citing *State v. Britt*, 235 S.C. 395, 111 S.E.2d 669 (1959); *State v. Jones*, 211 S.C. 319, 45 S.E.2d 29 (1947); *State v. Waring*, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the Court must presume a properly returned indictment is valid. *State v. James*, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing

² See *State v. Anderson*, 312 S.C. 185, 187, 439 S.E.2d 835, 836 (1993) (explicitly prohibiting the solicitor from appearing as the sole witness before the grand jury).

Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); *State v. Thompson*, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Applicant's indictment is valid on its face because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Id.* at 75, 472 S.E.2d at 40. The indictment is stamped "True Billed" and signed by the foreman. *Pringle*, 287 S.C. at 410, 339 S.E.2d at 128. Applicant presented no evidence, other than his own testimony, to support his contention the Solicitor appeared before the grand jury. The indictment specifically indicates a representative from the Georgetown County Sheriff's Office appeared as the witness when Applicant's indictment was presented to the grand jury. The Court agrees with trial counsel's analysis that the indictment was not objectionable and finds trial counsel was not deficient. *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992))). The Court also finds Applicant failed to demonstrate he was prejudiced by trial counsel's decision to not move to quash the indictment. *Palacio v. State*, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (no prejudice where allegation based on applicant's "mere speculation and conjecture" (citing *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998))).

2. Failure to Convey Plea Offer.

The Court finds Applicant failed to carry his burden to prove trial counsel ineffective for failing to convey a seven (7) year plea offer. To be successful on an allegation of an un-conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient

performance, he would have accepted he original plea offer. *Davie v. State*, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. *Id.* at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

demonstrate a reasonable probability [he] would have accepted the earlier plea offer had they been afforded effective assistance of counsel. [He] must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.

Missouri v. Frye, ___ U.S. ___, 132 S.Ct. 1399, 1409 (2012).

The Court finds Applicant failed to demonstrate trial counsel was deficient in failing to convey the State's initial offers. Trial counsel testified he independently recalled receiving the three (3) year offer and conveying it to Applicant, who rejected it. He testified similarly regarding the offer for a three (3) to seven (7) year range. Regarding an alleged seven (7) year offer, Applicant presented no competent evidence the State made such an offer. The Court finds trial counsel relayed all plea offers to Applicant, and Applicant made the decision to decline them.

Assuming, *arguendo*, Applicant never received these offers, the Court finds Applicant failed to demonstrate any prejudice. Specifically, he has not demonstrated he would have accepted any plea had one been offered. *Frye*, 132 S.Ct. at 1409. Applicant testified he did not learn of any pleas until the day of trial. However, nowhere in the record does Applicant indicate he did not want to go to trial. Furthermore, he admitted at the evidentiary hearing that he did not

ask trial counsel to actively pursue a plea offer. Trial counsel also testified he advised Applicant to enter a plea to avoid a harsher sentence, and would not have gone to trial if Applicant had not requested a trial. The Court finds Applicant has not demonstrated a reasonable probability he would have entered into any plea agreement that the State offered. *Davie*, 381 S.C. at 608, 675 S.E.2d at 420. Applicant has not shown he was prejudiced by trial counsel's performance regarding plea negotiations.

C. Ineffective Assistance of Appellate Counsel.

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387, 396 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing *Jones v. Barnes*, 463 U.S. 745 (1983)). Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones*, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Griffin v. Aiken*, 775 F.2d 1226, 1235 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. *Thrift*, 302 S.C. at 537, 397 S.E.2d at 526; *Strickland*, 466 U.S. at 687. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). Furthermore, the applicant must prove prejudice by showing "there is a reasonable

probability he would have prevailed on appeal." *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003) (citations omitted).

The Court finds Applicant failed to meet his burden of showing ineffective assistance of appellate counsel for failing to challenge Judge John's admission of the drug evidence over trial counsel's chain of custody objection. The Court notes Applicant failed to present any testimony from appellate counsel on this issue. The Court cannot speculate as to why certain issues were not briefed. *Cf. Dempsey v. State*, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, without a witness's testimony, "any finding of prejudice is merely speculative").

The Court also finds Applicant has not proven an irregularity in the Court of Appeals *Anders* procedure such that he would be entitled to a new trial. In *State v. McKennedy*, 348 S.C. 270, 559 S.E.2d 850 (2002), the South Carolina Supreme Court outlined the *Anders* procedure as follows:

"[A]ccording to *Anders*, the reviewing court is obligated to make a full examination of the proceedings on its own. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant 'the assistance of counsel to argue the appeal.' The purpose of filing a brief under *Anders* is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal."

McKennedy, 348 S.C. at 279, 559 S.E.2d at 855. A presumption of regularity attaches to judicial proceedings, and this presumption should extend to the Court of Appeal's review under the *Anders* procedure. *Pringle*, 287 S.C. at 410-11, 339 S.E.2d at 128. Accordingly, this Court must presume the Court of Appeals reviewed the chain of custody issue before dismissing Applicant's

appeal.³ *McHam v. State*, 404 S.C. 465, 475, 746 S.E.2d 41, 46 (2013) ("Under the *Anders* procedure, an appellate court is required to review the entire record, including the complete trial transcript, for any preserved issues with potential merit." (citing *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991))). The Court also notes Applicant raised this issue in his *pro se* response to the *Anders* brief. (Respondent's Exhibit No. 1). The Court of Appeals' compliance with the *Anders* procedure here creates a presumption of regularity, which the Court finds has not been rebutted by Applicant. Applicant cannot challenge the admission of the drug evidence on collateral review when he has previously challenged it on these same grounds on direct appeal. See S.C. Code Ann. § 17-27-20(b) (post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); see also *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

Applicant has not demonstrated he would have been successful had appellate counsel challenged the admission of this evidence. See *Smith v. Robbins*, 528 U.S. 259, 287 (2000) ("[I]n most cases in which a defendant's appeal has been found, pursuant to a valid state procedure, to be frivolous, it will in fact be frivolous."). For drug evidence to be admitted, the State must merely establish the chain of custody as far as practicable. *State v. Hutcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (citing *State v. Siveet*, 374 S.C. 1, 647 S.E.2d 202 (2007); *Benton v. Pellum*, 232 S.C. 26, 100 S.E.2d 534 (1957)). However, "every person handling the evidence

³ Trial counsel objected to the introduction of the drugs based on the chain of custody (Trial Tr. p. 141, lines 8-9) and renewed his objection at the close of the evidence.

need not be identified in all cases." *Id.* at 95, 708 S.E.2d at 755. Here, the State established a chain of custody for the drugs up to the point they were analyzed. This chain is sufficient to admit the drug evidence. *See State v. Pollard*, 261 S.C. 389, 391, 200 S.E.2d 233, 234 (1973) (drug evidence admissible where chain of custody proven up to the chemist who analyzed it (citing *Benton*, 232 S.C. 26, 100 S.E.2d 534; T. W. Cousens, Annotation, *Proof of Identity of Person or Thing where Object, Specimen, or Part is Taken from a Human Body, as Basis for Admission of Testimony or Report of Expert or Officer Based on Such Object, Specimen, or Part*, 21 A.L.R.2d 1216 (1952))). Accordingly, Applicant has not shown he would have been successful if this issue had been raised. *Anderson*, 354 S.C. at 434, 581 S.E.2d at 835.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. This application for post-conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7th day of October, 2014.

Charles South Carolina

THE HONORABLE KRISTI LEA HARRINGTON
Presiding Judge

WITNESSES:

Georgetown County Sheriff's Office

ARREST WARRANT NUMBER:

A/W: J-510455

CDR: 3039 §44-53-375(B)(3)

P.L.:

DOI: 5-4-07

SID: SC01317842

ACTION OF GRAND JURY
TRUE BILL

Date

11/14/07

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 07 GS22 1204x ✓

The State of South Carolina,

County of Georgetown

22232

DCB

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2007

THE STATE

VS.

AZIKIWE A. ARCHIE

Georgetown, SC 29440

J. GREGORY HEMBERG, SOLICITOR

INDICTMENT FOR

DISTRIBUTION OF
COCAINE BASE
(CRACK COCAINE)

FBI received on 11/30/07

SCANNED

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

INDICTMENT FOR:

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

At the Court of General Sessions, Convened on November 14, 2007 the Grand Jurors of Georgetown County present upon their oath:

That Azikiwe A. Archie did in Georgetown County, on or about May 4, 2007, distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of cocaine base, a controlled substance under provisions of §44-53-110, et. seq., Code of Laws of South Carolina (1976), as amended, such possession not having been authorized by law, and being in violation of §44-53-375(B), S. C. Code of Laws, 1976, as amended.

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


SOLICITOR DUB

SCANNED