

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEFFREY DAVIS,

APPELLANT

APPELLATE CASE NO. 2013-002617

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit
Moss Justice Center
1675 York Highway, Ste. 1-A
York, SC 29745-7495
(803) 628-3020

Attorneys for Respondent

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)

5 -vs-)

6 JEFFREY DAVIS,)

7 DEFENDANT.)

) TRANSCRIPT OF RECORD

) 2013-GS-46-00214

) JUNE 4, 2013

) YORK, SOUTH CAROLINA

8 (VOLUME I)
9

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 JENNIFER COLTON, ASSISTANT SOLICITOR
16 MATTHEW SHELTON, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 MARK MCKINNON, ASSISTANT PUBLIC DEFENDER
19 CREIGHTON HAYES, ASSISTANT PUBLIC DEFENDER
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, JUNE 4, 2013)

2 THE COURT: All right, counsel, we are ready to
3 proceed?

4 MS. COLTON: Yes, Your Honor.

5 Your Honor, at this time the State would call the
6 State versus Jeffrey Davis, 2013-GS-46-0214.

7 The State is electing to proceed just on the
8 distribution of crack cocaine, third offense.

9 There's also an accompanying proximity, but we are
10 not -- we are going to dismiss that case and go forward on
11 the distribution at trial.

12 Your Honor, Mr. Davis is not present in the
13 courtroom. He has been served with a life notice. I would
14 ask that the bailiff go out and call his name three times to
15 see if he is outside the courtroom. We intend to go forward
16 with a trial in absence.

17 I did put him on notice in front of -- during the
18 May 6th term of court Mr. Davis and his attorney were served
19 with a life notice, a notice to seek life without parole,
20 this being a third offense, Your Honor, with two prior
21 strikes.

22 He was also given a notice that he would be tried
23 this week, this term, the June 3rd term, on the record with
24 Judge Burch.

25 I have a copy of his certified bond papers, Your

1 Honor, where Mr. Davis signed an acknowledgement that he had
2 a right and obligation to be present at trial. Should he
3 fail to attend court, the trial would proceed in his
4 absence.

5 I ask that this be made a Court Exhibit, Your
6 Honor.

7 MR. MCKINNON: No objection, Your Honor.

8 THE COURT: Okay.

9 (Bond Paperwork marked as Court's Exhibit No. 1
10 for identification)

11 MS. COLTON: In addition, Your Honor, Mr. McKinnon
12 and I have been trying to work through this case. It's my
13 understanding -- I'm not asking Mr. McKinnon to in any way
14 throw his client under the bus, so to speak, but we have
15 been back and forth and keep seeing that maybe we have
16 reached an accord. I know that Mr. Davis had two
17 appointments to meet with Mr. McKinnon that he failed to
18 appear. He also failed to appear the last term of court,
19 and that would be the May 20th term of court. I gave him
20 until Friday to appear and we didn't have any judges
21 available, wasn't able to get the bench warrant. I do have
22 a bench warrant here because I didn't anticipate he was
23 coming.

24 I believe Mr. McKinnon also spoke to him this
25 morning about his attendance at the trial today, so I think

1 as an officer of the court I don't think it would be
2 inappropriate if Mr. McKinnon -- or he would be jeopardizing
3 his client, as an officer of the court, that he agrees that
4 there was a conversation that he and I had, just for
5 purposes of the record, to ensure that Mr. Davis knew that
6 he would have a trial starting this afternoon.

7 THE COURT: Okay.

8 MR. MCKINNON: Your Honor, if I could just briefly
9 address that issue with you real quickly.

10 What Ms. Colton said is mostly true.

11 I will say that Mr. Davis, although he's on a PR
12 bond, has eventually shown up. I have only met with him a
13 few times. He's frequently tardy. He will miss an
14 appointment. The next time he will show up, or he will show
15 up kind of on his own schedule, but he -- unfortunately he
16 does have -- I cannot contest the notice of this trial,
17 but --

18 THE COURT: Tell me exactly what notice he had.

19 MR. MCKINNON: As Ms. Colton said, he was given
20 the formal notice in front of Judge Burch. That was May
21 7th. At that time his drug court application was still
22 pending. Since then he was denied the possibility of going
23 to drug court.

24 Then I have told him on Friday over the phone --
25 I'm sorry, he came in and met with me this past Friday in

1 person. We discussed that his trial was up this week and
2 discussed, you know, the offer with him again the last
3 second. And then this morning I talked to him on the phone.
4 He told me he would be here by 10:30. Since then I have
5 talked to his mother and she doesn't know where he is.

6 THE COURT: Certainly he's not present or had any
7 contact with your office?

8 MR. MCKINNON: Not since the conversation about
9 10:30, or ten o'clock this morning.

10 THE COURT: All right. Mr. Comer, please come
11 around and be sworn.

12 THE CLERK: Yes, sir.

13 THE COURT: Please come around and be sworn.

14 BAILIFF JOHN COMER, having been first duly sworn,
15 testified as follows:

16 THE COURT: Mr. Comer, I'm going to ask you, if
17 you will, to go outside the courtroom and announce outside
18 the doors of the courthouse the name Jeffrey Davis three
19 times. And then I'll ask you to go downstairs in the lobby
20 and announce the name Jeffrey Davis three times. Come back
21 and report to the court if you get any response.

22 BAILIFF JOHN COMER: Sure.

23 THE COURT: Do you have a witness list of any voir
24 dire you want?

25 MR. MCKINNON: Your Honor, I do not have a

1 witness. We don't have any witnesses, but I do have a
2 motion in limine and I do have voir dire.

3 THE COURT: Please bring those up and give a copy
4 to the solicitor, if she doesn't already have one.

5 MS. COLTON: I have one, Your Honor. Thank you.

6 THE COURT: While he's doing that, we can go ahead
7 and get started I think with the motions in limine.

8 The State has no motions?

9 MS. COLTON: No, Your Honor. I believe that we
10 just have a joint motion, we will join with the defense at
11 that time. It's number 9 on the defense's list.

12 THE COURT: All right.

13 MS. COLTON: And the only other thing, this is
14 merely formality. I think that Mr. McKinnon and I are in
15 agreement on this, we talked about it briefly, but that the
16 fact that Mr. Davis may face life without parole, and
17 certainly at a minimum third offense 10 to 30, no parole, if
18 he was found to be not life eligible, that that not be
19 mentioned in front of the jury.

20 THE COURT: Do you agree to that?

21 MR. MCKINNON: Absolutely, Your Honor.

22 THE COURT: We can take that up. I don't know
23 that we need to determine -- well, do we need to determine
24 if it's LWOP before we get started, or can that be done
25 afterwards? You have given him notice.

1 MS. COLTON: Yes, sir, and I believe that's a
2 sentencing issue with enhancement, that that eligibility
3 comes into play: Once if he's convicted, then we make that
4 determination if it's life without parole or if it's a true
5 third offense at that point.

6 THE COURT: So we can hold off on that one.

7 Yes, sir.

8 BAILIFF JOHN COMER: I made the announcement in
9 the hallway and outside. No response.

10 THE COURT: Thank you, sir.

11 All right, let's go back then to the defense
12 motions. Let's proceed, counsel, if you want to present
13 your motions at this time.

14 MR. MCKINNON: Your Honor, we would ask that the
15 State has fully complied with Rule Five and Brady.

16 MS. COLTON: We have, Your Honor. This morning we
17 provided the criminal record of the confidential informant.

18 We have prepared and provided copies of the
19 videotapes in the distribution case, Your Honor, and I have
20 also shown the defendant -- the defense counsel some stills
21 that I have, still pictures that I clipped from the video.

22 And we have also -- although it's not covered by
23 Rule Five until after the confidential informant actually
24 testifies, we have already gone ahead and handed over the
25 witness statements, the confidential informant's statement

1 and the photo lineup.

2 THE COURT: All right.

3 MS. COLTON: And there have been no other
4 contradictory statements made by the confidential informant
5 or law enforcement that would be covered by Brady.

6 THE COURT: Before we move to the next one, do you
7 want to hand up a bench warrant in order for the bench
8 warrant and let's notify the bonds person?

9 MS. COLTON: Yes.

10 MR. MCKINNON: Unfortunately he's on a PR bond.

11 THE COURT: He's on a PR bond?

12 MR. MCKINNON: Yes, sir.

13 THE COURT: How did that work?

14 MR. MCKINNON: The bond judge gave him four
15 \$10,000 bonds, all secured on a personal recognizance.

16 THE COURT: It's kind of unusual there for
17 somebody who might be looking at life without parole or a
18 third drug offense to get a PR bond, but -- I don't know.

19 I would say that we need to go ahead and get that
20 order out there, and also contact the -- well, we don't have
21 a bonds person. We can't do that.

22 MS. COLTON: Your Honor, I'm going to ask that --
23 this individual resides in the valley area of York and I
24 have already spoke to Lieutenant Ligon this morning and he
25 indicated that they would go out and make an effort to

1 locate him.

2 THE COURT: Okay. If we get him at all. And the
3 reason I say that is if we get him picked on this bench
4 warrant, he could participate in the trial.

5 MS. COLTON: Yes, sir.

6 THE COURT: Even if he comes in a little bit later
7 after the jury is selected or anything, it won't matter.

8 MS. COLTON: Yes, sir. I would like that as well,
9 given the nature of the case, so I have asked the lieutenant
10 to try to get him picked up.

11 THE COURT: All right, let's go through the rest
12 of the motions.

13 MR. MCKINNON: Your Honor, I think that the State
14 has covered number 5 as well. She has provided me all
15 the --

16 THE COURT: Okay.

17 MR. MCKINNON: And, Your Honor, onto number two,
18 as far as I can tell, I don't believe there is any
19 out-of-court statements that they are going to intend to
20 use, but I just wanted to make sure.

21 MS. COLTON: There is not -- I think for the --
22 not being -- not utilizing the distribution proximity
23 charge, Your Honor, I don't think there will be anything
24 covered. There are statements by the defendant that are
25 captured on videotape, but they are during the course of the

1 distribution that proceeded.

2 THE COURT: Obviously that would come in following
3 the res gestae of the crime. Okay.

4 MR. MCKINNON: Your Honor, on number three, I want
5 to determine if there is any prior bad acts or convictions
6 that the State could use, if my client does show up and
7 testify.

8 MS. COLTON: Your Honor, it would be his three
9 prior drug offenses, as indicated on -- I think they are all
10 felonies on his rap sheet.

11 One moment, please.

12 (Off the record)

13 (Back on the record)

14 MS. COLTON: I believe the only incidents on his
15 record is he has a conviction for petit larceny in 2008.

16 MR. MCKINNON: That is not on his NCIC.

17 MS. COLTON: I have got a copy of the certified --

18 MR. MCKINNON: Well, yeah.

19 MS. COLTON: -- conviction to make sure.

20 MS. COLTON: Yeah.

21 Possession of crack cocaine from 2006, and that
22 was a second offense, Your Honor. So that would be a felony
23 conviction, and the State would agree to refer to that as a
24 felony conviction, not the crack cocaine or drug -- allude
25 to it as a drug offense.

1 He has a distribution within proximity of a public
2 school from 2000, and a distribution of crack cocaine first
3 from 2000, and I believe that those would fall --

4 MR. MCKINNON: Your Honor, I think defense would
5 concede that given he got a 54 month sentence --

6 THE COURT: The question would be when he got off
7 of parole.

8 MR. MCKINNON: Yes, sir. I believe he was revoked
9 on the parole in '05, so he was not done with that until
10 2006.

11 MS. COLTON: That would be covered within the ten
12 year period.

13 THE COURT: That would be within the ten years.

14 MS. COLTON: Again, we agree that we refer to that
15 as a felony conviction.

16 THE COURT: Just a felony conviction.

17 MS. COLTON: Yes.

18 THE COURT: All right. And petit larceny, how
19 about that? I think you can ask him about the petit
20 larceny, I guess.

21 MS. COLTON: Yes, sir.

22 THE COURT: Do you agree, Mr. McKinnon?

23 MR. MCKINNON: Yes, sir. Moral turpitude.

24 THE COURT: Moral turpitude, and it has nothing to
25 do with, of course, the offense to which he's on trial.

1 Really that has nothing to do with that. Okay.

2 MR. MCKINNON: Moving on to number four, I don't
3 believe that the State is intending to admit any Lyle
4 evidence, but I wanted to make sure.

5 MS. COLTON: No, Your Honor.

6 THE COURT: Okay.

7 MR. MCKINNON: Your Honor, number six, there
8 appears to be an issue that I have with the video that the
9 State has provided. It doesn't seem to be a complete video,
10 so I think given that the -- there appears to be a large
11 gap, which I cannot locate, I would just like the court --
12 the State to address that. I mean, I think that would be
13 prejudicial to my client if the State has cherry picked what
14 they are going to show.

15 THE COURT: Okay. Do you want to respond to that?

16 MS. COLTON: Your Honor, I do. What transpired
17 is, in a nutshell -- we can play the video, if Your Honor
18 wished to see it, and I can also proffer testimony. We have
19 a police officer who was driving the vehicle with the
20 confidential informant as the passenger. That police
21 officer taped from the beginning when they were getting into
22 the vehicle. And at the conclusion of the drug deal on the
23 way back to Moss Justice Center that police officer shut the
24 video off. So it was a complete -- what he has is the
25 complete video of what the officer videotaped. I think

1 there is no requirement, unlike a DUI, the State create
2 evidence and certainly that would go to the weight, not the
3 admissibility.

4 THE COURT:--So it's videotaped, the drug
5 transaction -- the alleged drug transaction itself is
6 videotaped?

7 MS. COLTON: Yes, sir.

8 THE COURT: And the informant is back in the car?

9 MS. COLTON: Yes, sir.

10 THE COURT: And they are on their way back --

11 MS. COLTON: Yes, sir.

12 THE COURT: -- to the origination point --

13 MS. COLTON: Yes, sir.

14 THE COURT: -- or police station?

15 MS. COLTON: Yes, sir.

16 THE COURT: And at that point -- the video is cut
17 off at that point?

18 MS. COLTON: Yes, sir.

19 THE COURT: Okay.

20 MR. MCKINNON: Well, Your Honor, that's not
21 actually what I was referring to. The videotape -- there is
22 two alleged points of contact with my client. One, a brief
23 contact, and then three minutes later the alleged deal. The
24 reports from the State put that as a twelve minute tape,
25 twelve minutes between those points of contact. I cannot

1 see a break in the video, but something is not jiving, I
2 guess.

3 MS. COLTON: Is that --

4 MR. MCKINNON: It says times are approximate, but --
5 given that it's four times the length of the transaction,
6 they have extended out four times, it --

7 MS. COLTON: Judge, all I know is that the
8 investigator -- I can put up the investigator in here to
9 testify. I mean, she will testify that she started the
10 video when they left and that she cut it off at some point.
11 They recorded it as being the drug transaction. At the end
12 of the drug transaction they are approximate. You may have
13 had two different, but I think they are approximate times.
14 I don't think there was a stopwatch recording of the video.
15 It doesn't appear to be broken. It doesn't appear to be
16 cut, or stopped and stopped, started at any point. It seems
17 to be a fluid transition on the video.

18 THE COURT: What is the issue then? You are
19 saying that -- the State is saying it's a three minute
20 transaction, and the --

21 MR. MCKINNON: Well, the State said it's a twelve
22 minute transaction, and we watched the video and it's only
23 three minutes.

24 THE COURT: How about that?

25 MS. COLTON: I don't know. I think the video

1 lasts a little bit longer than that, judge. I'm pretty sure
2 is lasts from the time they get in the vehicle until the
3 actual deal is done. I think they are on their way back to
4 the Moss Justice Center when Investigator Ervin cuts it off.
5 I'm pretty sure -- I made the same copy that I have I gave
6 to Mr. McKinnon.

7 MR. MCKINNON: Your Honor, the full video is about
8 six or six and a half minutes, but the point of contact
9 between the first contact allegedly with my client and the
10 second is three minutes, and that is the time frame that the
11 State has said is twelve minutes.

12 MS. COLTON: Well, where is it in the surveillance
13 notes?

14 MR. MCKINNON: 7:40 p.m. to 7:52 p.m..

15 MS. COLTON: Judge, I think that that would just
16 become something to cross-examine the officers on, as far as
17 recording it accurate. Investigator Figueroa prepared this.
18 He wasn't the officer that was in the car with the
19 informant. He wasn't a material witness to the crime, so if
20 he made an error in that report, certainly they can ask
21 Investigator Figueroa about that, but I don't think it's an
22 issue.

23 THE COURT: Do we need to do that pretrial before
24 the jury ever hears it?

25 MR. MCKINNON: He's not even on your witness list.

1 MS. COLTON: I didn't intend to call him. He has
2 prepared the surveillance log, Your Honor, but he can ask --
3 I mean, certainly he can ask Investigator Ervin what
4 transpired, because she was with the informant the entire
5 time. The informant never left the vehicle. The
6 transaction occurred in the vehicle, so everything from the
7 time they left Moss Justice Center together until
8 Investigator Ervin shuts the video camera off on the way
9 back to Moss after the deal, it is what it is. There
10 weren't any other stops.

11 You can ask Officer Ervin if there were any other
12 stops or why there is the discrepancy, but I think it's -- I
13 mean, I think the logical conclusion is the officer that was
14 writing the surveillance log made a mistake, which commonly
15 does happen, but as far as it being an issue with destroyed
16 evidence or being misleading in what transpired, that would
17 be something to ask Officer Ervin about, because this
18 officer that prepared this wasn't even a material witness to
19 what transpired.

20 THE COURT: Well, they are saying that the
21 videotape is intact from start to finish. There may be a
22 mistake in the report by an officer who was not a material
23 witness who was not involved in the transaction or a witness
24 to the transaction. Their position will be that there was a
25 mistake as being reported as to the amount of time on the

1 video. So that's something you can certainly cross-examine
2 them about. There is no question about that, unless you
3 have got some evidence that --

4 MR. MCKINNON: Well, Your Honor, quite frankly
5 looking at the video I cannot see a break or something would
6 have been excised, but I'm not --

7 THE COURT: Maybe -- it could be a mistake in
8 there, you know. It might be helpful to have the officer
9 who made the report state why -- you know, why they put that
10 in there, but I guess the other officer may testify that
11 they don't want why he put that it in there, but it's not
12 correct.

13 MR. MCKINNON: I mean, at least for these purposes
14 Officer Figueroa is not going to be available, so perhaps we
15 could subpoena him for tomorrow.

16 THE COURT: Is he back to work?

17 MS. COLTON: He's not an officer anymore, Your
18 Honor.

19 THE COURT: He's not?

20 MS. COLTON: No, sir.

21 THE COURT: Well, I don't know if they can get
22 ahold of them then.

23 Do you know his whereabouts so that they could
24 possibly subpoena him?

25 INVESTIGATOR ERVIN: He still lives in the same

1 house at Indian Land.

2 MS. COLTON: He still lives at that same address
3 that he's lived at at Indian Land.

4 THE COURT: Is that in York County?

5 MS. COLTON: Lancaster.

6 THE COURT: Well, I don't know that we will just
7 proceed or how do you want to proceed? I think you can try
8 to subpoena him. If he's within the State, though, he's
9 still in South Carolina, you probably can subpoena him, if
10 he's not across the state lines.

11 MR. MCKINNON: If we can find him, yes.

12 THE COURT: They say he's probably still at his
13 old address. You probably can get that from the police
14 department, or from whatever, and go ahead and subpoena him,
15 if you want to do that.

16 MS. COLTON: We can provide them with that, judge.

17 THE COURT: Pardon me?

18 MS. COLTON: We can provide them with that, Your
19 Honor.

20 THE COURT: Provide them with the information. Go
21 ahead and subpoena him. And if you can get him here before,
22 you know, your case ends, you know, we could put him on the
23 stand, if you choose to do that. Now, you may choose not to
24 do that, but, at any rate, we can look at the tape and see
25 and you can certainly question the officers about that,

1 whether that is why it appears on there in that way about
2 any missing part on the tape. You can certainly ask him
3 about that.

4 MR. MCKINNON: Yes, sir.

5 THE COURT: That's all I know to do with that.

6 They are saying the officer is going to testify
7 that it's complete and accurate up to the point that they
8 got in the car and started back. I have to let that in. If
9 there is some discrepancy -- again, their position is it's
10 just a mistake by Officer Figueroa when he did the report,
11 but you certainly can cross-examine and question him about
12 that. Try to get Officer Figueroa here. He might testify to
13 something different. If you ever get in touch with him, he
14 might not disagree with what they are saying, or he might
15 not know any, you know.

16 MR. MCKINNON: So I guess the question would be
17 what if the jury has already seen the video and Figueroa
18 comes in and says "oh, I saw it and it was twelve minutes
19 when I had it. I mean, that's why I put twelve minutes,
20 because it was a twelve minute video."

21 THE COURT: Well, you know, what are you going to
22 do if he's not available? I mean, you are still going -- we
23 are still going forward with it, but if he's not available
24 and it doesn't come or something? I don't know.

25 Let me ask the State to see if maybe you can -- if

1 somebody can be in touch with him. I don't know what the
2 relationship is there. Maybe if -- maybe you all could be
3 in touch with him and see if he would agree to come.

4 MS. COLTON:-- Okay.

5 THE COURT: Just on that one point, and -- I mean,
6 they can ask him I know once he is on the stand, but they
7 need him for that purpose, if he's aware of that about the
8 report.

9 MS. COLTON: Well, Your Honor, and I think that
10 Mr. Shelton has already e-mailed somebody to try to get
11 ahold of his address. Even if that -- the State's position
12 with that is if -- even if that officer didn't come in and
13 testify and say "no, these were the precise numbers, this is
14 exactly what happened," again, that would be for impeachment
15 value and go to the weight, not the admissibility.

16 I think once Officer Ervin says this is truthful
17 and accurate and complete, which is what I intend to -- you
18 know, which she -- which is the only conversations she's had
19 with me, if that's the case, then I think it comes in,
20 because it's been authenticated. And anything else that
21 they wish to argue would go to the weight.

22 THE COURT: Well, I think it comes in, unless the
23 State or anybody on behalf of the State knows that it's not
24 accurate.

25 MS. COLTON: Correct.

1 THE COURT: Then you got a real problem.

2 MS. COLTON: Yes, sir.

3 THE COURT: And so if your position is that it is
4 complete and accurate, and then they can attack it any way
5 that they want to attack it.

6 MS. COLTON: Yes, sir.

7 THE COURT: That's what I said, it would come in
8 if it's authenticated and everything and they are testifying
9 it's complete and accurate, you know.

10 Again, I just caution you if that's not the case,
11 somebody could be in serious trouble over that, if it's not
12 accurate and they know it's not accurate.

13 MS. COLTON: Yes, sir.

14 THE COURT: You just need to be aware of that
15 before you ever present it.

16 MS. COLTON: Yes, sir.

17 THE COURT: Okay.

18 MR. MCKINNON: Your Honor, I guess we will move on
19 then for now.

20 Number seven, there was an out-of-court
21 identification by the CI I believe in this case, who doesn't
22 appear to be present. I'm not sure if the State is going to
23 call the CI. So if they are not intending to call the CI
24 and introduce that, that ID, then we won't --

25 MS. COLTON: Judge, we intend on calling the

1 informant.

2 Just by way of background, as Your Honor is aware,
3 the informant had known this defendant for sometime prior to
4 this. They performed the lineup just to confirm the
5 identity.

6 In addition, if it's necessary we need to go
7 there, Investigator Ervin -- as well, both Investigator
8 Ervin -- both Investigator Ervin is Tanya Ervin, who was in
9 the vehicle, as well as Officer Rayford Ervin, were familiar
10 with the defendant and they could identify him from the
11 videotape, because it's a very clear videotape. I believe
12 Investigator Ervin had known Mr. Davis for several years.

13 INVESTIGATOR RAYFORD ERVIN: Yes, sir.

14 MS. COLTON: And so he can identify him. He knew
15 exactly who he was from the video, but I think it's clear
16 from the video as well that there is a discussion between
17 Tanya Ervin and the confidential informant about the
18 defendant, including his last name, so the identify -- that
19 gave them the identity the bigger aspect of it. Just for
20 the purposes of the record we are prepared to go forward
21 with that.

22 THE COURT: Do you want to do that?

23 MR. MCKINNON: Your Honor, I believe we need to,
24 and -- Your Honor, may we approach briefly?

25 THE COURT: Sure.

1 (Whereupon, the lawyers approached the bench for
2 an off-the-record discussion)

3 MS. COLTON: Judge, I don't -- if I could
4 backtrack for one second. It could be I'm still puzzled,
5 but did Your Honor say that we could go forward on the -- I
6 think I'm just going assuming it, but on the record saying
7 that we could forward with the TIA, that you found that he
8 was properly notified?

9 THE COURT: I probably didn't make that specific
10 finding. That's a good point, and, of course, we are still
11 in pretrial, but, yeah, let me go ahead and address that
12 issue.

13 The court finds that Mr. Davis in his bond form
14 was put on notice that he be tried in his absence if he
15 failed to show up.

16 He was notified, it was before Judge Burch in May
17 that his trial was coming up, that if he was not here, he
18 would be tried in his absence.

19 He was notified on Friday by defense counsel that
20 his trial was coming up this week and he needed to be here.

21 He talked to him this morning and he agreed to be
22 here. He said he would be here by 9:30, I believe, this
23 morning and talked with him. He knew he was going to trial
24 today and he has failed to show up.

25 He somehow got a recognizance bond in this case.

1 There is no bonds person we can contact, or that the State
2 or defense can contact to get the bondsman to find him and
3 bring him in, and so we have no way to do that.

4 And defense counsel talked with him and he was
5 aware that he had to be here at 9:30 today for trial. He
6 said he would be here, knew he was going to trial, and he
7 failed to show up, and so the court will proceed in his
8 absence, him having full notice.

9 We have asked outside the courtroom and outside
10 the court down in the lobby of the courthouse. The name was
11 announced three times from Mr. Comer, the bailiff, and he
12 failed to -- there was no response.

13 So he's not here. The court finds he's not here,
14 and he's willingly not here, as far as I know, has not
15 contacted defense counsel to say if there is any other
16 reason why he's not here. Therefore, it's appropriate. He
17 cannot delay the trial, commence with the trial to go
18 forward just because he simply chose not to be here after
19 being given full notice.

20 The court does not like trials in absence. I
21 prefer to have the defendant present if the trial is going
22 on, but, on the other hand, he can waive his right to be
23 present for the trial, and I find he's done that in this
24 case, unless he's found and shows up. Obviously he would be
25 allowed to participate if he shows up. All right, so we

1 will proceed in absence on it.

2 MS. COLTON: Your Honor, the State would call
3 Rayford Ervin.

4 ~~-----~~ INVESTIGATOR RAYFORD ERVIN, having been first duly
5 sworn, testified as follows:

6 MS. COLTON: Judge, before we begin questioning
7 Investigator Ervin along the lines of a trial in absence,
8 what we will be able to do is get a photograph of Mr. Davis,
9 a black and white photograph. The only photograph we have
10 is with the orange jumpsuit on, so we have put it in black
11 and white so you don't see the orange jumpsuit. It's not
12 indicative of him being incarcerated. I have already shown
13 a copy to defense counsel and this is what we will use to
14 identify Mr. Davis --

15 THE COURT: Okay.

16 MS. COLTON: -- in court.

17 DIRECT EXAMINATION BY MS. COLTON:

18 Q. Investigator Ervin, could you state your full name for
19 the record?

20 A. Rayford Lewis Ervin, Jr..

21 Q. And what's your occupation?

22 A. Police officer with the City of York.

23 Q. And are you currently assigned to the
24 Multi-Jurisdictional Drug Enforcement Unit?

25 A. Yes, ma'am.

1 Q. And what's your ranking there?

2 A. Commander.

3 Q. How long have you been with the DEU?

4 A. Since 1999.

5 Q. And were you assigned to the DEU on August 16th, 2012?

6 A. Yes, ma'am.

7 Q. And did you have -- did you -- were you involved in the
8 investigation of Jeffrey Davis?

9 A. Yes, ma'am, I was.

10 Q. And in the course of that investigation -- that was a
11 distribution of drugs, crack --

12 A. Yes, ma'am.

13 Q. -- distribution.

14 And did you utilize a confidential informant?

15 A. Yes, ma'am.

16 Q. And through your investigation was this informant then
17 able to purchase crack cocaine from an individual known as
18 Jeffrey Davis?

19 A. Yes, ma'am, they were. They did.

20 Q. And after this crack purchase was made, did you prepare
21 a photo lineup to show the confidential informant?

22 A. Yes, I did.

23 Q. And who is the confidential informant?

24 A. The lady sitting back there in the pink dress.

25 Q. Shari Jennings?

1 A. Yes, ma'am.

2 Q. Investigator Ervin, I'm going to show you --

3 MS. COLTON: I ask this be marked as Court's 2.

4 (Lineup Photographs marked as Court's Exhibit No.

5 2 for identification)

6 (Lineup Photographs marked as Court's Exhibit No.

7 3 for identification)

8 BY MS. COLTON:

9 Q. Investigator Ervin, Court's Exhibit 2, can you tell the
10 court what that is?

11 A. This is the photo lineup that I made of Jeffrey Davis.

12 Q. And is it -- who appears to be in the photograph with
13 Mr. Davis?

14 A. Repeat the question.

15 Q. Who is in that photograph? How did you prepare that
16 photo lineup?

17 A. We go through the York County database and pick out six
18 individuals with similar features.

19 Q. And there is six people on that paper?

20 A. Yes, ma'am.

21 Q. And what did you do after you prepared this photo
22 lineup?

23 A. After I prepared the photo lineup, I showed the photo
24 lineup to Ms. Jennings.

25 Q. And what did you tell her when you showed her the photo

1 lineup?

2 A. I advised her that Mr. Davis may or may not be in the
3 lineup.

4 Q. Okay. And did you tell her to pick anybody out in
5 particular?

6 A. No, ma'am.

7 Q. Did you point at it or indicate, otherwise verbal or
8 nonverbal, that Mr. Davis may be in the lineup?

9 A. No, ma'am.

10 Q. Did Ms. Jennings -- did you notice any other officer
11 indicate who Mr. Davis was in the lineup?

12 A. No, ma'am.

13 Q. And did Ms. Jennings pick out an individual in the
14 lineup?

15 A. Yes, ma'am, she did.

16 Q. And I'm going to show you what's been marked as Court's
17 Exhibit 3. Do you recognize that document?

18 A. Yes, ma'am.

19 Q. And what is that document?

20 A. It's the same document as this document, but it does
21 not have their names at the bottom of them.

22 Q. Okay. And is that the actual document that you showed
23 to Ms. Jennings, the confidential informant?

24 A. Yes, ma'am.

25 Q. Okay. And what did she do -- what did she do after you

1 showed her that, Court's Exhibit 3, without the names?

2 A. She picked Jeffrey Davis as being in photo number
3 three, circled it and initialed it.

4 Q. Okay. And you observed her doing that?

5 A. Yes, ma'am.

6 MS. COLTON: Your Honor, at this time the State
7 with move to enter into evidence Court's Exhibit 2 and
8 Court's Exhibit 3.

9 THE COURT: For the purposes of this hearing?

10 MS. COLTON: Yes, sir.

11 THE COURT: Okay.

12 Any objection?

13 MR. MCKINNON: For the purposes of this hearing we
14 will not object.

15 THE COURT: Okay. Admitted for purposes of this
16 hearing.

17 BY MS. COLTON:

18 Q. Investigator Ervin, are you familiar with Jeffrey
19 Davis?

20 A. Yes, ma'am.

21 Q. And for the purpose of pretrial, could you please tell
22 the court how you are familiar with Jeffrey Davis?

23 A. I have had prior dealings with Mr. Davis down in the
24 valley, as far as like drug sales.

25 Q. Okay. How long -- when was the first time that you met

1 Mr. Davis?

2 A. I was probably on the drug unit maybe a year, or so,
3 and then his name started popping up.

4 Q. Did you know him when you were a City of York police
5 officer?

6 A. Yes, ma'am, because I started the drug unit when I came
7 to the City of York.

8 Q. Okay. Investigator Ervin, how many years do you think
9 that is?

10 A. Thirteen.

11 Q. And how many times have you had a chance to encounter
12 Mr. Davis during that period of time?

13 A. I would say over ten times, because we worked that area
14 down there some.

15 Q. And did you have an opportunity to review the videotape
16 of the distribution with the confidential informant, Shari
17 Jennings?

18 A. Yes, ma'am.

19 Q. And when you reviewed that video, did you recognize --
20 who did you recognize on that video?

21 A. Jeffrey Davis..

22 Q. And Mr. Davis is -- what did you observe about that
23 video of Mr. Davis?

24 A. Mr. Davis walked up to the vehicle. The CI asked Mr.
25 Davis for a forty, meaning \$40 worth of crack. Mr. Davis

1 told them to go around the block and come back. A short
2 period of time, I ain't sure how many minutes or seconds it
3 was, they pulled back up, Mr. Davis sold Ms. Jennings a
4 quantity of crack-cocaine.

5 Q. Are you certain it was Mr. Davis on that videotape?

6 A. Yes, ma'am.

7 MS. COLTON: Your Honor, I have no further
8 questions for Investigator Ervin.

9 MR. MCKINNON: May it please the court?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION BY MR. MCKINNON:

12 Q. Investigator Ervin, you said you were investigating
13 Jeffrey Davis?

14 A. We were investigating drug dealers that was in the
15 valley area of York, South Carolina, which is in York
16 County.

17 Q. But you just specifically said that you were
18 investigating Jeffrey Davis.

19 A. Yes, we purchased a quantity of crack from Mr. Davis,
20 who lives in that area.

21 Q. As part of that investigation?

22 A. Yes, sir.

23 Q. Now, you said you prepared the lineup?

24 A. Yes, sir.

25 Q. And you administered the lineup?

1 A. Yes, sir.

2 Q. Now, had you already watched the video at that point?

3 A. Yes, sir.

4 Q. And what time did you administer the lineup?

5 A. I'm not sure. I don't have the other page.

6 Q. Would 8:29 p.m. be accurate?

7 A. If you let me take a quick glance of it.

8 Q. Sure.

9 MR.. MCKINNON: Your Honor, may I approach?

10 THE COURT: Sure.

11 A. Yes, sir.

12 BY MR. MCKINNON:

13 Q. Okay. How long did it take you to get the video from
14 an undercover officer, review it, and then create the
15 lineup?

16 A. I'm not sure how long it took, sir.

17 Q. I'm sorry?

18 A. I'm not sure how long it took.

19 Q. Well, just, in general, how long does it take to do
20 that? I mean, can you look at it, the video, immediately
21 and --

22 A. You can look at the video immediately. Probably maybe
23 five, ten minutes. And then the photo lineup was compiled
24 and I showed it to Ms. Jennings.

25 Q. Okay. So no one told you to put Jeffrey Davis into the

1 lineup?

2 A. Repeat the question, sir.

3 Q. Nobody else in your unit told you to put Jeffrey Davis
4 on the lineup?

5 A. Nick Schifferle was also looking at the video.

6 Q. So who decides that Jeff Davis should be one of the
7 six?

8 A. Because I know Jeffrey Davis from eye contact.

9 Q. I understand. Who decided that? You decided that, or
10 did Nick Schifferle decide that?

11 A. I decided that.

12 Q. And did you speak to the informant, Ms. Shari, before
13 administering the lineup?

14 A. No, sir.

15 Q. Now, you said that they told her there may or may not
16 be a suspect in the lineup. Did you show her any other
17 lineups that did not have anyone that were all six foils?

18 A. No, sir, this is the only lineup.

19 The reason why I tell them that is simply because
20 that's just something that I do. You know, I let them to
21 know that they may be in there or they may not be in there.

22 Q. But you never actually show -- have you ever shown an
23 entirely red herring lineup?

24 A. A what now?

25 Q. I'm sorry, a lineup without a person that you were

1 write the message down on a tablet provided for you back in
2 the jury room. Give that to the bailiff. The bailiff will
3 bring it to me and I'll correspond in like manner or bring
4 you back out in the courtroom and respond, as the case may
5 be. That's how we should communicate, you now having been
6 sworn as jurors in this case.

7 Thank you for your kind attention, ladies and
8 gentlemen. We are now ready to get started with the trial.
9 I ask that you listen attentively now as counsel address you
10 in opening statement.

11 Solicitor.

12 MR. SHELTON: May it please the court, Your Honor?

13 THE COURT: Yes, sir.

14 MR. SHELTON: Good morning, ladies and gentlemen,
15 Madam Forelady.

16 The defendant in this case is Jeff Davis. He's
17 charged with one count of instruction of crack cocaine.

18 There are three essential simple elements that the
19 State must prove to you beyond a reasonable doubt. Those
20 are that Mr. Davis distributed; or, in other words,
21 dispensed or delivered. Words we may commonly use are give,
22 or sell, or hand a quantity of crack cocaine to another
23 person, in this case a confidential informant, and that this
24 occurred in York County, South Carolina.

25 It's alleged that on August 16th, 2012, Jeff Davis

1 sold a quantity of crack cocaine to a confidential informant
2 in the presence of an undercover police officer in the
3 valley area of York, South Carolina, which is in York
4 County. In fact, in this case it was on Valley Road where
5 the transaction occurred. For those of you who may be
6 familiar with this area, it's really not very far from this
7 courthouse. It's over in the city limits of York, and you
8 will hear police officers and witnesses tell you a little
9 bit more about exactly where that was.

10 There is a video of this drug deal. The police
11 officer had a camera and video recorded the transaction
12 where Mr. Davis sold crack to the confidential informant.

13 You will hear from the undercover officer. You
14 will hear from the confidential informant. You will see the
15 video. On the video you will see the deal. You will see
16 money and you will see drugs.

17 This is what's commonly known as a controlled buy.
18 This was a transaction that the police had control over.
19 They set this deal up.

20 You will also hear from other witnesses, other
21 police officers, who participated in this investigation.

22 You will hear from a chemist, Ms. Cynthia Mitchum,
23 who analyzed the substance believed to be crack cocaine.
24 You will hear her opinion as to what it actually is.

25 At the conclusion of all of the testimony and the

1 presentation of the evidence you will have to make a
2 decision. You will have to decide did the State carry its
3 burden of proof proving to you the three main elements, the
4 three elements of this case, beyond a reasonable doubt.

5 And you will hear Judge Alford instruct you more
6 on what reasonable doubt is. You will hear words like the
7 kind of doubt that causes a reasonable person to hesitate to
8 act; or, in the alternative, the kind of proof that leaves
9 you firmly convinced.

10 So, ladies and gentlemen, you are going to get to
11 see and hear with your own eyes what happened that day. You
12 are the sole judges of the fact, but at the end of all the
13 testimony and evidence it will be your decision. I posit to
14 you that your role is to render a verdict that speaks the
15 truth, and in this case it's guilty as charged. Thank you.

16 MR. MCKINNON: May it please the court, Your
17 Honor?

18 THE COURT: Counsel.

19 MR. MCKINNON: Good morning again.

20 Ladies and gentlemen, Mr. Shelton and the State I
21 think is trying to tell you that we have got a simple case
22 here. I think that is what the State is going to try and
23 tell you. They are going to present a not complicated set
24 of facts, let's say, but I want you to think about this as
25 you see their testimony and hear their evidence, see their

1 testimony and hear their testimony, is there something else
2 going on here? Are my getting the entire picture? Is there
3 anything behind the scenes that we are missing?

4 Think about the details that you hear and ask
5 yourself does it all add up? Do the pieces make sense?
6 Does the full puzzle come together from the tidbits that you
7 are seeing and hearing?

8 As you are doing that, I hate to bore you again
9 with some legal terms, but the judge, Judge Alford, touched
10 on them and Mr. Shelton just did as well, but the
11 presumption of innocence, I want to clarify this for you.
12 And I know that you have heard this term a million times on
13 TV, or in books, or whatever, but the presumption of
14 innocence is a very, very real core concept of our legal
15 system. What that means is before Jeff Davis was arrested,
16 the day he was arrested, and even up and until today he is
17 presumed innocent. He's considered to have a veil of
18 innocence covering him that cannot be broken if, and until,
19 all twelve of you believe that the State has proven his
20 guilt beyond a reasonable doubt. Until that time, and only
21 if that happens, he is innocent. And it's your job,
22 obviously, to decide whether he is guilty or innocent, but
23 that remains, and please keep that concept in mind.

24 Now, how do you decide that? As the judge said,
25 you will hear evidence, see evidence, hear testimony. You

1 will see a video, I'm sure.

2 There is a standard of proof in a criminal case
3 that's much higher than you might see in a civil case.
4 People probably are more familiar with a lawsuit, you know,
5 somebody that's injured or somebody is out some money of
6 some kind. You go in civil court and the stakes are money.
7 They are not liberty. They are money. So the standard to
8 prove that case for the moving party, or the State in this
9 case, is it's much higher than it would be where money is at
10 stake.

11 If you can picture the proverbial Scales of
12 Justice, say for kind of balance back and forth with the
13 evidence. In a civil case you have got a preponderance of
14 the evidence standard, which means for one party to prevail,
15 it's got to tip that balance just a hair, just over fifty
16 percent.

17 In this case, in a criminal case, you have got a
18 beyond a reasonable doubt standard. Now, that is not --
19 there is not an easy way to describe that, but if you can
20 kind of picture the scales having tilted way on one side or
21 way for the State to actually meet that burden of proof.

22 I will give you two more examples, just to try and
23 illustrate what that burden is, which is a high burden the
24 State must meet. Another simple way I have heard described
25 is if you can picture at a carnival they have got the big

1 bell machine and if you are strong enough, you can hit the
2 hammer, bam, you try to get all the way to the top. And you
3 can hit it pretty hard and get it way up there, but it might
4 not ring the bell. You might be very good at that and very
5 strong, but to meet beyond a reasonable doubt, you have got
6 to picture that with a ball going all the way up and hitting
7 that bell.

8 And probably my favorite way to try and describe
9 what reasonable doubt is is a story I have heard where let's
10 say you can picture like a paper box, you know, the kind of
11 box that's about this big that reams of paper come in. And
12 it sounds a little strange, but bear with me. Well, if we
13 put a cat in that box and then we put a mouse in that box
14 and then you close the box, tape it all up, seal it up. You
15 hear some scratching and clawing and it kind of shakes
16 around a little bit. Then you take the tape off let's say
17 after a few minutes, look inside, there is no mouse and you
18 have got a happy looking cat. What happened? Do you think
19 that beyond a reasonable doubt that that cat ate that mouse?
20 The answer in my example would be yes.

21 If we redo this experiment, but change it a little
22 bit by before we seal it all up, we poke a little hole in
23 the corner of the box and then turn our back, and the same
24 thing happen. You hear some shaking and clawing and jumping
25 around. You open it back up, the cat is still sitting there

1 very happy. There is no mouse, but the whole time there is
2 a hole in the bottom. So, at that point have you decided
3 beyond a reasonable doubt that the cat ate the mouse, or is
4 there a possibility in your mind, however slight, that
5 another scenario happened that that cat -- or that mouse got
6 out of that hole?

7 So, ladies and gentlemen, as you hear and see the
8 State's case, please keep these concepts, these very, very
9 important core legal concepts in mind; the presumption of
10 innocence, the burden of proof, and the standard of beyond a
11 reasonable doubt. And, as I said, please try and think
12 about everything else that you are not hearing. Think about
13 the details. Like I said, I think the State is going to
14 want to make this real simple, look at this video, go.
15 Thank you.

16 THE COURT: The State will call its first witness,
17 please.

18 MS. COLTON: Yes, Your Honor.

19 The State calls Tanya Ervin.

20 INVESTIGATOR TANYA ERVIN, having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. COLTON:

23 Q. Ms. Ervin, can you state your full name for the record?

24 A. Tanya Moore Ervin.

25 Q. Thank you. Can you tell the jury what your job is?

1 A. I'm a police officer with the Town of Fort Mill.

2 Q. And how long have you been with Fort Mill?

3 A. I have been with Fort Mill for eleven years.

4 Q. Okay. And have you spent your entire time assigned to
5 work in Fort Mill?

6 A. No, I was assigned to the DEU for two and a half years.

7 Q. Okay. Can you explain to the jury what the DEU is?

8 A. It's a Multi-Jurisdictional Drug Enforcement Unit in
9 York County. We investigate and try drug cases.

10 Q. And it's kind of your specialty. Do you do a little
11 bit of vice as well?

12 A. That's correct.

13 Q. And you were with the DEU for two years?

14 A. That's correct.

15 Q. And what types of assignments did you have when you
16 were with the DEU?

17 A. I would do undercover drug buys. We would control buys
18 with CI's.

19 Q. And can you tell the jury what a control buy is with
20 the CI?

21 A. Sure. That's when police officers would have a
22 confidential informant come in and buy drugs for the DEU.

23 Q. And what is a confidential informant?

24 A. That is a person that is able to go out and buy drugs
25 undercover.

1 A. I was.

2 Q. Where were you assigned to the Drug Enforcement Unit
3 during that period of time?

4 A. I was assigned the Rock Hill DEU office, which is in
5 the police department at Rock Hill.

6 Q. Okay. And there are two other DEU offices?

7 A. There is. There is one in Fort Mill at the police
8 department, and there is also one in York County at the Moss
9 Justice.

10 Q. Okay. And on August 16th, 2012, were you asked by the
11 York office to assist in an investigation?

12 A. I was.

13 Q. And where was that investigation to be?

14 A. It was to be in what they call the valley of York.

15 Q. And is that within the City of York?

16 A. I believe so.

17 Q. Okay. And what -- can you describe -- are you familiar
18 with the valley?

19 A. I'm not real familiar with it. I did become familiar
20 with it with the undercover operation that we had going on.

21 Q. Okay. And what type -- based upon your training and
22 experience, what type of area is the valley?

23 A. It is a low poverty level, heavy drug activity.

24 Q. And a lot of drug sales and a lot of drug buyers?

25 A. Yes.

1 Q. Okay. And when you were asked to assist in the
2 investigation in the valley, did you participate in an
3 investigation on August 16th, 2012?

4 A. I believe so, yes.

5 Q. Okay. And who -- how did you come to be involved in
6 that?

7 A. I was asked by the lieutenant in the York DEU office to
8 drive the criminal -- or the confidential informant, excuse
9 me, around that day.

10 Q. Okay. And who was the confidential informant?

11 A. I believe her name was Shari Jennings.

12 Q. And do you recall what type of confidential informant
13 she was; if she was paid or if she was working off charges?

14 A. I believe she was a paid informant.

15 Q. And you were to drive her around, but is that your only
16 roll in that investigation?

17 A. No, during that time I was to videotape the
18 transactions.

19 Q. Okay. And were you -- did you bring the videotaping
20 equipment with you?

21 A. I did.

22 Q. And was that functional?

23 A. It was.

24 Q. And why didn't you go down and act as an undercover
25 police officer yourself?

1 A. Why did I?

2 Q. Without Ms. Jennings? Why didn't you go without Ms.
3 Jennings?

4 A. Because I didn't know anyone down there and I could not
5 buy any drugs from those drug dealers.

6 Q. Do you recall leaving the Moss Justice Center?

7 A. I do.

8 Q. And Ms. Jennings was with you?

9 A. She was.

10 Q. And what did you'll do?

11 A. We took the truck we were driving down to a place
12 called the valley and drove around and she -- she
13 encountered someone she knew. We stopped and he introduced
14 himself as Jeff and told her to go around the block and to
15 come back and he would sell her some crack, after she had
16 asked for \$40 worth of crack.

17 Q. And how did she ask for \$40 worth of crack?

18 A. So told him -- I believe she said that she needed to
19 get a forty.

20 Q. All right. And based on your experience in the DEU and
21 law enforcement, what did you believe that to be?

22 A. That means that she wanted \$40 worth of crack.

23 Q. In street vernacular?

24 A. Yes.

25 Q. And you said that you recorded the buy. Did you have

1 an opportunity to review the recording of the buy?

2 A. I did.

3 Q. And did you review it before coming to court today?

4 A. I did.

5 (Videotape marked as State's Exhibit No. 1 for
6 identification)

7 BY MS. COLTON:

8 Q. Okay. And do you recognize what's been marked for
9 identification purpose as State's Exhibit 1?

10 A. Yes, that's a copy of the -- that is the videotape --

11 Q. Okay.

12 A. -- off the video equipment.

13 Q. And does this truthfully and accurately depict what you
14 recorded on August 16th with Ms. Jennings?

15 A. It does.

16 Q. Okay.

17 MS. COLTON: Your Honor, at this time the State
18 would offer into evidence State's Exhibit 1.

19 MR. MCKINNON: Without objection, Your Honor.

20 THE COURT: Admitted without objection.

21 (Whereupon, State's Exhibit No. 1 was entered into
22 the record as evidence)

23 MS. COLTON: Your Honor, we would ask to publish
24 it to the jury.

25 THE COURT: You may publish.

1 (Whereupon, State's Exhibit 1 was played to the
2 jury panel)

3 (Videotape stopped)

4 BY MS. COLTON:

5 Q. Investigator, I may stop it a couple of times and have
6 you explain a couple of things, but without going into too
7 much detail about the type of camera, what's the reason why
8 this camera was moving around so much?

9 A. It was -- it's a loose camera. I think the CI at first
10 had a camera attached to her ear, some type of device that
11 we use to film, and it kept falling off, so we used a
12 different type of camera that I could hold in my hand and I
13 had it laying on the --

14 Q. Okay. Let me stop you right there. I don't want you
15 to go into too much detail about the type of camera, but it
16 wasn't stationery? You weren't holding a camcorder or cell
17 phone?

18 A. Right.

19 Q. Okay.

20 (Videotape started)

21 (Videotape stopped)

22 BY MS. COLTON:

23 Q. At that point, and it's pretty quick, but who did that
24 individual introduce himself to as Jeff?

25 A. Pardon me?

1 Q. Who was Jeff introducing himself to?

2 A. Me as the undercover.

3 Q. Okay. And did the confidential informant introduce you
4 as somebody?

5 A. Yes, her Aunt Teresa.

6 Q. Okay. And at that point that's where the informant
7 asked Jeff for a forty?

8 A. That's correct.

9 Q. Okay.

10 (Videotape played)

11 (Videotape stopped)

12 BY MS. COLTON:

13 Q. Investigator -- I'm sorry, I'm trying to stop the video
14 for you. I'm going to ask you a few questions about what
15 transpired right there.

16 Were you watching the confidential informant at that
17 point? Were you actually watching her, in addition to video
18 recording?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. And what did she have in her hand that she handed to --

23 A. She had --

24 Q. -- Mr. Davis?

25 A. -- a piece of crack in her hand.

1 Q. No, what did she hand to Mr. Davis?

2 A. Oh, she handed him the \$40 that we had given her to buy
3 the crack.

4 Q. And that's government money?

5 A. That is government money.

6 Q. Okay. And what did you see Mr. Davis put in the
7 informant's hand?

8 A. The crack.

9 Q. And did they have a discussion about the crack?

10 A. They did. Ms. Jennings didn't think that it weighed
11 enough to be \$40 worth and they were talking about the
12 weight on it.

13 Q. And what did Mr. Davis tell her about the crack?

14 A. That it was the fire, that it was good.

15 Q. And that's what fire means?

16 A. Yeah, it means it's really good stuff.

17 Q. Okay. And after Ms. Jennings took that crack cocaine
18 into her hand, what did she do with it?

19 A. She presented it to me to put in the --

20 Q. And did you take it out of her hand?

21 A. I did.

22 Q. And she kept it in her hand the entire time --

23 A. That's correct.

24 Q. -- when she handed it to you?

25 A. That's correct.

1 Q. Okay.

2 (Drugs marked as State's Exhibit No. 2 for
3 identification)

4 (Photograph marked as State's Exhibit No. 3 for
5 identification)

6 (Photograph marked as State's Exhibit No. 4 for
7 identification)

8 (Photograph marked as State's Exhibit No. 5 for
9 identification)

10 (Photograph marked as State's Exhibit No. 6 for
11 identification)

12 (Photograph marked as State's Exhibit No. 7 for
13 identification)

14 (Photograph marked as State's Exhibit No. 8 for
15 identification)

16 BY MS. COLTON:

17 Q. Investigator Ervin, I'm going to show you what's been
18 marked for identification purposes as State's Exhibit 2. Do
19 you recognize that item?

20 A. Yes.

21 Q. Can you tell the jury what that item is?

22 A. This is the crack that the CI handed me after she
23 bought it from Jeffrey Davis.

24 Q. How do you know that?

25 A. Because I sealed the bag up.

1 Q. And why did you seal the bag up?

2 A. Because when we place evidence into the evidence bin we
3 seal it up.

4 Q. Okay. Who has access -- who --

5 Well, when you took that from the CI's hand, did you
6 keep it in your sole care and custody until you placed into
7 that bag?

8 A. Yes. Yes.

9 Q. And after you sealed it and placed it into the bag,
10 where did you put it?

11 A. I put it in the evidence drop box, which is a locked
12 box in the DEU.

13 Q. Okay. And who has access to the evidence bin?

14 A. The evidence custodian at York County.

15 Q. Do police officers have keys to it?

16 A. No.

17 Q. Only people that work in the evidence office?

18 A. That's correct.

19 Q. So if you wanted to go back--

20 THE COURT: Wait. Excuse me, I'm sorry. Some of
21 the jurors are much further away from you. If you could
22 speak up a little bit, please.

23 THE WITNESS: Yes, sir.

24 BY MS. COLTON:

25 Q. Could you have gone back and retrieved that evidence?

1 A. I placed it in the small plastic bag and sealed it up.

2 Q. And then you put it into evidence?

3 A. When we returned to the office in York we filled out
4 the paperwork.

5 Q. How long would it take you to get from where you were
6 to the --

7 A. It's three to five miles, so just -- just a few
8 minutes.

9 Q. Now, Officer Ervin, you testified that the purchase was
10 for a forty?

11 A. Yes.

12 Q. Now, how much is that?

13 A. As in what?

14 Q. I mean, I -- I guess in your experience is that a lot?

15 A. I'm not sure what you call a lot. Any drugs are a lot.
16 I mean --

17 Q. Any drugs are a lot?

18 A. Yeah, as far as illegal substances, that's a lot.

19 Q. So you are saying it's illegal?

20 A. Yes.

21 Q. Now, on the video you could hear one of your voices say
22 "who was that", and the other say "Jeff". Can you tell us
23 who was asking that question and who was answering it?

24 A. Well, it would be me, because I did not know Jeff and
25 she did.

1 Q. So you were asking the question?

2 A. Yes, sir.

3 Q. And Shari answered them.

4 You said also that the money used in this was
5 government funds?

6 A. Yes.

7 Q. Now, was that recorded, as in their serial numbers
8 beforehand?

9 A. Yes, they are.

10 Q. And the reason you would do that is so you could
11 recover that later?

12 A. Possibly.

13 Q. What other reason would you record the numbers?

14 A. So that everything is just recorded.

15 Q. Were the bills ever recovered?

16 A. I'm not sure. That was my part of the investigation.
17 I'm not sure what happened after that.

18 MR. MCKINNON: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY MR. MCKINNON:

22 Q. Officer, could you please tell me what this document
23 is?

24 A. This is an evidence sheet that's filled out when we --
25 it's right before we drop the evidence in the --

1 Q. And during the entire time of that video and your
2 entire time in the vehicle with the confidential informant,
3 did either she or you get crack cocaine from anybody else?

4 A. No.

5 Q. It was just Mr. Davis?

6 A. That's correct.

7 Q. Y'all didn't stop off anyplace?

8 A. No, we did not.

9 Q. You didn't bring any crack cocaine with you?

10 A. No.

11 Q. She was searched?

12 A. Yes, she was.

13 Q. She didn't bring any crack cocaine with her?

14 A. No, she didn't.

15 Q. She didn't reach in her pocket in front of you and pull
16 it out?

17 A. No, she didn't.

18 Q. You saw it transferred from Mr. Davis to her?

19 A. I did see that.

20 Q. You took it?

21 A. I did.

22 Q. And then you placed it into evidence?

23 A. I did.

24 Q. Then you filled out the paperwork?

25 A. I did.

1 Q. At 9:30 at night?

2 A. I did.

3 Q. Thank you.

4 MR. MCKINNON: No further questions, Your Honor.

5 THE COURT: Thank you, ma'am. You may stand down.

6 MS. COLTON: And, Your Honor, I would ask that
7 Investigator Ervin, Tanya Ervin, can be excused.

8 THE COURT: No objection?

9 MR. MCKINNON: No, sir.

10 THE COURT: Thank you for coming, ma'am. You may
11 be excused at this time.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Thank your.

14 MS. COLTON: Your Honor, the State would call
15 Shari Jennings.

16 THE COURT: I would state to the jury the
17 witnesses are sequestered in this case. That's the reason
18 they have to be brought from the outside in for their
19 testimony.

20 SHARI JENNINGS, having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION BY MS. COLTON:

23 Q. Ms. Jennings, can you state your full name for the
24 jury?

25 A. Shari Marie Jennings.

1 Q. Okay. Now, what do you do for a job or occupation?

2 A. I just stay at home with my kids, but I do clean houses
3 part-time.

4 Q. And back in 2012 were you working as a confidential
5 informant?

6 A. Yes, ma'am.

7 Q. And were you working with Investigator Rayford Ervin?

8 A. Yes, ma'am.

9 Q. Okay. And at that time were you volunteering, or were
10 you getting paid, or were you working off a charge?

11 A. I was getting paid.

12 Q. And how much were you getting paid by the DEU?

13 A. \$80 a buy.

14 Q. Okay. And back then where did -- where did you live at
15 that time?

16 A. Well, I was staying with my mom at that time.

17 Q. Okay. And where did you live before you were staying
18 with your mom?

19 A. In the valley.

20 Q. Okay. And that's in York?

21 A. York.

22 Q. City of York?

23 A. Uh-huh.

24 Q. Okay. And how long did you live in the valley?

25 A. About a year.

1 Q. Okay. And is it a big community, a small community?

2 A. It's small.

3 Q. Okay. Can you tell the jury a little bit about how
4 many streets wide it is and --

5 A. It's about three streets. It's like two blocks.

6 Q. And you lived there for about a year?

7 A. Yes, ma'am.

8 Q. And had you seen Mr. Jeff Davis before?

9 A. Yes, ma'am, I had.

10 Q. Were you familiar with him?

11 A. Yes, ma'am.

12 Q. Approximately how many times had you seen Mr. Davis in
13 the community?

14 A. Like every day. He was coming through there every day
15 for a year, the whole year I lived there.

16 Q. And what -- what year was that?

17 A. 2012 -- or 2011.

18 Q. So 2011 --

19 A. I'm not sure.

20 Q. 2011, towards 2012?

21 A. Yes, ma'am.

22 Q. And back in August of 2012, were you working with the
23 DEU at that time?

24 A. Yes, ma'am.

25 Q. And did you on August 16th, 2012 have occasion to

1 encounter Mr. Jeff Davis again?

2 A. I seen him at the store and stuff, but that's about it.

3 Q. Were you working as a confidential informant at that
4 time?

5 A. When I seen him at the store?

6 Q. No, no, no, no, on August 16th.

7 A. Yes, ma'am.

8 Q. And did you go someplace with Investigator Tanya Ervin?

9 A. Yes, ma'am.

10 Q. Okay. Tell me about what happened with Investigator
11 Tanya Ervin on that day.

12 A. We went to the -- we left here and went to the valley
13 and we rode around the block and we passed Jeff Davis, which
14 I already knew who he was. We passed him walking down the
15 road and he hollered at me and, you know, called my name
16 twice. We stopped. We pulled over and he walked to the
17 driver's side of the truck and talked to Ms. Ervin. First
18 introduced himself, and then I asked him for a forty, which
19 meant \$40 worth of crack, and he told us to ride around the
20 block. We rode around the block and came back and we made
21 the deal. He come to the passenger side and we made the
22 deal.

23 Q. Okay. By making the deal, can you tell the jury
24 exactly what happened?

25 A. I purchased \$40 worth of crack from him.

1 Q. And I'm going to play that little portion of the
2 videotape for you in a few minutes, but when you went with
3 Investigator Ervin, before y'all went and drove over there,
4 were you searched by law enforcement?

5 A. Yes, ma'am.

6 Q. Do you remember who searched you?

7 A. It was probably Lori or Robin. It was one of them.

8 Q. Okay. And whose car were you in?

9 A. I was in the law enforcement's car. It was a --

10 Q. It wasn't a marked police car?

11 A. No, no.

12 Q. Okay. And who was videotaping what happened?

13 A. Ms. Ervin.

14 Q. And -- I'm going to show you part of the State's
15 Exhibit 1.

16 (Videotape started)

17 (Videotape stopped)

18 BY MS. COLTON:

19 Q. Okay. Now, Mr. Davis said "Cricket, Cricket."

20 A. That's my nickname.

21 Q. Okay. So he was calling to you at that time?

22 A. Yeah.

23 Q. Okay. And you introduced Investigator Ervin as your
24 aunt?

25 A. Yes, ma'am.

1 Q. And why did you do that?

2 A. So -- so he wouldn't know anything. So he wouldn't
3 know who she was and he would think she was my family,
4 because normally he wouldn't just do that for anybody. You
5 know, he would be nervous.

6 Q. You weren't going to introduce her as Investigator
7 Ervin?

8 A. No.

9 Q. And then you asked for a forty. And can you explain to
10 the jury -- I know we talked about it a little bit a minute
11 ago, but explain to the jury what a forty means.

12 A. \$40 worth of crack cocaine.

13 Q. And do you know approximately how much \$40 worth of
14 crack cocaine is?

15 A. I really don't know, I mean, but what he gave me didn't
16 look like it.

17 Q. Okay.

18 A. I don't know the weight is what I'm saying.

19 (Videotape started)

20 (Videotape stopped)

21 BY MS. COLTON:

22 Q. Now, what happens there?

23 A. He -- we came back around the block and he gave me the
24 crack and we kind of argued about it, because it didn't look
25 like \$40 worth to me.

1 Q. Did it look like more or less?

2 A. Less.

3 Q. Okay.

4 A. I told him it looked like a twenty.

5 Q. Okay. And what did he say about the quality of the
6 crack?

7 A. That that's all they were getting this day, because it
8 was fire, and that means it's supposed to be real good, that
9 I would be back, more or less.

10 Q. Okay. That it was a good quality crack cocaine?

11 A. Yes.

12 Q. Okay. And at that point you handed him the money that
13 the DEU had given you?

14 A. Yes, ma'am.

15 Q. Okay.

16 MS. COLTON: Madam Clerk, could you please turn
17 the lights on?

18 BY MS. COLTON:

19 Q. Ms. Jennings, now, you are familiar what \$40 is and
20 fire, and you explained that to the jury. I'm going to have
21 to ask you to explain to the jury why you are familiar with
22 those terms.

23 A. I'm familiar with it because I used to -- Jeff would
24 come to my house and --

25 Q. Whoa, whoa, whoa. Let me ask you this. Stop you right

1 there.

2 Did you used to be --

3 MS. COLTON: Your Honor, I'll ask the court, if we
4 need to be heard a little bit.

5 BY MS. COLTON:

6 Q. Did you have a substance abuse problem?

7 A. Yes, ma'am, I did.

8 Q. With crack cocaine?

9 A. Yes, ma'am.

10 Q. Okay. And how long had you used crack cocaine?

11 A. About the whole year I was in the valley.

12 Q. Okay. And are you still using crack cocaine now?

13 A. No, ma'am.

14 Q. How long have you been clean?

15 A. Over a year now.

16 Q. And did your use of crack cocaine get you in a little
17 bit of trouble?

18 A. Yes, ma'am.

19 Q. And what -- have you been convicted of burglary third?

20 A. Yes, ma'am.

21 Q. Okay. And you were placed on probation?

22 A. Yes, ma'am, for a year.

23 Q. And during the year of your probation, that's when you
24 came and worked for the drug unit?

25 A. Yes, ma'am.

1 Q. And did you get any benefit from probation by working
2 for the drug unit?

3 A. No, ma'am.

4 Q. Did they really want you to work for the drug unit?

5 A. No, at first they didn't.

6 Q. And actually -- well, during probation are you
7 supervised by probation?

8 A. Yes, ma'am.

9 Q. And did they eventually not have any objection to you
10 working for the drug unit?

11 A. Yes, ma'am.

12 Q. Do you know why?

13 A. I think it was because they knew I would have more
14 supervision and I would get drug tested, and, you know,
15 it -- it -- really it helped me stay clean.

16 Q. By working for the drug unit?

17 A. Uh-huh. Yes, ma'am.

18 Q. They were more restricted with you than just being on
19 simple probation?

20 A. Yes, ma'am.

21 Q. And so you didn't get to terminate your probation early
22 or anything like that?

23 A. No, ma'am.

24 Q. Okay. And, to your knowledge, did Investigator Ervin
25 go and plead your case to the probation on your behalf, or

1 anything like that?

2 A. No. I mean, to my knowledge he just had to ask for
3 permission.

4 Q. All right.

5 A. You know, just ask her.

6 Q. And today are you currently on probation?

7 A. No, ma'am.

8 Q. And you don't have any pending charges today?

9 A. No, ma'am.

10 Q. And you haven't been -- have you been promised anything
11 to come here?

12 A. No, ma'am.

13 Q. And part of the deal -- you signed a confidential
14 informant agreement when you agreed to work for law
15 enforcement?

16 A. Yes, ma'am.

17 Q. And you agreed not to get in trouble?

18 A. Yes, ma'am.

19 Q. And you agreed that you would come in and testify and
20 fulfill your end of the bargain?

21 A. Yes, ma'am.

22 Q. And you have complied with those terms?

23 A. Yes, ma'am, I have.

24 Q. Now, when you got back to the drug unit that night --
25 Let me ask you this. Y'all -- you and Investigator

1 Tanya Ervin didn't make any extra stops or anything like
2 that along the way?

3 A. No, ma'am.

4 Q. And when you got back to the drug unit, did you write a
5 statement from the DEU?

6 A. Yes, ma'am, we did.

7 Q. And that basically outlining what happened --

8 A. Uh-huh.

9 Q. -- during that deal?

10 A. Yes, ma'am.

11 Q. And did Investigator Ervin take that statement?

12 A. Yes, ma'am.

13 Q. And did he also show you a photo lineup?

14 A. Yes, ma'am, he did.

15 Q. And did he ask you to pick out anybody from the photo
16 lineup?

17 A. He said -- he showed me six people. He said he may or
18 may not be on here, and he was on there.

19 Q. Who was that on there, I'm sorry?

20 A. Jeff Davis.

21 Q. And did you immediately recognize him?

22 A. Yes, ma'am.

23 Q. Because you were familiar with him beforehand?

24 A. Yes, ma'am, I was.

25 Q. And would showing the pictures and taking the

1 statement, that was Rayford Ervin? That wasn't Tanya Ervin?

2 A. Yes, ma'am.

3 Q. I'm sorry, but it gets a little confusing.

4 A. Uh-huh.

5 Q. I have a few more questions for you.

6 I'm going to show you State's Exhibit 8. Do you
7 recognize State's Exhibit 8?

8 A. That's Jeff Davis.

9 Q. Okay. Can you speak up?

10 A. Jeff Davis.

11 Q. Okay. And this is the individual that you bought crack
12 cocaine from --

13 A. Yes, ma'am.

14 Q. -- with Ms. Ervin, Tanya Ervin, in the car?

15 A. Yes, ma'am.

16 Q. And I'm going to show you State's Exhibit 7. Who is
17 that person?

18 A. That's me.

19 Q. What's in your hand?

20 A. The crack cocaine.

21 Q. That you bought from Jeff Davis?

22 A. Yes, ma'am.

23 Q. What did you do with that crack cocaine after you
24 bought it from Jeff Davis?

25 A. I handed it to straight to Ms. Ervin.

1 Q. And do you know what Ms. Ervin did with that crack
2 cocaine after you handed it to her?

3 A. I believe she held it the whole time, or she might have
4 put it in the ashtray. I didn't look, because at that time
5 I was still kind of nervous about, you know, having it in my
6 hand or anything like that.

7 Q. Did you ever touch it after that?

8 A. No, ma'am, I didn't.

9 Q. Thank you, Ms. Jennings. Please answer any questions
10 that Mr. McKinnon has for you.

11 A. Okay.

12 MR. MCKINNON: If it please the court?

13 THE COURT: Yes, sir.

14 CROSS EXAMINATION BY MR. MCKINNON:

15 Q. Ms. Jennings, you said that you had no pending charges
16 when you did this?

17 A. No, sir --

18 Q. I find that --

19 A. -- I didn't.

20 Q. -- hard to believe that you would do with this
21 absolutely --

22 THE COURT: Counsel, you are going to ask her a
23 question. We are not interested in your opinion.

24 MR. MCKINNON: Yes, sir.

25 BY MR. MCKINNON:

1 Q. Now, Ms. Jennings, you said that you had known Mr.
2 Davis for some time and you would see him every day?

3 A. Yes, sir.

4 Q. -- You said -- I'm-sorry, I couldn't remember. -- You said
5 one year or two years that you had known him?

6 A. Well, I have known him for two years, but for a year I
7 have seen him every day the whole year I was in the valley.

8 Q. Okay. Now, on this day you handed what you purchased
9 to Detective -- or Investigator Ervin?

10 A. Yes, sir.

11 Q. Okay. That was -- and you handed that in the car?

12 A. Yes, sir, right when I got it in my hand.

13 Q. Okay. Now, in your time of knowing Mr. Davis, did you
14 know him to have a car, to own a car?

15 A. No, sir.

16 Q. Did you know him to own a house?

17 A. No, sir.

18 Q. Did you know him to own a lot of jewelry?

19 A. No, sir.

20 Q. A pager?

21 A. No, sir.

22 Q. Ms. Jennings, you said you were kind of a stay-at-home
23 mom, did not really work?

24 A. I didn't. Now I am.

25 Q. Now you are what?

1 A. A stay-at-home mom, and -- I mean, I do work, you know,
2 part-time just cleaning houses.

3 Q. But back then was your -- you say that your business --

4 A. No, sir.

5 Q. -- was --

6 A. Drugs.

7 Q. All right. I didn't finish yet, but --

8 A. I'm sorry.

9 Q. Your business was getting \$80 to put people in jail?

10 A. I was trying to pay my probation. I didn't have a way
11 to do that. I don't see what this has to do with it,
12 though.

13 Q. How often would you go out and find people?

14 A. A couple days a week.

15 Q. A couple days a week.

16 How long did this behavior last?

17 A. Probably three or four months, until I got my probation
18 paid.

19 Q. Three or four months.

20 So would you say at least fifteen, twenty times at \$80
21 a pop?

22 A. Yes, sir.

23 MR. MCKINNON: Your Honor, I don't have any more
24 questions at this time.

25 REDIRECT EXAMINATION BY MS. COLTON:

1 Q. Ms. Jennings, your probation is paid today, right?

2 A. Yes, ma'am.

3 Q. You are not on probation any more?

4 A. No, ma'am.

5 Q. And you are taking care of your kids and doing the
6 right thing?

7 A. Yes, ma'am, I have got my kids.

8 Q. And how do you -- how do you feel about being here
9 today having to testify to these things that you did?

10 A. I feel good about it, because people shouldn't be
11 selling that poison out there. They shouldn't.

12 Q. How did it affect your life when you were --

13 A. I lost everything. I lost my kids for three years. I
14 went to jail. It's not worth it.

15 Q. And how do you feel about having to tell the jury about
16 your crack cocaine?

17 A. It's embarrassing, but at the same time I'm proud of
18 myself. I mean, that's one less person out there selling
19 drugs to our kids, to your kids.

20 Q. Are you proud of the fact that you no are longer using
21 drugs?

22 A. Yes, ma'am.

23 MS. COLTON: I have no further questions, Your
24 Honor?

25 MR. MCKINNON: Nothing, Your Honor.

1 Q. Specifically anything illegal?

2 A. Correct.

3 Q. Did you give her anything illegal to take with her?

4 A. I did not.

5 Q. Did you find anything illegal or unusual on her person
6 or in her property when you searched her before going out on
7 the investigation?

8 A. No.

9 Q. Would you have noted that, if you had?

10 A. Yes.

11 Q. Would you have seized it, if you had?

12 A. Yes.

13 Q. But that didn't happen in this case?

14 A. That is correct.

15 Q. Was Ms. Jennings, the CI, given money with which to
16 purchase drugs?

17 A. She was.

18 Q. Do you recall who gave her that money?

19 A. I cannot recall exactly who it was.

20 Q. Do you recall how much she was given?

21 A. \$40.

22 Q. And was Ms. Jennings and/or officer Tanya Ervin given
23 audio and video recording equipment?

24 A. They were.

25 Q. And that was to be utilized during their investigation?

1 where did you go from there?

2 A. I went over to the York County detective division.

3 Q. And back in August of 2012, were you with the drug unit
4 then?

5 A. I was.

6 Q. And where were you assigned?

7 A. I was assigned to the York area, District 1, District 2
8 area of York County.

9 Q. And is that housed -- your unit is housed in the Moss
10 Justice Center?

11 A. That is correct.

12 Q. And did you participate in a controlled purchase
13 utilizing a confidential informant Shari Jennings on August
14 16th, 2012?

15 A. I did.

16 Q. And do you remember what your role was in that
17 controlled buy?

18 A. Yes, in the early stages of the deal I was there
19 prepping with the deal. I searched the undercover vehicle
20 that the undercover police officer and the confidential
21 informant were going to use.

22 Q. Okay. And that vehicle, was it a police vehicle?

23 A. It is. It belongs to the police department, to the
24 sheriff's office. It's registered and it's controlled by
25 the sheriff's office as well.

1 Q. It's not a police car, but it's an undercover vehicle?

2 A. That is correct.

3 Q. It doesn't have police markings, etcetera?

4 A. It does not.

5 Q. And did you search the vehicle prior to the informant
6 getting into the vehicle?

7 A. I did.

8 Q. And can you tell the jury why you do that?

9 A. The reason why we search the vehicle is basically to
10 make sure that there is no contraband inside the vehicle
11 prior to anyone getting inside of it. That way we can say
12 that any dope that was recovered from the deal was not in
13 the vehicle prior to the deal.

14 Q. So it's not later challenged?

15 A. That is correct.

16 Q. And do you recall how far before the deal you searched
17 this vehicle?

18 A. It was right before the deal. It was, you know,
19 several minutes, you know, before we actually left to go
20 take care of this.

21 Q. And is that your protocol, that you search immediately
22 before?

23 A. That is. It's part the guidelines that we follow.

24 Q. And as far as searching the confidential informant, is
25 it part of the your protocol to search them immediately

1 violence. A lot of times people that sell drugs carry guns,
2 so it's inherently dangerous.

3 Q. And did you receive any phone calls that there was a
4 violent situation, or anything like that, in this particular
5 case?

6 A. No, I did not.

7 Q. And so you were primarily stationed there just in case?

8 A. That is correct.

9 Q. And that's your standard procedure for all narcotics
10 investigations or controlled buys?

11 A. That is correct.

12 Q. And after the buy occurred what did you do?

13 A. Basically our vehicle, we tried to catch up with the
14 undercover vehicle to follow it back to make sure that
15 nobody from that particular neighborhood was following them
16 back.

17 Q. And why is that important?

18 A. Well, it's important to make sure that, you know, in a
19 particular situation that there is no stops in between from
20 them buying drugs, that they couldn't possibly have met up
21 with somebody else in another parking, got drugs that way,
22 or that they wouldn't get rid of evidence that was
23 purchased.

24 Q. And, again, that's to keep it under law enforcement's
25 control?

1 A. That is correct.

2 Q. And when the vehicle returned with Investigator Tanya
3 Ervin and the confidential informant, what did you do with
4 the vehicle then?

5 A. At that point I didn't do anything with the vehicle.
6 Actually Rayford Ervin searched the vehicle.

7 Q. When it returned to the Moss Justice Center?

8 A. That is correct.

9 Q. And did you observe the vehicle and Investigator Ervin
10 make any unplanned stops or anything like that?

11 A. No, I did not.

12 Q. And from your monitoring of it, they drove to the
13 valley region and then returned?

14 A. That is correct.

15 Q. Okay. Did you -- are you in charge of downloading
16 videotapes and audio tapes, etcetera?

17 A. I'm not specifically in charge of it, but I'm pretty
18 good about with a lot of technology. And through the use of
19 doing undercover buys, there is a lot of technology and
20 equipment that's involved in it, and I happen to know a good
21 bit about that tech technology and equipment and I do --
22 when I was on the drug unit I did download a majority of the
23 devices so we could maintain them for court reasons.

24 Q. And in this particular did you review the buy video
25 from the August 16th date?

1 have.

2 Q. I mean on this incident. You are just talking about in
3 general you can't say whether that this time was correct?

4 A. -- That is correct. I'm going off the surveillance notes
5 and -- which, you know, off the time stamp that I observed
6 that was on that device, the video that I observed.

7 MR. MCKINNON: No further questions.

8 MS. COLTON: Your Honor, we ask that this witness
9 be excused.

10 THE COURT: No objection?

11 MR. MCKINNON: No, sir.

12 THE COURT: Thank you for coming, sir. You may be
13 excused at this time.

14 MR. SHELTON: Your Honor, the State would next
15 call Cynthia Mitchum.

16 CYNTHIA MITCHUM, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. SHELTON:

19 Q. Good morning, ma'am.

20 A. Hey.

21 Q. Would you please identify yourself for the jury?

22 A. I'm Cynthia Mitchum.

23 Q. And where are you presently employed?

24 A. I'm employed with the York County Sheriff's Office in
25 the drug analysis laboratory.

1 Q. What are your duties in the laboratory?

2 A. I analyze controlled and non-controlled substances that
3 officers submit for evidence.

4 Q. Do you have education, training and experience that
5 qualifies you in that role?

6 A. Yes.

7 Q. Would you please explain that to the jury?

8 A. I have a Bachelor's of Science Degree in chemistry,
9 which I received from Winthrop University in 1990.

10 And prior to working here at the sheriff's office,
11 which I have been here for a little over thirteen years, I
12 worked with the South Carolina Law Enforcement Division,
13 commonly known as SLED, in Columbia, South Carolina for
14 seven and a half years, and I worked in their drug analysis
15 department also.

16 Q. So you have a little more than twenty years experience
17 in this field?

18 A. That's correct.

19 Q. Have you ever been qualified in court as an expert in
20 the field of chemical drug analysis and identification?

21 A. Yes, I have.

22 Q. Can you give us an approximation on how many times?

23 A. In excess of two hundred times.

24 Q. So just to be clear, as part of your duties with the
25 sheriff's department working in the lab, do you analyze

1 substances, such as narcotics and illegal drugs in that
2 capacity?

3 A. Yes.

4 MR. SHELTON: Your Honor, the State offers Ms.
5 Cynthia Mitchum as an expert in chemical analysis and
6 identification substances.

7 MR. MCKINNON: Your Honor, we are not going to
8 challenge the qualifications of this witness.

9 THE COURT: Let me give the jury a brief
10 explanation about expert witnesses, in general.

11 I charge you that although a lay witness is
12 limited to testifying about facts within their knowledge and
13 not allowed to give opinions, certain witnesses, who by
14 training, education or experience are considered as experts
15 in a particular field may give opinions in that field based
16 upon the facts of a matter and their conclusions, and these
17 opinions constitute evidence to be considered by you in
18 connection to all of the other evidence and testimony in the
19 case.

20 It is for you, the jury, to give such weight as
21 you in your experience and discretion may determine. By
22 this I mean that you must weigh such evidence and accept or
23 reject it in the same manner as you treat all other evidence
24 in the case.

25 The value of expert testimony does not depend upon

1 the substance out?

2 A. Yes, I cut the bag open. This is one complete circular
3 bag. It's only open at the top, so I cut open the bottom,
4 so that seal is still intact. And then I retrieved the
5 substance out of the bag and then open the ziplock to get
6 the substance out.

7 Q. And after testing of the substance, you put it back in
8 the original bag?

9 A. No, I put it in this outer bag, which I have in the
10 laboratory, and then I heat sealed that shut, and that is
11 still intact today.

12 Q. So did this bag, the bag that you hold in your hand,
13 did it at some point leave your custody and control?

14 A. Yes, it did.

15 Q. Can you explain that?

16 A. Yes, it goes back to the evidence department where in
17 evidence department it would be stored, after I have
18 completed the analysis, to where it would either be
19 destroyed, or come to court, or just stay there until it's
20 needed.

21 Q. And does it appear to be in the same condition now as
22 when it left your possession?

23 A. Yes.

24 Q. Were you able to make a determination as to what the
25 substance inside the bag actually is?

1 A. Yes.

2 Q. What is that?

3 A. State's Exhibit No. 2, which is item number 1 in this
4 case, was found to be cocaine base, also known as crack, in
5 the amount of 0.25 grams, or 3.85 grains, and that's a
6 Controlled II substance.

7 Q. Did you prepare a report of your findings?

8 A. Yes.

9 Q. And these are your findings after the testing that you
10 just explained a moment ago?

11 A. That is correct.

12 Q. And do you have a copy of that report with you here in
13 court?

14 A. Yes.

15 Q. Are you holding that in your hand right now?

16 A. Yes, I am.

17 MR. SHELTON: Your Honor, I would like to have
18 this marked as State's Exhibit No. 9, please.

19 THE COURT: Are you offering it?

20 MR. SHELTON: I will, Your Honor.

21 THE COURT: Okay.

22 MR. SHELTON: I will be offering it into evidence.
23 I can show it to counsel.

24 THE COURT: At this point mark it.

25 (Drug Report marked as State's Exhibit No. 9 for

1 A. That's correct.

2 Q. Did you monitor the tape?

3 A. Yes, I did.

4 Q. And why were you monitoring the tape?

5 A. Because when we monitor the buys and stuff, one is to
6 maintain control of the CI.

7 Two, if we are using undercover officers, for her -- or
8 her or his safety.

9 And while we are monitoring the buy, we know that's the
10 person they met with. Like they didn't stop at a store
11 somewhere on the way back or something like that right
12 there. We follow them to the area and follow them from the
13 area.

14 Q. And you had an opportunity to review that videotape?

15 A. Yes, ma'am.

16 Q. Did you review it after the buy occurred?

17 A. Yes, I did.

18 Q. And did you know who was on the videotape? Did you
19 recognize who sold the crack cocaine?

20 A. Yes, ma'am, I did.

21 Q. And who was that person?

22 A. Jeffrey Davis.

23 Q. And from working down and being in that community in
24 York -- how long have you been in York?

25 A. Since '99. What's that, thirteen years?

1 Q. Okay. You lived in York County your whole life?

2 A. Yes, ma'am.

3 Q. You are familiar with a lot of people that live in that
4 area?

5 A. Yes, ma'am.

6 Q. And had you spoken to Mr. Davis beforehand?

7 A. Yes, ma'am.

8 Q. Okay. And approximately how many times have you spoken
9 to Mr. Davis, per say?

10 A. It's hard to put a number to it. I would say at least
11 more than ten.

12 Q. Would you recognize him if you saw him on the street?

13 A. Yes, ma'am.

14 Q. And you recognized him in the video?

15 A. Yes, ma'am.

16 Q. Immediately?

17 A. Yes, ma'am.

18 Q. Okay. I'm going to show you what's been marked -- or
19 entered into evidence as State's Exhibit 8. Can you tell
20 the jury who that is?

21 A. That's Jeffrey Davis.

22 Q. And Jeffrey Davis, the same Jeffrey Davis that was on
23 the videotape, correct?

24 A. That's correct.

25 Q. Okay. And did you have an occasion to participate in

1 the arrest of Mr. Davis?

2 A. Yes, ma'am.

3 Q. When did that happen?

4 A. I think it -- I think it was in October. I'm not sure
5 exactly the date.

6 Q. October of 2012?

7 A. Yes, ma'am.

8 Q. And so that would have been two months after the
9 distribution occurred?

10 A. Yes, ma'am.

11 Q. Did you get -- were warrants sworn out back in August?

12 A. Yes, ma'am.

13 Q. And why did y'all wait two months to have those
14 warrants served?

15 A. Because it was an ongoing investigation and we didn't
16 want to what we call burn the CI to -- you know, everybody
17 in the area would know that they are actually working for
18 the police, so we -- that's the reason why we draw them out.

19 Q. And it's to keep them confidential?

20 A. That's correct.

21 Q. And would -- if you had immediately arrested Mr. Davis,
22 what impact would that have on any other investigations?

23 A. It would have been over with.

24 Q. And is that kind of standard operating procedure for
25 the DEU in making drug distribution buys?

1 A. Yes, ma'am.

2 Q. And when you arrested Mr. Davis on this particular
3 case, are you certain that's the same Mr. Jeffrey Davis that
4 you saw on the video?

5 A. Yes, ma'am.

6 Q. And two months later did you recover any of the marked
7 money from Mr. Davis?

8 A. No, ma'am.

9 Q. Thank you. Please answer any questions that defense
10 counsel may have.

11 CROSS EXAMINATION BY MR. MCKINNON:

12 Q. Investigator Ervin, you were in charge of this
13 operation?

14 A. Yes, sir.

15 Q. So you supervised? The buck stops with you and all
16 that stuff?

17 A. Pretty much, yes, sir.

18 Q. Now, did you write the case file summary?

19 A. Yes, I did.

20 Q. And did you write the case report summary?

21 A. The case report? Are you talking about the incident
22 report?

23 Q. The incident report.

24 A. No, sir. Well, I'm not sure without looking at it.

25 Q. Did you -- I mean, you were not actually in the car,

1 We are ready now to resume with the trial and we
2 are to that part of the trial where counsel will make their
3 final arguments to you. I ask that you listen attentively
4 now as counsel address you in final argument.

5 Counsel, ready to proceed.

6 MS. COLTON: Thank you, Your Honor.

7 May it please the court?

8 THE COURT: Yes, solicitor.

9 MS. COLTON: Madam Clerk.

10 Ladies and gentlemen, the cat ate the mouse and
11 unfortunately for the defendant we videotaped it.

12 Mr. McKinnon was right. We are going to say that
13 this is a simple case, because it is.

14 Jeffrey Davis is charged with distribution of
15 crack cocaine. We have showed that Mr. Davis distributed,
16 dispensed, or delivered crack cocaine, or conspired, aided,
17 abetted, or attempted to distribute, dispense, or deliver
18 crack cocaine in York County, South Carolina.

19 It's a simple case. Mr. Davis gave, sold,
20 distributed, handed, whatever you would like, crack cocaine
21 to a confidential informant. He didn't get paid, but he did
22 it, but all it takes is the act of handing that for him to
23 be guilty of distributing crack.

24 How do know it's Jeff Davis? Well, I can get up
25 here and talk to you about credibility of witnesses and

1 corroboration, what the police did to make sure that what
2 the informant did was truthful and why you should believe
3 the police, because they don't want to risk their career,
4 etcetera, etcetera, all day long. You are the judges of
5 credibility. We can do that, and I think that that's common
6 sense.

7 We know that Shari Jennings knows him and
8 identifies him. She testified to that. We know that
9 Commander Rayford Ervin knows him and identified him. We
10 know that Investigator Tanya Ervin identified him. And the
11 defendant introduces himself as Jeff. Moreover, we can
12 identify him. This is Mr. Davis from the confidential
13 informant's video that was recorded by Tanya Ervin and
14 that's the picture of Mr. Davis that was identified in court
15 of the defendant. That's him side by side. You don't need
16 to take Sherry Jennings word for it. You don't have to take
17 the police officers, who have known him for nearly ten years
18 word for it. You can see it for yourself. Why? Because it
19 was videotaped.

20 How do we know he sold crack? He's asked for a
21 for. Officers and Ms. Jennings testified that a forty is
22 what's commonly determined what's known as crack cocaine or
23 denomination of crack cocaine. And he tells them to drive
24 around the block. They weren't asking for car keys, house
25 keys, pay me \$40 for new shoe laces. It's a crack buy in

1 the valley, period.

2 (Whereupon, the videotape was started)

3 (Whereupon, the videotape was stopped)

4 MS. COLTON: You don't have to take the officers
5 word for what they saw and observed. You don't have to take
6 Shari Jennings word for what she saw and observed. You can
7 see it for yourself. Davis takes the money and gives the CI
8 something. He tells her that's a forty. He tells that it's
9 fire and she's going to like it and she immediately hands it
10 to the officer.

11 (Whereupon, the videotape was started)

12 (Whereupon, the videotape was stopped)

13 MS. COLTON: You observed Ms. Jennings hand from
14 the time she receives that item from Mr. Davis to the time
15 she hands it over to the police officer, it doesn't move.
16 Right there is when he hands her that crack. And then they
17 argue about the weight. What else could they possibly be
18 talking about if it isn't the crack cocaine? She thinks
19 it's a twenty. He is saying that's what you get out here,
20 and he tells her that it's the fire and that she is going to
21 like it.

22 Common sense. You don't have to take the officers
23 word for it. You don't have to take Shari Jennings word for
24 it. You can see it for yourself.

25 And there is the money.

1 The CI immediately hands it to the police officer.
2 That's what he handed her. You can see that for yourself.
3 It's not new shoe laces.

4 And that's a picture of what you will have in the
5 jury room with you. The crack cocaine that Investigator
6 Ervin turned into the evidence room to have tested to see if
7 it truly is crack cocaine. It's what she recovered from Ms.
8 Jennings hand.

9 It doesn't have to match. It does. You can see
10 that for yourself.

11 And Cynthia Mitchum tested and it is crack.

12 So that leads us to why we are here. This is a
13 simple case. It doesn't get any better than this. The
14 officers did their job. They videotaped it. They
15 corroborated what Ms. Jennings said. They didn't send her
16 out there without a wire. Oh, you don't have just an audio
17 tape going "garble, garble, garble" and having to take her
18 word for everything and determine her credibility. They put
19 a bow on it. You see the crack. You see the money. You
20 hear the conversation. You can use your common sense and
21 know what that is. You don't need me to tell you what that
22 is. You don't need Ms. Jennings to tell you what that is.
23 You don't need these officers to tell you what that is. You
24 can see it for yourself. It doesn't get any better than
25 that and that's why it's a simple case. It's simple for me

1 to present as the prosecutor. It's simple for you guys to
2 use your common sense to determine what happened. It's
3 easy.

4 And that brings us to why we are here. Because
5 every defendant, no matter how simple the case is, or how
6 guilty they may appear to be, has a Constitutional Right to
7 be tried by a jury. Only you twelve people can make a
8 determination of whether he's guilty or innocent. That's
9 it. I can't do it. The officers can't do it. The judge
10 can't do it. The defense attorney can't do it. Only you
11 can render that decision, and that's your duty.

12 These trials are not about the search for doubt.
13 They are about the search for truth. Judge Alford told you
14 that you are the triers of the fact. You determine what
15 transpired. He is the judge of the law, but you have to
16 determine what happened on that particular day.

17 Mr. McKinnon has alluded to the doubt in looking
18 for things that aren't there. He's brought up the fact that
19 there may or may not be some errors in what the officers
20 wrote down. Really? They wrote down 7:52 on two pages
21 instead of putting down 9:30 and that's a reasonable doubt?
22 That's not reasonable doubt. That's a mistake. That
23 doesn't change what y'all saw. That doesn't change what
24 happened. And if you look at the evidence log, Tanya Ervin
25 puts down the drugs were recovered at 7:52 from the CI's

1 hand and entered into evidence at 9:30. Now, just because
2 she put on a separate piece of paper recovered at 7:52,
3 turned in at 7:52, logically that's a mistake, because she
4 can't be in two places at one time. And they are going to
5 want you to believe that something like that is reasonable
6 doubt. It is not reasonable to say that he didn't do what
7 he did, that he didn't sell crack. Because the officer
8 wrote down something wrong, that's the reasonable answer.
9 An error. Not that Mr. Davis didn't sell drugs.

10 The judge will charge you that any hesitation to
11 act is not reasonable doubt. It has to be reasonable.
12 Reasonable doubt is the kind of doubt that would cause a
13 person to hesitate to act. But it's not beyond any and all
14 doubt. It is not beyond any and all possibility and it's
15 not with a hundred percent certainty. It has to be
16 reasonable. And it's not reasonable to think that an
17 officer writing something down wrong on a piece of paper
18 changes the fact that what these officers saw, what Shari
19 Jennings did, what Jeff Davis himself said, and what you
20 observed, it doesn't change it. It's not reasonable. And I
21 ask that you don't confuse this hesitation to act with
22 reasonable doubt with what you do in the jury room.

23 I'm sure, because this is going to be my only
24 opportunity to speak to you, that when the defense gets up,
25 they are going to throw around what if's and maybe's and

1 could have been's and possibilities to explain why that
2 wasn't Mr. Davis and he wasn't really selling crack and that
3 this never occurred. He's got to. But when you go back in
4 the jury room, your job is to consider those factors, just
5 like you consider the State's evidence, to throw around the
6 what if's, maybe's, could be's, or possibilities. That's
7 deliberation. That's what you are supposed to do. And at
8 the end of that you are going to be asked to determine has
9 the State met its burden of proof and how you know that I
10 have done that. And at the end of all those discussions and
11 considering the evidence, and considering the what if's,
12 maybe's and could be's and possibilities, that you believe
13 that Jeff Davis sold or gave crack cocaine to Shari Jennings
14 in the presence of Tanya Ervin and that occurred in York
15 County, then I have met my burden of proof and you must find
16 him guilty of distributing crack cocaine.

17 MR. MCKINNON: May it please the court?

18 THE COURT: Yes, sir.

19 MR. MCKINNON: Ladies and gentlemen, we are pretty
20 much at the end. Mercifully this was not a very long trial.

21 At the beginning I did talk about, and you heard
22 the judge talk about, and you have heard the State talk
23 about presumption of innocence, the burden of proof, and
24 reasonable doubt. This is when you put it altogether.

25 The State is wanting to tell you that I'm going to

1 make some arguments about mere mistakes made on paperwork.
2 That's one way to put it. That's one way that you can
3 believe it, but what we are going to get into in a second is
4 that it's your job to decide that, whether that was a
5 paperwork error or whether that's something else.

6 What officers could tell you when this actually
7 occurred? Not Rayford Ervin, not Tanya Ervin, not Robin
8 Gander, not even Shari Jennings. Detective Schifferle, the
9 one who said he had searched the car at the beginning, if
10 you recall, refreshed his memory with the surveillance
11 report and what did that tell us? He said that looking back
12 at that, the car left the Moss Justice Center at 7:30.
13 Really, other than that, we had no way of knowing when any
14 time frame at all on the 16th when this occurred, but that
15 kind of gives us a base point, right?

16 He then says that that car and the occupants made
17 contact with who they say is Jeff Davis at 7:40, and then
18 twelve minutes later, at 7:52, made the second contact.

19 Now, Tanya Ervin is the officer that was in the
20 car who she says with Shari Jennings. She says that at that
21 very same time that she took possession of the crack at
22 7:52. She read from her evidence log then that she then
23 turned it into the evidence drop box back here at Moss
24 Justice Center at that very same time. The solicitor is
25 correct, how could she be in two places at once? Perhaps

1 that is an error, that as the State suggests, but perhaps it
2 is something else.

3 But that's not all. You are going to have a
4 chance to look at that bag there that's got the alleged
5 controlled substance in it. When you look at that bag, you
6 will see when it was signed by Tanya Ervin over to the
7 evidence room here at Moss Justice Center and that's not
8 7:52, or eight o'clock, or 8:15. It is 9:30. Now, that's
9 not difficult math. That's an hour and 38 minutes
10 difference. Is that significant? What could have happened
11 in that hour and 38 minutes time? Is that a simple
12 paperwork error? Again, that's up to you to decide, but an
13 hour and 38 minutes, that's not a transposed number. That's
14 not, you know, putting a decimal in the wrong place or
15 misspelling a word. Those are two different numbers, very
16 different times, that allow a very large window for any
17 number of things to happen, and I can't speculate as to what
18 could have happened. That's not my job. We have no
19 evidence of what other things could have happened, but,
20 nevertheless, that's a large, large window when this entire
21 incident took place in a very short amount of time.

22 That also brings me to that actual tape. No one
23 testified as to actually how long that tape was, but y'all
24 got to watch it. You maybe have an estimation of how long
25 it was, and then maybe you have an estimation of how long it

1 was between the first contact that the car made with what
2 they say is Jeff Davis to the second contact. The report
3 that Schifferle refreshed his memory said that that time
4 frame was twelve minutes; 7:40 for the first instance, 7:42
5 for the second one. Again, the State wants you to believe
6 that's mere paperwork error. This is from someone they say
7 was watching the entire event and taking notes. Now, what
8 else could that mean? Is there more out there that we
9 haven't seen? Either it's a paperwork error or there is
10 something entirely not right here and something missing.
11 Again, you have heard the testimony. That's up for you to
12 decide.

13 Now, if we can take a second to think about Ms.
14 Mitchum's testimony. She was the chemist. She's an expert.
15 She gave us her expert opinion that it was, in fact, crack.
16 But if you remember, I asked her if her cobalt test that she
17 says turns blue in the presence of cocaine or crack, do
18 other substances turn blue in the presence of cocaine or
19 crack and she says yes. She did not use the melting point
20 to determine whether it was crack. She said they didn't
21 have that equipment, nor has she checked the PH. Now,
22 again, she's an expert. Her testimony is it is crack, but
23 certainly I want you to think about the entire picture here.

24 Now, the solicitor said that this case is all
25 about truth. I would say that's correct, any trial is about

1 truth, but this trial might also be about money.

2 Now, Judas Escariot was paid forty pieces of
3 silver to turn in Jesus. What is that in today's money? I
4 don't know.

5 MS. COLTON: Your Honor, may we approach?

6 THE COURT: You may.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 MR. MCKINNON: Ladies and gentlemen, I will not go
10 any further in that line. But, overall, not to beat a dead
11 horse, but to go back to the presumption of innocence, this
12 is the only time that that can possibly end, and that's up
13 to you guys to decide that. Is he innocent? That is the
14 case, unless all twelve of you agree that the State has
15 proved Jeff Davis is guilty beyond a reasonable doubt. And
16 I implore you to think through everything, all the
17 testimony, all the possibilities before you reach your
18 decision. Thank you.

19 (Whereupon, at 1:55 p.m. the Court instructed the
20 jury panel)

21 THE COURT: Madam Forelady, members of the jury
22 panel, you have heard the final arguments from counsel.
23 It's now time for me to charge you, that is, to instruct you
24 with regard to the law that applies to the issues in this
25 case.

1 In this case the State charges the defendant,
2 Jeffrey Davis, with the offense of distribution of crack
3 cocaine. To that charge the defendant has pled not guilty,
4 which then places upon the State the burden of proving the
5 defendant guilty.

6 A person charged with committing a criminal
7 offense in South Carolina is never required to prove himself
8 innocent.

9 I charge you that it is a vital important rule of
10 law that a defendant in a criminal trial must always be
11 presumed innocent, until his guilt has been proved beyond a
12 reasonable doubt. This presumption of innocence remains
13 with the defendant at all times throughout the trial and is
14 only removed when and if the State has proved guilt beyond a
15 reasonable doubt. For it is your solemn duty, ladies and
16 gentlemen, if not clearly convinced of guilt beyond every
17 reasonable doubt to the contrary to find the defendant not
18 guilty.

19 Madam Forelady, members of the jury panel, I
20 instruct you and emphasize to you that the fact that the
21 defendant did not appear in this trial and did not testify
22 in his own behalf in this trial is not a factor to be
23 considered by you in any way in your deliberation. You must
24 not consider the fact that the defendant has chosen not to
25 participate in the trial or to testify when you determine

1 the guilt or innocence of the defendant. It must not be
2 considered by you in any manner whatsoever either against or
3 for the defendant. A defendant has the Constitutional Right
4 to remain silent. The assertion of that Constitutional
5 Right cannot and must not be considered by you in your
6 deliberations. Under your oath then you are to reach no
7 inference, draw no conclusion whatsoever from the fact that
8 the defendant did not testify or participate in the trial.
9 The fact that the defendant was not present and did not
10 testify should not even be discussed in your jury room. The
11 burden of proof, as I have stated to you, is upon the State.
12 It is not the burden of the accused to prove his innocence.

13 Madam Forelady, members of the jury panel, I
14 charge you with regard to reasonable doubt. The State has
15 the burden of proving the defendant guilty beyond a
16 reasonable doubt.

17 What is a reasonable doubt? Some of you may have
18 served as jurors in civil cases where you were told that it
19 is only necessary to prove the fact is more likely true than
20 not, such as by the greater weight or preponderance of the
21 evidence. However, in criminal cases the State's proof must
22 be more powerful than that. It must be beyond a reasonable
23 doubt.

24 Now, ladies and gentlemen, proof beyond a
25 reasonable doubt is proof that leaves you firmly convinced

1 of the defendant's guilt. There are very few things in this
2 world that we know with absolute certainty and in criminal
3 cases the law does not require proof that overcomes every
4 possible doubt.

5 A reasonable doubt may also be described as the
6 kind of doubt that would cause a reasonable person to
7 hesitate to act. If you have such a doubt as to the guilt
8 of the defendant, then he would be entitled to a verdict of
9 not guilty.

10 Reasonable doubt may arise from evidence which is
11 in the case, or from the absence or lack of evidence in the
12 case.

13 If, based on your consideration of the evidence,
14 you are firmly convinced that the defendant is guilty of the
15 crime charged, you must find him guilty.

16 If, on the other hand, you think there is a real
17 possibility that he is not guilty, you must give him the
18 benefit of the doubt and find him not guilty.

19 You alone must make the determination of whether
20 or not reasonable doubt exists as to the guilt of the
21 defendant.

22 Madam Forelady, members of the jury panel, there
23 are two types of evidence generally presented during a
24 trial; direct evidence and circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 asserts or claims to have actual knowledge of a fact, such
2 as an eyewitness.

3 Circumstantial evidence is proof of a chain of
4 facts and circumstances indicating the existence of a fact.

5 The law makes absolutely no distinction between
6 the weight or value to be given to either direct or
7 circumstantial evidence, nor is a greater degree of
8 certainty required of circumstantial evidence than of direct
9 evidence.

10 You should weigh all the evidence in the case.
11 After weighing all the evidence, if you are not convinced of
12 the guilt of the defendant beyond a reasonable doubt, you
13 must find the defendant not guilty.

14 Madam Forelady, members of the jury panel, you
15 have heard the testimony of a witness who has special
16 knowledge, skill, experience, training or education in a
17 particular field and who has given opinions as to matters in
18 which she is skilled. In determining the weight to be given
19 such opinions you should consider the qualifications and
20 credibility of the expert witness and the reasons given for
21 her opinion. You are not bound by such opinions. Give them
22 the weight, if any, you deem them entitled.

23 Madam Forelady, members of the jury panel, under
24 the Constitution of South Carolina you are the finders of
25 facts in this case. I do not have the right to pass upon

1 the facts or even to express any opinion I might have as to
2 the facts, nor may I suggests in any way what I may think
3 about the guilt or innocence of the defendant. You should
4 form no opinion in that regard from anything I may have said
5 or any ruling I have made during the course of the trial.

6 As the sole judges of the facts in this case you
7 are also necessarily the sole judges of the credibility or
8 believability of each of the witnesses that have testified
9 during the course of the trial.

10 Now, there are a number of factors which you may
11 consider in arriving at your assessment as to a particular
12 witness' credibility or believability. Some factors I'm
13 going to list for you, and should you think of other factors
14 that you think you believe also ought to be considered when
15 you go back into your jury room on the question of
16 credibility, then you should consider those factors as well,
17 but you may consider the demeanor of the witness from the
18 witness stand. What was that witness' manner of appearance?
19 Was the witness straightforward in answering questions or
20 hesitant in responding to questions. Simply put, do you
21 believe the witness was telling the truth or not telling the
22 truth. Do you believe the witness knew of what that witness
23 testified or did not know of what that witness testified.

24 You may consider whether or not the testimony of a
25 witness is consistent or inconsistent with that witness' own

1 testimony or with other testimony or evidence presented
2 during the course of the trial.

3 You may also consider how the witness came to know
4 the facts to which he or she testified. You may consider
5 the opportunity that a witness had to observe or hear, that
6 is, to perceive the existence of a fact by means of their
7 senses.

8 You may also consider whether or not a witness is
9 biased or prejudiced. That simply means do you find that a
10 particular witness had some reason to come into court and
11 testify one way or another to help or hurt one side or the
12 other.

13 You may also consider whether or not the testimony
14 of a witness was strengthened or weakened by other testimony
15 or other evidence presented during the course of the trial.

16 As the finders of facts in this case you are also
17 judges of the credibility or believability of each of the
18 witnesses that have testified. You may believe as much or
19 as little of what a witness testifies to as you deem
20 appropriate. You may believe all of what a witness says,
21 you may believe none of what a witness says, or you may
22 believe part of what a witness says.

23 Madam Forelady, members of the jury panel, the
24 same Constitution that makes you the finders of the facts
25 makes me the sole and only instructor in the law. You must

1 accept as correct the law that I charge and apply to the law
2 the evidence as you find it and reach your verdict. Put
3 aside any conceptions you may have had as to the law before
4 coming here today and accept the law as I instruct it to be.
5 You, for purposes of your duty as jurors today, should not
6 be concerned about what the law ought to be, but what I
7 charge you the law is now in this state.

8 Madam Forelady, members of the jury panel, I
9 charge you with regard to criminal intent. Criminal intent
10 is a necessary element of each crime that must be proved by
11 the State beyond a reasonable doubt. Criminal intent is
12 always a matter that must be determined by the jury from the
13 circumstances surrounding the situation. There is no way to
14 prove intent to a mathematical certainty. There is no way
15 medical science can dissect a person's brain and determine
16 what he had in mind, so the law says that criminal intent
17 may be inferred from the circumstances shown to have
18 existed. This is how the jury makes a determination whether
19 or not the element requiring intent was present.

20 Criminal intent is a state of mind, which operated
21 jointly with an act, is the commission of a crime.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. So it is up to you, the jury, to determine what
24 the defendant intended to do based on the circumstances
25 shown to have existed.

1 I tell you that the State must prove criminal
2 intent beyond a reasonable doubt, just as the State must
3 prove every element beyond a reasonable doubt.

4 It is not necessary to establish intent by direct
5 and positive evidence, but intent may be established by
6 inference, the same way as any other fact, by taking into
7 consideration the acts of the parties and all of the facts
8 and circumstances of the case.

9 While the State may prove motive, it is
10 unnecessary that the State do so. However, the State must
11 prove intent.

12 Now, Madam Forelady, members of the jury panel, I
13 charge you now with the law specifically with regard to the
14 offense of which the defendant has been charged in this
15 case.

16 The defendant Jeffrey Davis is charged with
17 distribution of crack cocaine.

18 The State must prove beyond a reasonable doubt
19 that the defendant distributed crack cocaine.

20 Crack cocaine has been defined as a controlled
21 substance under Section 44-53-110 and Section 44-53-210 of
22 the South Carolina Code of Laws, 1976, as amended.

23 Under South Carolina Code of Laws, Section
24 44-53-375, it is illegal for any person to manufacture,
25 distribute, dispense, deliver, purchase, or otherwise aid,

1 abet, attempt, or conspire to manufacture, distribute,
2 dispense, deliver or purchase crack cocaine, or to possess
3 with the intent to distribute, dispense, or deliver crack
4 cocaine.

5 Distribution is the passing on to another the item
6 that is unlawful or illegal.

7 The passing of the item from one who has
8 possession of it to another individual would be
9 distribution.

10 Distribution can involve an exchange for money, a
11 barter, or a gift, but there need not be anything given in
12 exchange for the crack cocaine in order to constitute
13 distribution.

14 Therefore, to find the defendant guilty of
15 distribution of crack cocaine, you must find the State has
16 proven to you beyond a reasonable doubt that the defendant,
17 Jeffrey Davis, did distribute crack cocaine in York County
18 on August the 16th, 2012.

19 Madam Forelady, members of the jury panel, nothing
20 that I may have said or done during the course of this trial
21 has been in any way intended to express or suggest a view of
22 the case or an opinion as to the facts, the weight of the
23 evidence, or the credibility of the witnesses. If any of my
24 actions or words have seemed to so indicate, you will
25 disregard such and form your own opinion as to these

1 matters.

2 You have been selected as fair and impartial
3 jurors, sworn to impartially try and determine the facts of
4 this case. And when you comply with your oath to do so,
5 then no one will have a right to criticize your verdict and
6 you will have fully discharged your duty as jurors.

7 You are to decide this case according to the
8 testimony you have heard from the lips of the sworn
9 witnesses along with other evidence introduced during the
10 course of the trial.

11 I charge you that as jurors you must decide the
12 issues in this proceeding without bias and without prejudice
13 to any party. You cannot allow yourself to be governed by
14 sympathy, by prejudice, by passion, by public opinion, or
15 any other arbitrary factor. Both the State and the
16 defendant have the right to expect that each of you will
17 carefully and impartially consider all of the evidence in
18 the case and that you will follow the law as I have
19 explained it to you.

20 Madam Forelady, members of the jury panel,
21 whatever your verdict in this case, it must be your
22 unanimous verdict. All twelve jurors must agree on the
23 verdict which the foreperson would be authorized to sign on
24 behalf of the jury.

25 Madam Forelady, I charge you that once you begin

1 your deliberations that you maintain some order in those
2 deliberations, that everyone who wishes to participate and
3 to be heard be allowed to do so. If for any reasons any
4 member of the jury panel take a break from deliberations,
5 all should take a break. By that I mean all twelve jurors
6 should be present and deliberating when deliberations are
7 going on.

8 Now, I have prepared for your use in the jury room
9 a verdict form which I'll go over with you at this time.

10 On the verdict form there are two possible
11 verdicts which appear on the verdict form. They are as
12 follows:

13 First, we, the jury, find the defendant Jeffrey
14 Davis guilty of distribution of crack cocaine.

15 The second possible verdict which appears on the
16 form is we, the jury, find the defendant Jeffrey Davis not
17 guilty.

18 Now, in preparing the verdict form I have to put
19 the possible verdicts on the form in some order. I do it
20 the same way every time, but the order in which the possible
21 verdicts appear on the verdict form means absolutely
22 nothing. You should infer nothing from it.

23 What you should do, Madam Forelady, the jury
24 should deliberate. Once they have reached a unanimous
25 verdict you will go to the verdict form, find the verdict on

1 the verdict form which corresponds to the unanimous verdict
2 reached by the jury. You will simply put a checkmark in the
3 blank beside that particular verdict. Sign your name on the
4 line above the word foreperson's signature. Date it. Knock
5 on the door and let the bailiff know that you have reached a
6 verdict. The bailiff will let me know and I will bring you
7 back out to receive that verdict.

8 Now, I'm going to ask you, if you will, at this
9 time to retire to the jury room, but do not yet begin your
10 deliberations. I have to give counsel an opportunity to
11 request additional instructions on the law. But if
12 additional instructions are requested and I deem them
13 necessary, I will bring you back out to give you those
14 instructions. It follows that we need to make sure all
15 instructions are complete before you begin.

16 If no additional instructions are necessary, I
17 will send to you by means of the bailiff the verdict form
18 and any exhibits admitted into evidence and instructions to
19 begin deliberating. Please do not begin deliberating until
20 you get that instruction.

21 Thank you. Please retire to the jury room, all
22 except the alternate. Ma'am, I'll ask you at this time not
23 to go into the jury room, but wait just outside the
24 courtroom door for further instructions. Thank you.

25 (Whereupon, at 2:08 p.m. the jury retired to the

1 THE COURT: Madam Forelady, have you and the jury
2 reached a unanimous verdict in this case?

3 JURY FORELADY: Yes, we have.

4 THE COURT: Please, ma'am, if you will hand the
5 verdict form up to the bailiff.

6 The clerk will please publish the verdict.

7 THE CLERK: In the State of South Carolina versus
8 Jeffrey Davis with Indictment 2013-GS-46-214 for
9 distribution of crack cocaine, we, the jury, find the
10 defendant Jeffrey Davis guilty of distribution of crack
11 cocaine. Signed by the foreperson this date.

12 If this so be your verdict, so say you all by
13 raising your right hand.

14 Let the record show all affirmed.

15 THE COURT: Thank you.

16 Any questions of the jury panel from the State?

17 MS. COLTON: No, Your Honor.

18 THE COURT: From the defense?

19 MR. MCKINNON: No, Your Honor.

20 THE COURT: Madam Forelady, members of the jury
21 panel, this will complete your service on this particular
22 case. It will also complete your service for the week. I'm
23 pleased to tell you that we have quite a bit of work to do
24 yet this week, but it will not involve the jury. There's a
25 trial going on in the other court, but I want to take this

1 opportunity to thank you for your service and thank you for
2 the sacrifices that you have made this week to help make our
3 justice system work. We do not take that sacrifice for
4 granted. We deeply appreciate it.

5 Does anybody need anything to take to your
6 employer showing that you are required to be here this week?
7 Anyone? All right. Some of you do.

8 Do you want to get it downstairs?

9 THE CLERK: Melissa is still down there in the
10 office back in the jury room.

11 THE COURT: If you will go back to the jury
12 assembly room where you were when we first started off the
13 week. The lady down there will give you something to take
14 to your employer, those that need it. A check will be put
15 in the mail for your service this week in the very near
16 future. Again I want to thank you for your service and
17 again this will complete your service for the week. Thank
18 you very much.

19 Madam Forelady, if you will come up and sign the
20 indictment for us. We need you to do that.

21 (Whereupon, at 2:45 p.m., the jury panel was
22 discharged)

23 THE COURT: I'll hear you with regard to any
24 motions that you might wish to make at this time.

25 Anything from the State?

1 MS. COLTON: Nothing from the State, Your Honor.

2 THE COURT: Defense?

3 MR. MCKINNON: Your Honor, I would like to renew
4 all objections.

5 We would also like Your Honor to set aside the
6 verdict and set this case for retrial.

7 THE COURT: Okay. Well, the motions are noted for
8 the record. I think there's overwhelming evidence of guilt
9 in this case. Therefore, certainly the court is not
10 surprised or shocked by the verdict, the jury verdict in
11 this case, and I decline to set aside the jury verdict. I
12 think it is well supported by the testimony and evidence in
13 this case.

14 All right. Is there anything we need to put on
15 the record now with regard to sentencing?

16 MS. COLTON: Your Honor, the State has three --
17 excuse me, four certified copies, and I ask that these be
18 made Court Exhibits.

19 There is actually -- the first one is for
20 possession of crack cocaine, and that was a second offense,
21 and that occurred in -- 2006 was the conviction date. It's
22 2006-GS-46-0347, a prior drug offense for possession of
23 crack cocaine, second offense conviction.

24 The solicitor was Ms. Joyner. Gary Lemel was the
25 attorney for the defendant at that time and I ask that that

1 be made a Court's Exhibit, and that's one prior offense.

2 Mr. Davis, in 2000, has two convictions.

3 Distribution of crack cocaine, first offense, which is
4 2000-GS-46-2112.

5 Solicitor Dan hall and Teresa Thomas was the
6 prosecutors. I'm not sure who -- I think he had a public
7 defender, Your Honor, but I'm not sure from the signature.
8 I can't say for certain who that is.

9 And accompanying that is 2000-GS-46-2111, a
10 distribution within proximity of a public school or park
11 conviction. Your Honor was the presiding judge and the
12 State would submit that that is one prior strike for a
13 distribution of crack cocaine within proximity of public
14 school.

15 THE COURT: That's a serious offense?

16 MS. COLTON: It is, Your Honor. It's so noted on
17 the sentencing sheet as well.

18 And then in 1990, there is indictment 19 -- excuse
19 me, it's Indictment 1989-GS-46-3256. Mr. Davis was
20 convicted of trafficking -- trafficking powder cocaine under
21 the seven to 25, which would be second offense statute.
22 According to the CDR Code he received a seven years
23 sentence, Your Honor. He was sentenced by Judge McFadden,
24 and that was a sealed sentence opened in 1991.

25 The State would submit that trafficking is a

1 serious offense as well, and that would constitute in
2 addition another drug offense. There is three prior drug
3 offenses, making this a third offense, as well as two prior
4 strikes -- two prior serious offenses, with the current
5 charge being carrying 10 to 30, being a serious offense as
6 well, distribution of crack cocaine, third offense.

7 And we placed the defendant on life notice on the
8 record, served him with a certified copy of life notice, as
9 well as his defense attorney. The State's intention to seek
10 life without parole. He was convicted for a serious offense
11 and, therefore, the State has asked the court or would ask
12 the court to sentence him --

13 THE COURT: Do you want to -- I realize that's
14 been in the prior record somewhere?

15 MS. COLTON: Yes, sir.

16 THE COURT: Do you want to make that letter, or do
17 you have a copy of that letter, or do you want to make it an
18 exhibit?

19 MS. COLTON: Your Honor, we have a copy of the
20 notice with intent to seek life without parole. We would
21 make that a Court's Exhibit as well.

22 THE COURT: That keeps it altogether. I know it's
23 in a prior transcript somewhere, but --

24 MS. COLTON: Yes, sir.

25 Your Honor, I think I noted that before it was

1 during the May 6th term of court. I believe it was on May
2 7th in front of Judge Burch. We placed him on notice of the
3 intention to seek life without parole.

4 (Indictment No. 2006-GS-46-0347 marked as Court's
5 Exhibit No. 4 for identification)

6 (Indictment No. 2000-GS-46-2112 marked as Court's
7 Exhibit No. 5 for identification)

8 (Indictment No. 2000-GS-46-2111 marked as Court's
9 Exhibit No. 6 for identification)

10 (Indictment No. 1989-GS-46-3256 marked as Court's
11 Exhibit No. 7 for identification)

12 (Notice of Intent to Seek Life Sentence marked as
13 Court's Exhibit No. 8 for identification)

14 THE COURT: All right, yes, sir.

15 MR. MCKINNON: Yes, Your Honor, first I would just
16 like to say that referenced as part of that Court Exhibit on
17 the notice with intent to seek life imprisonment, it does
18 actually reference the trafficking conviction in 1990, as
19 well as two prior proximity charges.

20 I realize they only need two strikes, but just for
21 clarification sake the letter mentions the two proximity
22 charges at the time. I think both sides thought that was
23 correct. Upon looking at it later we both realized that one
24 of those was actually a parole revocation of the same
25 proximity charge. So actually it should just read one.

1 And, Your Honor, the issue we have with this,
2 quite honestly, is that the 1990 trafficking, if you look at
3 the sentencing sheet, there was no marking on there for
4 serious offense. I mean, obviously now reading the statute
5 it says it's a serious offense. I'm not sure, to be honest,
6 if in 1990, or '89, which it was indicted, if there were
7 serious offenses existed. I tried to look in every database
8 I could find, but nothing actually would go back that far to
9 show me what the law was as of 1990. So that's the only
10 issue I have with it, Your Honor.

11 I certainly understand the State's position would
12 probably be that what the law was back then did not matter
13 and that the law now says if you have a trafficking offense,
14 that's a serious offense, and if you have a proximity
15 charge, it's a serious offense. However, the question I
16 think remaining is this a serious offense? If it was not
17 when the defendant was convicted, if I'm saying that
18 correctly.

19 MS. COLTON: Your Honor, if I may?

20 THE COURT: Yes.

21 MS. COLTON: In looking at 17-25-45, Subsection
22 (a), "notwithstanding any other provision of the law, except
23 in cases in which the death penalty is imposed, upon a
24 conviction for a most-serious offense," if one or more prior
25 convictions for, (1) is a serious offense. (2) is a federal

1 or out-of-state conviction for an offense that would be
2 classified as most-serious offense under this section.

3 I think that what the statute the legislature
4 envisioned was if it met the elements of what could be
5 currently considered a serious offense. Certainly
6 trafficking back then was a violent offense, and I think the
7 enhancement statutes back in 1990, as in back in 1986 for
8 third strikes for repeat offenders dealt with violent
9 offenses.

10 And if we look to State v. Washington, which is a
11 2000 case, it's 333 S.C. 392, a Supreme Court case, Your
12 Honor, the defendant's prior common law burglary conviction
13 could be used to seek a life sentence without parole under
14 the repeat offender statute, even though the common law
15 burglary is not listed in the statute as a most-serious or
16 serious offense, common law offense, because the common law
17 offense contained the same elements that the burglary first
18 degree, which is a most-serious offense.

19 And essentially I think what they are saying is if
20 you meet the elements of what would be considered as serious
21 offense under the law now, then it's considered a serious
22 offense. Just because serious or non-serious may or may not
23 be -- I don't know if it did exists back in 1990. Certainly
24 it was a violent offense and would have constituted violent
25 repeat recidivism offense back under the law in 1986, but it

1 certainly has not changed. In fact, I believe it's the same
2 CDR Code on the sentencing sheet that we currently use for
3 trafficking. Therefore, the State would say that it's
4 analogous to common law burglary being able to be used as
5 repeat, even though it's not titled serious.

6 THE COURT: Well, of course, our code that we use
7 it's amended, of course, since then, but the code we use is
8 1976 Code.

9 In the main body, in Subsection -- it's 17-25-45,
10 Subsection (c)(2), serious offense means any offense which
11 is punishable by a maximum term of imprisonment of thirty
12 years, or more, which is not referenced in Subsection (c)
13 (1), okay, which lists a number of offenses.

14 (C)(1) does, however, mention trafficking in
15 controlled substances as a serious offense. That's in --
16 well, really that's under Subsection (2)(b). Do you see
17 those?

18 MR. MCKINNON: Yes, Your Honor. I mean, the
19 fact that -- I mean, we are not saying that the current
20 state of the law does not say that trafficking in crack
21 cocaine or other controlled substances is not a serious
22 offense.

23 My argument was simply that at the time was this a
24 serious offense? Was the defendant on notice that it was a
25 serious offense? And if all that is true, does the law now

1 mean to encompass what the definition of a serious offense
2 is for that offense now, not what it was at the time of the
3 conviction.

4 THE COURT: Well, I don't think he had to be aware
5 of it when he got the prior conviction, but he may one day
6 they are going to -- one day going to be treated as serious
7 and most-serious offense. I think he needs to be aware of
8 that at the time when he's plead guilty or convicted of it.

9 What's the date that you handed up?

10 MS. COLTON: Your Honor, I don't have a copy of
11 it. I just read it on the back of it. I don't have --

12 THE COURT: It came out of the annotation?

13 MS. COLTON: Yes, sir.

14 I know that -- I know this is no help to the
15 court, but commonly we use two burglaries and house breaking
16 under the same sought as North Carolina because it matches
17 the elements and I think --

18 THE COURT: I don't disagree with that.

19 MS. COLTON: Yes, but --

20 THE COURT: What I'm -- I agree with that, and
21 this statute makes that clear, that any offense which would
22 meet the elements of an offense in this state would be
23 classified as that offense for this purpose.

24 MS. COLTON: Yes.

25 THE COURT: I don't disagree with that.

1 But what they are saying here is that no question
2 but what this would be classified as a serious offense.
3 Which the defendant has been convicted of today of third
4 offense, because it carries a maximum of thirty years.

5 MS. COLTON: Yes.

6 THE COURT: No question about that.

7 The question is the two prior serious offenses.
8 And they are saying that he didn't know if it was a serious
9 offense at the time that he was convicted of it. You are
10 saying it doesn't matter --

11 MS. COLTON: Yes, sir.

12 THE COURT: -- because the statute says if he's
13 convicted of one of those, that would be classified -- that
14 would be a serious offense.

15 MS. COLTON: Yes, sir.

16 THE COURT: They are saying well, if it wasn't a
17 serious offense in 1990 when he got it, it couldn't be, you
18 know, considered as a serious offense for the purposes of
19 life without parole statute. That's their position.

20 MS. COLTON: Yes, sir.

21 Do they contest the 2000 one, because I think it's
22 clearly marked in the sentencing sheet that it is a serious
23 offense.

24 THE COURT: No, I don't think they do.

25 MR. MCKINNON: Your Honor, I believe that at the

1 time, from my research, was that the proximity charge at
2 2000 was considered a serious offense. I may be incorrect
3 on that, but I --

4 THE COURT: I don't think there is any question
5 about that one. It definitely was. You should be able to
6 track that down, though.

7 MR. MCKINNON: I tried.

8 THE COURT: What?

9 MR. MCKINNON: I tried, Your Honor, but the
10 closest I could get was 1995, and it was listed in 1995.
11 The update from 1995, Act 83, I believe as it's listed, and
12 I don't know if that was a new update or whether that was
13 just regurgitating what was previously there from the '86
14 amendment.

15 THE COURT: Well, when was the prior conviction
16 that you are questioning?

17 MR. MCKINNON: 1990.

18 THE COURT: 1990?

19 MR. MCKINNON: Yes, sir.

20 THE COURT: You said prior to that?

21 MR. MCKINNON: The furthest that I could find -- I
22 mean the furthest back I could find what the statute was.
23 I'm not saying that correctly, but 1995 was the earliest
24 version of the statute that I could find anywhere.

25 MS. COLTON: Could we -- if you could give us one

1 moment, Your Honor.

2 (Off the record)

3 (Back on the record)

4 THE COURT: Trafficking is classified as a violent
5 offense.

6 MR. MCKINNON: We are just thinking about the same
7 thing back in 1990 that we are discussing.

8 (Off the record)

9 (Back on the record)

10 MS. COLTON: I don't know if this is -- it may be
11 helpful. I'm not -- I don't know if it is, but it's the
12 General Assembly's, the Omnibus Crime Bill in 1986, which
13 predates the trafficking conviction, and it amends 16-1-60,
14 the definition of violent crime, and it amends 17-25-45
15 relating to life sentences for persons convicted three times
16 of certain crimes for life without parole, which is what we
17 have now, the life without parole under 17-25-45. And under
18 that it talks about Section 37, 17-25-45, that statutes fall
19 under 16-1-60 are strikes for life without parole. And I
20 guess defined as violent crimes for life without parole,
21 whereas, I assume it was later amended to be serious strikes
22 equal life without parole changing the violent to serious,
23 but the State would submit that trafficking back in 1990 was
24 still classified as violent, and, therefore, he would have
25 been given notice that it would be a strike. And whether

1 it's called serious or not would still be a life without
2 parole eligibility strike.

3 THE COURT: I think the legislative counsel, which
4 has a legislative history in Columbia, can give you the
5 answer to the question if you contact them. They have it
6 all recorded down there.

7 MS. COLTON: Your Honor, Ms. Weaver actually
8 researched this issue for us, and if I may ask her to
9 enlighten me --

10 THE COURT: Sure.

11 MS. COLTON: -- as to what --

12 MS. WEAVER: Your Honor, the way the legislative
13 counsel explained it to me was that you go -- you look in
14 the history. When you pull up the statute it will tell you
15 the history and you just have to go back through each
16 amendment, and you can look up the archived amendment on the
17 South Carolina Legislature website. And by piecing those
18 amendments together you could come up with what the law was
19 back on that date.

20 Now, they didn't specifically tell me that drug
21 trafficking was classified as a serious offense. However,
22 that was the law as it existed back in 1990. From that 1986
23 amendment, I think the next amendment was 1995. So that was
24 the law as it existed at that time. And at that time
25 what -- and speaking will legislative counsel it was all

1 violent crimes, could be used as the three strikes, and drug
2 trafficking was listed as a violent crime as of 1986.

3 MS. COLTON: Your Honor, we are going to ask the
4 office to pull the State v. Washington case and bring it to
5 us.

6 THE COURT: Well -- and then, of course, the other
7 question is whether or not it's classified as a serious
8 offense back then or not, whether it was classified as a
9 serious offense now under the statute. And I suspect that
10 it is, but I'm just trying to get to the root of it before I
11 actually fill out a sentencing sheet.

12 MS. COLTON: Yes, sir.

13 THE COURT: I think probably the intent of the
14 legislature was anything that is included in this code
15 section would be classified as a serious offense, no matter
16 when.

17 MS. COLTON: Your Honor, if I may look at the
18 sentencing sheet of the trafficking to get the CDR Code?

19 THE COURT: The sentencing sheet -- I don't have
20 it. You mean this?

21 MS. COLTON: The prior conviction. I'm sorry.

22 MR. SHELTON: Your Honor, 278 is still the active
23 CDR Code for trafficking cocaine, 10 grams, or more, less
24 than 28 grams, first offense. And I believe under the
25 recidivism statute that is defined as a serious offense. It

1 was enumerated out there. The ones that are actually
2 listed, not the ones that just carry up to 30 years. It was
3 the same CDR Code today as it was on that sentencing sheet
4 back from 1990.

5 MR. MCKINNON: Were you looking at the --

6 (Off the record)

7 (Back on the record)

8 MR. SHELTON: Judge, just for the purpose of the
9 record, we are talking about obviously 17-25-45. Subsection
10 (c)(2), it says serious offense means. And then under
11 Subsection (b) of that it enumerates felonies listed and it
12 has trafficking in crack cocaine 44-53-375 (c), or
13 trafficking in controlled substances. It doesn't make a
14 distinction between first or second offense or weights. It
15 simply reads trafficking in controlled substances, or
16 trafficking in ice, crank, or crack cocaine, which we now
17 know, of course, crack and cocaine are treated the same in
18 the Omnibus Law, when it used to be a little bit different
19 before the big change.

20 (Off the record)

21 (Back on the record)

22 THE COURT: Now that, under Subsection 17-25-45
23 (2) -- excuse me, (c)(2) describing serious offenses they
24 include in that, any offense punishable by a maximum term of
25 imprisonment of 30 years, or more, which is not referenced

1 in Subsection (c)(1). That makes, of course, the conviction
2 in the trial of this case fall into the maximum 30 years.
3 Therefore, it's a serious offense, without question under
4 this section.

5 And it goes on to say any offense punishable by a
6 maximum term of imprisonment of 30 years, or more, which is
7 not referenced in Subsection (c)(1) and (b), those felonies
8 enumerated as follows: And trafficking in controlled
9 substances and trafficking in ice, crank, or crack cocaine
10 are specifically listed in there as serious offenses.

11 So, you know, regardless of what -- defense has
12 not shown the court that it was not classified as a serious
13 offense back in 1990, when he was convicted of trafficking,
14 but this would appear to include trafficking as a serious
15 offense, in any event. The intent of the legislature was to
16 treat it as a serious offense for the purpose of the
17 Three-Strikes Rule.

18 What I'm going to do is I'm going to go ahead and
19 sentence based upon my understanding of the law at the
20 present time. I, of course, would seal the sentence today.

21 A bench warrant has already been issued for the
22 defendant, has it not?

23 MS. COLTON: It has, Your Honor.

24 THE COURT: Okay. And when the defendant is
25 picked up, you will have an opportunity, counsel, to argue

1 that to the court at that time. The court can always take
2 another look at it.

3 MR. MCKINNON: Thank you.

4 THE COURT: That's something that could be changed
5 at the sentencing hearing, whether it be me or another
6 judge. Hopefully I would be available for that and try to
7 schedule it before me, if he's picked up. If not, before
8 another judge you could still argue that. Now, that's one
9 of the things that you should still argue when the sealed
10 sentence is -- when he is picked up, you can argue that the
11 sentence is not appropriate because of that. Do you
12 understand that?

13 MR. MCKINNON: Yes, sir.

14 THE COURT: Give you a little more time to do
15 that.

16 MR. MCKINNON: Thank you, sir.

17 THE COURT: My suggestion would be -- I don't know
18 if the legislative history is going to help you, based on
19 the research that we have already been told what the
20 legislative, what they said. It may not be clear there,
21 because there was a different -- a violent offense in terms
22 of those days with the Three-Strikes Rule and life without
23 parole sentence, trafficking was included, but it may not
24 have been included as a serious offense, because they might
25 not have had a serious offense back then, but it had the

1 same effect being classified as a violent offense being
2 three violent offenses, that it would constitute a third
3 strike for life without parole. Now, it's been changed. I
4 don't know when it was changed. But even assume that it was
5 1990 was a violent offense that qualified as trafficking,
6 nevertheless, it was still considered an offense for which
7 you could get life without parole.

8 It appears to me that the intent of the
9 legislature was to include it in Subsection (2)(b) under
10 17-25-45 as a serious offense for which you could get life
11 without parole for three. I think that was the intent of
12 the legislature.

13 If you can find something different, I'll be open
14 today. I'm sure another judge will be, if you can establish
15 that to your satisfaction that this is not correct and the
16 court can look at it as probably a third offense.

17 MR. MCKINNON: Thank you, Your Honor. I'll
18 certainly make every attempt to come up with an argument.

19 THE COURT: I don't know that you could
20 specifically find what the law was then or if it's going to
21 make a difference, but then I think you would have to -- you
22 would have one more opportunity to argue it.

23 MR. MCKINNON: Thank you, Your Honor. I'll make
24 every attempt.

25 THE COURT: All right, sir.

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MR. SHELTON: Thank you, Your Honor.

(END OF REQUESTED TRANSCRIPT OF RECORD)

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF YORK 2013-GS-46-00214

3 _____
4 Transcript of Record
5 State of South Carolina

6 vs.

7 Jeffrey Davis
8 _____

9 Date: December 4, 2013

10
11 BEFORE: The Honorable Lee Alford

12
13 APPEARANCES:

14 Jennifer Colton, Esq.,
15 Assistant Solicitor

16 Mark McKinnon, Esq.,
17 Attorney for Defendant

18 Tracy Childers,
19 Court Clerk

20 Phyllis M. Campo, RPR
21 Court Reporter

22 (No Exhibits Introduced)
23
24
25

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1 THE JUDGE: Counsel, bring the defendant
2 around to the bar, please.

3 THE DEFENDANT, being duly sworn, testified
4 as follows:

5 THE JUDGE: Solicitor.

6 MS. COLTON: Your Honor, this is the State
7 vs. Jeffrey Davis, 2013-GS-46-0214. Mr. Jeffrey
8 Davis was tried in his absence and convicted of
9 distribution crack cocaine, third offense. He
10 was served with life notices.

11 He has two prior strikes on his record,
12 your Honor. That would be the 1991 trafficking
13 conviction for powder cocaine which would be one
14 strike, and 2000 distribution of crack cocaine
15 in proximity charge. He has an additional
16 possession of crack cocaine in proximity in 2006
17 as well, which would be another strike. Did we
18 determine it was only two strikes?

19 MR. MCKINNON I think so.

20 MS. COLTON: Your Honor, he has at least
21 two strikes. We made those certified
22 convictions part of the record after Mr. Davis'
23 conviction.

24 THE JUDGE: Do I have the record here? I
25 made notes on this at the time. I have so much

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1 back here it is difficult to put your hands on
2 it at the last second. I do recall the trial,
3 and I do recall sealing the sentence because
4 Mr. Davis had disappeared and absconded. He was
5 tried in his absence by me and a jury, and the
6 jury found him guilty. I do recall that. I do
7 recall sentencing him and proceeding with the
8 sentence. I thought we might be able to see the
9 exhibits on the priors.

10 THE CLERK: No, sir. They didn't have
11 them bring anything up from the trial. I can
12 get it.

13 THE JUDGE: We are going to need that if
14 they are going to argue that.

15 MR. MCKINNON: Your Honor, we are not here
16 to argue the prior strikes, actually.

17 THE JUDGE: Okay. Fine.

18 MR. MCKINNON: That came up after the
19 trial, but in the time since, I have gone over
20 the case law with the solicitor and we are in
21 agreement on that.

22 THE JUDGE: Never mind then.

23 THE DEFENDANT: Do I have any say on that?

24 THE JUDGE: You will have the opportunity
25 to speak, sir.

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1 THE DEFENDANT: All right.

2 THE JUDGE: We are just trying to get the
3 preliminaries out of the way here before we get
4 started.

5 There is no question it is a third serious
6 offense then?

7 MR. MCKINNON: That's correct.

8 THE JUDGE: I would be glad to hear from
9 the State if you wish to be heard with regard to
10 the sentencing.

11 MR. MCKINNON: Your Honor, now that I am
12 thinking about it, Mr. Davis might want to say
13 something on that regard, on the point on that,
14 before we continue and waive the prior
15 convictions. He had a concern that he recalls a
16 prior attorney telling him that the trafficking
17 charge from 1990 would not be used against him
18 in the future, and he wanted to address the
19 Court on that.

20 THE DEFENDANT: Yes. If you don't mind,
21 your Honor.

22 THE JUDGE: Yes, sir. Go ahead.

23 THE DEFENDANT: In 2000 when I was charged
24 with distribution of crack cocaine, my attorney
25 was Lisa Collard (phonetic spelling). She

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1 worked here for the Public Defender's Office. I
2 was doing time over at the chain gang. She come
3 and seen me there. It was supposed to be my
4 second offense, you know, distribution.
5 Trafficking was my first offense prior to that.
6 She came with an offer from the DA's office.
7 She actually said they offered me 12 years 85
8 percent, but she asked me about how did I get
9 convicted. I said, "Well, I was tried in my
10 absence on that." She said, "I don't think they
11 can hold it against you. Let me get back with
12 you on that in a couple of days." So when she
13 came back in couple of days, she said, "no,
14 Jeff, they cannot hold that against you." She
15 got it reduced from a second offense to a first
16 offense.

17 So, you know, I don't know the law, I am
18 not a lawyer. Evidently, there was something in
19 there about they couldn't hold it against me
20 because she got it reduced from a second offense
21 to first offense. As long as I have been
22 affiliated with, you know, the judicial system,
23 I know they don't do favors for nobody. I know
24 that personally from my own experience. It went
25 from 12 years from the second offense and

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1 dropped it to my first offense. I want to
2 know --

3 THE JUDGE: Well, we better get the record
4 up here then.

5 THE CLERK: I already told them to bring
6 it.

7 THE JUDGE: Here is the thing. You might
8 not consider it a favor, but sometimes they do
9 negotiate and sometimes -- and this happens all
10 of the time -- I will not say all of the time
11 but it happens a lot. This happened this week
12 as a matter of fact. They will reduce a charge
13 to a lesser offense and let you plead guilty to
14 the lesser offense so you can get a lesser
15 penalty. Some crimes carry mandatory sentences,
16 minimum sentences, and some of them carry
17 mandatory no parole sentences. So sometimes in
18 negotiations, they will let you plead to a
19 lesser offense instead of like a first offense
20 instead of a second because the second is a no
21 parole offense, and the first is a no parole
22 offense, or the second carries a mandatory
23 minimum sentence whereas the first doesn't. So
24 they will let you do that, but it doesn't change
25 the fact that it truly is a second. Even though

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1 they let you plead to a first, when you look to
2 see whether the next one is a third or not, then
3 whatever you got on the record at that time.
4 Like if you've already got two on your record,
5 it doesn't matter whether they allowed you to
6 plead to at first rather than a second to get a
7 break on your sentence and amount of time. It
8 is still a drug offense, serious offense on your
9 record. That doesn't matter. Do you
10 understand, for this purpose? That might be a
11 little difficult for you to understand but it
12 counts against you.

13 Once you put it on the record, it is just
14 like -- another good example of this: Sometimes
15 if there is a problem with driving under the
16 influence charge, some minor technical problem,
17 sometimes the solicitor will let someone plead
18 to a first instead of a second. The second one
19 carries more of a penalty. Okay? They will let
20 you plead to a first for a lesser penalty
21 because there might be a problem in the trial
22 and they don't want to go to trial with it. If
23 you come back with another one, it is going to
24 be third, it is not going to be a second. Even
25 though you pled to first, it is truly a second.

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1 On your driving record, the Department of
2 Motor Vehicles, they count it as a second no
3 matter what you pled to because it is second on
4 their records so they are going to suspend your
5 license based on the second.

6 If you come back in here on another one,
7 it is third regardless of whether you plead as a
8 first. It truly was a second on your record.
9 Do you understand what I am saying?

10 THE DEFENDANT: I understand.

11 THE JUDGE: So in this case, if you got
12 that break and you were allowed to plead to a
13 first instead of a second to get a lesser
14 sentence and possibly a no parole, I don't know
15 how that worked out, but if you got a break by a
16 lesser sentence or maybe on whether it is
17 paroled or not, that doesn't change the fact
18 that it is a serious offense on your record. Do
19 you understand what I am saying?

20 THE DEFENDANT: I understand. You know, I
21 understand you clearly, but I recall her saying
22 they couldn't hold that first one against me.
23 Those were her words as a lawyer. So those
24 words --

25 THE JUDGE: I don't know that means. She

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1 is not here to say it. She no longer is
2 employed here. I don't know what she meant by
3 that in saying that, what you understood it to
4 mean. I know if you have something on your
5 record, obviously, it is on your record.
6 Sometimes you can get a break by -- I wouldn't
7 consider it a favor, but it is negotiated to,
8 sometimes to get at a break, that you get it
9 reduced from second to first to third to second.
10 But it doesn't change the fact that it is still
11 on the record, and when the next one comes it is
12 going to be treated as whatever number it is.

13 THE DEFENDANT: All right.

14 THE JUDGE: Do you understand what I am
15 saying?

16 THE DEFENDANT: I understand.

17 THE JUDGE: If you want to talk to your
18 attorney, I will give you a chance to do that.

19 (Defendant and his attorney conferring.)

20 THE JUDGE: Solicitor, let me hear from
21 you on this. Why is this a third serious
22 offense?

23 MS. COLTON: Your Honor, the trafficking
24 is a serious offense.

25 THE JUDGE: What trafficking?

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1 MS. COLTON: The trafficking from 1991.

2 THE JUDGE: I don't seem to have that.

3 MS. COLTON: Your Honor, at the time of
4 his conviction, it would be part of the record,
5 the trafficking prior conviction and the
6 proximity prior conviction, before your Honor
7 sentenced him. Both certified copies should be
8 in there.

9 THE JUDGE: Well, I don't see it. If it
10 is in here, I am overlooking it if it was made
11 part of the record.

12 What I've got is possession of crack
13 cocaine second offense. I've got distribution
14 of crack cocaine first. I got distribution
15 crack cocaine within proximity of a public
16 school.

17 MS. COLTON: Your Honor, may I approach.
18 This is a copy of the trafficking conviction
19 that I gave Mr. McKinnon.

20 THE JUDGE: Wait a minute. Maybe I do
21 have it. It is not in the regular sentencing
22 sheet?

23 MS. COLTON: No, sir.

24 MR. MCKINNON: 1989 version I would guess,
25 sir.

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1 THE JUDGE: That's where the confusion
2 comes. It is so old it doesn't look like the
3 regular sentencing sheet. I am satisfied on
4 that.

5 I will hear from defense on sentencing
6 first.

7 MR. MCKINNON: Your Honor, this is before
8 you to unseal the sentence or --

9 THE JUDGE: I have already unsealed it,
10 and my sentence at that time was life without
11 parole, the only sentence I could give.

12 MR. MCKINNON: Yes, sir. Your Honor, I
13 would object to the imposition of mandatory life
14 without parole on the grounds that would be in
15 violation of the U.S. Constitution Eighth
16 Amendment under cruel and unusual punishment.

17 If it may please the Court, I have a good
18 bit of material --

19 THE JUDGE: I read all of those and none
20 of them apply, in my opinion. If you will
21 recite something specific, I will hear from you.
22 I have already read all of the stuff you handed
23 up to my Law Clerk. I don't think any of it
24 applies.

25 Certainly, those California cases don't

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1 have anything to do with our jurisdiction, not
2 enough precedent to me. The Federal District
3 Court is not on point with this particular case,
4 and Justice Scalia's opinion in there was
5 probably most on point. As far as actual
6 sentences like this, he didn't have any problem
7 with it. He said he only had a problem in death
8 penalty cases.

9 What else do you have?

10 MR. MCKINNON: Your Honor, if I could, I
11 would just make my presentation. In doing that,
12 I would like access to my desk.

13 THE JUDGE: All right.

14 MR. MCKINNON: Thank you. Your Honor, I
15 will try to be as brief as possible, but to
16 begin with, I would say that the Solemn v. Helm
17 case is probably the similar case here and there
18 certainly has been a lot of case law since then.
19 Solemn v. Helm case --

20 THE JUDGE: That was overruled by Scalia's
21 opinion. Give me something else.

22 MR. MCKINNON: Your Honor, I think there is
23 various other South Carolina cases, Fourth
24 Circuit cases and U.S. Supreme Court cases,
25 saying that the proportionality is a proper --

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1 THE JUDGE: It depends on the facts. If
2 you have one with five or six nonviolent
3 offenses like petit offenses in South Carolina
4 which they said was not proportional, et cetera,
5 et cetera. Now, Scalia said in his opinion, I
6 forget the name of it, I think you just
7 mentioned it. He said it doesn't apply in
8 nondeath penalty cases. He said death penalty
9 is different. You always apply it in that case
10 that didn't apply otherwise. There could be
11 some specific case that you could refer to. I
12 don't think this is it.

13 MR. MCKINNON: Which case are you
14 referring to?

15 THE JUDGE: Scalia's opinion in which it
16 was a five to four decision. At any rate, that
17 was the majority of the decision. He said it
18 only applied in death penalty cases. It didn't
19 apply otherwise. Some of the concurring
20 opinions thought it applied in certain types of
21 cases where it was, you know, extremely unusual
22 punishment in the case, but it wouldn't apply in
23 this particular case.

24 MR. MCKINNON: Your Honor, which opinion
25 are you referring to, which case is that? Is

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1 that the Reingold case. The case I am looking
2 at is the Second Circuit Court of Appeals.

3 THE JUDGE: --If you look at,--and this is
4 the case you handed me, State vs. Harrison.

5 MR. MCKINNON: Yes, sir.

6 THE JUDGE: In which Chief Justice Toal
7 recited all these federal opinions, and she said
8 that -- South Carolina said that it was not
9 subject to proportionality ruling citing these
10 federal cases. Do you have anything to overrule
11 that?

12 MR. MCKINNON: That was a 2010 case, I
13 believe, right? I'm sorry, 2013.

14 THE JUDGE: October 3, 2012 -- I beg your
15 pardon. It was filed February 27, 2013. Do you
16 have anything to overrule that?

17 MR. MCKINNON: Your Honor, the Reingold
18 case, which is a United States opinion from the
19 Second Circuit Court of Appeals are not directly
20 here, but this is a federal issue. I would say,
21 again, does read to me as adding back in the
22 proportionality as well as agreeing with the
23 original Solem v. Helm that in identifying cruel
24 and unusual punishment, the Supreme Court looks
25 to the Evolving Standards of Decency that marked

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1 the progress of a maturing society.

2 Your Honor, that's the reason I brought up
3 the reading materials on various other districts
4 like California, which I think that a popular
5 vote, voter referendum in California in 2012, to
6 undo life sentences for people convicted of
7 nonviolent sentences and given life without
8 parole passed by almost 70 percent margin.

9 THE JUDGE: That's California. This is
10 South Carolina.

11 MR. MCKINNON: Yes, sir, but I'm talking
12 the federal protection against cruel and unusual
13 punishment, and that standard being the Evolving
14 Standards of Society, being the nation as a
15 whole.

16 THE JUDGE: It doesn't say California
17 proposition has any effect whatsoever on South
18 Carolina law. If you were talking about 70 or
19 80 percent of the states reaching that
20 conclusion, you might have an argument on that.
21 But what one state does, it doesn't meet that
22 standard.

23 MR. MCKINNON: Your Honor, yes, I was
24 going to go on. There are other indicia of the
25 loosening values on harsh sentences on drug

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1 offenses. I mean, in addition to that, we've
2 got other states the decriminalized marijuana.

3 THE JUDGE: That is probably two or three
4 states.

5 MR. MCKINNON: I believe Washington,
6 Massachusetts --

7 THE JUDGE: That was for medical purposes.

8 MR. MCKINNON: Well, California I think is
9 just for medical purposes. It is decriminalized
10 in Massachusetts and legal I think in Colorado
11 and Washington.

12 THE JUDGE: Colorado is for medicinal
13 purposes only.

14 MR. MCKINNON: Your Honor, I would say the
15 omnibus crime after 2010 also loosened it here
16 in South Carolina a little bit by narrowing the
17 proximity elements as well as --

18 THE JUDGE: I don't have a problem with
19 that. You are not even close to the facts in
20 this case or anything on the point.

21 How about State vs. Williams, Court of
22 Appeals case in 2008 in South Carolina, which
23 specifically found that it did not violate cruel
24 and unusual punishment?

25 MR. MCKINNON: I thought that case was on

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1 point.

2 THE JUDGE: And those penalties were
3 approved in South Carolina, did not overturn it.
4 Then you the South Carolina Supreme Court
5 decision offered by Chief Justice Toal in 2013
6 which reached the same conclusion and didn't
7 find any federal prohibition against these life
8 without parole sentences and serious offense
9 cases.

10 Do you have anything to overrule those?

11 MR. MCKINNON: Your Honor, I've got the
12 United States vs. Hashime, I believe Fourth
13 Circuit Court of Appeals, saying that the
14 proportionality view is available.

15 THE JUDGE: It really didn't say that, did
16 it? That is one judges opinion that they really
17 need to take another look at that, and they
18 decided the reasons why they thought ought to
19 sit in the bank. That case didn't sit in the
20 bank. I don't know if they sat in the bank on
21 that and reversed themselves or not. He said
22 there were reasons because of some other
23 decisions to take a look at and review that is
24 less than death penalty sentences and life
25 sentences. He didn't say that. Whether they

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1 ever sat in the bank or made any changes, I am
2 not aware of that. Do you have anything to
3 indicate that? He said it might be time to do
4 that. That case was decided on another issue.

5 MR. MCKINNON: Yes, but it was basically
6 indicative saying that he thought that --

7 THE JUDGE: I understand. Did they change
8 the law?

9 MR. MCKINNON: Your Honor, I can't give
10 you a concrete case saying --

11 THE JUDGE: If you want me to consider it,
12 you better hand me something up. I am not going
13 to do it based on something out of thin air.

14 MR. MCKINNON: My argument basically is
15 one that the Evolving Standards of Society, the
16 things are changing. This judge clearly thinks
17 it is right for review.

18 THE JUDGE: I don't have any problems with
19 that. Counsel, I don't have any problem with
20 that. I think you are right. In some
21 jurisdictions, they take look at proportionality
22 review in some of these cases. South Carolina
23 is not one of them, as far as I know of. I
24 think the Justice Scalia made it clear that it
25 is not binding on the states except in death

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1 penalty cases. South Carolina is not for that.
2 We've got cases in South Carolina that
3 specifically say approved of the legislature use
4 of life without parole in serious and most
5 serious offenses, and in particular, on a number
6 of drug cases, excessive drug cases.

7 I don't find any merit for that argument,
8 and I am certainly not going to make that
9 decision here at the trial court level.
10 Somebody might make it to the Supreme Court. I
11 don't think they will be successful with it
12 given the most recent rulings in 2008 Court of
13 Appeals and 2013 South Carolina Supreme Court.
14 I don't think you will have much success with
15 that argument.

16 I deny your motion to alter the law by
17 saying it is unconstitutional, which is what you
18 are asking me to do. I do not find it is
19 unconstitutional. I find, based on all of our
20 case law and even federal law, United States
21 Supreme Court, that it is not unconstitutional.

22 What else do you have?

23 MR. MCKINNON: Well, your Honor.

24 THE JUDGE: You might want to address that
25 on appeal to the appellate courts if you want

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1 to. I am certainly not in a position to declare
2 the law unconstitutional.

3 MR. MCKINNON: So you are potentially say
4 you are not going to engage in the
5 proportionality?

6 THE JUDGE: That's correct. The only way
7 I would gain in that is say it is
8 unconstitutional as a violation of the Eighth
9 Amendment because it is not some kind of
10 proportionality review. I am not in a position
11 to say that, and I decline to do that.

12 What else have you got?

13 All the authorities against that position,
14 if somebody wants to argue with the appellate
15 courts to change their mind, you are welcome to
16 do that. They might change their mind. But in
17 light of the 2008 Court of Appeals decision and
18 the 2013 South Carolina Supreme Court, I don't
19 think that is very likely. But somebody can
20 always argue that. They can always change their
21 position, but that's not for the trial court to
22 determine.

23 MR. MCKINNON: Well, your Honor, I guess I
24 will just be clear, again, object to the
25 imposition of the life sentence.

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1 THE JUDGE: You have done that. I
2 decline..

3 MR. MCKINNON: I understand.

4 THE JUDGE: My ruling is I am bound by
5 the three strikes rule, three serious offenses.
6 I am bound by that under South Carolina Law and
7 the decisions of the Court of Appeals, South
8 Carolina Supreme Court. I am bound by that. I
9 don't make up the law here at the trial court
10 level, and I don't make the law here at trial
11 court level. I think they need to make it at
12 the Federal Court level. I think Supreme Court,
13 United States Supreme Court, based on decisions
14 I am familiar with, I think they would uphold
15 South Carolina law in challenge. So there we
16 are. If somebody wants to argue that to the
17 appellate court, they would have the authority
18 to change it if they wish to do so.

19 MR. MCKINNON: Your Honor, I understand
20 your ruling here today. I realize I would like
21 to tell your Honor a little bit about Mr. Davis.

22 THE JUDGE: Sure. Absolutely.

23 MR. MCKINNON: He is a lifetime resident
24 of this area, the valley area in York. I know
25 the State has a position that that area has a

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1 bad drug problem. Mr. Davis is an addict. I
2 think he may have contributed to the drug
3 problem in that area but was also a victim of
4 that. He was born into that. He has been a
5 drug addict since a teenager.

6 Your Honor, I applied to get him into Drug
7 Court and while Drug Court agreed that he was
8 definitely an addict and in need of treatment,
9 there were other reasons they could not accept
10 him.

11 THE JUDGE: They don't take serious drug
12 dealers into Drug Court, you know that.

13 MR. MCKINNON: Your Honor, I would not
14 characterize my client as that. I think he is
15 very much a subsistence level person. In this
16 case, he was found guilty of selling \$20 worth
17 to a friend, someone he smoked with for an
18 extremely long time. There was the officer in
19 the car.

20 THE JUDGE: I remember the whole testimony
21 and the whole trial. I remember all of the
22 testimony including the CI.

23 MR. MCKINNON: Mr. Davis, he had a
24 lifetime of using drugs, and I guess sometimes
25 distributing or what have you. He has no

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1 assets. He certainly is very bottom of the food
2 chain if he is, in fact, habitual dealer. He
3 does it on a limited basis to his friends is
4 what they have here, and that certainly is still
5 against the law.

6 Your Honor, he has nothing violent on his
7 record other than the drug offenses that you
8 have in front of you there. His entire record
9 is for conviction for trespassing and conviction
10 for driving under suspension. He has no
11 property crimes, no violent crimes, nothing that
12 has hurt the person or property of another. I
13 think it is very sad that we are here for the
14 life sentence for Mr. Davis. I wish there was
15 some other way this could be resolved. I
16 certainly hope in the future that legislature
17 and the courts do change their opinion on the
18 situation.

19 THE JUDGE: You know what, Mr. McKinnon,
20 it could be changed. It could have been
21 different if he had come in here and manned up
22 and pled, and I am sure they would given him a
23 better deal. He refused to take any kind of
24 negotiation and offers and fled and having
25 forced it to trial, and the jury found him

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1 guilty.

2 That left nobody any choice, including me
3 as to what sentence. He had a choice. He could
4 have come in and negotiated. He chose not to do
5 that. I know they would have let him plead to
6 something that would not have gotten that -- I
7 don't know that, but I am pretty sure on past
8 experiences that if he come in and negotiated,
9 or had someone negotiated for him, he could have
10 come out with no doubt a long lengthy prison
11 sentence, but something less than life without
12 parole. He chose not to do that. He chose to
13 decline to accept or get into any kind of
14 negotiations and just flee, and it went to
15 trial. He was tried in his absence, and that's
16 where you are. He had that opportunity. He has
17 burned that opportunity. That's all I can tell
18 you.

19 They will always negotiate these cases. I
20 can't speak for the Solicitor's office, and
21 based on the cases that come through here, I am
22 sure there could have been some negotiations if
23 he had been willing to do that.

24 MR. MCKINNON: And generally, Mr. Davis
25 didn't know this, but once the trial started

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1 they said that if he does show up there will be
2 no plea bargains.

3 THE JUDGE: Of course not, once he fled
4 and didn't show up for his trial, at that point
5 they are not going to put plea bargains out
6 there. He had the chance before he did it. You
7 know, he could have negotiated and probably
8 gotten something less than life without parole.
9 That was his choice.

10 Is anything else you want to offer?

11 MR. MCKINNON: I just wanted to say that
12 everyone I have talked to and in all walks of
13 life and people I cannot name based on their
14 profession, all tell me what a fantastic person
15 Mr. Davis is and he is extremely nice. I will
16 agree he is a good person. Apparently, he does
17 a lot in the community. He was working at
18 construction as well as a part-time job at
19 Stacy's Greenhouse at the time of the arrest.

20 Your Honor, he has a sizeable amount of
21 family here in support of him, and as you know,
22 his pastor is trying to get here.

23 Does anybody want to address the judge?
24 They don't, but they are all here in support of
25 him.

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1 THE JUDGE: Mr. Davis, anything you wish
2 to say to the Court?

3 THE DEFENDANT: I would like to say a few
4 things, your Honor, about my life. I just want
5 to ask you a question. Have you ever known
6 personally a drug addict? Have you personally
7 ever known a drug addict?

8 THE JUDGE: I deal with it all of the
9 time. We have Drug Court going and there are
10 drug addicts that completely turn their life
11 around. I graduated six of them last night that
12 have gone from abusing drugs tremendously to now
13 have jobs, some are in college, some have
14 promotions, they have returned to their
15 families, they have gotten their kids back from
16 DSS, they are working every day, and are good
17 productive citizens. They have to battle that
18 decision every day. They are in NA, AA and made
19 the corner, and they spent two years in Drug
20 Court. Yes, they have overcome the drugs and
21 still battle it every day. Yes, I have known
22 plenty drug addicts over the years. I was
23 probate judge for 13 1/2 years. I was committed
24 to get them off alcohol and drugs who had severe
25 convictions. I have dealt with it for 35 years.

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1 THE DEFENDANT: I heard you say, you know,
2 to know what drugs does. Your Honor, I just
3 want to tell you a little bit about myself. I
4 was not a known drug dealer. I was an addict
5 with a serious drug problem. I heard you say,
6 you know, drug addicts who are given a chance.
7 I wasn't given a chance to go to drug rehab and
8 drug court.

9 THE JUDGE: Mr. Davis, you want me to go
10 over these drugs convictions you have? You have
11 four drug convictions. This is the fourth drug
12 conviction on your record. The first one is
13 back in 1990. You have had all of these years
14 to clean yourself up. You don't have to be
15 forced into treatment. There is all kinds of
16 treatment available for you to go into. You
17 could have gone into drug rehab. Plenty of
18 people abuse drugs for years and suddenly they
19 decide they are going to make that change
20 whether they get help from the good Lord above
21 or they get into some treatment or make that
22 decision they want off of it and get some help.

23 You have had the same opportunity that
24 everybody else has had to get into treatment and
25 get off these drugs and lead a normal life, law

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1 abiding, taking care of everything, and you
2 chose to keep dealing with the drugs since
3 1990s. So don't tell me that you have never had
4 an opportunity. Everybody has an opportunity
5 and everybody who comes in this court can tell
6 me the same thing. So I don't hear that.

7 THE DEFENDANT: Yes, sir. But your Honor,
8 I wasn't dealing drugs. It ain't like I was on
9 the corner, you know what I am saying with a
10 pocket full of drugs in my pocket. I knew the
11 informant came by. Me and her used plenty of
12 times together. When she came by, I am not
13 expecting that she is a ride up as an informant.

14 THE JUDGE: Of course not. She knew she
15 could buy from you.

16 THE DEFENDANT: No. Just listen to me,
17 your Honor.

18 THE JUDGE: Go ahead. When she comes
19 back, she said do you know where I can get \$20
20 of cocaine crack from? Me, thinking I am doing
21 her favor, I get it for her from the girl. This
22 idea where addicts such as myself, when I go do
23 a favor for her about finding a deal of \$20,
24 \$40, he give me drugs to get high with. I don't
25 want you to get that impression I was not

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1 sitting on corner selling drugs.

2 You do a lot of things just to obtain
3 drugs themselves to get high. I just want you
4 to get that out of your heart and mind that I
5 was on the corner selling drugs. I was
6 definitely not selling drugs. She rolled up,
7 you know what I am saying, wired up, and she
8 wanted me to go get drugs for her. I went to
9 get drugs for her. I didn't have the drugs in
10 my possession and I didn't sell the drugs.

11 THE JUDGE: I know where you got the drugs.
12 Don't forget I heard the testimony during the
13 trial. We have a disc that shows you buying and
14 shows you giving her the drugs, where you got it
15 from, and all that. We know that. It is on
16 here. Why do you want to tell me something that
17 is not true?

18 THE DEFENDANT: I am not telling you
19 something not true. I got the drugs from
20 somebody else, and it is four or five drug
21 dealers in that area. Honestly, I don't know
22 who I got the drugs from. The only thing I was
23 thinking of is getting my own fix and trying to
24 do her favor. But it ain't like I was selling
25 drugs. Your Honor, I want to read the letter I

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1 wrote from the bottom of my heart, and I want
2 you to hear what I have to say, regardless if
3 you change your mind, but I want you to get
4 better picture of who Jeffrey Davis are.

5 First, I give your Honor regard of my life
6 and I respect you as judge of this Court.
7 Judge, the only thing I will ask you to do for
8 me is judge me fairly. I am coming to you as
9 the judge to overseer and the one with the final
10 say in this courtroom. I would like to throw
11 myself at the mercy of this courtroom. I would
12 like to say I am guilty of this charge before
13 me. Yes, I am guilty of the charge. I did make
14 the sale, but I was not on the corner selling no
15 drugs. I thought I was doing her a favor, and
16 in the meantime, by doing her a favor, taking
17 drugs, he do me a favor. I want you to get that
18 out of your heart, please.

19 I would like to say that I am guilty of
20 the charges before me, but I would also like to
21 say I am guilty of being a drug user not a drug
22 dealer. Yes, I made the drug sale to an
23 informant I knew very well who I used with many,
24 many times before. Yes, she knew that I knew I
25 could get the drugs for her. Not justifying my

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1 actions, your Honor. I am guilty of making the
2 drug sale, but I repeat I am not a drug dealer.

3 Your Honor, I am sure in your time being a
4 judge, you have seen plenty of drug dealers come
5 through this courtroom with their fancy lawyer
6 talking and fancy prep cases. To be honest with
7 you, I was one of those dealers in 1988 and 1989
8 when I first got introduced in drugs. Since
9 then, I have been one of the biggest users in my
10 community.

11 A drug dealer possesses the finer things
12 in life such as lots of money, cars, nice home,
13 jewelry, et cetera. Your Honor, I am 45 years
14 old, and because of my drug addiction I have not
15 been able to accomplish nothing in my life. I
16 have never owned anything because of my drug
17 addiction. I never owned a car. I never owned
18 my own place. I can't even keep a cell phone
19 turned on because of my drug addiction. My
20 drivers license is suspended because of
21 addiction. I get a seatbelt fine, \$25, \$35 fine
22 and because of my drug addiction, I can't even
23 pay it and my license suspended.

24 I want to give you a picture of who I am.
25 I have never been able to keep a job even though

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1 I have had plenty of jobs over the last 20 years
2 of my life. But because of my disease, I always
3 end up losing. It has caused my failed
4 relationship after failed relationship. I have
5 not been able to be a father or grandfather that
6 it is in me to be because of my disease. It has
7 been a real disability over the past 20 years of
8 my life. I was \$27,000 behind on child support
9 because of my drug addiction.

10 Your Honor, I have never physically hurt
11 anyone in my entire life; but I have hurt myself
12 and my loved ones a lot. I have never did a
13 serious violent crime in my life, but I have
14 accumulated a few drug charges, I have done
15 that, mostly because of my drug addiction.

16 That's basically it, your Honor. I have
17 some more stuff to talk about. I think my
18 lawyer did a great job today. I wasn't pleased
19 with him at first because I had to give him some
20 well known people who uphold the law that know
21 my history, Lieutenant James Riccio (phonetic
22 spelling) with the York Police Department.
23 Detective Marist (phonetic spelling) who has
24 been by my house because my girlfriend called
25 the police on me.

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1 I just want you to know I am not a drug
2 dealer. I was when I first got introduced to
3 drugs, and that was 25 years ago. You know, the
4 last three drug charges I have come because of
5 my drug addiction not because I am out there
6 trying to make no dollar. If I was to get \$100
7 in my pocket, I would probably hold that \$100
8 for 20 minutes because of my drug addiction.

9 I just want to paint a picture, please get
10 that out of your heart about Jeffery Davis being
11 a drug dealer. I was not a drug dealer. I have
12 plenty of problems in my life because of drugs.
13 Drug users do a lot of things to get high, and
14 running to make a sale, you know what I am
15 saying, the informant was wired up, you know,
16 getting to get the drugs for her. I never
17 thought I would be in this situation that I am
18 now, you know, facing a life sentence, you know,
19 with my history, you know. I just wanted you to
20 get that out of your head that I was a drug
21 dealer. I definitely wasn't a drug dealer.
22 Drug users do a lot of things.

23 THE JUDGE: All right. You are just
24 repeating yourself over and over now. Anything
25 else you want to say?

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1 THE DEFENDANT: No, sir.

2 THE JUDGE: All right. Does the State
3 wish to be heard on sentencing?

4 MS. COLTON: No, your Honor.

5 THE JUDGE: Mr. Davis, I am not judging
6 you. I don't know anything about you really. I
7 am not judging you. I am not saying you are a
8 big time drug dealer. I want you to understand
9 that. I realize the big time drug dealers are
10 slick. They have other people working for them,
11 and they make big bucks. They eventually get
12 caught, most of them. I am not saying you are
13 one of them.

14 The fact of the matter is you were out
15 there dealing drugs. This lady used to live in
16 that area. She knew she could come back down
17 and who she could buy from. She knew she could
18 buy from you. I saw where you had it, you had
19 it laid by the drain pipe and all that stuff.
20 We saw all that on the tape and watched it on
21 the tape. So all of that is here.

22 THE DEFENDANT: Drain pipe?

23 THE JUDGE: It was near the drain pipe in
24 back of house where you went and got it and
25 brought to her. We saw that on the tape. You

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1 don't know what we saw on the tape.

2 In any event, I am not saying you are a
3 big time drug dealer. I am saying that at all.
4 I am not judging you. It is not up for me to
5 judge you. All I do is pass on the law. I
6 don't judge anybody's soul. The good Lord will
7 do that for all of us. I am not judging. All I
8 am doing is a job here. I don't have any choice
9 in this particular case because it is a third
10 serious offense, and under South Carolina law --
11 legislature makes the laws. I don't make the
12 laws.

13 Your lawyer wants me to say it is
14 unconstitutional, and I can't say it
15 unconstitutional because I don't have any
16 authority to say it is unconstitutional.
17 Therefore, I believe it is constitutional. Only
18 the Supreme Court is going to change that if
19 they are going to change it, or the legislature
20 can change the law. They have made minor
21 changes in the law. It is not to say that I
22 agree with the law. It is not that I agree this
23 is the way it ought to be. But I didn't make
24 the law. I am not saying that's the way it
25 ought to be at all. If I had the opportunity to

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1 make the law or pass on it, I might do something
2 entirely different. I am just here as the judge
3 to enforce the law.

4 You had your choice to come in here and
5 negotiate with the solicitor's office, and I
6 believe if you had done that you could have
7 gotten something substantially less than a life
8 without parole sentence. That was your choice.
9 You chose not to do that. You chose to take
10 off. You had that choice. But now that the
11 jury convicted of you this, and it is a third
12 serious offensive, I have no choice but to enter
13 a sentence of life without parole. I don't have
14 any authority to change it. Do you understand
15 what I am saying?

16 THE DEFENDANT: Yes, sir.

17 THE JUDGE: If I had some authority to
18 change it, we could talk on and I would listen
19 to you, and if I thought it ought to be changed
20 or to reduce the sentence I gave you, I could
21 consider that, but I can't change the sentence
22 because it is third serious offense.

23 I looked back, and on one of yours I
24 sentenced you on. I see I was on the sentencing
25 sheet. I tell everybody --

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1 THE DEFENDANT: Which one was that, your
2 Honor?

3 THE JUDGE: It was the distribution of
4 crack cocaine first offense, which I gave you 54
5 months. That was in 2000, 13 years ago. I
6 sentenced you then. I know I told you then just
7 like I tell everybody who is sentenced on a drug
8 conviction, "Look, if you get another drug
9 offense of any kind in the future, the penalty
10 is going to be enhanced to higher because this
11 is on your record, because a penalty for a
12 second drug offense or a third drug offense or
13 higher in some cases, much higher, than they are
14 for a second. Do you understand that?" I tell
15 everybody that. I want them to know, "if you go
16 back out and you do it again, you are probably
17 going to prison for most of your life." I tell
18 them that. I am sure I told you that. That was
19 in 2000. I don't remember specifically, but
20 that's what I tell every person here on drugs.
21 So you were warned at that time about it.

22 You had a chance to clean up your act and
23 go get treatment and you didn't do any of that.
24 I understand, you are saying I am more of an
25 addict than I am a dealer. That may be true.

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1 But you are a dealer. It is the third serious
2 offense on your record and that gets you life
3 without parole sentence. That's all I am going
4 to say about it. There is nothing else I can
5 really do.

6 I am not saying you are a terrible person
7 or anything like that. I am not judging you at
8 all as an individual. I am just saying that you
9 were convicted of this by a jury, third serious
10 offense, and I'm required to impose life without
11 parole sentence. I have no choice.

12 In case 2013-GS-46-214, Jeffrey Davis
13 having been found guilty by a jury of
14 distribution crack cocaine, third offense, this
15 being a third serious offense on his record, the
16 sentence of the Court is he be committed the
17 State Department of Corrections for a
18 determinate term of life without parole. That's
19 the mandatory sentence that I have to impose. I
20 could not change that if I wanted to. At this
21 time, I am rescinding the bench warrant. Good
22 luck to you.

DOCKET NO. 2013-GS-46-

00214

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

DEU / Ervin

The State of South Carolina

County of York

Defendant

COURT OF GENERAL SESSIONS

February 21, Term 2013

I hereby appear in my own proper person and plead guilty to the within indictment or to

amg

ARREST WARRANT NUMBER

N230626

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

JEFFREY DAVIS

TRUE BILL

Foreperson of Grand Jury

Date:

James Ervin

2/21/13

VERDICT

Guilty

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375(B)(1)

CDR Code: 3039

Foreperson of Petit Jury

Date: 6/5/13

X Mary E. McKenney

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

INDICTMENT

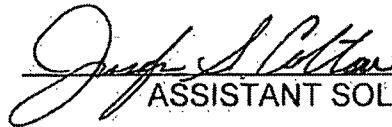
2013 DEC -9 AM 11:18

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of York County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

On or about August 16, 2012, the Defendant, Jeffrey Davis, did manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, or deliver crack cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. Said incident occurred in York County, South Carolina all in violation of Section 44-53-375 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

COUNTY OF York
STATE VS.
Jeffrey Davis

AKA: _____
Race: BLACK Sex: M Age: 45

Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Distribution of Crack Cocaine 3rd Offense

in violation of § 44-53-0375 (B) (3) of the S.C. Code of Laws, bearing CDR Code # 3039

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Colton, Jennifer S. 68591 SC Bar# _____ Defendant Attorney for Defendant 74065 SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE WITHOUT PAROLE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$280 -

INDICTMENT/CASE#: 2013GS4600214

A/W#: N230626

Date of Offense: 8/16/2012

S.C. Code § : 44-53-0375 (B) (3)

CDR Code #: 3039

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning: _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: David Hamilton

Court Reporter: Michael Wallis

SCCA/217 (03/2011)

Presiding Judge: 2113

Judge Code: 6-5-13

Sentence Date: 6-5-13

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. #
DATE:

See Below
CRIMINAL CHARGING DOCUMENT NO.

BAIL PROCEEDING
FORM I

STATE OF SOUTH CAROLINA
COUNTY OF York
IN THE York County General Sessions

STATE OF SOUTH CAROLINA
v.
ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

2013 MAY 30 AM 8:20
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
Davis, Jeffrey
NAME OF DEFENDANT

Offense Charged: Drugs / Distribute, sell, purchase, manuf. crack cocaine, or pwid, near school-[J159132, N230625]; Drugs,
manufacture, distribution, etc. of methamphetamine or cocaine base, 3rd or sub. offense-[J159131, N230626]

IT IS HEREBY ORDERED

I
That the above named defendant be released from custody on his own recognizance without surety on the condition that he will personally appear before the designated court at the place, date, and time required to answer the charge made against him and do what shall be ordered by the court, and not depart the State without permission of the court and be of good behavior.

II
That the above named defendant be released from custody upon recognizance without surety executed by him.

Appearance Recognizance Without Surety

On the 20th day of October, 2012, personally appeared before the undersigned judge the defendant named above who acknowledged himself indebted to the State of South Carolina, in the sum of 40,000.00 dollars, to be levied on his real and personal property for the use of the State, if the defendant shall fail in performing the conditions of the Order.

III
That the defendant will notify the court promptly if he changes his address from the one contained in this Order and will comply with the following other conditions of release: (Initial Appearance: 12/3/2012 @ 9am) at Moss Justice Center, York, SC

IV
That the defendant shall appear at (check one):

☒ the term of COURT OF GENERAL SESSIONS beginning on January 08, 2013 at 8:30 o'clock, A.M., at York County General Sessions - 1675 York Hwy/York, SC 29745 / (803) 628-3036 and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____ M. at _____

If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.
I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.
It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

Jeffrey Davis
SIGNATURE OF DEFENDANT

ADDRESS

York, SC 29745

CITY/STATE/ZIP

TELEPHONE

SIGNATURE OF JUDGE

DATE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED

Original Copy For The Trial Court - Copy For The Defendant

INDICTMENT/CASE#:

2006-GS-46-0347

A/W#: K015357

Date of Offense: 12-19-2005

S.C. Code § 44-53-0375 (B) (1)

CDR Code #: 3017

☐ CASE RESTORED
SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☒ PLEADS

OF York *Jack*
VS.
Jeffery Davis
RACE: B Sex: M Age: 37
DOB: SS#: ALL 10:08
Address: Lane
YORK, SC 29745
DL#: *DAVID HAMILTON*
CLERK OF COURT
YORK COUNTY, SC

In disposition of the said indictment comes now the Defendant who was
TO POSSESSION OF CRACK COCAINE 2ND OFFENSE

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3017

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

E. Payne
Solicitor*Jeffery Davis*
Defendant*Ray C. El*
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: any other

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$ 225.00

David Hamilton
Clerk of Court/ Deputy Clerk

Court Reporter: *Phyllis Barnett*

PTUP

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

CERTIFIED TRUE COPY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

Jeffrey Davis

2013 MAY 29 AM 10:07

2000-GS-46-2112

A/W#: G-026129

Date of Offense: 3-22-2000

S.C. Code § : 44-53-375

AKA:

Race: Black

Sex:

Male

DOB:

Age:

32

SSN:

DL#:

SID#:

SC

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

CDR Code #: 011112

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Distribution Crack Cocaine 1st

in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 011112

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Jeffrey Davis
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 54 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 25,000.00; provided that upon the service of 54 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2000-65-46-2111

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Shirley Green

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

PRESIDING JUDGE [Signature]

Judge Code: 011113

Sentence Date: 6/11/00

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA017 (1/00)

COURT'S 6

EXHIBIT NO.
IDENTIFICATION/EVIDENCE
DKT. #
DATE:IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

175

VS.

CERTIFIED TRUE COPY

2000-GS-46-2111

A/W#: 6026128

2013 MAY 29

Date of Offense: 3-22-2000

S.C. Code §: 44-53-445

Sex: male

Age: 32

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

CDR Code #: 0111018

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Distribution Crack Cocaine Within Proximity of a ~~Private~~ Public School
in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0111018☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

David Hamilton
SolicitorJeffrey Davis
DefendantJeffrey Davis
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
(and/or to pay a fine of \$ 10,000.00; provided that upon the service of 54 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ The Defendant is to be given credit for days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2000-65-46-2112

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ OrderedPTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ 25.00 paid to Public Defender Fund. Other: PRESIDING JUDGE Lee R. RogersJudge Code: 0411113Sentence Date: 12/10/00Clerk of Court/Deputy Clerk David HamiltonCourt Reporter: Shirley Broom

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (1/99)

STATE VS. 176

GENERAL SESSIONS DOCKET SHEET

INDICTMENT / CRIMINAL DOCKET NUMBER

DAVIS, Jeffrey

89 GS 46 3256

Hickory Lane

TRUE COPY

York

SC

2013 MAY 29 AM 10:07

WARRANT / TICKET NO. 062298

WARRANT / TICKET NO.

DEFENSE ATTORNEY

RACE X SEX X S.S. #

WARRANT / TICKET NO.

WARRANT / TICKET NO.

89 41 261 STATE SC DATE OF ARREST 02/11/89

WARRANT / TICKET NO.

MO DAY YEAR 11/20/89

COUNTS OFF CODE 01 278 Trafficking Cocaine

MO DAY YEAR 11/27/89

OFFENSE CHARGED

COUNTS OFF CODE

MO DAY YEAR

COUNTS OFF CODE

MO DAY YEAR

COUNTS OFF CODE

ION: DATE 03/05/90

1. PLEA 2. TRIAL (G) 3. TRIAL (NG) 4. NOL PROS 5. PROS ENDED 6. JUD. DISM. 7. REMAND 8. OTHER

93 COURT REPORTER: Janet Fischer

OFFENSE OF CONVICTION 01 278 Sealed Sentence (OFFENSE)

Sealed Sentence Opened 4/22/91

OFFENSE OF CONVICTION Sentence: Seven (7) years (OFFENSE)
\$500.00 (\$6225.25)

OFFENSE OF CONVICTION (OFFENSE)

OFFENSE OF CONVICTION (OFFENSE)

COURT'S EXHIBIT NO. 7 IDENTIFICATION/EVIDENCE DKT. # DATE:

REMARKS USE REVERSE SIDE (COURT USE ONLY)

SENTENCE

STATE OF SOUTH CAROLINA

YORK COUNTY

CERTIFIED TRUE COPY CASE NO. 89-GS-46-325

2013 MAY 29 AM 10:07

The defendant JEFFERY DAVIS ^{DAVID HAMILTON}
^{CLERK OF COURT}
 YORK COUNTY, SC is committed to the State
 Department of Corrections/County for a term of 7 months/years and/or to pay a fine of \$5000.00, provid-
 ed upon the service of _____ months/years and/or payment of \$ _____, plus pay/wave costs and assessments
 as applicable**, the balance suspended with probation for _____ months/years.

Restitution**

For physical injury \$ _____

Yes/No

property damage \$ _____

to be paid _____

to clerk for _____ **

Other conditions _____

Date March 5, 1990

Robert L. McFadden
 Presiding Judge

Costs and Assessments

L.C.F. FEE \$ 1000.00
 C.A.T. FEE \$ _____
 ACADEMY \$ 200.25
 C.C.A. FEE \$ 25.00
 OTHER \$ _____
 FINE \$ 500.00
 GRAND TOTAL \$ 1725.25

Clerk of Court

**Pay to Victim's Compensation Fund if subrogated.

SCCA Form 217 (3/86)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

STATE OF SOUTH CAROLINA)

v.)

Jeffrey Davis)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUITIndictment number 2013-GS-46-0211, -0212
2013-GS-46-0213, -0214NOTICE OF INTENTION TO SEEK
LIFE IMPRISONMENT WITHOUT
POSSIBILITY OF PAROLE SENTENCE

In the above captioned case the Defendant, Jeffrey Davis, is charged with Two (2) Counts of Distribution of Crack Cocaine 3rd Offense and Two (2) Counts of Distribution of Crack Cocaine within Proximity of a School or Park, each are crimes defined as "Serious Offenses" in South Carolina Code Ann. § 17-25-45(C)(2)(b)(1976 & Supp. 2003).

The State of South Carolina hereby advises that the Defendant was convicted on three separate occasions of offenses defined by South Carolina Code Ann. § 17-25-45(C)(2) (1976 & Supp. 2003) as a "Serious Offense." In 2006, the Defendant was convicted of a violation of South Carolina Code §44-53-445, Possession with Intent to Distribute Crack Cocaine within Proximity of a School /Park. In 2000, the Defendant was convicted Distribution of Crack Cocaine within Proximity of School or Park. In addition, the Defendant was convicted in 1991 of Trafficking in Crack Cocaine in violation of South Carolina Code §44-53-375.

The State of South Carolina through the Solicitor's Office, Sixteenth Judicial Circuit, hereby gives notice that at the trial of the case at bar, which will be scheduled on a date at least ten (10) days after notice to the Defendant, upon a conviction for this, another "Serious Offense," the State intends to seek a term of imprisonment for life without the possibility of parole pursuant to South Carolina Code Ann. § 17-25-45(B) (1976 & Supp. 2003).

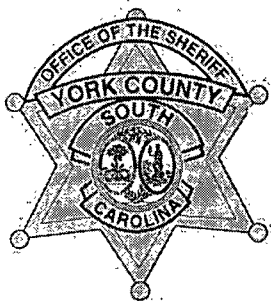
Jennifer Colton
Jennifer Colton
Assistant Solicitor
Sixteenth Judicial Circuit

May 6 2013
York, South Carolina

2013 MAY 6 AM 11:15

RECEIVED TRUE COPY

PENDING 4-100-071-028	COURT'S
	EXHIBIT NO. <i>8</i>
	IDENTIFICATION/EVIDENCE
	DKT. #
DATE:	

**OFFICE OF THE SHERIFF**

Moss Justice Center
1675-2A York Highway
York, South Carolina 29745-7430
Tel: (803) 628-3059 • Fax: (803) 628-3075
www.yorkcountysheriff.com

BRUCE M. BRYANT

Sheriff

T. Ervin

YCMDEU

June 03, 2013

Case Number: 201200027810

(S) Davis, Jeffrey

Court Type(s):Magistrate: Family: General Sessions: X

CONFIDENTIAL: This is an official report of the York County Sheriff's Office Forensic Laboratory and is to be used only in conjunction with an official criminal investigation.

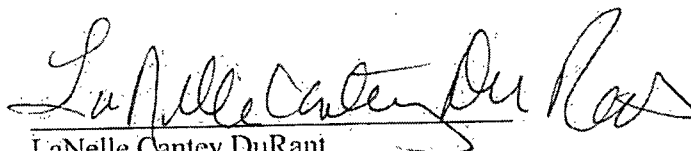
ITEMS OF EVIDENCE:Item 1: (0058673) Rock substanceResult 1: Cocaine base (Crack) found 0.25 grams (3.85 grains), C-II

Cynthia J. Mitchum 06.03.2013
Cynthia J. Mitchum (Chemical Analyst) Date

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 20th, 2015


LaNelle Cantey DuRant
Appellate Defender

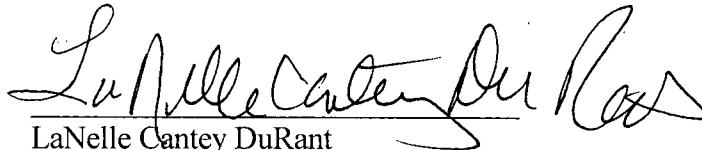
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 20th, 2015



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from York County

Lee S. Alford, Circuit Court Judge

RECEIVED

MAY 20 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEFFREY DAVIS,

APPELLANT

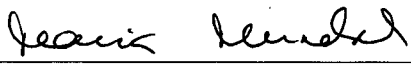
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of May, 2015.


Cruise Mitchell

Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of May, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.