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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County

R. Lawton McIntosh, Circuit Court Judge

ODOURI L. LYLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001292

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN WALT WHITMIRE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF EDGEFIELD

5 STATE)
6)
7 V.)
8 ODOURI L. LYLES)
DEFENDANT.)

TRANSCRIPT OF RECORD

07-GS-19-753

10 AUGUST 11 - 12, 2009
11 EDGEFIELD, SOUTH CAROLINA

13 B E F O R E:
14 THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

17 ERVIN J. MAYE, ASSIST. SOLICITOR

18 H. FRANKLIN YOUNG, III, ASSIST. SOLICITOR

19 ATTORNEYS FOR THE STATE

 JAMES R. SNELL, ESQUIRE

 ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD, RPR
CIRCUIT COURT REPORTER

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1 (The following proceedings were held on
2 August 11, 2009.)

3 **THE COURT:** Ladies and gentlemen of the jury,
4 you've been brought in to possibly serve as jurors
5 in a trial. And I'm going to go through this one
6 time with you even if we try more than one case this
7 week.

8 What we're going to do now is we're going to
9 turn from the general matters that we covered
10 yesterday to more specific issues and we'll be
11 qualifying you to serve as a juror in a particular
12 case. I'll be asking you a series of questions and
13 if the questions applies to you or you have doubt
14 about whether they apply to you, you need to discuss
15 that with me. Remember what I told you that if I
16 ever ask you anything you prefer to discuss more
17 privately, you can come down front.

18 Remember this is a court of record, so
19 everything we say is taken down. So when you stand,
20 the first thing I'm going to get you to do is to
21 identify yourself by your name and by your juror
22 number.

23 It's very important that you listen to the
24 question that I ask you and answer that question.
25 There may be times when I limit your responses. I

1 may say to just answer a question yes or no. If you
2 feel that you cannot answer the question adequately
3 within the limitations I place on you, let me know
4 you want to come down front and give me the full
5 answer down front, don't just blurt out the answer,
6 otherwise you defeat the purpose of my limitation.

7 Now, again, you'll be under oath so you need to
8 discuss these things with me if you believe that
9 they apply to you or you have any doubt about
10 whether they apply to you.

11 The purpose for all of these questions is to
12 obtain information from you about any possible
13 knowledge you may have related to the case, any
14 possible interest you may have in this particular
15 case or the type of case that it's alleged to be,
16 any connection you might have with any of the people
17 involved in the case or any of the entities, the law
18 enforcement agencies for example, involved in the
19 case. And if you keep in mind that our goal is that
20 we have a fair and impartial jury, I think the
21 questions will make more sense to you.

22 All right. Solicitor, call your first case.

23 **MR. MAYE:** The State now calls for trial
24 indictment 2007-GS-19-753, the State versus Odouri
25 Lamont Lytes. It's an indictment for trafficking

1 crack cocaine. It's been true billed by the Grand
2 Jury of Edgefield County. The State now calls this
3 case for trial.

4 **THE COURT:** Ladies and gentlemen of the jury,
5 we're about to qualify a jury to hear a case
6 captioned the State versus Odourri Lamont Lytes.
7 Mr. Lytes is charged in an indictment with
8 trafficking crack cocaine.

9 The indictment alleges that Mr. Lytes did in
10 Edgefield County on or about October 24, 2007,
11 knowingly, intentionally, willfully and unlawfully
12 sell, cultivate, manufacture, deliver, purchase or
13 bring into this state or provide assistance or
14 otherwise aid, abet, attempt or assist, conspire or
15 participate with others to sell, manufacture,
16 cultivate, deliver, purchase or bring into this
17 state or was knowingly in actual or constructive
18 possession of or knowingly attempted to become in
19 actual or constructive possession of more than 28
20 grams but less than 100 grams of crack cocaine.
21 This is alleged to be in violation of code section
22 44-53-370(c) and 44-53-375 of the South Carolina
23 Code.

24 Upon his arraignment on this charge, Mr. Lytes
25 has entered a plea of not guilty.

1 He is presumed to be innocent. It is incumbent
2 upon the State of South Carolina having brought this
3 charge against Mr. Lytes to prove him guilty beyond
4 a reasonable doubt.

5 I'll be asking you a series of questions. If
6 any of these apply to you or you have doubt about
7 whether they apply to you, please stand and follow
8 the procedure that I outlined earlier.

9 I need to caution you, ladies and gentlemen,
10 that an indictment is not evidence of anything.
11 This is merely the formal means by which someone is
12 charged and brought to trial. You may not give an
13 indictment any evidentiary value.

14 Is Odourì Lamont Lytes in the courtroom?

15 **MR. SNELL:** Yes, sir.

16 **THE COURT:** Mr. Lytes, I need for you to stand
17 please, turn and face the jury over here to my
18 right.

19 Thank you very much, sir. You may be seated.

20 Is there any member of the jury panel who is
21 related by blood or marriage or connected by
22 employment with the defendant in the case, Odourì
23 Lamont Lytes; if so, please stand?

24 (There was no response.)

25 **THE COURT:** Mr. Lytes will be represented by

1 Mr. James Snell.

2 (Mr. Snell stands.)

3 **THE COURT:** Thank you, Mr. Snell.

4 The following persons have been identified as
5 potential witnesses for the State. If any of these
6 persons happen to be present in the courtroom at
7 this time, I need for that person to stand as his or
8 her name is called: Coby Perry; Roosevelt Young of
9 the Edgefield County Sheriff's Department, thank
10 you, Mr. Young; Charles Holloway with the Saluda
11 Police Department; Kukila, K-u-k-i-l-a, Stanley of
12 SLED; Selena Kinard of SLED; Heidi Presley;
13 Antoinette Thomas; Crystal Leaphart; and Warren
14 Miller of the Edgefield County Sheriff's Office,
15 thank you, Mr. Miller.

16 Are any of you related by blood or marriage or
17 connected by employment with any of the potential
18 witnesses for the State; if so, please stand?

19 (There was no response.)

20 **THE COURT:** The State will be represented by
21 Mr. Ervin Maye of the Eleventh Judicial Circuit
22 Solicitor's Office and Mr. Frank Young, also an
23 Assistant Solicitor of that office.

24 Ladies and gentlemen, do any of you know
25 anything at all about this matter? Do you have any

1 knowledge whatsoever about the underlying case? Do
2 you know anything through anyone talking to you
3 about the case, anything through the media? If
4 you've heard, seen or read anything about this case,
5 if anybody's discussed it with you, if you've
6 overheard conversations in any way related to it, if
7 you know anything whatsoever about this matter,
8 please stand.

9 (There was no response.)

10 **THE COURT:** All right. I've introduced you to
11 Mr. Lytes. I've read the list of potential
12 witnesses, introduced you to the attorneys.

13 And what I need for you to do now is if you
14 have any connection of any kind with any of the
15 people involved in the case or any of the entities
16 involved in the case, you need to disclose that to
17 us. To give you examples of what I mean:

18 If you're a friend, if you're a neighbor, if
19 you attend the same church or civic clubs or other
20 religious organizations or any other type of
21 organization, if you've ever been involved in a case
22 that was represented by one of these attorneys or
23 anyone with whom they're affiliated, that would
24 include the Eleventh Judicial Circuit Solicitor's
25 Office, if you have ever been on the opposite side

1 of a case that was prosecuted by the Solicitor's
2 office, if you -- if you have any connection with
3 any of the entities involved, SLED, the Edgefield
4 County Sheriff's Office, Saluda Police Department or
5 the Solicitor's office in the Eleventh Circuit, you
6 need to disclose those kinds of things to us. So
7 any connection of any kind with anybody in the case,
8 any entity in the case, please let us know about it
9 by standing.

10 (Jurors stand.)

11 **THE COURT:** Like I said, we have to be kind of
12 formal, so I'm going to get each of you to state
13 your name and then we'll go from there, all right.
14 We'll start on the front.

15 **JUROR:** Joy Agner, number one.

16 **THE COURT:** Ms. Agner's juror number one.
17 What's your connection, ma'am?

18 **JUROR:** Son-in-law's on the sheriff's
19 department.

20 **THE COURT:** Your son-in-law is on the sheriff's
21 department?

22 (Pause.)

23 **THE COURT:** I'm going to set you aside on this
24 case, Ms. Agner. Just stay with us for other cases,
25 okay?

1 JUROR: Okay.

2 THE COURT: Juror number one, Ms. Agner, is set
3 aside.

4 Over here on my right.

5 JUROR: George Turner, number 117.

6 THE COURT: All right. Mr. Turner is 117.

7 What's your situation, please?

8 JUROR: My son-in-law works for the Edgefield
9 County Sheriff's Department.

10 THE COURT: All right. Mr. Turner, I'm going
11 to set you aside on this case. Just stay with us
12 for further instructions, all right.

13 117 is set aside on this case.

14 Yes, ma'am.

15 JUROR: Rebecca Turner, Juror 118.

16 THE COURT: All right. Ms. Turner's 118. And
17 what's your situation?

18 JUROR: I attend church with Mr. Perry.

19 THE COURT: With who? I'm sorry.

20 JUROR: Didn't you list Mr. Perry as one of --

21 THE COURT: Oh, Coby Perry?

22 JUROR: Yes, sir.

23 THE COURT: I'm sorry. I thought you said
24 Hill. I'm sorry. You attend church with Coby
25 Perry?

1 **JUROR:** Yes, sir.

2 **THE COURT:** Is there anything at all about your
3 relationship with him, your experiences with him
4 that would in any way affect your ability to be fair
5 and impartial as a juror in this case?

6 **JUROR:** No, sir. I only stood because you
7 mentioned that.

8 **THE COURT:** You're doing the right thing, but
9 I've got to ask you some more questions, okay?

10 **JUROR:** Yes, sir.

11 **THE COURT:** All I want any of y'all to do is be
12 truthful with me.

13 **JUROR:** There's no -- I think that I can be
14 fair.

15 **THE COURT:** Okay. I've got to keep going,
16 though. Can you decide the case without regard to
17 what he may think of your decision?

18 **JUROR:** Yes, sir.

19 **THE COURT:** You won't be concerned about the
20 next time you see him in church if you have to rule
21 against his position in the case?

22 **JUROR:** No, sir.

23 **THE COURT:** All right. Now, I need you to
24 answer these questions yes or no. If you need to go
25 beyond that, come down front, all right?

1 JUROR: Okay.

2 THE COURT: Do you understand that if you're a
3 juror in the case, you have to evaluate the
4 credibility, the believability of every witness who
5 testifies; you understand?

6 JUROR: Yes.

7 THE COURT: Have you ever formed in your own
8 mind or have you ever expressed to anyone else an
9 opinion as to whether Coby Perry is a believable
10 person or not?

11 JUROR: Yes.

12 THE COURT: I have to set you aside. All
13 right, stay with us for other instructions, but
14 you'll be set aside on this case.

15 Ms. Turner's 118. She's set aside.

16 Yes, sir, your name.

17 JUROR: Lawrence D. Pfennig. And I saw --

18 THE COURT: Wait a second.

19 JUROR: I don't remember my number.

20 THE COURT: It doesn't matter. I've got to
21 find you first. Spell your last name for me. I
22 don't think I heard right.

23 JUROR: D-f-e --

24 THE COURT: All right. Mr. Pfennig's juror
25 number 92. I'm sorry, Mr. Pfennig, I just found

1 you. All right, go ahead.

2 **JUROR:** I just have an issue with my stepson in
3 this courtroom.

4 **THE COURT:** Don't go any further. Come down
5 front, please.

6 What's your name, ma'am?

7 **JUROR:** Karen Keefer, Juror 65.

8 **THE COURT:** Ms. Keefer's juror number 65.
9 What's your situation?

10 **JUROR:** Likewise, I have --

11 **THE COURT:** Come down front.

12 The attorneys may join me on the side.
13 Mr. Lytes may join me if he likes.

14 (Whereupon, the following bench conferences
15 were held on the record.)

16 **JUROR:** My son -- excuse me -- my stepson was
17 tried here last fall.

18 **THE COURT:** Would that affect your ability to
19 be fair and impartial in this case?

20 **JUROR:** It might could.

21 **THE COURT:** I'll set you aside on this trial.
22 Just have a seat back there. Don't discuss anything
23 about that case with your fellow jurors please, all
24 right. Thank you.

25 92, Mr. Pfennig's set aside on this trial.

1 65, Ms. Keefer, what's your situation, ma'am?

2 **JUROR:** I have two brothers with addiction
3 problems. One, they have a history in this court
4 and different officers that are here.

5 **THE COURT:** Would any of that affect your
6 ability to be fair and impartial as a juror in the
7 case?

8 **JUROR:** Probably not.

9 **THE COURT:** Do you have any doubt?

10 **JUROR:** Uh-huh.

11 **THE COURT:** I have to set you aside. Don't
12 discuss any of that with your fellow jurors please,
13 ma'am. Just have a seat back out there.

14 Ms. Keefer's juror number 65. She's set aside
15 on the trial of this case.

16 (The bench conferences were concluded.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 is there anything at all about the allegations in
19 the case, the type of case it's alleged to be, that
20 is trafficking in crack cocaine, is there anything
21 at all about the nature of this case and the
22 allegations in it that would in any way affect your
23 ability to be a fair and impartial juror; if so,
24 please stand?

25 (There was no response.)

1 **THE COURT:** Are any of you members of or
2 contributors to any organization that has as one of
3 its primary purposes, the support of law enforcement
4 or the assistance of victims, that would include
5 organizations such as the Troopers Association, the
6 sheriff's association, Mothers Against Drunk
7 Driving, working in any kind of shelter for abused
8 persons, any such organization; if so, please stand?

9 (Juror stands.)

10 **THE COURT:** Your name, please?

11 **JUROR:** Lisa Gordon, number 42.

12 **THE COURT:** Ms. Gordon's number 42. What's
13 your situation, ma'am?

14 **JUROR:** In the past, we've given, my husband
15 and I, money to the South Carolina Order of --
16 Fraternal Order of Police.

17 **THE COURT:** Anything about that that affects
18 your ability to be a fair and impartial juror in
19 this case?

20 **JUROR:** No, sir.

21 **THE COURT:** Any doubt in your mind?

22 **JUROR:** No, sir.

23 **THE COURT:** Thank you. Ms. Gordon's juror
24 number 42. She's eligible to serve.

25 I'm going to pose these questions and there

1 will be multiple parts to the question and we're
2 going to talk about this down front if it applies to
3 anyone. But if any of you, any of your immediate
4 family members, any of your close, personal friends
5 have ever been charged with any type of drug law
6 violation or if any of you, any of your immediate
7 family members, any of your close, personal friends
8 have ever been victimized in any way by someone who
9 was alleged to be under the influence of drugs, you
10 need to discuss that with me.

11 It doesn't matter whether any formal charges
12 were actually brought on either side. If you -- any
13 of your immediate family -- if you or any of your
14 immediate family members or close, personal friends
15 have ever been in such situations, please come down
16 and talk to me.

17 (Jurors stand.)

18 **THE COURT:** Form a line over here for me,
19 please.

20 (Whereupon, the following bench conferences
21 were held on the record.)

22 **THE COURT:** Yes, ma'am, what's your name?

23 **JUROR:** Cassandra McCullough, 78.

24 **THE COURT:** Ms. McCullough is juror number 78.
25 What's your situation?

1 JUROR: I have two cousins that's been charged
2 with drugs.

3 THE COURT: In Edgefield County?

4 JUROR: Uh-huh.

5 THE COURT: Are the charges pending or are they
6 over?

7 JUROR: They in prison.

8 THE COURT: Do you know if they were prosecuted
9 by the sheriff's department or town?

10 JUROR: I haven't the slightest idea.

11 THE COURT: Is there anything at all about your
12 relationship with your cousins or their experiences
13 that affect your ability to be fair and impartial as
14 a juror in this case?

15 JUROR: No.

16 THE COURT: Any doubt in your mind?

17 JUROR: No.

18 THE COURT: Thanks very much.

19 Ms. McCullough is juror number 78 and eligible
20 to serve.

21 Yes, ma'am. Ms. Miles is juror number 80.
22 What's your situation?

23 JUROR: I have had a nephew incarcerated,
24 (inaudible) drugs, brother. I presently have a --

25 COURT REPORTER: I didn't hear the last part,

1 I'm sorry.

2 THE COURT: Brother.

3 JUROR: Brother. And I presently have a nephew
4 incarcerated in Columbia, drug addicted.

5 THE COURT: Any of those cases come out of
6 Edgefield County?

7 JUROR: My brother and my nephew.

8 THE COURT: Do you know what entity prosecuted
9 him? Was it the sheriff's department, local police?

10 JUROR: I'm not quite sure. He was in -- my
11 nephew was in Johnston and then he was walking near
12 a school and he had drugs on him. And my brother
13 was accused of soliciting to a minor.

14 THE COURT: Is there anything about those
15 relationships or experiences that affect your
16 ability to be fair and impartial in this case?

17 JUROR: No.

18 THE COURT: Any doubt in your mind?

19 JUROR: No.

20 THE COURT: Thanks very much.

21 Ms. Miles is juror number 80. She's eligible
22 to serve.

23 Yes, sir, what's your name, please?

24 JUROR: Juror 113.

25 THE COURT: Mr. Thomas.

1 **JUROR:** I've got two situations. I have a
2 stepfather charged with DUI. And I've also had a
3 close, personal friend killed by a drunk driver, but
4 no charges were -- well, it was a trial, but
5 acquitted.

6 **THE COURT:** Either one of those in Edgefield
7 County?

8 **JUROR:** No.

9 **THE COURT:** Anything about those experiences
10 that affect your ability to be a fair and impartial
11 juror in this case?

12 **JUROR:** No.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** (Juror shook head.)

15 **THE COURT:** Thanks very much.

16 Mr. Thomas is 113. He's eligible to serve.

17 Yes, sir, your name, please?

18 **JUROR:** Barry Brown, number 13.

19 **THE COURT:** Okay. Mr. Brown, what's your
20 situation?

21 **JUROR:** I have an ex-wife. We divorced about
22 six years ago. Years before we got married, she was
23 a user and has been treated.

24 **THE COURT:** Anything about that experience that
25 affects your ability to be fair and impartial as a

1 juror in the case?

2 JUROR: No, sir.

3 THE COURT: Any doubt in your mind?

4 JUROR: No, sir.

5 THE COURT: Thanks very much.

6 Mr. Brown's 13. He's eligible to serve.

7 Yes, sir.

8 JUROR: My name is Randy Duncan, Juror 33.

9 THE COURT: Okay. Mr. Duncan, what's your
10 situation?

11 JUROR: My wife's nephew was convicted of
12 crystal meth charges in Georgia.

13 THE COURT: Anything about that situation that
14 affects your ability to be fair and impartial in
15 this case?

16 JUROR: No, sir.

17 THE COURT: Any doubt in your mind?

18 JUROR: No, sir.

19 THE COURT: Thanks very much.

20 Mr. Duncan's juror number 33. He's eligible to
21 serve.

22 Yes, ma'am.

23 JUROR: Donna Stichert, 106.

24 THE COURT: Ms. Stichert's juror number 106.

25 Yes, ma'am.

1 **JUROR:** My ex-husband, who was my husband at
2 the time, but he was arrested for simple possession.

3 **THE COURT:** What drug?

4 **JUROR:** Excuse me?

5 **THE COURT:** What drug?

6 **JUROR:** Marijuana.

7 **THE COURT:** In Edgefield County?

8 **JUROR:** No, sir. It was out of state, Georgia.

9 **THE COURT:** Anything about that experience that
10 affects your ability to be fair and impartial in
11 this case?

12 **JUROR:** No, sir.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No, sir.

15 **THE COURT:** Thank you, ma'am.

16 Ms. Stichert's juror number 106, eligible to
17 serve.

18 Yes, sir.

19 **JUROR:** Antonio Counts.

20 **THE COURT:** 24. What's your situation,
21 Mr. Counts?

22 **JUROR:** My cousin was convicted of distribution
23 of crack cocaine.

24 **THE COURT:** Edgefield --

25 **JUROR:** He's in SCDC right now.

1 **THE COURT:** Was that in Edgefield County?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Do you know what agency prosecuted
4 him? Was it the sheriff's department?

5 **JUROR:** I don't know.

6 **THE COURT:** Anything about that experience or
7 your relationship with him that affects your ability
8 to be fair and impartial in this case?

9 **JUROR:** No.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No.

12 **THE COURT:** Thank you, sir.

13 Mr. Counts is juror number 24. He's eligible
14 to serve.

15 Yes, ma'am, what's your name?

16 **JUROR:** Good morning. Angela Dent, number 32.

17 **THE COURT:** Angela Dent?

18 **JUROR:** Yes.

19 **THE COURT:** 31.

20 **JUROR:** I'm sorry.

21 **THE COURT:** That's okay. What's your
22 situation?

23 **JUROR:** My nephew was charged a couple years
24 ago for marijuana, I think, in a school district.
25 And he served a year in Saluda County.

1 **THE COURT:** Anything about that experience that
2 affects your ability to be fair and impartial as a
3 juror in the case?

4 **JUROR:** No.

5 **THE COURT:** Any doubt in your mind?

6 **JUROR:** No.

7 **THE COURT:** Thanks very much.

8 Ms. Dent's juror number 31, eligible to serve.

9 Yes, ma'am, what's your name?

10 **JUROR:** Robin Hagaman, number 45.

11 **THE COURT:** What's your situation?

12 **JUROR:** My son was arrested for possession of
13 marijuana about seven years ago. And my husband was
14 attacked by a gentleman that was...

15 **COURT REPORTER:** I didn't hear the last part.

16 **THE COURT:** Husband was attacked by a gentleman
17 who was high on some kind of drug.

18 Your son's situation, was he charged in
19 Edgefield County?

20 **JUROR:** No, it was in Florida.

21 **THE COURT:** And your husband, did that happen
22 in South Carolina?

23 **JUROR:** Florida.

24 **THE COURT:** Anything about your situation with
25 your son that affects your ability to be fair and

1 impartial in this case?

2 JUROR: Oh, I don't think so, huh-huh.

3 THE COURT: What about your husband?

4 JUROR: No.

5 THE COURT: Do you have any doubt about your
6 ability to be fair and impartial?

7 JUROR: No.

8 THE COURT: Thank you very much.

9 Ms. Hagaman's juror number 45. She's eligible
10 to serve.

11 Yes, sir. What's your name, sir?

12 JUROR: Alex Hillary, number 52.

13 THE COURT: Mr. Hillary is 52.

14 What's your situation?

15 JUROR: Back in 1998, my uncle was on trial.

16 THE COURT: For what?

17 JUROR: I think it was for manslaughter.

18 THE COURT: Drugs involved in it?

19 JUROR: No, sir.

20 THE COURT: What happened in the case?

21 JUROR: He wound up doing, I think, two years.

22 THE COURT: Two years?

23 JUROR: Yes, sir. He took a plea I think.

24 THE COURT: You think he pled guilty?

25 JUROR: Yes, sir.

1 **THE COURT:** Anything about that experience that
2 affects your ability to be fair and impartial in the
3 case?

4 **JUROR:** No, sir.

5 **THE COURT:** Any doubt in your mind?

6 **JUROR:** No, sir.

7 **THE COURT:** Was the sheriff's department
8 involved in that?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you.

11 Mr. Hillary's 52. He's eligible to serve.

12 Yes, ma'am. What's your name?

13 **JUROR:** Wanda Carroll. I think it's number 88.

14 **THE COURT:** Did you say Carroll?

15 **JUROR:** Yes.

16 **THE COURT:** 18, Ms. Carroll's juror number 18.

17 What's your situation?

18 **JUROR:** My nephew has been charged with several
19 drugs.

20 **THE COURT:** Your nephew had been charged with
21 several drugs?

22 **JUROR:** Uh-huh. It's been two of them here in
23 Edgefield County.

24 **THE COURT:** Two drugs or two nephews?

25 **JUROR:** Two nephews.

1 **THE COURT:** Did the sheriff's department charge
2 them or do you know what agency charged them?

3 **JUROR:** I'm not sure. I think one of them
4 supposed to be getting tried this week.

5 **THE COURT:** So one of your nephews has pending
6 charges?

7 **JUROR:** And one of them have been tried
8 already, but I don't know the situation.

9 **THE COURT:** Are you involved in your nephew's
10 cases?

11 **JUROR:** Huh-huh.

12 **THE COURT:** Either one?

13 **JUROR:** No, sir.

14 **THE COURT:** Do you know if the sheriff's
15 department's involved in the pending case?

16 **JUROR:** I'm not sure.

17 **THE COURT:** You understand he'll be prosecuted
18 by the same people that will be prosecuting this
19 case?

20 **JUROR:** I'm not sure.

21 **THE COURT:** Well, I'm telling you.

22 **JUROR:** Okay.

23 **THE COURT:** Do you understand that?

24 **JUROR:** Yes.

25 **THE COURT:** Is there anything about that

1 situation that affects your ability to be fair and
2 impartial as a juror in the case?

3 JUROR: No, sir. Well, they're my nephew on my
4 husband's side, so, no.

5 THE COURT: Your nephews on your husband's
6 side?

7 JUROR: Uh-huh.

8 THE COURT: Do you have any doubt at all about
9 your ability to be fair and impartial in the case.

10 JUROR: No.

11 THE COURT: What's your nephews' names?

12 JUROR: One of them name is Michael Norris.

13 THE COURT: That's the one with the pending
14 charges?

15 JUROR: I think he already been tried.

16 THE COURT: What about the other one?

17 JUROR: Rico Norris.

18 THE COURT: Thank you, ma'am.

19 JUROR: You're welcome.

20 THE COURT: Ms. Carroll's juror number 18.
21 She's eligible to serve.

22 Yes, sir.

23 JUROR: Number 60, John Johnson.

24 THE COURT: Mr. Johnson, what's your situation?

25 JUROR: My nephew was arrested for drugs in

1 Aiken County a couple years ago. I don't remember
2 when or what happened. I wouldn't return his calls.
3 He wanted me to get him out.

4 **THE COURT:** Anything about that experience that
5 affects your ability to be fair and impartial --

6 **JUROR:** No, Your Honor.

7 **THE COURT:** Any doubt in your mind?

8 **JUROR:** No, sir.

9 **THE COURT:** Thank you, sir.

10 Mr. Johnson is juror number 60. He's eligible
11 to serve.

12 Yes, sir. What's your name, sir?

13 **JUROR:** Gilmore Stevens.

14 **THE COURT:** Mr. Stevens?

15 **JUROR:** 105, I think.

16 **THE COURT:** Yes, sir. What's your situation?

17 **JUROR:** My son had been caught with selling
18 drugs, too.

19 **THE COURT:** Your son was caught selling drugs?

20 **JUROR:** Yes, sir.

21 **THE COURT:** Was that in Edgefield County?

22 **JUROR:** Right.

23 **THE COURT:** What happened to your son?

24 **JUROR:** He hadn't gone through trial yet.

25 **THE COURT:** He hadn't been tried?

1 JUROR: No, sir.

2 THE COURT: Do you know what agency arrested
3 him? Was it the sheriff's department, local police?

4 JUROR: I think sheriff's department.

5 THE COURT: Are you involved in his case in any
6 way?

7 JUROR: No, sir.

8 THE COURT: You don't plan to testify?

9 JUROR: No, sir.

10 THE COURT: You understand that the same
11 prosecuting office will be prosecuting your son?

12 JUROR: (Juror nodded head.)

13 THE COURT: Speak your answer for me.

14 JUROR: Yes, sir.

15 THE COURT: And would that -- is there anything
16 about your situation with your son, with your son's
17 situation, your experience or relationship with him
18 that would affect your ability to be fair and
19 impartial in this trial?

20 JUROR: No, sir.

21 THE COURT: So you can decide the case even
22 though your son's going to be prosecuted by the same
23 people?

24 JUROR: Yes, sir.

25 THE COURT: You can be fair and impartial on

1 that?

2 JUROR: Yes, sir.

3 THE COURT: And you can decide the case fairly
4 and impartially even though the sheriff's office has
5 your son charged?

6 JUROR: Yes, sir.

7 THE COURT: You sure of that?

8 JUROR: Positive.

9 THE COURT: Okay. Thank you, sir.
10 Mr. Stevens' 105, he's eligible to serve.
11 Yes, ma'am. Your name, please?

12 JUROR: Judith Nicholson.

13 THE COURT: Ms. Nicholson's juror number 87.
14 What's your situation?

15 JUROR: I hope nothing, but there's a man that
16 works for my husband that we've been trying to help
17 through a lady down in Augusta who takes in drug
18 addicts and mostly Vets and keeps them. And this
19 man and now his wife came back, said she was with
20 that guy and had something to do with drugs.
21 They're hiding him out and --

22 THE COURT: Wait a second. You're losing me.
23 Start over. There's a man who works for your
24 husband?

25 JUROR: Yeah. And now he and his wife was

1 having problems. Now, it turns out his wife is with
2 some black man that supposedly is doing drugs. He's
3 supposedly wanting to kill them, so they put him in
4 a safe place. We don't know what the truth is about
5 anything. I'm really not sure where it's going, but
6 you said having to do with drugs. I just get
7 involved with helping people. Don't ask me how I do
8 this.

9 **THE COURT:** Is there anything about that
10 experience or your relationship with these folks or
11 that situation that affects your ability to be fair
12 and impartial as a juror in this trial?

13 **JUROR:** No.

14 **THE COURT:** Any doubt in your mind?

15 **JUROR:** I don't think so.

16 **THE COURT:** All right. Thank you, ma'am. Wait
17 a second. You said you don't think so?

18 **JUROR:** No.

19 **THE COURT:** Let me ask you again. Do you have
20 any doubt about your ability to be fair and
21 impartial?

22 **JUROR:** No.

23 **THE COURT:** Thank you.

24 Ms. Nicholson's 87. She's eligible to serve.

25 (The bench conferences were concluded.)

1 **THE COURT:** Have any of you formed or expressed
2 any opinions about this case; if so, please stand?

3 (There was no response.)

4 **THE COURT:** Are any of you aware of any
5 interest, bias or prejudice that you might have for
6 or against the State, for or against the defendant,
7 Mr. Lytes, for or against anyone or any entity in
8 the case; if so, please stand?

9 (There was no response.)

10 **THE COURT:** Can each of you give both the State
11 of South Carolina and the defendant, Mr. Lytes, a
12 fair and impartial trial? If you know of any reason
13 why you cannot, please stand now.

14 (There was no response.)

15 **THE COURT:** Further questions from the State?

16 **MR. MAYE:** None from the State, Your Honor.

17 Thank you.

18 **THE COURT:** Further questions from the defense?

19 **MR. SNELL:** None, Your Honor.

20 **THE COURT:** The jury panel is qualified.

21 Strikes are five for the State and five for the
22 defense.

23 All right. Ladies and gentlemen, the way that
24 traditionally juries have been drawn in criminal
25 court in South Carolina is that the clerk would have

1 your names in a hopper up here, spin it around, draw
2 a name. Edgefield County is one of the counties
3 that was selected, one of the rural counties that
4 was selected, to be part of the case management
5 system, which means we were one of the counties
6 selected to be the first to go on line with our
7 records and, hopefully, you -- that'll keep being
8 expanded.

9 Right now they can't seem to afford to pay us
10 gas money, but, hopefully, they'll find some way to
11 continue to expand this, but that also -- as part of
12 that process, they have changed the way that we draw
13 juries in certain counties and Edgefield is one of
14 them.

15 What we do now is similar to what we do in
16 civil court and that is the computer randomly picks
17 the names and they'll be printed on a list. And so
18 the computers are going -- has already randomly
19 picked your names. They'll be put on a list. Those
20 will be given to the attorneys and you'll be called
21 up one at a time based on your order on that list.

22 Each side has five strikes that they may
23 exercise. Don't worry about why they exercise their
24 strikes. Don't be offended if you get stricken from
25 the trial.

1 But here's what you'll need to do: If your
2 name is called, you need to gather up your personal
3 belongings and you need to come down front, go to
4 the nearest aisle. I don't care if you go to the
5 center aisle or down that aisle over there. You can
6 come around this way or you can come down the
7 center. Then you need to come right there in front
8 of the Clerk's desk, turn around and face in the
9 direction from which you came, so I'm going to be
10 look straight at your back, that's how I want you to
11 stand. You'll be looking straight at the doorway.

12 When you get down here, the Clerk's going to
13 ask questions of the State's attorney and the
14 defense attorney. And based on their responses, you
15 will be told whether to have a seat in the jury box
16 or return to your seat in the courtroom. And that's
17 why you need to bring your personal belongings
18 because the next stop may be over here, all right?

19 Madame Clerk, give us a jury.

20 **THE CLERK:** Juror number one, Joseph M. Saye.

21 **THE COURT:** It's 99. Read out his real number.

22 **THE CLERK:** Juror number 99, Joseph M. Saye.

23 (Whereupon, Joseph M. Saye, a white male,
24 was called forward.)

25 **THE CLERK:** What sayeth the State?

1 MR. MAYE: Please present the juror.

2 THE COURT: What sayeth the defense.

3 MR. SNELL: Please swear the juror.

4 THE CLERK: Have a seat in the jury box.

5 Juror number 20, Anette M. Collins.

6 (Whereupon, Anette M. Collins, a black
7. female, was called forward.)

8 THE CLERK: What say you for the state?

9 MR. MAYE: Please present the juror.

10 THE CLERK: What say you for the defense?

11 MR. SNELL: Please swear the juror.

12 THE CLERK: Please have a seat.

13 Juror number 86, James E. Nicholson.

14 (Whereupon, James E. Nicholson, a black
15 male, was called forward.)

16 THE CLERK: What say you for the State?

17 MR. MAYE: Please excuse the juror from the
18 trial of this case.

19 THE COURT: Return to your seat in the
20 courtroom.

21 THE CLERK: Number 124, Deborah M. Wollam.

22 (Whereupon, Deborah M. Wollam, a white
23 female, was called forward.)

24 THE CLERK: What say you for the State?

25 MR. MAYE: Please present the juror.

1 THE CLERK: What say you for the defense?

2 MR. SNELL: Please excuse this juror.

3 THE COURT: Return to your seat in the
4 courtroom.

5 THE CLERK: Juror 35, Thomas W. Ellers.

6 (Whereupon, Thomas W. Ellers, a white male,
7 was called forward.)

8 THE CLERK: What say you for the State?

9 MR. MAYE: Please present the juror.

10 THE CLERK: What say you for the defense?

11 MR. SNELL: Please swear the juror.

12 THE COURT: Have a seat in the jury box.

13 THE CLERK: Juror 31, Angela M. Dent.

14 (Whereupon, Angela M. Dent, a black female,
15 was called forward.)

16 THE CLERK: What say you for the State?

17 MR. MAYE: Please present the juror.

18 THE COURT: What say you for the defense?

19 MR. SNELL: Please swear this juror.

20 THE COURT: Have a seat in the jury box,
21 please, ma'am.

22 THE CLERK: Juror number 33, Randy A. Duncan.

23 (Whereupon, Randy A. Duncan, a white male,
24 was called forward.)

25 THE CLERK: What say you for the State?

1 MR. MAYE: Please present the juror.

2 THE CLERK: What say you for the defense?

3 MR. SNELL: Please excuse this juror.

4 THE CLERK: Juror 77, Linda J. McCall.

5 (Whereupon, Linda J. McCall, a white female,
6 was called forward.)

7 THE CLERK: What say you for the State?

8 MR. MAYE: Please present the juror.

9 THE CLERK: What say you for the defense?

10 MR. SNELL: Please swear this juror.

11 THE CLERK: Juror number 24, Antonio L. Counts.

12 (Whereupon, Antonio L. Counts, a black male,
13 was called forward.)

14 THE CLERK: What say you for the State?

15 MR. MAYE: Please excuse the juror from the
16 trial of this case.

17 THE COURT: Return to your seat in the
18 courtroom.

19 THE CLERK: Juror number 52, Alex J. Hillary.

20 (Whereupon, Alex J. Hillary, a black male,
21 was called forward.)

22 THE CLERK: What say you for the State?

23 MR. MAYE: Please present the juror.

24 THE CLERK: What say you for the defense?

25 MR. SNELL: Please swear this juror.

1 THE COURT: Have a seat in the jury box.

2 THE CLERK: Juror 113, Anthony K. Thomas.

3 (Whereupon, Anthony K. Thomas, a white male,
4 was called forward.)

5 THE CLERK: What say you for the State?

6 MR. MAYE: Please present the juror.

7 THE CLERK: What say you for the defense?

8 MR. SNELL: Please excuse this juror.

9 THE COURT: Return to your seat in the
10 courtroom, please.

11 THE CLERK: Juror number 39, Debora F. Friar.

12 (Whereupon, Debora F. Friar, a white female,
13 was called forward.)

14 THE CLERK: What say you for the State?

15 MR. MAYE: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. SNELL: Please swear this juror.

18 THE COURT: Take a seat in the jury box.

19 THE CLERK: Juror 45, Robin P. Hagaman.

20 (Whereupon, Robin P. Hagaman, a white
21 female, was called forward.)

22 THE CLERK: What say you for the State?

23 MR. MAYE: Please present the juror.

24 THE CLERK: What say you for the defense?

25 MR. SNELL: Please swear this juror.

1 **THE COURT:** Have a seat in the jury box,
2 please.

3 **THE CLERK:** Juror number 6, Martin M. Bauer.
4 (Whereupon, Martin M. Bauer, a white male,
5 was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MR. MAYE:** Please present the juror.

8 **THE CLERK:** What say you for the defense?

9 **MR. SNELL:** Please swear this juror.

10 **THE COURT:** Have a seat in the jury box,
11 please.

12 **THE CLERK:** Juror 82, Johnnie L. Mitchell.

13 (Whereupon, Johnnie L. Mitchell, a black
14 female, was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. MAYE:** Please excuse the juror from the
17 trial of this case.

18 **THE COURT:** Return to your seat in the
19 courtroom, please.

20 **THE CLERK:** Juror 40, Carolyn Fuller.

21 (Whereupon, Carolyn Fuller, a black female,
22 was called forward.)

23 **THE COURT:** Let me see the attorneys up here,
24 please.

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury venire, but
2 out of the hearing of the jury venire.)

3 THE COURT: Ms. Fuller, I want to make sure I
4 got this right. Yesterday you said you were retired
5 from the department of corrections, right?

6 JUROR: Yes.

7 THE COURT: Okay. Thank you. All right.
8 Thank you.

9 All right. Madame Clerk, go ahead.

10 THE CLERK: What sayeth the State?

11 MR. MAYE: Please present the juror.

12 THE CLERK: What sayeth the defense?

13 MR. SNELL: Please excuse this juror.

14 THE COURT: Return to your seat in the
15 courtroom please, ma'am.

16 THE CLERK: Juror 120, Sherletha Walker.

17 (Whereupon, Sherletha P. Walker, a black
18 female, was called forward.)

19 THE CLERK: What say you for the State?

20 MR. MAYE: Begging the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. MAYE: Please present the juror.

24 THE CLERK: What say you for the defense?

25 MR. SNELL: Please swear this juror.

1 **THE CLERK:** Juror 73, Susan J. Lunsford.

2 (Whereupon, Susan J. Lunsford, a white
3 female, was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. MAYE:** Please present the juror.

6 **THE CLERK:** What say you for the defense?

7 **MR. SNELL:** Please swear this juror.

8 **THE CLERK:** Juror 122, John A. Williams.

9 (Whereupon, John A. Williams, a white male,
10 was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. MAYE:** Please present the juror.

13 **THE CLERK:** What say you for the defense?

14 **MR. SNELL:** Please swear this juror.

15 **THE COURT:** Have a seat in the jury box.

16 We'll draw an alternate. Strikes are one for
17 the State, two for the defense.

18 **THE CLERK:** Juror number 64, Scott A. Jones.

19 (Whereupon, Scott A. Jones, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. MAYE:** Please present the juror.

23 **THE CLERK:** What say you for the defense?

24 **MR. SNELL:** Please swear this juror.

25 **THE COURT:** Draw another alternate. Strikes

1 are one for the State, two for the defense.

2 THE CLERK: Juror 78, Cassandra McCullough.

3 (Whereupon, Cassandra McCullough, a black
4 female, was called forward.)

5 THE CLERK: What say you for the State?

6 MR. MAYE: Please excuse the juror from the
7 trial of this case.

8 THE CLERK: Juror number 80, Davonia A. Miles.

9 (Whereupon, Davonia A. Miles, a black
10 female, was called forward.)

11 THE CLERK: What say you for the State?

12 MR. MAYE: Please present the juror.

13 THE CLERK: What say you for the defense?

14 MR. SNELL: Please swear this juror.

15 THE COURT: Have a seat in the jury box,
16 please.

17 Are there any matters to take up including
18 composition of the panel prior to the jury being
19 sworn, from the State?

20 MR. MAYE: Nothing from the State, Your Honor.
21 Thank you.

22 THE COURT: From the defense?

23 MR. SNELL: If I may just one minute, Your
24 Honor, please.

25 THE COURT: Sure.

1 (Pause.)

2 MR. SNELL: Your Honor, at this time, I believe
3 there may be a matter of law in regard to the jury
4 composition.

5 THE COURT: All right. Ladies and gentlemen of
6 the jury, I need to send you back into the jury room
7 while I consider a legal issue. The bailiff's going
8 to escort you back in just a moment.

9 Do not discuss this case in any way. Don't
10 talk about the people involved in the case, the type
11 of case it's alleged to be, don't talk about the
12 case at all.

13 As you're leaving, folks, the jury room is in
14 the back, watch these steps. We seem to have folks
15 who stumble even though I give that warning every
16 time. Watch your step, all right. There's two
17 steps over here. There's two over here.

18 Follow the bailiff, please. I'll get you back
19 out here as quickly as I can.

20 (The jury retires to the jury room.)

21 THE COURT: Ladies and gentlemen, if I set you
22 aside on this case, raise your hand for me.

23 All right. You folks that have your hands
24 raised, you may leave and you don't have to come
25 back today. Call tonight after 6:00, all right. I

1 may not see you again in court this week, but I need
2 you to call tonight after 6:00. You folks are free
3 to go. Thank you. Just the ones who I set aside.

4 (Jurors were excused.)

5 **THE COURT:** I've got another one of those legal
6 issues that I have to take up and I have to do it
7 outside your presence. And it's probably hotter
8 today than it was yesterday, I know that, but I
9 don't have anywhere to send you but outside. At
10 least it's not raining.

11 Folks, I have to ask you if you're here for
12 jury duty to step outside, wait close enough by that
13 I can get you back in here. Hopefully, this won't
14 take but about 10 to 15 minutes. Don't discuss this
15 case in any way at all, all right. Thank you.

16 (The remaining jury venire leaves the
17 courtroom.)

18 **THE COURT:** All right. What's your motion?

19 **MR. SNELL:** Your Honor, just in reviewing the
20 strikes made by the State, I noticed it had a
21 disproportionately -- disproportionate affect on
22 African-American jurors, specifically all the jurors
23 were African-American that were struck by the State.
24 Just reviewing just my notes pretrial, I can't, in
25 my own mind, formulate a -- what the potential

1 reasons for the strike to be that would be race
2 neutral and, at this time, I make a motion pursuant
3 to Batson.

4 **THE COURT:** All right. The first strike that
5 was exercised by the State was on juror number 86,
6 James E. Nicholson, black male. Solicitor, can you
7 give me a racially neutral reason for the strike?

8 **MR. MAYE:** Yes. I prosecuted his son for
9 burglary first. He has a pretty extensive record,
10 simple assault, bad check, DUI second, DUS, failure
11 to stop. He has a number of convictions as recently
12 as 1999 out of Johnston. I have no other juror
13 that's on the panel that's similarly situated.

14 **THE COURT:** The next strike was juror number
15 24, Antonio Counts.

16 **MR. MAYE:** Mr. Counts also has a criminal
17 history, Your Honor. I'm prosecuting here a drug
18 case. He has a conviction for simple possession of
19 marijuana out of 2006. It's actually a fairly
20 recent conviction for that. I certainly don't want
21 anybody sitting on a drug case that just got
22 convicted.

23 I don't have any other juror that is on this
24 jury that is similarly situated or has been
25 prosecuted -- or has a record for simple possession

1 of marijuana.

2 THE COURT: Juror number 82, Johnnie L.
3 Mitchell, a black female, was your third strike.

4 MR. MAYE: She also has a criminal history,
5 although I was somewhat surprised when I checked her
6 record. She's got a conviction for shoplifting. I
7 have no other -- it's an '89 conviction for
8 shoplifting. And I don't have anybody else on the
9 jury that's similarly situated that has a criminal
10 conviction for shoplifting or any other similar
11 criminal conviction that I can find from my review.

12 THE COURT: And on the alternates, you struck
13 juror number 78, Cassandra McCollough.

14 MR. MAYE: I struck juror number 78, Your
15 Honor, I noted that she -- and I have the benefit
16 now, this is a little bit new, where we have the
17 list showing us what the next ones are going to be.
18 The next one after 78, the next juror that was going
19 to be called was Davonia A. Miles, which was number
20 80. I noted that both of them had cousins or
21 relatives that were prosecuted for drugs, which gave
22 me some pause as to each of them.

23 But one thing before I even knew anything about
24 that, I had, with Ms. Cassandra McCollough, she's
25 employed with Urban Outfitters. And, Your Honor, I

1 don't know what they do at Urban Outfitters, but
2 I've had so much trouble out of people that work at
3 Urban Outfitters for stealing, I've had so many
4 controversies and cases that have arisen with people
5 that were involved with this business, I have no
6 idea what it is, but I wrote no on my sheet
7 initially when I saw she was employed at Urban
8 Outfitters.

9 I basically had a balancing contest whether or
10 not Ms. McCullough, who was 78, was going to be on
11 the jury or Ms. Miles. I noted that Ms. Miles was a
12 teaching assistant at Gleams. Weighing those two, I
13 elected to exercise a strike against Ms. McCullough
14 rather than Ms. Miles who was a teaching assistant
15 because I had some concern about their relatives
16 that I have prosecuted. I have no one else on the
17 jury that's similarly situated to Ms. McCullough and
18 I have grave concerns about her employment at Urban
19 Outfitters.

20 **THE COURT:** All right. The jury consists of
21 juror number 99, Joseph M. Saye. He owns Carolina
22 Machine in Johnston. He's a white male. He has not
23 given any remarks or any comments about any of the
24 questions, didn't respond to any questions that were
25 posed during the voir dire.

1 The second juror seated was Anette M. Collins,
2 who's a black female, juror number 20. She works at
3 the senior citizens center. She also gave no
4 responses to any of the interrogatory questions.

5 The next juror that came up who we haven't
6 discussed yet -- well, the next one was
7 Mr. Nicholson, James E. Nicholson, a retired
8 painter, juror number 86. And the reason the State
9 indicates they struck him, he's a black male, is
10 that he has an extensive criminal history, which he
11 -- if that's true and if it involves the Solicitor's
12 office here, he didn't disclose that and he should
13 have, and that his son was prosecuted and he didn't
14 disclose that and he should have if it were here in
15 the Eleventh Circuit or specifically in Edgefield.

16 The next juror that came up was struck by the
17 defense, Deborah M. Wollam, W-o-l-l-a-m, white
18 female, juror number 124. She gave no responses to
19 the voir dire.

20 The next juror, Thomas W. Ellers, juror number
21 35 is a white male. He's retired Air Force. He was
22 seated on the jury. He was the third juror and he
23 gave no responses to the voir dire.

24 The next juror is juror number 31, Angela M.
25 Dent, a black female who works at the Savannah River

1 Site. She was struck. She did indicate that she
2 had a nephew who was charged with drugs when we went
3 through the voir dire questions.

4 MR. YOUNG: Your Honor, just for the record, my
5 records do not indicate she was struck.

6 THE COURT: I didn't say she was struck. She
7 was seated. If I said she was struck, I said it in
8 error. I'm sorry. She's the fourth juror seated is
9 what I meant to say.

10 Her nephew was charged with marijuana and she
11 said she thought a proximity charge and got a year
12 in prison out of Saluda, but she is -- she's of the
13 same race so -- she's a black female, obviously.
14 She was not struck, but she's not a similarly
15 situated white person or other race person, she's
16 the same race. She also works at SRS.

17 She -- I mean, it's hard to gauge people by
18 their appearance. Matter of fact, it's impossible
19 to gauge people by their appearance, but the factors
20 that are indicated there do not indicate that the
21 State seated a similarly situated white person not a
22 black person because she's black.

23 The next juror that came up was Randy A.
24 Duncan. He works at Southern Nuclear. He's juror
25 number 33, white male. He was struck by the

1 defense. His wife's nephew was charged with
2 methamphetamine.

3 Linda J. McCall was the next juror who came up,
4 juror number 77. She works in computers. I think
5 she's self-employed. She was seated on the jury as
6 the fifth juror. She has a criminal domestic
7 violence conviction way in her past in another
8 state.

9 When she went through the questioning
10 yesterday, she came up to the Court when I was
11 qualifying the jury, she said it was 18 years ago.
12 It was a magistrate's level offense. And for some
13 reason, I'm thinking it was in another state all
14 together.

15 Antonio Counts was juror number 24, black male,
16 unemployed, never has worked, according to what he
17 said yesterday. He indicated during the voir dire
18 that he had a cousin who was involved in drugs.

19 He -- the State has advanced the reason for
20 striking him that he has a criminal record and he
21 was convicted himself of a drug offense which he did
22 not disclose to the Court and should have disclosed
23 both of those factors, but certainly should have
24 disclosed his prior conviction for simple
25 possession.

1 He also, even though I have to go by the
2 reasons you all give me, Mr. Counts is very hesitant
3 in his responses. To say that I don't think he's
4 taking this seriously is an understatement. His
5 demeanor and his appearance almost caused me to
6 strike him myself or find him unqualified.

7 Alex Hillary, juror number 52, works in the day
8 care industry. He was seated. He had an uncle who
9 entered a plea for drugs some time back. He's a
10 black male.

11 Anthony K. Thomas works at Wal-Mart. He was
12 struck by the defense. He's a white male. He
13 indicated his father had a DUI and a friend was, I
14 believe, injured in a DUI.

15 The next juror is Debora Friar, who's juror
16 number 39. She's a pharmacy technician. She was
17 seated as the seventh juror. She gave no responses
18 to the voir dire.

19 Robin Hagaman, white female, juror number 45.
20 She's a flight attendant. She was seated as the
21 eighth juror. She indicated that her son was
22 convicted on a drug violation, I believe, in
23 Florida. And her husband was attacked by somebody
24 who was under the influence of drugs also in
25 Florida. So she had, as far as her voir dire

1 responses, she had both sides on that, but, anyway,
2 she's on the jury.

3 Mr. Bauer, Martin M. Bauer, juror number 6,
4 he's a white male. He's auto body repair work, had
5 no voir dire responses. He was seated as the ninth
6 juror.

7 Johnnie L. Mitchell is a substitute teacher.
8 She's a black female. Again, you can't go by
9 appearances because the State indicates she has a
10 criminal history. She was struck as a third strike.

11 Carolyn Fuller works at the Burton Center.
12 She's a black female, juror number 40. She was
13 struck by the defense. I called the attorneys up to
14 the bench and then I put on the record, just to make
15 sure in fairness to the defendant and his attorney,
16 that her employment information lists her current
17 employment at the Burton Center, but yesterday when
18 she gave her employment, she said she had retired
19 from the department of corrections.

20 Juror 120 is the next juror, Sherletha Walker,
21 black female. She was seated tenth in the jury.
22 She had no responses to her voir dire questions and
23 she works at a Baptist church.

24 Susan J. Lunsford works at the Savannah River
25 Site, is a white female, juror number 73. She was

1 seated as the 11th juror and she gave no voir dire
2 responses.

3 John A. Williams is a counselor. He's a white
4 male seated as the 12th juror and he had no voir
5 dire responses.

6 The alternates, the first one called up, Scott
7 A. Jones, works at Bridgestone-Firestone. He's
8 juror number 64, white male. He was seated as the
9 alternate without a strike from either side.

10 The second alternate that was called, Mr. Maye
11 is correct, he had on his list, he had one strike,
12 the first two people on that list seem to be
13 similarly situated with themselves. They both had
14 relatives who have drug convictions or pending drug
15 charges. He didn't have but one strike and he
16 exercised the first one against the first one up,
17 Ms. McCullough.

18 In addition to that, Mr. Maye states his
19 experience with Urban Outfitters. I actually think
20 Urban Outfitters is a very reputable company. I
21 don't have the benefit of knowing what all is going
22 on with the employees down there, but they're a
23 manufacturing plant that makes clothing out on
24 Highway 25, but if they have a problem with
25 employees, I wouldn't have any way of knowing that.

1 All right. Do you want to be heard at all on
2 any of these, Mr. Snell?

3 MR. SNELL: Your Honor, just -- and just for my
4 benefit and just to make sure, it's my understanding
5 that number 86 was struck primarily because of
6 criminal history that juror has that had been
7 undisclosed during the questioning by the Court and
8 that the criminal history was known based on a
9 criminal history report run by the Solicitor's
10 office.

11 THE COURT: Well, he said he prosecuted his
12 son, that was the first reason he gave. Mr. Maye
13 said he had prosecuted Mr. Nicholson's son. And
14 then he said that Mr. Nicholson has an extensive
15 criminal history himself.

16 I should probably note Mr. Nicholson appears to
17 be somewhat disoriented. I don't know what his
18 situation is. He seems to have a hard time
19 following instructions.

20 Go ahead. But that wasn't given as a reason by
21 the State. It caused me some concern, but go ahead.

22 MR. SNELL: Your Honor, I just -- and I did
23 hear, my understanding was that juror number 24 also
24 appeared to have a criminal record run by the State.

25 THE COURT: Yes, sir, apparently -- either that

1 or they knew it from memory.

2 MR. SNELL: And, Your Honor, I seem to recall
3 some law that I guess if the State's going to run
4 criminal records on jurors, they have to show that
5 they didn't only run -- that they've got a burden to
6 show they didn't only run African-American juror
7 criminal records.

8 MR. MAYE: I've got them all here. I ran every
9 one of them.

10 THE COURT: Traditionally, they run a criminal
11 record check on every juror who comes up.

12 MR. YOUNG: I'm handing him, Your Honor, the
13 rap list that we get. The Clerk of Court hands us a
14 list ahead of time of the jurors that will be
15 possibly selected. We then hand that to the
16 sheriff's office. I've handed him a list that the
17 sheriff's office returned to me. They ran rap
18 sheets and marked on those which came back with
19 raps. I've handed him that. And I have the raps
20 individually here if you would like to inspect them.

21 THE COURT: Well, the obvious question is
22 whether these records involve anything that would
23 disqualify these folks. Now, simple possession of
24 marijuana would not on Mr. Counts, presumably.

25 The extensive record that Mr. Nicholson has,

1 I'm assuming it's all magistrate's level offenses or
2 something of that nature because if it carried more
3 than a year, he can't serve anyway.

4 MR. YOUNG: Yes, sir, Your Honor. In reviewing
5 the rap sheets with Mr. Maye, he misspoke when he
6 said failure to stop. I think it was Mr. Nicholson,
7 in fact. It was failure to surrender a license. It
8 was my little scrivener's error, Your Honor. I'm
9 sorry.

10 MR. MAYE: He had a magistrate's court
11 operating a business without a license that he got a
12 conviction on. He had a DUS first and failure to
13 surrender driver's license. His FTS, I thought, was
14 failure to stop, but it was failure to surrender a
15 driver's license. He had a DUI second. He had a
16 bad check and another bad check what I'm looking at
17 here.

18 And like I said, with my involvement, I know
19 either I or my office we just prosecuted his son for
20 burglary first. I certainly wasn't going to put him
21 on this jury.

22 THE COURT: Anything else, Mr. Snell?

23 MR. SNELL: Just, Your Honor, I just would add,
24 and I -- actually, I didn't know the Clerk of Court
25 sent out jury notices weeks in advance to the

1 Solicitor's office or that the sheriff's department
2 was running rap sheets --

3 **THE COURT:** I think they do it in every county
4 in this circuit. I think they do it in most every
5 county in the state.

6 **MR. SNELL:** Your Honor, I would just add that,
7 you know, any of the documentation pertaining to the
8 individual jurors or the rap sheet, you know, unless
9 it's protected by privilege or some other reason, I
10 mean, it wasn't disclosed to the defendant as part
11 of the discovery process.

12 **THE COURT:** I don't think they have to, but did
13 you ask for it?

14 **MR. SNELL:** Your Honor, I think the Rule 5,
15 Brady motions were filed December 31st of 2008. So
16 everything encompassed by Brady or Rule 5 motion has
17 been requested.

18 **THE COURT:** I don't think it's covered under
19 Brady or Rule 5. Anything else you have, Mr. Snell?

20 **MR. SNELL:** Other than just maintaining a
21 continuing objection, Your Honor.

22 **MR. YOUNG:** Can I have that back, Your Honor?
23 That has social security numbers on it.

24 **THE COURT:** There are restrictions about
25 disseminating criminal records. I can't cite them

1 to you off the top of my head.

2 All right. With regard to the Batson motion,
3 the Court finds that there is no indication that the
4 Solicitor's office has exercised its strikes in a
5 racially discriminatory manner. The prosecutors
6 advanced racially neutral reasons for each of the
7 strikes. They all seem to be very reasonable based
8 on my view of what was occurring in the court in
9 light of the information now supplied by the State.

10 There is no one similarly situated to
11 Mr. Nicholson, juror number 86. And there's no
12 indication given to the Court that anyone's son or
13 daughter has recently been prosecuted by the
14 Solicitor's office.

15 And once again, as far as his criminal record,
16 there are some white jurors -- there is a white
17 juror who is on here who has a criminal record for
18 criminal domestic violence 18 years ago in another
19 state, which I don't even think showed up on the
20 record check, but the Solicitor advanced as the
21 first reason, that he prosecuted Mr. Nicholson's
22 son.

23 The second juror, Mr. Counts, juror number 24,
24 has a drug conviction himself. I don't know of any
25 similarly situated juror who is white or any other

1 race that was not stricken by the State.

2 With regard to his criminal history, I would
3 note that the State sat -- I'm sorry -- with regard
4 to his cousin's situation, I would note that the
5 State sat Ms. Dent, who is a black female, juror
6 number 31, who has a nephew with drugs. I don't see
7 where they were exercising strikes in a racially
8 discriminatory manner at all.

9 They sat Mr. Hillary who also had an uncle who
10 pled guilty to drugs, so that's another black person
11 that they sat.

12 So it looks like they sat two blacks and two
13 whites -- or they didn't exercise their strikes as
14 to two blacks and two whites. There's no indication
15 of racial discrimination of the strikes.

16 With Ms. Mitchell, she herself, according to
17 the Solicitor, has a criminal history. I don't see
18 any other similarly situated whites or other race
19 juror on the panel.

20 The motion with regard to the alternate, what
21 the Solicitor said appears to be fairly obvious. He
22 has a strike list because of the computer system
23 where he now knows who the next juror out of the box
24 is going to be and he had two people coming up both
25 black females both who had relatives who were

1 convicted of -- or have pending charges related to
2 drugs. He struck the first one that came out. The
3 second one was seated.

4 There's no indication of a racially
5 discriminatory motive in the strikes or his
6 experience with Urban Outfitters employees. I have
7 no reason to doubt it, but in any event, he had a
8 valid reason to strike juror number 78 anyway.
9 She's an alternate.

10 The motion under Batson is denied.

11 MR. SNELL: Your Honor, does that include the
12 portion of the objection based on the nondisclosure
13 of the rap sheets and the juror list pursuant to
14 Brady, Rule 5?

15 THE COURT: All right. In case I didn't rule
16 earlier, there is no Rule 5 or Brady violation.

17 I've been a judge 18 years. As long as I've
18 known, they've run rap sheets on every juror that
19 comes up. If the information had been asked to be
20 shared, it would have been shared, I assume. It's
21 not covered under Rule 5 or Brady to the best of my
22 knowledge.

23 MR. SNELL: Just to make sure I'm protected for
24 the record, Your Honor. Thank you.

25 (Jury venire returns to the courtroom.)

1 **THE COURT:** All right. Ladies and gentlemen,
2 I've handled that legal issue that I need to handle
3 and I don't need to require you to stay here any
4 longer today. I do need you to call tonight after
5 6:00, please, and follow the instructions.

6 If you're here for jury duty, you're free to go
7 for the day. Please call tonight after 6:00. Thank
8 you.

9 (The remaining jury venire was excused.)

10 **THE COURT:** All right. Mr. Snell, you
11 indicated you needed some time to talk to your
12 client?

13 **MR. SNELL:** I do. And, Your Honor, it may be
14 more prudent, I've got a few motions right now that
15 it may be prudent to take and then I can speak to my
16 client afterwards.

17 **THE COURT:** Don't argue the motions, but what
18 motions do you have?

19 **MR. SNELL:** Related to discovery and evidence
20 suppression related to discovery and probably a
21 continuance -- actually and a continuance motion.

22 **THE COURT:** You've got a motion for a
23 continuance?

24 **MR. SNELL:** Yes, Your Honor.

25 **THE COURT:** Bring the jury back in.

1 (The jury returns to the courtroom.)

2 THE COURT: All right. Ladies and gentlemen,
3 after conferring with the attorneys, it appears that
4 there's some other legal issues that I'm going to
5 need to address. I've addressed the one that I sent
6 you back for me to consider.

7 I need you folks to be back at two o'clock. So
8 you're going to be on your own until then. When you
9 come back, I need for you to come directly to the
10 jury room back there, don't come through the
11 courtroom, so come up the back either the elevator
12 or you'll have to go underneath -- go through the
13 metal detector downstairs and just come up and go
14 straight into the jury room.

15 Do not discuss this case in any way among
16 yourselves. Do not let anybody else discuss it with
17 you. If anybody should attempt to contact you and
18 discuss the case with you, please report that to me
19 so that I can deal with it. You can tell a spouse
20 or a friend that you're on the jury, but you cannot
21 tell them what kind of case it is or who's in it,
22 that's the kind of thing I mean. You can't discuss
23 the case at all.

24 If there's any media coverage of the trial, and
25 I don't expect any, but if there is any, get away

1 from it, don't allow yourselves to be exposed to it
2 any further and report to me at the first
3 opportunity what you may have seen, heard or read
4 through the media.

5 Do not do any independent investigation, don't
6 go on the Internet and look up the law, don't go out
7 and try to find out anything about the case or the
8 law that relates to the case. You folks are
9 perfectly qualified to do the job that you're going
10 to be asked to do and you don't need to do any
11 independent investigation.

12 When you come back, the oath that you're going
13 to take as the trial jury is one in which you're
14 going to promise us that you'll decide the case
15 based on the evidence and the law and you'll get
16 those things here in the courtroom. Now, we want
17 you to use your common sense, but you don't need to
18 be going out trying to find out any facts or any law
19 on your own. It'll come to you in the courtroom.

20 Mr. Ellers, where are you?

21 **FOREMAN:** Right here, sir.

22 **THE COURT:** You're going to be the foreman of
23 the jury. When you come back, I just want you to be
24 the last person to come in the courtroom when the
25 jury comes in and have a seat on the end of the

1 front row, all right?

2 FOREMAN: Yes, sir.

3 THE COURT: The two alternates will usually be
4 seated -- y'all need to stay in one of those two
5 seats throughout the trial, all right.

6 The rest of you folks I'm going to ask you to
7 please file all the way down as you come in, leave
8 those two seats vacant and leave this seat on the
9 end vacant.

10 We did have an incident in Lexington where a
11 lady broke her ankle. I don't want that happening
12 to you, so please don't make people walk across you,
13 file all the way down. If you develop a favorite
14 chair, step to the side outside of the jury box and
15 slide in and get your favorite chair.

16 Any questions before I let you go?

17 (There was no response.)

18 THE COURT: All right. I'll have more
19 information for you at two o'clock. Hopefully, I
20 can get to you right at 2:00. I promise you that I
21 will do everything I can not to waste your time, but
22 as you already know, court involves hurry up and
23 wait, so that's what we're in right now for you
24 folks.

25 We're going to stay here and work. I'm going

1 to try to work through all of these legal issues
2 that I need to address, then I'll look to see you
3 folks at two o'clock. Thank you.

4 (The jury was excused for lunch.)

5 **THE COURT:** All right. Mr. Snell, state your
6 motions, please.

7 **MR. SNELL:** Actually -- and before I go on, I
8 want to let the Court know I have taken over as
9 substituted appointed counsel for Mr. Lytes as of
10 June 10th of 2009 from Belinda Ellison so I haven't
11 been working with him for that long. If I may, Your
12 Honor, I've got a consent order that probably ought
13 to be signed at this point, if I may?

14 **THE COURT:** Sure.

15 (Pause.)

16 **MR. SNELL:** Thank you, Your Honor.

17 And, Your Honor, just based on the, certainly,
18 the seriousness of the charge, I want to be very
19 careful in preserving the record. Originally, I
20 have -- actually, Judge McMahon gave me protection
21 for today, but my civil matter fell through at the
22 very last minute. And I certainly told the
23 Solicitor's office I'd be happy to make myself
24 available today.

25 I guess the -- and a lot of these, I guess my

1 first issues relate to, mostly, to discovery and the
2 time line issues. Although, I'd like to first start
3 off making a motion, a motion regarding the
4 indictment in the case and particularly two issues.

5 The first issue being an issue of the
6 defendant's name being misspelled as referenced on
7 the indictment. I think there's a substantial issue
8 created of misidentification. And I don't believe
9 the indictment, as put forth by the grand jury or as
10 in the record of the court, is sufficient to grant
11 the Court the necessary personal subject matter
12 jurisdiction as it relates to this specific
13 defendant.

14 Number two related to the indictment. And,
15 Your Honor, I'm basing this argument on the
16 discovery materials as were provided by the
17 Solicitor's office in response to the Brady and Rule
18 5 motions filed in December of 2008 and submitted by
19 the Solicitor's office on January 28th, 2009.
20 The -- I don't believe the State had any -- the
21 necessary chemical lab analysis that will be
22 necessary for a grand jury here to make a probable
23 cause determination, one, that any crime was
24 committed at all, specifically with regards to a
25 crack cocaine possession and trafficking related

1 offense.

2 I think, just looking specifically at the chain
3 of custody documents, finally, that a drug lab
4 result from SLED dated November 21st, 2007, that
5 doesn't indicate what type of testing occurred, the
6 specific results. I think there's usually more
7 extensive lists I've seen in other cases. I don't
8 believe that was made available in this case to the
9 grand jury. And we'd just make a motion to dismiss
10 the indictment on those counts.

11 **THE COURT:** Solicitor.

12 **MR. MAYE:** Your Honor, I move to amend the
13 indictment. It was a scrivener's error. It was
14 apparently picked up -- his name is spelled -- his
15 first name is spelled O-d-o-u-r-i. It was picked up
16 as an L and it was a scrivener's error. I move to
17 amend the indictment to that effect.

18 All of his personal information is on there.
19 All of the other indictments against him have the
20 correct spelling. I don't think he can reasonably
21 say that he wasn't apprised of the charges against
22 him at that preliminary hearing.

23 I maintain that the L rather than an I on the
24 spelling of his first name is a mere scrivener's
25 error. I don't think it affects the nature of the

1 charges or it certainly doesn't fail to apprise him
2 of notice of the charges that he faces. I move to
3 amend the spelling where that has an L on his last
4 name where it is an I.

5 As to the other issues, Your Honor, as to the
6 grand jury proceedings, they're secret certainly as
7 to what was presented to the grand jury in this
8 case. And they returned a true billed indictment on
9 trafficking in this case, Your Honor. And I can't
10 imagine any attack based on that. I would not offer
11 any argument in that regard.

12 THE COURT: Anything else, Mr. Snell?

13 MR. SNELL: No, Your Honor.

14 THE COURT: Do you oppose the amendment of the
15 indictment?

16 MR. SNELL: I do, Your Honor, and we would
17 object to any amendment being made to this
18 particular indictment at this time. And I believe
19 the proper remedy would be to dismiss it. And the
20 State would have certainly leave to reindict it if
21 they so choose.

22 THE COURT: The motion to amend the indictment
23 is granted to correct the scrivener's error. It's
24 an obvious scrivener's error. It's one letter of
25 the defendant's first name. It should have been an

1 I, it was indicated as an L. The motion to quash
2 the indictment based on the misspelling of the
3 defendant's name is denied.

4 With regard to the challenges to the indictment
5 and the motion to quash the indictment based on what
6 was presented to the grand jury, the Court has no
7 way of knowing exactly what was presented to the
8 grand jury and does not believe that a complete drug
9 analysis is necessary for the grand jury to make a
10 determination of probable cause. I will be guessing
11 as to what was or was not presented to the grand
12 jury.

13 So the challenges based on not having a
14 chemical analysis that was extensive enough, the
15 chain of custody issues, which I don't know anything
16 about, and the SLED results not having an exhaustive
17 or extensive listing, the Court finds no basis upon
18 which to quash the indictment.

19 What's your next motion?

20 MR. SNELL: Your Honor, I've got, I guess,
21 three separate sets of motions. And I'm going to be
22 asking to have, one, a dismissal of the case based
23 on Rule 5 and Brady, depending upon the outcome of a
24 suppression motion and, finally, a continuance
25 motion.

1 And I think the -- I've got a time line I just
2 want to put forth in the record for the Court. And
3 the defendant in this case has been sitting in the
4 Edgefield County Jail since October of 2007. He was
5 arrested immediately after the alleged incident on
6 October 24th. I had -- the Rule 5 and Brady were
7 filed on December 31st. By correspondence dated
8 January 28th, 2009, discovery was sent to
9 defendant's counsel.

10 The defendant currently has four charges.
11 There is a conspiracy that's not being tried, this
12 trafficking offense, a contraband offense related to
13 an alleged incident occurring at the jail and an
14 obstruction of justice charge related to alleged
15 communications made either by the defendant or
16 someone acting on the defendant's behalf and at his
17 direction and control. That individual is listed
18 as, one, a co-defendant on the conspiracy charge, as
19 an eyewitness to the alleged incident that the
20 defendant's on trial for today and is listed as
21 witness number eight on the witness list as produced
22 or presented by the State.

23 **THE COURT:** Crystal Leaphart?

24 **MR. SNELL:** Crystal Leaphart, yes, Your Honor.

25 Now, I understand there is a substantial -- or

1 there is some discovery regarding the obstruction of
2 justice charge related to statements alleged to have
3 been made by the defendant, potentially some
4 statements alleged to have been made by her. Your
5 Honor, we don't have them and they haven't been
6 provided to us. I think that's interfered to an
7 extent certainly with our ability to gauge the
8 credibility of that witness, prepare for
9 cross-examination of that witness..

10 **THE COURT:** You don't have what statement?

11 **MR. SNELL:** I don't have discovery -- I do not
12 have any discovery regarding the obstruction of
13 justice charge that the defendant is currently
14 charged with, although it would have been covered by
15 the discovery motions related to Crystal Leaphart.
16 So she's a victim or, I guess, along with the State,
17 she would be the complaining witness in the State's
18 case on the obstruction of justice regarding the
19 communications between her and the defendant or
20 someone acting on the defendant's behalf. And I
21 think just patently that sounds material and
22 important. And let me...

23 **MR. MAYE:** Your Honor, maybe I can clarify
24 that. We're not trying any obstruction of justice
25 case against him. Apparently somebody acting upon

1 Mr. Odouri Lyte's behalf that was an inmate out of
2 Trenton sent some correspondence to a witness for
3 the State in this case that she turned over to her
4 defense lawyer. It was just a -- some sort of
5 statement not written by Mr. Lytes and certainly not
6 anything involving this case other than, apparently,
7 some intent to obstruct justice on the part of some
8 third party who indicated that he was acting on
9 Mr. Lytes' behalf.

10 We don't intend to offer -- I've looked and
11 reviewed Rule 5 in the case at hand that we have
12 here today. It certainly would not be subject to
13 Rule 5 in this case, though, our witness has not
14 given any statement involving that case. She merely
15 turned over correspondence that she got to a lawyer.
16 I don't have anything out of that case that's
17 discoverable regarding the trafficking case that
18 we're trying here today. And I would maintain it's
19 in no way relevant.

20 I don't have anything to give him in that
21 regard that was -- is in any way subject to Rule 5
22 in this case, Your Honor. This is the only one that
23 we're going forward with, this trafficking case.

24 I'm not trying -- I think he's got an intent to
25 possess contraband, a criminal conspiracy and an

1 intimidation of a witness charge. And I'm not going
2 forward with any of those today nor do I intend to
3 offer any evidence regarding any of those things in
4 this case.

5 THE COURT: Mr. Snell.

6 MR. SNELL: Your Honor, I don't know how the
7 defendant is supposed to prepare a defense when one
8 of the State's witnesses has accused him of
9 attempting to interfere with her or there's some
10 allegation. Obviously, there's enough into this
11 that a probable cause finding, they have some
12 evidence they presented to a magistrate and to a
13 grand jury. I have no idea what the allegations
14 are. And that's a witness they're planning on
15 calling, putting on the stand to testify about what
16 happened.

17 The interference of a witness or the
18 obstruction of justice charge is obstructing with
19 the justice of this case, so it's directly relevant.
20 We haven't had any opportunity to look at that. I
21 don't know if that's something I need to try to get
22 an investigator to talk to this witness about. I
23 don't know how much fodder is in those documents for
24 impeachment or cross-examination.

25 I just don't know how a case goes forward when

1 he's been charged with four counts, one of which is
2 related to this one and specifically related to a
3 witness who's the eyewitness and they don't give us
4 discovery. And I understand the position of the
5 State that they don't consider it related. I think
6 it's absolutely related.

7 And I've got -- I don't know if you want to
8 rule on these individually, but I've got more
9 issues, Your Honor.

10 Additionally, Your Honor, if it's the State's
11 position that materials, any statements or anything
12 are not subject to disclosure, I think, at a
13 minimum, an in camera hearing would be appropriate.

14 **THE COURT:** An in camera hearing about --

15 **MR. SNELL:** Actually, in camera review. If the
16 State believes that they have documents that are not
17 discoverable -- are not subject to discovery that
18 relate to this case, and my understanding of the
19 State's position, I think that's something that the
20 State shouldn't be allowed to make a determination
21 on their own and that would be appropriate --
22 actually, it's appropriate for the defendant to make
23 it, but if the Court needs to conduct an in camera
24 review to protect an alleged privilege --

25 **THE COURT:** What is it that I'm going to be

1 reviewing? The letter from the inmate?

2 MR. SNELL: Your Honor, we don't know. I think
3 there have been some letters. My understanding, and
4 this is all hearsay because certainly the defendant,
5 he doesn't know, but my understanding is there is an
6 individual who wrote letters to Crystal Leaphart,
7 who was riding -- I mean, who was the driver in the
8 car that drove the defendant to this alleged
9 transaction location, wrote her, said, I'm acting on
10 Mr. Lytes' behalf. We need you to say and tell the
11 truth that nothing happened, or something to that
12 effect, you know, please recant your story.

13 I understand this Ms. Leaphart -- I don't know
14 how much communication went back to that individual.
15 Ms. Leaphart reported that, from my understanding,
16 to her lawyer. This is all what I've heard from the
17 Solicitor's office.

18 Apparently, there was enough evidence that
19 Mr. Lytes was indicted for interference, so there's
20 -- I'm guessing there has to be letters. I have no
21 idea when the letters were written, how many
22 letters, what the specific content of the letters, I
23 don't know if she wrote letters back. And all of
24 these are materials, Your Honor, I think that would
25 ordinarily be, you know, produced during discovery

1 since I'm his lawyer also on that charge, but none
2 of that's been produced and here we are today and
3 they're going to be calling her to the stand. And
4 she's a material witness that may even be
5 exculpatory to the defense and we've had no
6 opportunity to review that.

7 **THE COURT:** How many letters do you have?

8 **MR. MAYE:** Your Honor, one single letter
9 written by a guy in the jail in Trenton who wrote to
10 this Crystal Leaphart who asked her basically to lie
11 and he said he was acting on Mr. Lytes' behalf. We
12 don't intend to offer any of that evidence against
13 him that this person wrote that letter or this
14 person asked her to lie. I don't think I can even
15 put it in in this case. He got indicted for
16 basically attempt to obstruct justice acting in
17 concert with this other person.

18 This other person wrote her one letter. She
19 wrote no communications back. She never gave any
20 statement. She got that letter from this guy in the
21 Trenton jail and gave it to her lawyer who turned it
22 over to us. We charged the person in jail in
23 Trenton and charged Mr. Lytes, but we're not
24 presenting any of that evidence.

25 There's nothing exculpatory in anything that

1 was produced by some third party. And we're not
2 trying anything related to that obstruction case
3 here.

4 **THE COURT:** Where is the letter?

5 **MR. MAYE:** Let me see if we can come up with a
6 copy. Mr. Seigler may have a copy of it, Your
7 Honor. We'll see if we can pull it.

8 But we don't know -- like I said, I was unaware
9 of anything that was exculpatory involving that. We
10 don't intend to introduce any evidence involving
11 that in this case.

12 **THE COURT:** All right. Rule 5 states that
13 you're required to disclose a statement by the
14 defendant.

15 **MR. MAYE:** Your Honor, the only statement that
16 we have by the defendant in this case we've made
17 available, and it was just oral, it was not in
18 writing, was that Ms. Crystal Leaphart did not have
19 anything to do with this transaction.

20 If there's any Jackson versus Denno or anything
21 that was said or any statement that he's ever made,
22 the only thing that I'm ever aware of that he
23 uttered that we might potentially intend to
24 introduce in this case is that he stated after being
25 advised of his Miranda rights while he was in

1 custody, that Ms. Crystal Leaphart had absolutely
2 nothing to do with this crime. We have disclosed
3 everything that's subject to Rule 5 in this case,
4 Your Honor.

5 THE COURT: You're required to disclose his
6 prior criminal record. You're required to disclose
7 or allow them to inspect any books, papers,
8 documents, photographs, tangible objects, buildings
9 or places, or copies or portion thereof, in the
10 State's possession that are material to the
11 preparation of the defense or intended to use as
12 evidence in chief in the trial by the prosecution,
13 or were obtained from or belonged to the defendant.
14 You're required to disclose any tests or
15 examinations that were done.

16 You are not required to disclose reports,
17 memoranda, internal prosecution documents made by
18 the attorney for the prosecution or prosecution
19 agents with the investigation or prosecution of the
20 case or statements made by prosecution witnesses or
21 prospective prosecution witnesses provided that
22 after a prosecution witness has testified on direct
23 examination, the court, upon motion of the
24 defendant, shall order the prosecution to produce
25 any statement of the witness in possession of the

1 prosecution that relates to the subject matter as to
2 which the witness has testified. And the court may
3 upon sufficient showing require the production of
4 the statement prior to the time that the witness
5 testifies.

6 Brady deals primarily with matters that are
7 exculpatory. Now, what Mr. Snell said was that he
8 believes, from what he has heard, that a
9 co-defendant wrote a letter asking Ms. Leaphart to
10 tell the truth that she -- that basically this
11 didn't happen.

12 Now, if there is such a letter that says
13 something like that, that may well be exculpatory.
14 Whether you intend to offer it in evidence or not is
15 irrelevant. Generally, I wouldn't expect the State
16 to be offering things that are exculpatory. So I
17 don't -- it depends on what the letter says and what
18 other statements may have been made or given, oral
19 or written, as to whether they are things that would
20 help the defense.

21 MR. MAYE: Your Honor, we don't have anything
22 regarding any statements from Crystal Leaphart. We
23 merely have a letter that was written by a third
24 party. I'll be happy to give him a copy. I'll be
25 happy to turn it over to the Court. I don't think

1 that there's anything exculpatory in this. And I'll
2 make a copy and give one contemporaneous to
3 Mr. Snell.

4 **THE COURT:** Give Mr. Snell a copy of the
5 letter.

6 **MR. MAYE:** We'll do so, Your Honor.

7 **THE COURT:** All right. We're at ease.

8 (Brief Recess.)

9 **THE COURT:** All right. I've been provided with
10 a copy of what purports to be a letter addressed to
11 Crystal Leaphart from Bennie Mitchell, an inmate at
12 the Trenton Correctional Facility. This letter
13 appears to be -- to be somewhat in the nature of
14 legal advice.

15 What qualifications Mr. Mitchell has to give
16 out such advice is beyond me. I don't know. But
17 he's basically, according to this letter, telling
18 Ms. Leaphart to sign an enclosed affidavit, take it
19 to her attorney, use an affidavit that purports to
20 be from Mr. Lytes to get her charges dropped and not
21 to cut any kind of deals with the State, to plead to
22 anything.

23 And then there's a letter which I cannot read
24 the bottom of it. I'm assuming that this is a
25 letter from -- or purports to be a letter from

1 Mr. Lytes to Ms. Leaphart. I think it must have
2 been written in pencil so it did not photocopy very
3 well particularly at the bottom.

4 And then I've been given copies of proposed
5 affidavits, one which was to be executed by Crystal
6 Leaphart, the other was to be executed by Mr. Lytes.
7 Mr. Lytes is -- it states is an affidavit, but
8 there's no notary on it. If he did sign it, there
9 is some signature on it if he did sign it. It's
10 dated August 14th, 2008, where he's basically saying
11 that he and Crystal Leaphart did not conspire or
12 engage in conduct that would constitute trafficking.

13 I assume these same documents were given to
14 defense counsel.

15 MR. SNELL: Your Honor, I've gotten a total of
16 seven pages of photocopy documents.

17 THE COURT: All right. So what's your
18 position?

19 MR. SNELL: Your Honor, the defendant is just
20 now -- we were just now looking at them. You know,
21 I originally asked for this in -- by correspondence
22 dated July 8th, 2009.

23 THE COURT: You asked for what?

24 MR. SNELL: The discovery related to this
25 obstruction -- or this witness -- this interference

1 charge. So what I've been provided with, you know,
2 I had requested back on July 8th.

3 Your Honor, I think -- I mean, typically, when
4 it's a charge this serious, I think the defendant
5 will be entitled, and I don't know exactly what I'll
6 do because I haven't had enough time to think about
7 it, but I usually would, I think, at a minimum,
8 probably write to -- try to get, you know, write
9 some parties involved in this directly if I can, you
10 know, either the gentleman that wrote the letter try
11 to find out if he has any other statements, did he
12 get any kind of return correspondence.

13 You know, I don't know if this is something --
14 I just -- I don't think this is something I would
15 just look at and not take any action on to prepare a
16 defense related to. And so, Your Honor --

17 **THE COURT:** Wait a minute now. Was Mr. Lytes
18 ever housed at the Trenton Correctional Facility?

19 **MR. SNELL:** No, Your Honor.

20 **THE COURT:** All right. Go ahead.

21 **MR. SNELL:** You know, actually, Your Honor, I
22 think this letter's dated, the envelope I saw had a
23 postmark of August 18th. The warrant was issued in
24 October of 2008 and the indictment on this charge
25 was true billed on December 8th, 2008.

1 Now, I would suspect, you know, I've got a
2 letter here that is not self-authenticating. I
3 would expect that in addition to this letter, that
4 the gentleman or the inmate who -- Mr. Mitchell who
5 allegedly wrote the letter, who I understand has
6 also been charged criminally, I would also expect
7 there's probably been a written statement from him
8 if he's been arrested, you know, perhaps a
9 confession or some sort of admission.

10 **MR. MAYE:** Your Honor, I can circumvent that.
11 We don't have anything else. That's all we have. I
12 don't have any statements from Mr. Mitchell. I
13 don't have anything else. That letter was written
14 purportedly by Mr. Mitchell, that's all we've got.

15 **MR. SNELL:** You know, I ordinarily wouldn't
16 have thought just a single letter without any kind
17 of authentication or other verification would be
18 enough to support two indictments for felonies, but,
19 anyway, regardless, Your Honor, I think it's
20 potentially -- I think this potentially could lead
21 us towards evidence, additional evidence in the
22 case.

23 You know, if this had been provided 30, 60, 90
24 days ago, I think it would have been time to write
25 letters and do some things. So if the Court goes

1 forward at this point with this issue hanging out
2 there, the defendant's been offered no --

3 THE COURT: What issue? I'm struggling to
4 understand. How is this in any way exculpatory to
5 Mr. Lytes?

6 MR. SNELL: Your Honor, the letter that's been
7 presented I don't believe is -- it doesn't appear to
8 be at this time to be exculpatory.

9 THE COURT: Well, how is some jailhouse lawyer
10 from Trenton Correctional Facility going to be able
11 to provide anything in this case?

12 MR. SNELL: If he's had correspondence with one
13 of the State's witnesses and the State's witness
14 wrote him back, corresponded back or he's collected
15 other notes, that may be potentially evidence that's
16 relevant to the defense.

17 So, Your Honor, if we had gotten this a month
18 or two ago or some time prior to trial, I think at a
19 minimum, I would have written a letter and said, I'm
20 representing Mr. Lytes, do you have any other
21 documents or information or can you tell me anything
22 else about this, and at least pursue that
23 investigation avenue for him.

24 Additionally, Your Honor, I didn't know exactly
25 how to -- if I needed to arrange an interview of Ms.

1 Lytes and I held off --

2 **THE COURT:** Who is Ms. Lytes?

3 **MR. SNELL:** Excuse me, Ms. Leaphart. And I
4 held off making a final determination until I had an
5 opportunity to look at the correspondence and see
6 exactly what was in here.

7 I guess, Your Honor, what this boils down to is
8 we've been, with regard to this whole issue as it
9 relates to this case, Mr. Lytes and myself have been
10 proceeding in the dark.

11 **THE COURT:** This has all originated from him.
12 How can you be -- if it's true, and I don't know if
13 it is or not, it all originated with Mr. Lytes. How
14 could you possibly be in the dark?

15 **MR. SNELL:** I think Mr. Mitchell -- now, this
16 gentleman named Bennie Mitchell who signed this has
17 been arrested or charged with practicing law without
18 a license.

19 I think the two letters -- my understanding is
20 that the allegation is that the two page letter and
21 the two page affidavits were prepared by individuals
22 other than Mr. Lytes. And Mr. Lytes, to my
23 knowledge, has had no prior knowledge of who these
24 individuals were or that --

25 **THE COURT:** The wording in the indictments is

1 almost identical. The grammar, improper grammar is
2 identical.. The totality word, use of word, is
3 identical when it's not the right word to use. The
4 affidavit from Ms. Leaphart, that apparently she has
5 never signed, and the affidavit that purports to
6 have the signature of your client, have the -- they
7 were obviously written by the same person. In the
8 letter, if he sent this letter, from your client,
9 he's talking about the very same issues that this
10 jailhouse lawyer in Trenton Correctional Institution
11 is talking about.

12 How does that help you? How is that keeping
13 anything from you?

14 MR. SNELL: Well, first of all, Your Honor,
15 this is the first time I've had an opportunity to
16 review this myself. So up until I made my motion
17 and had the Solicitor's office hand this over at the
18 Court's request, I had no idea what I would get in
19 response.

20 So at this point, Your Honor, and I've got, you
21 know, would state that I do think it's relevant. I
22 think sitting down to plan a prospective
23 cross-examination of this witness, this is something
24 that I would have liked to have and I think the
25 defendant's entitled to have him and his lawyer to

1 be able to think about for, you know, more than a
2 few hours before the witness takes the stand. I
3 just thought that was a discovery issue and I wanted
4 to bring it to the Court's attention.

5 **THE COURT:** If the State is intending to offer
6 these documents, I understand where you're going.

7 **MR. SNELL:** Yes, sir.

8 **THE COURT:** The State's not offering these from
9 what I understand. They're not going to go into it.
10 They're not going to try to come in here and say,
11 This is a statement signed by Mr. Lytes.

12 **MR. SNELL:** Your Honor, at this point, I'm not
13 sure if Mr. Mitchell got correspondence back from
14 Ms. Leaphart. And I think my standard practice
15 would be to contact Mr. Mitchell or through his
16 attorney and ask him if they have contact back from
17 Ms. Leaphart. And if there's been correspondence
18 between one of the State's witnesses and Mr.
19 Mitchell or anyone else that Mr. Mitchell refers me
20 to, I mean, I think that could be relevant.

21 **MR. MAYE:** Your Honor, we have no information
22 of any correspondence or nothing that was brought up
23 that we maintain is in any way part of Rule 5 in
24 this case for this trafficking for which we've got a
25 jury struck.

1 We didn't intend to offer anything. This case
2 is so clear, we didn't intend to try to cloud the
3 issues and bring in his, what we believe, are
4 attempts to obstruct justice in this case or any --
5 if anything, in the best case scenario, would be
6 inculpatory against him. We're not going to
7 introduce any of that. We're not going to mention
8 it. We're not going to go into it in any way. We
9 just maintain none of this is part of Rule 5 in this
10 case.

11 **MR. SNELL:** And, Your Honor, just one
12 additional point. Mr. Lytes has had his bond set on
13 these charges back during 2007, 2008. This
14 obstruction charge, either due to a clerical error
15 or scrivener's error, for some reason, he's had his
16 bond denied. And my understanding from Mr. Lytes is
17 he's been incarcerated in the detention center for
18 over a year related specifically and solely just due
19 to this interference with witness charge.

20 But, Your Honor, I wouldn't ask the Court to
21 rule at this time and I've got other issues
22 involved.

23 **THE COURT:** Well, I feel like I'm up here
24 playing the biggest what if game in the world. And
25 I don't mean to say that you don't have an

1 obligation to follow leads and I'm certainly not in
2 any way implying that you shouldn't follow and
3 investigate as fully as you can. The difficulty I'm
4 having is that if I just sit up here and play what
5 if, what if, what if, that's just not the proper
6 evaluation for the Court to be doing.

7 MR. SNELL: And, Your Honor, I would certainly
8 agree with that. I believe that this issue is going
9 to relate to some dissimilar -- or seeking similar
10 relief related to other issues.

11 THE COURT: What issues? I don't even know
12 what the issue is. I'm really not playing dumb with
13 you. I don't know what it is that you say other
14 than you say that you would have gone and tracked
15 down Mr. Mitchell and tried to get Mr. Mitchell and
16 his attorney to tell you if Ms. Leaphart wrote them
17 back.

18 Now, normally, what I would expect is from the
19 defense argument would be that she would be some
20 sort of prosecution agent at that point because when
21 she got the letter, she turned it over to her lawyer
22 who turned it over to law enforcement. So if she
23 wrote anything back, normally the argument I expect
24 to hear from this side of the room is she's a
25 prosecution agent and she's trying to set the guy

1 up.

2 Now, who's his lawyer, Mitchell's lawyer,
3 because I don't see him still incarcerated?

4 MR. MAYE: I don't know. I think he got out of
5 jail and I'm not sure that he has counsel at this
6 point in time.

7 MR. YOUNG: He's currently incarcerated in
8 Newberry County, Your Honor, on other charges. I
9 don't think we've had a lawyer appointed here unless
10 the Clerk of Court's done so on an application. As
11 I understand it, he's still in Newberry custody.

12 THE COURT: I mean, y'all can bring that lady
13 out here and we can put her under oath and ask
14 her if she wrote anybody -- who's her lawyer?

15 MR. MAYE: Greg Seigler who is the one that
16 provided us with the --

17 THE COURT: And if there is an indication that
18 she did write him back, then, you know, that's --
19 maybe that's another answer to the what if, but...

20 MR. MAYE: She's right here, Your Honor. We'd
21 be happy to ask her that. I think the answer to
22 that is no. She never indicated that she gave any
23 correspondence back to him, just that she turned
24 this letter over to...

25 (Mr. Maye leaves the courtroom.)

1 MR. SNELL: And, Your Honor --

2 THE COURT: Let's wait until Mr. Maye's back
3 in.

4 (Pause.)

5 MR. MAYE: Your Honor, Mr. Seigler is not here.
6 She indicates that she's never sent any
7 correspondence to him. I'd be happy for her to be
8 placed under oath and I'd grant her immunity to
9 whatever extent that I would need to to cover her in
10 that regard.

11 THE COURT: Go ahead, Mr. Snell.

12 MR. SNELL: Your Honor, I just wanted to
13 clarify, Mr. Lytes has been -- has had the bond
14 denied on his contraband charge not the obstruction
15 charge or this interference with a witness charge.
16 I just wanted to let the Court know I was mistaken.

17 THE COURT: All right. The representation
18 that's been made to the Court is that Ms. Leaphart
19 has stated that she did not respond back to this
20 Mr. Mitchell.

21 Do y'all know if he's got a lawyer appointed?

22 THE CLERK: I don't know.

23 THE COURT: Can you check?

24 (Pause.)

25 THE COURT: He's charged with practicing law

1 without a license.

2 MR. YOUNG: Yes, sir.

3 THE COURT: And there's a bench warrant out for
4 failure to appear apparently. Greg Anderson has
5 been appointed to represent him; is that right?
6 It's 2008-GS-19-694 is what I'm seeing.

7 THE CLERK: It's a bench warrant.

8 THE COURT: But Greg Anderson is appointed to
9 represent him?

10 THE CLERK: That's right.

11 THE COURT: I'll let you try to check over
12 lunch if you like and see if you can come up with
13 anything else, but right now there's a motion to
14 dismiss the case for violation of Rule 5 and Brady.

15 MR. SNELL: And, Your Honor, I do have
16 additional grounds past the issue regarding, you
17 know, this letter and the interference with witness
18 charge.

19 THE COURT: Wait a second.

20 MR. SNELL: Yes, sir.

21 (Pause.)

22 THE COURT: If this document that was handed up
23 to me is a letter from the defendant to Ms.
24 Leaphart, then it probably should have been
25 disclosed under Rule 5 subsection (a)(1)(A).

1 It's not sufficient to dismiss the case,
2 however, because it would be a letter, if it is in
3 fact a letter from him, he would have written it, so
4 he would have known about it.

5 It's not required that the State intend to
6 offer a letter in order for it to be discoverable,
7 but if there is a violation of Rule 5, it's been
8 provided now to the defense and I can't see how, if
9 the State's not intending to offer it, how you need
10 anything more than a few minutes, certainly no more
11 than the lunch break, to adjust to it.

12 With regard to the other things, as I read
13 earlier from Rule 5, the relationship to documents
14 deal with matters that are material to the
15 preparation of the defense are intended to use --
16 for use by the prosecution as evidence in its case
17 in chief or that were obtained from or belonged to
18 the defendant. If the letter from, that purports to
19 be from the defendant again would be discoverable
20 under that subsection, which is A(1)(c), then it's
21 the same basic analysis. It's been provided now.

22 With regard to the other documents, this
23 purported affidavit, basically, again, it's the same
24 analysis. I don't really know exactly what it
25 means. The State doesn't intend to offer it.

1 I don't know if what he's trying to do there is
2 exonerate Ms. Leaphart or if he is trying to
3 exonerate himself and Ms. Leaphart, if he signed it.
4 Again, as I said, it's captioned as an affidavit.
5 It says, Sworn affidavit, but it's not sworn.

6 With regard to the statements of other
7 witnesses, those again would fall under subsection
8 (a)(2). And they're generally not required to be
9 produced until after the witness testifies at the
10 trial unless there's been a prior motion made to
11 disclose it.

12 But I've looked at this and -- I mean, on
13 discovery, I take the position, you know, the
14 Solicitor's heard me say to them several times that
15 I think the best practice is to give all this
16 information to the defense as far in advance as
17 possible.

18 When I was a public defender years ago, if I
19 had the information that the State had, I was able
20 to get to the truth and work out some sort of
21 agreement generally. If I didn't have the
22 information to refute things that might not exactly
23 be how a jury might look at something or if I didn't
24 have the information to discuss with my client who
25 was telling me something different, you know, that

1 just seemed to prolong the case.

2 So, I know how old I am and I know it's been
3 many years ago, but the practice we had where they
4 basically would open their file up and I'd come in
5 and look at everything in it, I think is the best
6 policy. But that's not the rule.

7 MR. MAYE: And, Your Honor, as to anything
8 involving this case, that is, in fact, what we've
9 done. I -- when we did not intend to offer it to
10 inculcate him or to prosecute him on this case,
11 we've sat down and reviewed everything that we've
12 gotten on the trafficking case in which we have a
13 jury pulled for now, Your Honor. I mean, we've been
14 through, to the extent that we could, everything
15 that we could and, in fact, asked Mr. Snell to come
16 up here and review the documents, listen to the
17 tapes.

18 The only thing that I can think of that we've
19 provided in any way new in this case is we gave them
20 the confidential informant's rap sheet, which I
21 don't know that until certainly after they testify
22 and all to protect the identity of the confidential
23 informant, we didn't give her rap sheet, her
24 identity, but any statements that she had made prior
25 to that time had been provided.

1 As far as I know, we've complied with Rule 5
2 involving this case, the trafficking case, as fully
3 as we can even giving Mr. Snell the opportunity if
4 he could think of anything else that he wanted, we
5 certainly endeavored to provide him anything,
6 whether or not it was provided -- subject to Rule 5
7 or not that he wanted, we made efforts to try to
8 provide them and I think that we've fully complied
9 with Rule 5 in this case.

10 **THE COURT:** Madame Court Reporter, make this a
11 court's exhibit, please.

12 (Court's Exhibit Number 1, letter, was
13 marked for identification.)

14 **THE COURT:** All right. Court's Exhibit Number
15 1 is everything that's been given to the Court so
16 far.

17 All right. Finish out your argument,
18 Mr. Snell. What other issues do you have?

19 **MR. SNELL:** All right. I'm going to move next
20 to the information regarding the CI. Your Honor, I
21 did have a very pleasant conversation with the
22 Solicitor's office yesterday evening.

23 **THE COURT:** You did or did not?

24 **MR. SNELL:** I did.

25 **THE COURT:** All right.

1 MR. SNELL: When I was called yesterday and
2 asked to be available this morning to strike a jury,
3 I finished up my office duties and left out about
4 four o'clock for Edgefield. At about -- I was
5 expecting the Solicitor's office maybe to fax me
6 some supplemental materials, but they were kind
7 enough to come down to the jail and get me at 5:30,
8 brought me back up to the work room at the
9 courthouse where I was provided with an opportunity
10 to listen to the audio recording in the case, as
11 well as to have the CI's identity disclosed and
12 provided with a copy of her rap sheet.

13 We talked about other information that I
14 thought would be relevant, specifically the CI was,
15 for lack of a better term, she was working off some
16 prospective charges that she could face for
17 trafficking in crack cocaine. The Solicitor's
18 office allowed me the opportunity, which I elected
19 to take, to leave Edgefield, drive to Saluda where I
20 got to about 6:30 at night and gave me the
21 information about the CI's -- the charges that she
22 could have been facing, basically the search warrant
23 and the results from that warrant.

24 I got back to my office at about 7:45 last
25 night, that's -- and I sat down for a few minutes

1 and skimmed the -- those documents, as well as the
2 rap sheet.

3 To this -- even at this late stage of the
4 process, though, Your Honor, I came over here this
5 morning as quick as I could get here. I have not
6 had an opportunity to tell actually the defendant
7 who the CI is and so the defendant has not had an
8 opportunity to look at the rap sheet, to look at any
9 of the CI documentation.

10 And so that's -- I understand the State's
11 position may be that he may very well know who she
12 is, but I haven't had that opportunity to talk to
13 him yet. Certainly, that's interfered with our
14 ability to -- or my ability to conduct any kind of
15 independent investigation into the CI or to
16 formulate any specific strategy that I may need to
17 determine, I don't know. So we have that issue
18 regarding the CI.

19 Additionally, there's an issue related to the
20 audio that I was able to listen to last night at
21 5:30 and then I got to listen to it again twice
22 today. And, Your Honor, I can't, and this may
23 actually be a subsequent motion if we get that far,
24 but I can't actually understand the audio. I don't
25 know exactly what's being -- I can't make out

1 probably 80 percent of it.

2 Typically, in a case where I'm provided with
3 audio and I can't understand it, I send to a court
4 reporting company and they prepare me a
5 transcription and they're able, you know, with their
6 equipment to fine tune it.

7 So with regard to additional discovery that's
8 come in late in the game, that's been the audio that
9 we were able to listen to, I was able to listen to
10 it at 5:30 and the defendant was able to listen to
11 it about 9:15, the CI rap sheet from last night and
12 the records of the CI's own drug issues from the
13 search warrant that I got yesterday evening, so we
14 have -- I just want, you know, all that's come in
15 kind of at the last hour so to speak, Your Honor. I
16 would put all of that in the same can because, you
17 know, as violating Brady Rule 5.

18 Additionally, the defendant's Sixth Amendment
19 right to confront witnesses in that if you can't
20 formulate a cross or a strategy, it's difficult to
21 effectively confront your witnesses. And that's two
22 issues additionally, the audio and the CI
23 disclosure, I make a motion to dismiss the case
24 again on those two grounds. If -- and --

25 **THE COURT:** On the quality of the audio or

1 what?

2 **MR. SNELL:** We just got it. I mean, I just got
3 it last night, was able to listen to it for the
4 first time. You know, I've done these cases, you
5 know, I've, you know --

6 **THE COURT:** I'm just trying to understand your
7 motion. You said you move to dismiss on the audio,
8 I don't know what you mean.

9 **MR. SNELL:** By the late disclosure of the
10 audio.

11 **THE COURT:** All right. Go ahead.

12 **MR. SNELL:** And, additionally, the late
13 disclosure of the CI identification, the CI rap
14 sheet and the documentation concerning the
15 prospective drug charges the CI's working off.

16 **THE COURT:** What's the State's position?

17 **MR. MAYE:** Your Honor, we would have sat down
18 -- we have complied with Rule 5 in this case. We
19 would have sat down at any time with Mr. Snell and
20 let him listen to that audio tape. We finally just
21 insisted that he come listen to this audio tape
22 yesterday afternoon. He's listened to it. His
23 client has listened to it.

24 We asked him if there was anything else that he
25 wanted after -- we've complied with Rule 5. We've

1 sent everything in this case that would be subject
2 to Rule 5 in this case. We've gone beyond that at
3 this point in time. We didn't wait until after any
4 witness testified. We've provided him with rap
5 sheets. They've heard the audio recording in this
6 case. We've disclosed the identity ahead of time.

7 We had already complied with anything that we
8 maintain that could be subject to Rule 5 in this
9 case. We would have let them listen to the audio
10 tape at any point in time that they wanted to.
11 We've made all of this available prior to this time.
12 They've heard it.

13 We're ready to go forward. We maintain that
14 we've complied with Rule 5 and we're ready to
15 proceed.

16 **THE COURT:** When did you disclose the name of
17 the confidential informant?

18 **MR. MAYE:** We gave them the statement of the
19 confidential informant with the initial Rule 5 in
20 this case and told them the identity of the Rule 5,
21 the informant yesterday and gave them the rap sheet.
22 They asked if she was working off any charges, she
23 does not have any formal charges.

24 A search warrant was executed at her house.
25 They asked about information regarding that and

1 we've provided that yesterday at their request, but
2 I don't know that any of those items would have been
3 incumbent upon us to provide to them pursuant to
4 Rule 5.

5 Now, the audio tape they could have heard that
6 at any point in time. We would have made that
7 available to them at any point in time they wanted
8 to hear so -- wanted to hear it. But we made sure
9 that prior to us coming in here, that they had had
10 an opportunity, and in fact, listened to it. And I
11 know the defendant has listened to it and Mr. Snell
12 has listened to it prior to us proceeding this
13 morning.

14 **THE COURT:** All right. Any reply to that,
15 Mr. Snell?

16 **MR. SNELL:** Just briefly, Your Honor. It's
17 been my understanding that it is the general policy
18 with confidential informant disclosures that the
19 Solicitor's office doesn't typically release that
20 information until plea negotiations conclude.

21 My understanding was the defendant up until
22 this point, until this morning, hasn't had an
23 opportunity or the ability to listen to the audio.
24 If I'd been provided with the audio previously, I
25 certainly would have made my copy and brought it to

1 the jail and let him listen to it.

2 I did receive disclosure of the CI's identity
3 yesterday evening. I've had, you know, the limited
4 amount of time to look at the rap sheet, look at
5 those documents. Again, I still haven't had time
6 yet to sit down and go through those materials with
7 the defendant. And just my concern is it's just
8 such a serious charge coming in at the last hour, so
9 to speak, you know, I don't know how to formulate a
10 defense without a good opportunity to consult with
11 the defendant on these type issues. I don't know
12 what the prior history is between the defendant and
13 the informant that may be -- that may come out or
14 come to light after he has a chance to review those
15 materials.

16 You know, the last time I tried a case like
17 this, Your Honor, I got all of these materials well
18 in advance of trial. And I've just never actually
19 heard of getting it the morning of or the evening
20 before.

21 But, Your Honor, I would say this, the folks at
22 the Solicitor's office last night were, I mean, they
23 were very helpful and very kind and, you know, when
24 I did meet with them yesterday.

25 **THE COURT:** Well, again, it's a motion to

1 dismiss. And there's no grounds to dismiss the case
2 based on the lateness of receiving an audio tape.
3 The State maintains that the existence of the tape
4 has been known for some time.

5 The lateness of disclosing the confidential
6 informant, again, that's not a ground for a
7 dismissal of the charge. The lateness of the
8 information related to the confidential informant,
9 again, is not a grounds for dismissal of the charge,
10 and that's the motion that's before me.

11 With regard to the quality of the audio
12 recording, I haven't heard it, obviously. Sending
13 it to a court reporter who transcribes what they
14 think they hear and sending it back, that's just not
15 the way it works. If something is not audible,
16 cannot be understood, you'd have to have some expert
17 come in and testify that the tape was enhanced in
18 some way or was understood, or somebody present
19 could say what was being said.

20 I would say most of the drug buys that I've
21 ever heard a recording on, I didn't know
22 three-fourths of what they were saying. I couldn't
23 understand them.

24 But to have time to send it to a court reporter
25 or some sort of -- whether it's a certified court

1 reporter or somebody else, all they'd be doing is
2 telling what they think the tape says and that
3 wouldn't be admissible.

4 MR. SNELL: And, Your Honor, if I may, because
5 I don't have, you know, in my office, I've got a
6 probably 20-year-old cassette player, I just found
7 that that's a service I've used before when I've had
8 inaudible audio because they can usually give me a
9 transcription which tells me what it says.

10 If I think it needs to go any further, my
11 practice has always been to, one, send it to a
12 professional company to clean it up and provide the
13 expert testimony service that may be required.

14 THE COURT: They still use tapes?

15 MR. MAYE: Many of the wires still utilize the
16 tape system. That equipment is inordinately
17 expensive and they still do utilize tapes to record
18 that. There are more modern digital recordings and
19 that sort of thing, but that equipment is extremely
20 expensive and not necessarily, until very recently,
21 has been widely available to law enforcement, or
22 certainly not law enforcement in smaller agencies.

23 THE COURT: Well, regardless, the motion that I
24 have before me specifically is to dismiss and none
25 of these things constitute grounds to dismiss the

1 indictment.

2 What else do you have?

3 MR. SNELL: Well, Your Honor, in the
4 alternative to dismissal, I would make a motion just
5 based on the late disclosure, that specifically the
6 items that have been disclosed late be suppressed
7 and not be presented in the State's case.

8 THE COURT: Okay. Other than the confidential
9 informant, what I heard from the State's side is
10 that they told you about this information a while
11 back; is that right or wrong?

12 MR. SNELL: Your Honor, I've known of the
13 existence of an audio tape. And my understanding of
14 the policy at the Solicitor's office or what they
15 say is that they don't make disclosures or they
16 won't release that information including the tape to
17 make it available for the defendant's review until
18 immediately before trial out of concern that some
19 sort of retaliatory or some sort of physical safety
20 issue related to the witness.

21 I knew there was an audio. I knew there was a
22 CI. My understanding is that audio, they weren't
23 going to release the audio until the eve of trial.

24 THE COURT: Well, the remedy there is to get
25 the Court to force the issue and bring it before the

1 Court. It's not to suppress the evidence. If they
2 told you there was an audio tape and they wouldn't
3 let you listen to it, which they haven't said that,
4 I'm not saying that's the case or not the case --

5 MR. SNELL: And, Your Honor, I had -- and let's
6 be clear, I had, you know, when I became involved in
7 the case and these materials were not submitted, I
8 wrote the Solicitor's office, said I'd like to have
9 those materials. I've discussed with them the,
10 specifically, the tape and the other information.

11 If I'm -- actually, Your Honor, I'd known the
12 case was -- that plea negotiations were going to be
13 terminating at the point they did and that if it
14 would have been in my client's best interest to file
15 a specific motion to compel, you know, a week ago or
16 two weeks ago, I would have done it up until kind of
17 the -- but it's been my understanding and my
18 practice that when you have this type information,
19 once the decision's made to terminate or the State's
20 decided they're not going to entertain plea
21 negotiations any further or that's not going to be
22 productive, that there's still some amount of time
23 that the defense is provided with these items and
24 it's not --

25 THE COURT: Okay. I understand -- I mean, you

1 made that argument ten times, I understand that.
2 It's not grounds to suppress the evidence.

3 I can't throw the evidence out because a motion
4 wasn't made to compel it or because you didn't come
5 over here and listen to it. I can't throw the
6 evidence out. I can't throw the charge out.

7 MR. SNELL: And in the alternative then, Your
8 Honor, would be a motion for a continuance.

9 THE COURT: All right. That one you may argue.
10 Go ahead.

11 MR. SNELL: Your Honor, based on all of the
12 foregoing argument related to specifically the CI,
13 the disclosure about the letters from the jail and
14 the affidavits, as well as the audio, I think at
15 this point, it would be incumbent upon me to request
16 a continuance of this case to allow sufficient time
17 for the defendant and counsel to review those
18 materials and to incorporate them into a defense
19 strategy.

20 THE COURT: All right. And what's the State's
21 position?

22 MR. MAYE: May it please the Court, Your Honor.
23 It's our position certainly in regard to a audio
24 recording with most cases that we deal with, the
25 defense lawyer himself can always listen to the

1 audio tape ahead of time. We don't let the
2 defendant himself listen because in all likelihood,
3 the defense lawyer himself would not be able to make
4 an identity based on hearing a voice.

5 And it's been our practice typically to let the
6 lawyer, at any point in time he wants to, to listen
7 to the audio recording. Just, we don't make it
8 available, we don't provide a copy of it and don't
9 let the defendant himself listen to it ahead of
10 time.

11 In this case, Your Honor, we've now disclosed
12 the identity of the confidential informant. We
13 already have a situation where, by the information
14 that we've been provided, at least by Mr. Mitchell,
15 there have been attempts to obstruct justice in this
16 case to try to intimidate a witness into not
17 testifying. He now knows conclusively who the
18 confidential informant is. He has listened to the
19 tape himself. He knows her identity.

20 We're ready to go forward in this case. We
21 maintain that that jeopardizes the safety of the
22 confidential informant at this point in time to
23 leave this matter unresolved. We'd certainly like
24 to go forward at this term of court on this case.
25 We've already drawn a jury.

1 We have complied with Rule 5 to the extent that
2 we believe that anything, and I understand,
3 respectfully, the Court's ruling regarding that
4 document involving the obstruction case, which we're
5 not proceeding on, but as in regard to this case of
6 trafficking, we maintain that we've complied with
7 Rule 5 and we're ready to proceed.

8 **THE COURT:** Who is the confidential informant?

9 **MR. MAYE:** Her name is Antoinette Thomas. And
10 she is present here today and prepared to testify.
11 And her identity has been made known to the
12 defendant now.

13 He has heard the audio tape, the conversation
14 they had. He's completely aware of the
15 circumstances. She was in the car with him. It was
16 a buy-bust and she was sitting in the front seat of
17 an automobile with him when the police took him
18 down.

19 They did a buy-bust, made a call ahead of time
20 and they took them both out of the same vehicle
21 sitting in the same spot. So I can't imagine -- I
22 don't know that he knew that she was cooperating or
23 someone else on the outside had done it, but she was
24 there and present and it was a buy-bust situation.
25 They gave him the drugs and they got their money

1 back on the spot. That's what this case is about.

2 THE COURT: Now, what's going on in Saluda?

3 MR. MAYE: In Saluda?

4 THE COURT: He said something about going to
5 Saluda last night.

6 MR. MAYE: With our office, I had Investigator
7 Young go and get a copy of the search warrant that
8 was previously executed on Antoinette Thomas' case.
9 She was never charged at this search warrant of her
10 house and found some drugs and in lieu of charging
11 her, she cooperated against a number of individuals
12 and made buys, including this reverse against this
13 defendant.

14 THE COURT: And have y'all made the record of
15 Antoinette Thomas available to the defense?

16 MR. MAYE: Yes, they got that.

17 THE COURT: That was yesterday?

18 MR. MAYE: Yes. We gave them her record. And
19 she had given a statement earlier, but we provided
20 that statement with the original Rule 5.

21 THE COURT: And what is the record?

22 MR. MAYE: Her record?

23 THE COURT: Yes.

24 MR. MAYE: I think the only thing that she's
25 got that's impeachable is, what?

1 (Pause.)

2 MR. MAYE: The only thing that she potentially
3 has, Your Honor, is a crime -- she's got a charge of
4 fraud or swindling out of 1997 that might
5 potentially, if it involved dishonesty, even though
6 it's outside of ten years, be impeachable, that
7 would be in the Court's determination. And any
8 other charges that she has, she's got like a
9 possession of marijuana and some other charges, all
10 of them outside ten years, some back about 1973.
11 And she has a petit larceny.

12 But she did -- she was not charged in this
13 case. They executed a search warrant at her
14 residence where she was. They did not make any
15 charges against anyone there. She agreed to work
16 with law enforcement after that. We have disclosed
17 that and given them a copy of the search warrant in
18 this case.

19 But she was not charged and was not per se
20 working off charges. They just -- they never
21 charged her. They just basically -- she agreed to
22 work on the -- they never sought a warrants, so
23 they're not holding warrants on her or anything like
24 that.

25 THE COURT: Anything else, Mr. Snell?

1 **MR. SNELL:** Just for the record -- just for the
2 record, Your Honor, I just want to make sure, you
3 know, the first time I had these things and the
4 chance to sit down with them was 7:45 last night and
5 that's been the extent of my opportunity to prepare
6 for the trial.

7 **THE COURT:** All right. Well, Mr. Snell, you
8 know, you've obviously been very diligent in the
9 preparation. I don't mean to imply in any way that
10 you haven't.

11 I don't see any grounds for a continuance and
12 the motion for a continuance is denied.

13 Court's in recess until two o'clock.

14 (Whereupon, there was a luncheon recess.)

15 (State's Exhibit Numbers 1 through 5,
16 photographs, were marked for identification.)

17 **THE COURT:** State ready for the jury?

18 **MR. MAYE:** The State's ready, Your Honor.
19 Thank you.

20 **THE COURT:** Defense?

21 **MR. SNELL:** With regard -- I have two
22 additional motions in limine.

23 **THE COURT:** What are those?

24 **MR. SNELL:** First, regarding to the audio, I
25 believe just by review of it, I think, the -- it's

1 unintelligible and I don't believe it serves any
2 valid purpose. I think the jury would have to
3 basically guess and speculate as to what it was
4 saying. I think based on just its lack of audio
5 quality, it would be inadmissible.

6 And I think it would be better if the jury
7 didn't hear about it in the first place because it
8 may bolster other witness testimony. If the jury
9 thinks that an audio existed somewhere and if they
10 aren't allowed to hear it at a later time, I think
11 that may be prejudicial.

12 **THE COURT:** What else?

13 **MR. SNELL:** And, Your Honor, I'm also not sure
14 that the State's going to be able to properly
15 introduce the drugs in the case due to issues
16 that -- with the chain of custody, as well as with
17 the results of the lab results. And I know,
18 typically, you know, chain of custody issues are
19 dealt later, but I'll make a -- in this case, I'll
20 make that motion at this time.

21 **THE COURT:** You have a motion in limine to
22 exclude the introduction of the audio tape because
23 it's unintelligible and it's unduly prejudicial?

24 **MR. SNELL:** Yes, Your Honor.

25 **THE COURT:** And it improperly bolsters the

1 testimony of a witness?

2 MR. SNELL: What I think is, Your Honor, if the
3 jury is told that there's an audio recording of the
4 alleged transaction, of the alleged circumstance,
5 even if they can't make heads or tails out of what's
6 actually on the audio, the fact that an audio --
7 they're told an audio exists or the State plays the
8 audio for them during an opening or in their case in
9 chief, I think that would be prejudicial. I think
10 probably it would be necessary for the Court to
11 actually listen to -- try to listen to the tape and
12 make a determination if it's audible.

13 THE COURT: When do y'all intend to introduce
14 the tape?

15 MR. MAYE: We'll introduce the tape in the case
16 in chief. We certainly disagree in this case, and
17 there are big portions of the audio that you can
18 hear exactly what's said. You can hear
19 conversations in between them. We think that any
20 objections in that regard go to weight of the
21 evidence rather than its admissibility.

22 And we fully anticipate to call an officer and
23 ask him if the audio tape fairly and accurately
24 reflects what he heard as he was monitoring it live
25 from the vehicle that day. And we certainly would

1 maintain that any objections to any of the quality
2 of the tape would go to weight of the evidence and
3 not its admissibility. That's the State's position
4 in regard to the tape evidence in this case.

5 And as to the drug evidence, if we don't get
6 the drug evidence in, that would be a matter to
7 appropriately address at the directed verdict stage,
8 but I'm not sure what his motion in limine would be
9 regarding the drugs in this case because that's
10 evidence that's chief in this case on a trafficking
11 case. If we don't get that in, this case will be
12 over.

13 **THE COURT:** And you have a motion to exclude
14 the State's ability to introduce the drugs in
15 limine?

16 **MR. SNELL:** Well, I think, Your Honor, and this
17 may be more of an issue of court -- of just probably
18 just how the cases proceed. You know, if -- I
19 believe it may be quicker towards achieving
20 dispositive issues if we handled it as an
21 evidentiary hearing, if the Court undertook a review
22 of the chain of custody and the admissibility issues
23 prior to the start of the case -- number one, I'm
24 not sure that they can -- they have a -- can
25 establish a chain of custody based on the documents

1 I've seen.

2 Number two, I have a drug analysis result
3 that's been provided to me dated November 21st,
4 2007, that simply states that there was a Ziploc bag
5 containing wet rock substance and the results were
6 cocaine base found of 59.74 grams. I don't believe
7 there's any information that indicates how the drugs
8 were actually tested, what procedures were used.

9 THE COURT: Aren't you going to call the
10 chemist?

11 MR. MAYE: Yes. I'm not relying on Rule 6 in
12 this case, Your Honor. And we've got a complete
13 chain. And I intend to call all of the chain
14 witnesses. I don't even have them all here yet.

15 I've got the lady that it was dropped with at
16 the front desk at SLED. I've got the chemist that
17 tested it. I've got the agent that's going to
18 testify he sealed it in the best kit and took it
19 directly to SLED. It's an extremely short chain in
20 this case, Your Honor.

21 And I've already stated that, even though
22 there's been nothing about a demand under Rule 6,
23 I'm bringing the chemist and I'm bringing every link
24 of the chain. And they'll testify as live
25 witnesses, but I don't have them all here right now.

1 They're coming, some of them, later in the day. I'm
2 staggering them so that they're not just sitting
3 here cooling their heels, the people from the State
4 Law Enforcement Division.

5 **MR. SNELL:** And if Your Honor made a
6 determination on the admissibility of the drugs, you
7 know, I guess my motion would be for the Court to
8 withhold making any rulings on the admissibility of
9 the drugs or the (inaudible).

10 **THE COURT:** Or what?

11 **MR. SNELL:** Until the State had finished its
12 case.

13 **THE COURT:** I rule on the admissibility when
14 they're tendered into evidence. An in limine ruling
15 is nothing more than a preliminary ruling as you all
16 well know and it would be subject to change if
17 further evidence was presented later in the trial.

18 The argument that the portions of the tape are
19 unintelligible and that the whole tape should be
20 therefore excluded, the motion in limine is denied.

21 The motion with regard to the chain of custody,
22 me ruling in limine on that is also denied. If I
23 don't let the drugs in, I don't know how they can
24 get past a directed verdict. If there are issues in
25 the chain, then -- if there's a break in the chain,

1 then the drugs (inaudible).

2 COURT REPORTER: I didn't hear that.

3 THE COURT: The drugs won't come in.

4 MR. SNELL: Thank you.

5 THE COURT: The motion in limine is denied.

6 (Lady leaves the courtroom.)

7 THE COURT: Do y'all need her in here if she's
8 going to cough like that the whole trial?

9 MR. MAYE: No, she can stay out. I didn't know
10 she was coughing. Sorry, Your Honor, I didn't even
11 hear it. There have been so many sirens and trucks
12 and everything else this morning, coughing didn't
13 even register with me.

14 THE COURT: I didn't want to exclude anybody.
15 I just -- and she may be okay now.

16 MR. SNELL: And, Your Honor, just for the
17 record, during the recess, I attempted to contact
18 the attorney for Mr. Mitchell. I was unable to
19 reach him.

20 THE COURT: All right. Have you got the oath,
21 Madame Clerk?

22 THE CLERK: Yes, sir.

23 THE COURT: Bring in the jury, please.

24 Now, there's no Jackson versus Denno issues,
25 there's no Biggers issues?

1 **MR. MAYE:** Your Honor, the only thing I can
2 think of that's Jackson versus Denno is he stated
3 that the -- the only thing that we're going to
4 attempt to offer that he said after Miranda is that
5 she wasn't involved, Crystal Leaphart, the girl that
6 was with him. If they want a Jackson versus Denno
7 hearing in that regard, we'll certainly do that. We
8 can stop and do it right now. That's all we intend
9 to offer as anything that he said.

10 **THE COURT:** Is there a need for a Jackson
11 versus Denno hearing?

12 **MR. SNELL:** Yes, Your Honor.

13 **THE COURT:** You got your witnesses here for --

14 **MR. MAYE:** I do. Coby Perry is my only witness
15 for Jackson versus Denno hearing.

16 **THE COURT:** Mr. Perry, come around and be
17 sworn, please.

18 COBY PERRY,
19 having been duly sworn, testified as follows:

20 **THE CLERK:** Have a seat and state your full
21 name and spell your last name, please.

22 **THE WITNESS:** My name is Coby, C-o-b-y, Perry,
23 P-e-r-r-y.

24 ****

25 ****

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Agent Perry, introduce yourself, tell the Judge
4 -- tell the Court where you're employed or where you
5 were employed prior to retirement.

6 A I was employed with the South Carolina Law
7 Enforcement Division on the date of this incident,
8 which was October 24th, 2007. Since then, I have
9 retired.

10 Q Let me ask you this, and I'm going to direct
11 your attention for the purposes of a Jackson versus
12 Denno hearing here to determine the voluntariness of
13 any statements that Mr. Lytes made, immediately
14 after y'all concluded the buy-bust and got your
15 drugs back and the money back from the defendant in
16 this case, Mr. Lytes, did you have an occasion to
17 talk with him?

18 A Yes, sir. Once I placed him under arrest as --
19 when we pulled up on the scene, I advised him of his
20 rights.

21 Q Let me ask you this, what did you place him
22 under arrest for? Was he in your custody and for
23 what?

24 A Yes, sir, for trafficking crack cocaine.

25 Q Trafficking crack cocaine. Let me ask you

1 this, Agent Perry, prior to speaking to him then,
2 did you give him his rights, his Miranda warnings?

3 A Yes, sir, I did.

4 Q Please go through for the Court the Miranda
5 warnings as you gave them to him there that day.

6 A All right, sir. I said, It's my duty to advise
7 you that you are under investigation. And I stated
8 who I was and with SLED. And that you have the
9 right to remain silent. Anything you say will be
10 used against you in court. You have the right to
11 have a lawyer and consult with him before and while
12 answering any questions. And if you cannot afford a
13 lawyer, one will be provided for you without cost.
14 And I asked him if he understood these rights.

15 Q Did he indicate that he understood his rights?

16 A Yes, sir.

17 Q Were you in a setting where you had him under
18 control and in custody?

19 A Yes, sir, I was.

20 Q Could he -- did he appear -- or was he able to
21 hear and understood what you were saying?

22 A Yes, sir.

23 Q Were you in a calm enough setting to where you
24 had his attention and he was focused on what you
25 were telling him?

- 1 A Yes, sir.
- 2 Q Did he indicate to you that he understood his
- 3 rights?
- 4 A Yes, sir, he did.
- 5 Q After you gave him his rights -- or let me ask
- 6 you this, at any point in time prior to him talking
- 7 to you, did you make any threats to him?
- 8 A No, sir.
- 9 Q Did you make any promises to him?
- 10 A No, sir.
- 11 Q Did you offer him any hope of reward in
- 12 exchange for talking with you?
- 13 A No, sir.
- 14 Q Did you do anything at all to influence his
- 15 decision as to whether or not he spoke with you or
- 16 whether or not he did not speak to you?
- 17 A No, sir.
- 18 Q You gave him his Miranda rights as you've
- 19 already testified?
- 20 A Right. Yes, sir.
- 21 Q And he indicated that he understood them?
- 22 A Yes, sir.
- 23 Q After you gave him those, did he say anything
- 24 to you or did he speak to you at that point in time?
- 25 A Yes. He was -- while I was sitting there

1 talking to him, he said the lady driving the car
2 that was with him was not involved, please don't put
3 her in jail, she was not involved, that it wasn't
4 hers.

5 And for the record, this happened in Edgefield
6 County in Johnston, in the city limits of Johnston,
7 in Edgefield County, South Carolina. I mean, that's
8 where it was.

9 Q Okay. So you went through his rights with him.
10 He indicated he understood them and he told you
11 that?

12 A Right.

13 MR. MAYE: Answer any questions the defense has
14 for you.

15 THE COURT: Cross?

16 MR. SNELL: Very briefly.

17 CROSS-EXAMINATION

18 BY MR. SNELL:

19 Q Where did you have Mr. Lytes in custody, inside
20 the car or outside the car?

21 A Outside the car.

22 Q Was he -- at that time, was he handcuffed or
23 otherwise restrained?

24 A Yes, sir, he was handcuffed.

25 Q And how many officers were present during the

1 admission of the Miranda rights or in earshot of
2 this statement?

3 A I would say there was three other -- four other
4 people in the general area there.

5 Q And what were -- who were those individuals?

6 A Pardon? The ones right up next to me, for me
7 to sit right here and tell you the exact ones that
8 were right beside me during it, I couldn't tell you,
9 sir.

10 Q But they would all be the officers indicated on
11 the report as being involved in the --

12 A Yes, sir, it would be officers.

13 Q -- in the arrest?

14 A Right. Yes, sir.

15 MR. SNELL: No further questions, Your Honor.

16 THE COURT: Redirect?

17 MR. MAYE: None. Thank you.

18 The State calls Investigator Roosevelt Young
19 with the Edgefield County Sheriff's Office.

20 ROOSEVELT YOUNG,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat. State your full name
23 and spell your last name, please.

24 THE WITNESS: Roosevelt Young, Y-o-u-n-g.

25 *****

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Investigator Young, on October the 24th of 2007
4 immediately after y'all executed the buy-bust in
5 this trafficking case and taken Mr. Lytes into
6 custody, were you present as he was advised of his
7 Miranda warnings by Special Agent Coby Perry of the
8 State Law Enforcement Division?

9 A Yes, sir.

10 Q Did you hear Agent Perry go through his Miranda
11 warnings to him there at the scene?

12 A Yes, sir.

13 Q Okay. Did the defendant in this case,
14 Mr. Lytes, did he indicate that he understood each
15 of his rights as Agent Perry went through them with
16 him?

17 A Yes, sir.

18 Q Did you hear Agent Perry threaten him, coerce
19 him or to do anything at all to influence his
20 decision as to whether or not he spoke with y'all?

21 A No, sir.

22 Q Did you or any other officer in your presence
23 there make any threats to him, promise him anything
24 or do anything to impact his decision as to whether
25 or not he spoke with you?

1 A No, sir..

2 Q In your presence, did he agree to talk to you
3 and did he, in fact, make a statement to you?

4 A Yes, sir.

5 Q What did he tell you in regard to the woman
6 that was in the car with him or had driven him
7 there?

8 A He just simply said Ms. Leaphart didn't have
9 anything to do with it. All the drugs was his.

10 MR. MAYE: Answer any questions that the
11 defense has for you.

12 CROSS-EXAMINATION

13 BY MR. SNELL:

14 Q Was that statement in regard to any specific
15 question that was asked of Mr. Lytes?

16 A No, sir, that was just based on an excited
17 utterance what he made.

18 Q And did he make any other statements other than
19 that one statement?

20 A Basically that was all. He just kept saying
21 she wasn't involved in it. It was all his.

22 MR. SNELL: Thank you. No further questions.

23 MR. MAYE: Thank you, Agent Young.

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

25 Anything else from the State?

1 **MR. MAYE:** Nothing from the State, Your Honor.
2 And that's the extent of the statement that we would
3 offer to him, basically that he acknowledged his
4 involvement that they're his drugs and that he
5 exonerated the driver there, Crystal Leaphart, and
6 emphatically stated that she was not involved in it,
7 had no involvement, no knowledge.

8 **THE COURT:** Does the defense have any evidence
9 on the Denno hearing?

10 **MR. SNELL:** No, Your Honor.

11 **THE COURT:** All right. This really does not
12 have anything to do with Denno ruling, which I
13 haven't made yet, but I'm going back to the Rule 5
14 issue that we argued at great length this morning
15 and this afternoon.

16 Rule 5 requires that the substance of any oral
17 statement that the prosecution intends to offer in
18 evidence at trial made by the defendant before or
19 after arrest in response to interrogation by any
20 person then known to the defendant to be a
21 prosecution agent.

22 I didn't understand until now that the State
23 was claiming that the defendant claimed ownership of
24 the drugs or dominion and control over the drugs.
25 Was that disclosed to the defense?

1 **MR. MAYE:** Your Honor, we did relate orally, we
2 did not -- it was not in the form of a written
3 statement, it was an oral statement. We did relate
4 to the defense as we went over speaking to the CI
5 there at the scene that he exonerated the
6 confidential informant and had implicated himself in
7 this regard, that was not given in the form of a
8 written statement or any written summary, but we did
9 discuss it yesterday, Your Honor.

10 **THE COURT:** Mr. Snell, did you know about this
11 statement?

12 **MR. SNELL:** Your Honor, my understanding of the
13 scope of the statement was that Mr. Lytes had said
14 that Ms. Leaphart didn't have anything to do with
15 it. I did not know until the testimony just now
16 that part of that statement included -- was alleged
17 to have included claiming specific ownership of the
18 drugs. And what I did learn about the statement did
19 come orally from the Solicitor's office yesterday.

20 **THE COURT:** Play their testimony back.

21 (Whereupon, the testimony of Coby Perry and
22 Roosevelt Young was played for the Court.)

23 **THE COURT:** All right. Do y'all have anything
24 else?

25 **MR. MAYE:** Nothing else, Your Honor. That's

1 all we'd have for the voluntariness of the
2 statements.

3 THE COURT: Anything else from the defense?

4 MR. SNELL: Your Honor, other than I would
5 argue that the Miranda advisement as given wasn't
6 full and complete in that it did not include the
7 provision that he could start exercising his rights
8 at any time and which -- my understanding is that's
9 the majority rule around the country, although it
10 has not yet been adopted in South Carolina, at least
11 I don't believe so, but I believe that should be the
12 standard imposed in this case and don't believe that
13 he received a full and complete Miranda accordingly,
14 as well as it's also the defense position that that
15 statement wasn't -- the second half of that
16 statement wasn't disclosed during the discovery
17 process.

18 THE COURT: All right. Well, first, let me go
19 back to the Rule 5 issue. I wanted to listen to the
20 testimony again because Rule 5(a)(1)(A) provides
21 that the substance of an oral statement that the
22 prosecution intends to offer in evidence at trial
23 made by the defendant before or after the arrest has
24 to be disclosed if it's in response to interrogation
25 by a person then known to the defendant to be a

1 prosecution agent.

2 The only evidence I have before me was this was
3 not in response to any interrogation, that it was a
4 spontaneous statement. So I revisited the Rule 5
5 motions and do not see any reason to change the
6 ruling previously made.

7 With regard to Jackson versus Denno, I find
8 that the State has established by the requisite
9 degree of proof that the statements attributed to
10 the defendant are admissible. It will be up to the
11 jury to determine if the State has established that
12 beyond a reasonable doubt that the -- that the
13 statement was, in fact, made and then the jury would
14 have to decide whether it was properly made and
15 voluntarily made and Miranda warnings were given
16 prior to it even though the issue of Miranda is one
17 for the Court and not for the jury, specifically.

18 I find that the defendant, when his freedom of
19 liberty was deprived in a significant way by a law
20 enforcement officer, was advised of his Miranda
21 warnings or the substantial equivalent thereof. He
22 was advised specifically that he had the right to
23 remain silent, that any statement that was made
24 against him could be used in court, that he had the
25 right to have an attorney, if he could not afford

1 one, one would be appointed for him at no charge.

2 He was properly advised of his rights under the
3 constitution related to appointment of counsel or
4 having counsel and his right to remain silent. He
5 was properly advised of the consequences of any
6 statement that he did choose to make. There's no
7 evidence there was any interrogation by law
8 enforcement prior to the statement being given.

9 The Court finds that the alleged statements of
10 this defendant were the product of the defendant's
11 own free will. They were not improperly induced by
12 compulsion, duress, fear, by promise of reward or
13 hope of reward. There's no improper conduct on the
14 part of the police officers, the law enforcement
15 officials, that it was -- the statements were made
16 after the giving of the Miranda warnings. They were
17 not in response to any police interrogation, so a
18 lot of this analysis really may be inapplicable, but
19 Miranda warnings were properly given.

20 The State has established that the defendant
21 freely, knowingly, voluntarily and intelligently
22 waived those rights and made the statement. And the
23 statement is admissible if a proper foundation is
24 laid in front of the jury.

25 Any other pretrial issues?

1 (There was no response.)

2 THE COURT: State ready for the jury?

3 MR. MAYE: The State's ready, Your Honor.

4 THE COURT: Defense?

5 MR. SNELL: Yes, Your Honor.

6 THE COURT: Bring in the jury.

7 (The jury enters the courtroom.)

8 THE COURT: Members of the jury, the first
9 order of business is that I have to have you placed
10 under the oath of a trial jury. So I need for you
11 to stand and raise your right hand. The Clerk will
12 administer your oath.

13 (The jury was duly sworn by the Clerk of
14 Court at 2:40 p.m.)

15 THE COURT: All right. Ladies and gentlemen,
16 we're going to get started in the trial of the case.
17 I'm going to begin by just telling you logistically
18 how we normally operate with the jury. Then I'm
19 going to tell you how I expect the case to begin. I
20 won't go through all of the different stages, but
21 I'll tell you how we'll get started and then I'm
22 going to give you some instructions you have to
23 follow throughout the trial.

24 We usually bring the jury in at 9:30. We
25 usually go until about 1:00 and break for lunch.

1 Usually, you would have a lunch break for an hour to
2 an hour and a half. We usually start back around
3 2:00 to 2:30 and we usually break for the day
4 between 5:00 and 5:30. I know I told you that
5 Monday, but that's usually how we operate except
6 when the jury has the case. You know as much as I
7 know about how your day is likely to go right now.

8 The next thing I want to explain to you is how
9 the case will begin. The first thing you're going
10 to hear will be the opening statements of the
11 attorneys. In these opening statements, the
12 attorneys are not permitted to engage in argument.
13 Opening statements are introductory in nature.
14 They're an outline, an overview, an introduction.

15 Once the opening statements are finished, then
16 I will call upon the State to present its case. The
17 State brought this charge and the State has the
18 entire burden of proof. And the State has to prove
19 every essential element of the offense charged
20 against the defendant beyond a reasonable doubt. So
21 I will recognize the Solicitor to present evidence
22 in an attempt to meet that burden.

23 When the State finishes presenting its case in
24 chief, the Solicitor will inform me that the State
25 rests. At that point wherever we are, I have to

1 stop and send you out of the jury room -- back to
2 the jury room so that I can discuss some legal
3 issues with the attorneys. When you come back from
4 there, I'll tell you the next steps that we'll go
5 through, but that's how we're going to get started.
6 Those are the benchmarks, the landmarks you can look
7 for as we go along.

8 All right. Now, ladies and gentlemen, it's
9 really important that you understand some things.
10 That oath that you just took was one in which you
11 promised us that you're going to decide this case
12 based on the evidence and the law so you need to
13 know where those things come from.

14 The evidence comes from the sworn testimony of
15 witnesses. Evidence can also come in the form of
16 exhibits. Exhibits are anything tangible marked in
17 the record. It can be a map, a chart, a photograph,
18 a recording, anything tangible.

19 If something is an exhibit, you will have it
20 with you in the jury room when you decide the case.
21 And the reason I'm telling you that is because it's
22 not unusual for an attorney to have something like a
23 small photograph and show it to you from a distance
24 or hand it into the jury box and ask you to
25 circulate it around so that you're trying to pay

1 attention to what's going on in the witness stand
2 while you're also trying to pay attention to what's
3 circulating around the jury box. So just realize
4 that all of the exhibits go back with you when you
5 decide the case.

6 So exhibits are evidence, and the testimony of
7 the witnesses, that's evidence. What the lawyers
8 say is not evidence. I want you to pay close
9 attention to them, but what comes out of their
10 mouths is not evidence. The evidence comes from the
11 witnesses and the exhibits.

12 Now, there is one exception to that rule about
13 what the lawyers saying not being evidence. If we
14 come upon it, I'll tell you about it, otherwise I
15 won't burden you with it.

16 It's also very important that you understand
17 that there are two judges here. I'm the judge of
18 the law. It's my job to decide what law applies to
19 the case and to tell it to you at the end of the
20 trial. It's also my job to rule on legal issues and
21 preside over the trial, maintain order.

22 You're the other judge. You must understand
23 that you are the only judge of the facts. Only you
24 get to decide such things as whether evidence is
25 believable or not. Only you get to decide what

1 weight, if any, that evidence should have. That's
2 entirely your prerogative and I will not invade your
3 province.

4 Now, while you've promised us that you're going
5 to decide this case based on the evidence and the
6 law and you have to do that, as I mentioned to you
7 earlier, I'm not asking you to leave your common
8 sense at home. We want you to use your common
9 sense. We want you to use your sense of logic,
10 reason, your good judgment.

11 It just makes good common sense that you keep
12 an open mind about the case and you don't make up
13 your mind until you've heard all of the evidence and
14 you know what the law is. So there's a rule that we
15 have that's very hard to follow and I've mentioned
16 it to you earlier, but I have to repeat it again.
17 And that rule is that you are not to discuss this
18 case among yourselves until I tell you to.

19 Now, that's very hard to follow because you 14
20 folks may feel like you have little in common except
21 you all live in Edgefield County and you all got
22 picked on this case, so the logical thing you're
23 going to want to talk about during any break is what
24 just transpired in the courtroom or what somebody
25 just said or what somebody just did. You have to

1 resist that temptation until the end of the trial
2 when the case has been given to you to deliberate
3 and then we wait on you.

4 Don't discuss this case with anybody else until
5 the week is over and you've been seated on any jury
6 you might possibly be seated on. Don't discuss the
7 case with family members, friends, anybody else
8 until the verdict has been rendered and you've been
9 discharged.

10 If there's any media coverage of the trial, get
11 away from it, don't let yourselves be exposed to it
12 and report to me what you saw, heard or read through
13 the media.

14 If anybody does attempt to contact you and
15 discuss the case with you, please report that to me
16 so that I can deal with it.

17 You're not to do any independent investigation.
18 I mentioned that to you before the break and I gave
19 you examples of things that have been problems,
20 people going on the Internet and trying to look up
21 law. One other typical problem is once somebody
22 finds out where -- a jury finds out where the scene
23 of an incident is alleged to have occurred, I've had
24 people go out and look around, don't do that. As I
25 mentioned to you earlier, you're not to do any

1 independent investigation and you need to understand
2 that you're perfectly equipped to do what you need
3 to do.

4 Folks, I need y'all to bear with me because the
5 Chief Justice just sent something out that I'm
6 supposed to read to y'all.

7 (Pause.)

8 **THE COURT:** This has to deal with the
9 instruction I just gave you about independent
10 investigation, but apparently that's become such a
11 problem across the State that the Chief deemed it
12 appropriate to write out a specific instruction
13 dealing with cell phones and things like that.

14 All right. Ladies and gentlemen, I am supposed
15 to instruct you that until your jury service is
16 concluded, you are not to discuss the case with
17 others including other jurors except as otherwise
18 authorized by the Court. You are not to read or
19 listen to any news reports about the case.

20 You are not to use a computer, cell phone or
21 other electronic device with communication
22 capabilities while in attendance at trial or during
23 deliberations. These devices may be used during
24 lunch breaks, but may not be used to obtain or
25 disclose information that's prohibited by the

1 instruction that I'm about to give you.

2 The use of a computer, a cell phone or other
3 electronic device with communication capabilities or
4 any other method to obtain or disclose information
5 about the case when you're not in court is not to be
6 done. Information about the case includes but is
7 not limited to information about a party, a witness,
8 an attorney or a court officer, information about
9 the news accounts of the case, information collected
10 through juror research on any topics raised or
11 testimony offered by any witness, information
12 collected through the juror research on any topic
13 the juror might think would be helpful in deciding
14 the case.

15 So I've told you what the Chief said I had to
16 tell you. I think I covered it already, but now I
17 know I've got it covered.

18 The last thing I want to tell you folks is
19 this: I really do want to thank you for your
20 service. I know that you've got other places to be
21 and other things to do. I'll do the best thing I
22 can to keep things moving along.

23 I promise you we've been working all morning.
24 I had about ten minutes for lunch. We've been
25 working the entire time. So as you've already

1 figured out, I can't promise you won't have to wait
2 on us, you already have, but I do promise you this,
3 we won't be goofing around, telling jokes, drinking
4 coffee. If you're waiting on us, we'll be working
5 and that's all I can promise you.

6 To honor my commitment to you, I'm going to be
7 quiet to you now and invite your close attention.

8 Solicitor, you're recognized for your
9 opening --

10 **MR. SNELL:** Your Honor, before we begin, I do
11 have one final matter for the Court.

12 **THE COURT:** All right. Ladies and gentlemen,
13 please step in the jury room. Don't discuss the
14 case.

15 (The jury retires to the jury room.)

16 **THE COURT:** Yes, sir.

17 **MR. SNELL:** Your Honor, in between the -- or
18 after you asked us to be ready to go and before the
19 jury came in, I was notified that the State had
20 premarked some exhibits. And I'm specifically
21 referring to State's Exhibits 3, 4 and 5, which are
22 photographs of a car, of a scale and the interior of
23 a car.

24 Your Honor, these photographs were not
25 disclosed during the discovery portion. I've never

1 seen them before. And I suspect they're scenes
2 of...

3 (Pause.)

4 **MR. YOUNG:** Your Honor, original discovery was
5 provided to Mr. Randy Williams on November 12th,
6 2008. He was the first counsel in this case, that
7 was followed by Belinda Ellison. A third package
8 was developed at some point. I don't know.

9 I have the original package. It includes every
10 one of those photographs. I'll show it to him.

11 **THE COURT:** Madame Clerk, hand me those,
12 please.

13 (Pause.)

14 **THE COURT:** Yes, sir.

15 **MR. SNELL:** Your Honor, I've got a stack --
16 I've got the -- been provided with what looks like a
17 copy of a set of discovery materials provided to
18 Mr. Williams, the original attorney, on November
19 12th, 2008, which is 44 pages. It does contain the
20 three photographs.

21 I'm working off a set dated January 28th that
22 is 46 pages, but did not include the photographs.
23 So I think I've got -- I probably have some
24 additional pages. I don't know what they are.

25 My client has indicated to me that

1 Mr. Williams, when he forwarded him his discovery
2 last year, did not include the photographs of the
3 car or the scale.

4 THE COURT: Exhibit 5 for identification
5 appears to be a photograph of a vehicle which
6 appears to be in some sort of impound lot. What is
7 this?

8 MR. YOUNG: Your Honor, that I believe is the
9 Plymouth Breeze that was being operated in which he
10 was a passenger.

11 THE COURT: When was the photograph taken?

12 MR. MAYE: Contemporaneous with this, Your
13 Honor.

14 It was my understanding they'd been provided
15 not once but multiple times. We have a standard
16 fact that of discovery it was my understanding it
17 included all of the photographs and it was my
18 understanding that it had been provided multiple
19 times.

20 We went through, I think, three attorneys with
21 this. And we thought that all of it had been
22 provided and it had been provided multiple times.
23 We have that it was duplicated and provided and
24 those photographs intact in there. And like I said,
25 we maintained a copy here with some, I think, 46

1 some odd pages. To my understanding, every bit of
2 it had been sent repeatedly, I thought, to each
3 attorney.

4 THE COURT: Exhibit 4 for identification is a
5 set of scales with what appears to be some sort of
6 white rock like substance on the top of it with a
7 reading of 65.77 grams inside of a Ziploc bag. And
8 do you know when this was taken, who took it?

9 MR. MAYE: Contemporaneously, it was taken
10 contemporaneous with the deal, Warren Miller of the
11 sheriff's office.

12 THE COURT: Before or after the buy?

13 MR. MAYE: After they took it down. That was
14 -- after the buy-bust, those are the drugs that they
15 got back from the confidential informant, the ones
16 that were tested in this case.

17 THE COURT: All right. I got my buy-bust
18 terminology confused.

19 And Number 3 is the interior of the vehicle.
20 What is this?

21 MR. YOUNG: That's the interior of the Plymouth
22 Breeze automobile, Your Honor, that was -- in which
23 he was the passenger, shown in the passenger seat in
24 the prominence.

25 THE COURT: Is there anything in that

1 photograph that relates to drugs?

2 MR. YOUNG: Your Honor, I believe there will be
3 some testimony about him having a paper bag and
4 there's a crumpled up paper bag in that seat.

5 THE COURT: All right. And what's your motion,
6 Mr. Snell?

7 MR. SNELL: Your Honor, again, and I certainly
8 do -- and I certainly do understand having a case
9 with three attorneys. The defendant has been
10 provided with copies of discovery from, you know,
11 his original attorney and from my office, hasn't
12 seen the photographs. And I guess I want to make
13 sure there's nothing else, any other photographs or
14 any materials.

15 MR. YOUNG: We can have these marked at this
16 time, Your Honor. I just obtained the drugs from
17 the SLED agent who was in the next room. She just
18 provided them to me and she released them to me.
19 I'll have these marked as an exhibit and we intend
20 to offer them.

21 THE COURT: Do I have a motion in front of me
22 or not?

23 MR. SNELL: Your Honor, I'd make a motion to
24 suppress those photographs.

25 THE COURT: All right. The motion is denied at

1 this stage. I mean, they haven't been admitted, but
2 I'll give you some time to go over them with your
3 client. Obviously, I'm not limiting whether they're
4 admissible or inadmissible, but they're pretty
5 straightforward photographs.

6 I don't want those drugs just laying around
7 now, if that's what they are.

8 **MR. MAYE:** I'm going to ask that Agent Perry
9 keep those in his custody here in the courtroom.

10 **THE COURT:** Well, you're going to put Mr. Young
11 in the chain in a minute. Y'all tell me that
12 there's a chain issue and y'all are walking around
13 with drugs.

14 All right. I'll give you a few minutes to talk
15 to your client about the photographs and then we'll
16 see if there's anything I need to consider.

17 **MR. SNELL:** It'll be very briefly.

18 **THE COURT:** We're at ease.

19 (Brief Recess.)

20 (State's Exhibit Number 6, crack cocaine,
21 was marked for identification.)

22 **THE COURT:** In case I did not rule previously,
23 the motion to suppress the evidence based on a
24 discovery violation is denied. The Court finds the
25 discovery was given. The Court did allow an

1 opportunity for counsel and the defendant to review
2 those three photographs.

3 All right. Both sides ready now?

4 MR. SNELL: Yes, Your Honor.

5 MR. MAYE: The State's ready, Your Honor.

6 THE COURT: Bring them in.

7 (The jury returns to the courtroom.)

8 THE COURT: All right. Ladies and gentlemen, I
9 think we're ready to proceed now. During the break,
10 one of the bailiffs indicated that there was a
11 question about whether you could take notes. It's
12 fine with me if you take notes, but I'm supposed to
13 give you an instruction if you want to take notes.

14 The judges that do not allow jurors to take
15 notes, the primary reason they give for not allowing
16 that is that they are concerned that a juror who is
17 making written notes would be given an undue amount
18 of deference by the other jurors during the
19 deliberations because they would feel like if
20 something was written down, that that had greater
21 significance than something that was just in
22 someone's memory.

23 I don't buy into that at all, never have. You
24 know what you believe strongly and what you may have
25 questions about. So it's absolutely fine with me if

1 you take notes, but if we allow you to take notes,
2 we're supposed to have three rules.

3 The first rule is that during any breaks, you
4 have to leave the notes in the courtroom. So you
5 will just turn them facedown and lay them in your
6 chair or on the rail and then we'll get them back to
7 you before we started the next segment.

8 The next rule is that during deliberations, you
9 may take the notes back with you, but you cannot
10 physically show them to another juror. You may look
11 at them and then you may say whatever you like, but
12 you can't turn them to the juror and say, see, I've
13 got it written down right here. You can't do that.

14 And the third rule is that after the trial is
15 over, the notes have to be destroyed. We tear them
16 into little pieces or run them through a shredder,
17 but we do not ever read your notes. We're not
18 interested in reading your notes.

19 If you want to take notes, that's fine with me.
20 If you need something to write on, just tell the
21 bailiff. We'll get it for you right now. It's a
22 good idea maybe to put your name on the back or
23 something so that we can make sure that we get the
24 right ones to the right folks. But with those
25 rules, if you want to start taking notes at any

1 time, you're welcome to do it.

2 All right. Solicitor, you're recognized for
3 your opening statement.

4 MR. MAYE: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 OPENING STATEMENTS

7 MR. MAYE: Ladies and gentlemen, my name's
8 Ervin Maye. I'm an Assistant Solicitor in the
9 Eleventh Circuit. I work for your elected
10 Solicitor, Mr. Donny Myers, whose office is out of
11 Lexington. For about, I think, this month is 15
12 years, I've been helping him take care of McCormick,
13 Edgefield and Saluda Counties. It's certainly my
14 privilege today to be here representing the State of
15 South Carolina.

16 Seated at the State's table with me are a
17 number of individuals that are involved in law
18 enforcement here in Edgefield County. Direct your
19 attention specifically, the gentleman here in the
20 blue suit coat is Special Agent Coby Perry of the
21 South Carolina Law Enforcement Division. Agent
22 Perry has been employed or has recently retired from
23 the South Carolina Law Enforcement Division.

24 You'll hear what I'm talking with you about
25 now, you're going to sit as the judges of the facts

1 in this case and the evidence will come from the
2 stand, Special Agent Perry lived here in Edgefield,
3 but for a long time he's worked for the South
4 Carolina Law Enforcement Division before recently
5 retiring.

6 Seated here next to him in the pinstriped suit
7 is Investigator Roosevelt Young. And Investigator
8 Warren Miller is there in the gray suit seated over
9 there on the other side to the right of Agent Perry.

10 You're going to hear in this case that the
11 South Carolina Law Enforcement Division became
12 involved in an ongoing drug investigation that was
13 initiated by the Edgefield County Sheriff's Office.
14 Investigator Young and Investigator Miller work on
15 the narcotics team here for the Edgefield County
16 Sheriff's Office that's involved in a cooperative
17 organization where they cooperate with Saluda County
18 and McCormick County and they have a narcotics
19 squad. Investigator Young is the commander there
20 and you're going to hear his testimony in this case.

21 I submit to you that what you're going to hear
22 in this case is that the defendant, seated over here
23 with his lawyer, Mr. Odouri Lytes, on October the
24 24th of 2007, had in his possession 58 grams of
25 crack cocaine and he had just conducted an

1 undercover deal with a confidential informant and
2 they took it down as a buy-bust.

3 You're going to hear a lot of the terminology
4 about how they work these narcotics deals and what
5 some of the slang terms are. And I'll let Agent
6 Perry and Agent Young do a much better job of that
7 from the stand talking with you about how they go
8 about conducting these investigations.

9 I submit to you the defendant in this case, Mr.
10 Lytes, is charged with trafficking. When you're
11 talking about drugs or controlled substances, at the
12 conclusion of this case, I submit to you that Judge
13 Keesley, just as I talked to you just a second ago
14 about how you're going to sit as the judges of the
15 facts in this case, you'll judge the credibility of
16 what you hear from the stand and sit as judges of
17 the facts. Just as surely as you're judges of the
18 facts, Judge Keesley presides over this, he's going
19 to charge you at the conclusion of all of the
20 evidence in this case with what the law is.

21 I submit to you that Mr. Lytes, Mr. Odouri
22 Lytes, is charged with trafficking. I submit to you
23 you'll hear and the Judge will give you the
24 definition of trafficking, but when you're talking
25 about controlled substances, if they catch a kid or

1 they catch somebody with a little bit of drugs on
2 them, a little bit of marijuana, they call that
3 simple possession. If they catch them with a little
4 bit of crack, just merely possessing, they've got it
5 on them, they typically get charged with possession.

6 In South Carolina, if someone that possesses
7 drugs above a certain quantity or possesses drugs in
8 multiple packages, different circumstances can come
9 in, different pieces of evidence, that person can be
10 charged with possession with intent to distribute.

11 I submit to you the case that we're up here
12 today is trafficking. And the Judge is going to
13 charge you with what the law is, but specifically
14 when it comes to crack cocaine, if an individual has
15 more than 10 grams, and it's broken down into
16 different categories, 10 to 28 grams, 28 to a
17 hundred grams and it goes on up from there, what
18 we're talking about is a second tier trafficking
19 case in this, 28 to a hundred grams, and I've
20 already told you in this case what we're talking
21 about. And the State's got the burden of proof in
22 this case and we welcome it.

23 What we're going to prove to you from the stand
24 up here, from the witnesses that we're going to put
25 forward and the evidence that'll come into this

1 case, is that he had 58 grams and that it's in that
2 second tier, from 28 to a hundred grams.

3 And I submit to you basically what we're going
4 to prove in this case is we're talking about drugs
5 at the wholesale level not a street level deal, but
6 we're talking about a significant quantity of drugs
7 in this case, that \$1600, \$1625, was put forth by
8 the State, the South Carolina Law Enforcement
9 Division, to make this purchase from Mr. Lytes.

10 We're going to have to back up a little bit and
11 Agent Young and Agent Perry are going to tell you a
12 little bit about the background about how this case
13 against Mr. Lytes developed. I submit to you one of
14 the ladies that you're going to hear from in this
15 case is a lady named Antoinette Thomas. And she was
16 working as, some of the terms that they use of
17 narcotics officers, she was working as a CI or a
18 confidential informant.

19 Agent Young is going to get up here on the
20 stand and tell you that based on an investigation
21 that he was doing that involved Antoinette Thomas,
22 that he got a search warrant from a judge here in
23 this county and he went to her residence and he
24 executed a search warrant and he caught her with
25 crack cocaine.

1 But he's going to tell you that rather than
2 charge her in this case, he did not draw any
3 warrants in this case and did not bring up any
4 charges against her at that time, he flipped her and
5 used her as a confidential informant. She started
6 to work for law enforcement at that time.

7 And what you're going to hear is on the day
8 that this took place, on October the 24th of 2007,
9 Antoinette Thomas had already begun to supply
10 information to both the South Carolina Law
11 Enforcement Division and the Edgefield County
12 Sheriff's Office about drug activity here. And she
13 began to work to try to do deals in this case and
14 work for law enforcement in this case, set up drug
15 transactions for them.

16 You're going to hear that on the morning of
17 October the 24th of 2007, that she used her cell
18 phone. She told them when she got caught, I know
19 somebody I can buy from and I can get some big
20 weight.

21 She called Odouri Lytes on the cell phone that
22 morning and talked with him about doing a deal for
23 two ounces of crack cocaine. You're going to hear
24 that they were actually working on something else
25 that day. She was working and she had multiple

1 things going for them at the time, but they were
2 trying to work on another deal that day, work on
3 other activities, but during the course of that day,
4 Mr. Lytes is extremely anxious for this deal to take
5 place and he calls her over and over again.

6 You're going to hear from Ms. Thomas that he
7 rung her phone about three times that day wanting to
8 do this deal. And so you're going to hear that the
9 narcotics officers stopped what they were doing that
10 day, and they've got to dot their I's and cross
11 their T's in this case, and you're going to hear a
12 lot of tedious things in this case about how they
13 control these transactions, but, folks, what they
14 are talking about doing and what we're going to
15 prove in this case is they did a controlled
16 transaction. So even though it would have been easy
17 when she got that phone call for them just to stop
18 and go do the deal, that's not what they did.

19 They stopped what they were doing and they went
20 back to their headquarters. They got a female
21 officer to come from the sheriff's office so that
22 they could search Ms. Antoinette Thomas, the lady
23 that was working as a confidential informant. And
24 you'll hear that the reason that they do that in
25 this case is she was working for law enforcement and

1 they want to make sure that she's not bringing in
2 any outside drugs or she doesn't have money from
3 other sources, that anything that she has on her
4 when she goes to do a controlled transaction, that
5 they know about and they've got it under control and
6 they can monitor it in this case.

7 So they brought a female officer in who was
8 able to completely and thoroughly search her at that
9 time. And they put a wire on her, a body wire, that
10 was a recorder at that time. They searched her.
11 They searched the vehicle that she was going to be
12 driving. They put a wire on her. And Agent Perry
13 and Agent Miller got into an undercover vehicle and
14 tailed along behind her. Investigator Young was
15 monitoring this wire and listening to it live. He
16 was a little bit farther back.

17 And they left the location where they wired her
18 up and searched her and they went to just out at the
19 county line out here on Highway 23, near Highway 23
20 and Monument Drive, to a little car lot called
21 Bledsoe's there and that's where they had agreed to
22 meet.

23 And you're going to hear, we're going to put
24 the wire evidence in, the recording. And I submit
25 to you up front, when you're talking about a hidden

1 and undercover wire, and officers will talk to you
2 about this from the stand, it is not crystal clear.
3 It's a hidden recorder. And the tape recording is
4 actually being transmitted over a transmitter or
5 recorded by a moving vehicle in another vehicle
6 that's back behind it, but you can hear the gist of
7 what's going on in there and you can certainly hear
8 conversation.

9 And one of the things you're going to hear in
10 this case when you hear that wire and when Ms.
11 Thomas testifies in this case as the confidential
12 informant, that they said and they talked about
13 doing a deal for this two ounces. And there was
14 conversation beforehand, Are you sure, you know,
15 we're going to do this deal, that you're going to
16 produce the money and buy it, before he came up.

17 And you're going to hear that as she drove
18 there at that prearranged meeting location, there
19 was another call from the defendant in this case,
20 Mr. Lytes, to her, Where are you, where are we going
21 to meet in this case? They talked about what kind
22 of vehicle that he would be arriving in from
23 Batesburg-Leesville.

24 You're going to hear that Mr. Lytes in this
25 case got a young lady who was -- she's 21 now, this

1 occurred back in 2007, named Crystal Leaphart. And
2 I submit to you you're going to hear from the stand
3 in this case because she's going to come testify
4 that she drove Odouri Lytes from over in
5 Batesburg-Leesville to that meeting location there
6 near Bledsoe's Car Lot on Highway 23.

7 And she's going to tell you in this case, and
8 law enforcement are going to tell you what they did
9 on that day, she's going to tell you that she gave
10 him a ride, but she did not know what she was
11 bringing him for. She had encountered him while she
12 was visiting with a friend of hers.

13 She's going to get up here and testify that he
14 arranged with her for him to get a ride basically to
15 that spot and that when he got there, he got out of
16 her vehicle that she arranged to drive over there.
17 He bought her some gas money and gave her some of
18 the change as a result of him buying some gas money
19 and she's going to tell you that she just agreed to
20 drive him over there. She stopped her car and he
21 got out of her car and went and got in the car with
22 the confidential informant.

23 Now, at this point in time, law enforcement
24 officers, Agent Perry, Agent Miller and Investigator
25 Young in this case, they've all been trailing along.

1 And they're back where they can see what's going on
2 and monitor this wire and they're keeping control of
3 this transaction.

4 But Mr. Lytes gets out of his vehicle and gets
5 in with Ms. Antoinette Thomas and drives just a very
6 short distance to another spot and they stop. There
7 the deal takes place. She's already gotten -- and
8 the agents in this case, Investigator Perry has
9 photocopied the money that he gave her. He gave her
10 \$1625 in funds that they had documented. They made
11 xeroxed copies of all of the money they gave to her
12 in case it got outside of their control so they
13 could try to find this money again.

14 He gave her \$1625 plus a little bit of money
15 that she was going to give Mr. Lytes for his
16 expenses in driving over there from
17 Batesburg-Leesville, so she had \$1650 in SLED money.

18 And Investigator Perry's going to get up here
19 from the stand and basically tell you that one of
20 the reasons that SLED is involved in cases like this
21 is because the Edgefield County Sheriff's Department
22 doesn't have the budget and they don't have the
23 resources to produce 1600 bucks in cash that might
24 potentially get away.

25 And I think that officers are going to tell you

1 that, some of the slang terms, sometimes they'll
2 make a buy and they'll just let that money go, they
3 talk about letting it walk. They'll make a buy
4 sometimes, sometimes make multiple buys over a
5 period of time and sometimes they just let them go
6 with the money, they let it walk.

7 But in this case what they were going to do is
8 called a buy-bust transaction. They weren't going
9 to let the money go. They weren't going to let Mr.
10 Lytes go. Just as soon as they knew that the
11 hand-to-hand transaction had taken place, that Ms.
12 Thomas had given him that \$1650 and she had the
13 drugs in her hand, they were going to come from
14 every direction and descend on the spot there and
15 take them both down, a buy-bust operation.

16 And, ladies and gentlemen, you're going to hear
17 from the stand up here and from all of the witnesses
18 in this case that that is exactly what took place.
19 They were monitoring that wire. They could hear
20 this conversation about the two ounces. They knew
21 that the deal had taken place. And then
22 Investigator Young signaled all of the other
23 officers who were at the scene there and they
24 descended on Ms. Thomas' vehicle and they caught him
25 right there.

1 She had the drugs that she had just gotten from
2 him. He had the \$1650 in his pocket. They got it
3 back out of his pocket. They photocopied it again.
4 And you'll hear the procedures that they went
5 through at that point in time.

6 They put him under his Miranda rights at that
7 time. And he immediately told them, and you'll hear
8 in this case that the young lady, Ms. Leaphart, that
9 had driven him there, he immediately said, Look,
10 it's mine, she didn't have anything to do with it,
11 she just drove me over here.

12 I submit to you, ladies and gentlemen, it's not
13 a complicated case. You're going to hear from the
14 investigators how they set this deal up, how it was
15 that Ms. Thomas, the confidential informant in this
16 case, came to work for the sheriff's office, how she
17 set this deal up, about how they searched her, they
18 searched her automobile, they documented the money
19 they gave her, they monitored it with a recording,
20 they followed her out there and just as soon as the
21 deal went down, they descended on them and they made
22 their arrest.

23 I submit to you that's the evidence that the
24 State's going to put forward in this case. We're
25 going to put the drugs into evidence in this case.

1 We're going to put a chemist from the South Carolina
2 Law Enforcement Division that got those drugs, they
3 were transmitted and taken to SLED by Agent Perry,
4 and that she tested them and she's going to tell you
5 that it was nearly 58 grams of crack cocaine in this
6 case.

7 We've got the burden of proof in this case and
8 we welcome it. I submit to you that the evidence at
9 the conclusion will be overwhelming. All that I ask
10 that the 12 of you do is go back in that jury room
11 and deliberate in this case is come back with a
12 verdict that speaks the truth. I appreciate your
13 close attention.

14 **THE COURT:** Thank you, Solicitor.

15 All right. Mr. Snell, you're recognized for
16 your opening statement.

17 **MR. SNELL:** Thank you, Your Honor. May it
18 please the Court.

19 My name is James Snell. I'm an attorney in
20 Lexington, South Carolina, not too far from here. I
21 tell folks, who most thinks would be a laugh, I'm
22 across the street from the Chamber of Commerce and
23 Physicians Weight Loss. We're down across the
24 street, the next time -- right next to the County
25 Administration Building.

1 I'm the lawyer for Odouri Lytes, who's the
2 gentleman seated here at the table. Odouri's 28
3 years old. He's accompanied today by his mother and
4 two nieces and a family friend. And make no mistake
5 about it, this is the most important day or maybe
6 two days in Mr. Lytes' life.

7 The Solicitor, in giving his opening statement,
8 gave a recital or a summation of the facts as he
9 sees them. And I don't want to go over and review
10 everything, but let me tell you the -- we think
11 there's an abundance of reasonable doubt in this
12 case.

13 In order to prove their case, they have to
14 prove what occurred in a car between the
15 confidential informant and the defendant, Mr. Lytes.
16 There's only two folks in the car. And there was an
17 audio recording made of the transaction, the alleged
18 transaction, what went on in that car. I've
19 listened to it and I can't understand it. It is, I
20 think poor quality is an understatement. I'd be
21 surprised if anyone can make out more than a
22 syllable or two during the actual in car portion.

23 The confidential informant in this case was
24 herself found to be in possession of crack cocaine
25 enough to charge her with trafficking just a few

1 months prior to this incident. And the CI, the
2 confidential informant, she and the police decide
3 that she can help them make some more arrests and
4 that she's willing to help give them some cases she
5 says, or she thinks she says, on a silver platter,
6 if you will. And if you don't -- if you don't put
7 me in jail or arrest me or prosecute me, I'll help
8 do anything you want.

9 I think there's serious issues with the
10 credibility of this informant. There are going to
11 be some other discrepancies that you're going to
12 hear about during the presentation of the defense in
13 this case.

14 The defendant, Mr. Lytes, has pled not guilty.
15 And he has absolutely no obligation, and I have no
16 obligation on his behalf, to prove he didn't do it.

17 This is a case where the State has the burden
18 of proof and they must meet that burden of proof
19 beyond a reasonable doubt. And I like to tell folks
20 that reasonable doubt is a type of doubt that would
21 make you hesitate before you act. You know, if
22 you've got to think about it and hesitate and
23 seriously mull it over before you pull the trigger,
24 that is reasonable doubt.

25 It's the highest burden that exists in the law.

1 It doesn't mean that he probably did it or there's
2 probably enough evidence. And, in fact, the law in
3 South Carolina is very clear, if, at the end of the
4 case in your deliberations, if you come to the
5 conclusion that he probably did it and you were
6 highly suspicious that he did it and you believe
7 that it's much more, you know, that it's more likely
8 than not that he did it, you follow the instructions
9 the Judge gives you, you must come back and return a
10 verdict of not guilty.

11 So what I'm going to ask y'all to do is listen
12 very carefully during the State's presentment of its
13 evidence and their witnesses, listen for
14 discrepancies, got a lot of things the State has to
15 prove including weights and how this occurred. I
16 don't think they can give it to you in a straight
17 line.

18 The most important part of this case is, from
19 our perspective, is going to be the instructions
20 that the Judge is going to give you at the
21 conclusion of the case. The Judge is going to
22 charge you as to the law. And we just ask that you
23 listen to that very carefully because if you listen
24 to the Judge's instructions and you follow them to
25 the letter of the law as you take an oath to do, I'm

1 very confident that you're going to return a verdict
2 of not guilty. Thank you for your time.

3 THE COURT: Thank you, Mr. Snell.

4 Call your first witness, Solicitor.

5 MR. MAYE: The State calls Special Agent Coby
6 Perry, retired from the South Carolina Law
7 Enforcement Division.

8 THE COURT: Come around and be sworn, please.

9 COBY PERRY,

10 having been duly sworn, testified as follows:

11 THE CLERK: Have a seat. State your full name
12 and spell your last name, please.

13 THE WITNESS: My name is Coby Perry, P-e-r-r-y.

14 DIRECT EXAMINATION

15 BY MR. MAYE:

16 Q Agent Perry, if you would, just introduce
17 yourself to the extent -- tell them about your
18 background in law enforcement, tell them about where
19 you're from, tell them what kind of work you did in
20 your employment.

21 A I was born and raised in Edgefield County. I
22 started to work with law enforcement in 1979, was
23 with the South Carolina Wildlife Department, worked
24 there for approximately ten years. Five of those
25 years, I was assigned to the South Carolina

1 Governor's Raid Team to work drugs along with SLED,
2 the Highway Patrol and the ABC.

3 About five years later I guess it was, I
4 transferred over to the South Carolina Law
5 Enforcement Division to work strictly narcotics all
6 over the whole state. I worked there for
7 approximately 30 years and retired in December.

8 Q Let me ask you this. Agent Perry, because of,
9 I guess, your hometown and your connections here,
10 did you typically -- or did you frequently work with
11 the local narcotics task force? And would you
12 explain to the ladies and gentlemen of the jury how
13 you came to become involved in this case you got
14 involved in?

15 A I did. I pretty well worked all over the
16 state, but this is home and if I could work here in
17 the county, it was good to be here. How I got
18 involved in this case was Investigator Young had
19 contacted me and stated that he had an informant
20 that could do trafficking weight buys of crack
21 cocaine.

22 Q Tell the ladies and gentlemen of the jury what
23 resources that you can bring to a local law
24 enforcement agency when they're working a big
25 narcotics case, what specific assistance can the

1 South Carolina Law Enforcement Division offer and
2 what specific assistance did you offer in this case
3 that they would not normally have had access to.

4 A Okay. SLED can -- it was an -- we're an
5 assisting agency. We're there for manpower,
6 equipment, money and just equipment if it's needed,
7 but the main thing in this one was money. And then
8 if it was, say, it was going -- this deal was
9 supposedly to take place in Edgefield County, we
10 went into another county, we would be there to keep
11 on continuing with the deal. In this case --

12 Q By virtue of you being with SLED, do you have
13 jurisdiction in multiple counties?

14 A Right, statewide jurisdiction. So in this
15 case, it was the thing of manpower and money. Local
16 counties don't have the funds. SLED has a
17 contingency fund of money that's put there for drugs
18 and to be used. It is not tax payers' money. It is
19 drug money that is seized and put back in the
20 program. And we do walk money a lot of times.

21 Q Now, I want you to tell the ladies and
22 gentlemen of the jury, and I know I talked with them
23 about some slang, tell them about what walking money
24 is and about how y'all work those types of deals
25 that you cooperate with local law enforcement on.

1 A Some investigations you do you could do for
2 years. You're after multiple defendants, you're
3 after building up weight, you walk money. Say, you
4 would make a hundred dollar buy and you would let
5 that money go. You may make a 2,000 dollar buy and
6 let the money go. You may make a 50 dollar buy and
7 let the money go and pick them up later. And there
8 may be multiple defendants in that county or
9 throughout the state that you're working.

10 Q But y'all have to bear the brunt of the expense
11 of letting that money go?

12 A Right, but it also helps to develop more
13 defendants. If you have someone that's cooperating,
14 you try not to burn them until the last, so you keep
15 trying to work them as long as you can.

16 Q Tell them the difference in between letting the
17 money walk and working a deal like that with how you
18 would conduct a buy-bust situation and how that
19 differs -- and how it's different involving a CI.

20 A Well, the buy-bust is the best deal we could
21 get. You have a CI. It's in a controlled
22 environment, everything's controlled. You have them
23 searched, their vehicle searched, they're wired,
24 they're monitored, they're watched. You give them
25 the money, you document the money. They go make the

1 buy. There you have the drugs, the subject when you
2 arrest them and you also recover your money. That
3 is the best deal that we can get.

4 Q From an evidence standpoint?

5 A From an evidence standpoint.

6 Q Tell the ladies and gentlemen of the jury about
7 what happened October the 24th of 2007 and what your
8 involvement was in working the case involving the
9 trafficking charge against Odouri Lytes, the
10 defendant, in this case?

11 A Okay. On October --

12 Q Let me stop and ask you this. Is the
13 defendant, Odouri Lytes, present here in the
14 courtroom?

15 A Yes, sir, that's him right --

16 Q Could you point him out?

17 A -- right here sitting by his attorney in the
18 black coat, white shirt with a tie, and I guess he's
19 got gray colored pants on.

20 MR. MAYE: Your Honor, I would just like the --
21 well, for the record to recognize that he has
22 identified the defendant in this case.

23 THE COURT: It is so noted.

24 BY MR. MAYE:

25 Q Go ahead and tell them what you did on the --

COBY PERRY - DIRECT BY MR. MAYE

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1 A This was on October 24, 2007. It was in the
2 evening hours, took place here in Edgefield County
3 and right in the City of Johnston, South Carolina.
4 Investigator Young along with Investigator Miller,
5 Mr. Holloway from Saluda County and some other
6 agents and officers from the sheriff's department,
7 we were conducting a buy-bust to be in Edgefield
8 County in Johnston of approximately two ounces of
9 crack cocaine from a subject known to us as Gravy.

10 My involvement of that was I provided the funds
11 to Antoinette Thomas who was documented as a CI
12 through SLED. I provided her with \$1625 in
13 prerecorded state funds.

14 Q How did you record those?

15 A I ran copies of them. This was -- after she
16 had been searched, her vehicle had been searched and
17 we were getting ready to leave is when I actually
18 gave her the money and she re-counts it right in
19 front of us.

20 Q I'm going to show you what's previously been
21 marked for identification as State's 1 and State's
22 2. I'm going to ask you if you can identify those
23 photocopies there?

24 A Yes, sir.

25 Q What are those?

1 A This is a copy of the money that I provided Ms.
2 Thomas with. And this is a copy of the money that I
3 recovered out of Mr. Odouri Lytes' pocket.

4 THE COURT: Use the numbers, please.

5 BY MR. MAYE:

6 Q What's the number of the ones that you
7 recovered from Mr. Lytes?

8 A Exhibit 2, State's Exhibit 2. And State's
9 Exhibit 1 was the one where I first recorded them.
10 And you can tell where I have -- I would go back and
11 I'd put a check mark matching my serial numbers.

12 Q Did you match each one of those serial numbers
13 to one -- each bill that you gave to the
14 confidential informant, Antoinette Thomas, and
15 compare those with the money that you got back from
16 the defendant, Mr. Lytes, there on the scene?

17 A Yes, sir, I did --

18 Q Did they match?

19 A -- out the side of his left front pocket. Yes,
20 sir.

21 Q Every bill you gave her you got back out of his
22 pocket?

23 A Right. Yes, sir.

24 Q Are those copies fair and accurate
25 representations of the currency that you used, the

1 SLED buy money in this case?

2 A Yes, sir.

3 MR. MAYE: Your Honor, I move to admit these
4 into evidence at this time.

5 THE COURT: Subject to previous objections?

6 MR. SNELL: Yes, Your Honor.

7 THE COURT: Anything else?

8 MR. SNELL: Nothing further.

9 THE COURT: All right. Mark them in the record
10 please, ma'am.

11 (State's Exhibit Numbers 1 and 2,
12 photographs, admitted into evidence.)

13 BY MR. MAYE:

14 Q Agent Perry, you've already said you brought
15 the money with you from SLED and you marked it and
16 you gave it to Antoinette Thomas?

17 A Right.

18 Q What all did you do that day based on your
19 involvement as a narcotics agent for SLED in working
20 this case against Mr. Lytes?

21 A After I gave her the money, we were ready to
22 go, I, along with Investigator Miller with the
23 sheriff's department was riding with me. Once
24 Antoinette Thomas left from the meeting place, which
25 was the airport in Saluda, we followed her on

1 Highway 121 towards Johnston where she turned off on
2 to Monument Drive and we were watching.

3 Q Let me stop here and ask you this. Were you
4 working on the case exclusively that day on the 24th
5 against Mr. Lytes in this case or were you working
6 other cases along with that on that day?

7 A We were working all day on other cases, too.

8 Q Did there come a time that y'all stopped what
9 you were doing on the other cases and basically
10 changed gears and focused on Mr. Lytes' transaction
11 in this case?

12 A Yes, sir.

13 Q What did y'all do to prepare the confidential
14 informant? You've already testified in this case
15 that you gave her documented funds, you photocopied
16 it and you gave it to her. What else did y'all do
17 to control the transaction that you were involved
18 in?

19 A Her vehicle was searched.

20 Q What's the purpose in that?

21 A We want to make sure there's no contraband,
22 that means any other drugs or any other type stuff
23 that would be involved, weapons or anything like
24 that. We also search it for money so there's no
25 other moneys in there. Her pocketbook and her

1 person is also searched. Being it's a female, there
2 is a female that searches. A man won't search her,
3 we have a female search her.

4 Q Did y'all have a female agent come out and
5 search her that day prior to doing this transaction
6 with Mr. Lytes?

7 A I had a lady from the Edgefield County
8 Sheriff's Department.

9 Q Okay. Once y'all searched her, gave her the
10 money, wired her up and did the things that you're
11 talking about, where did y'all go? What did you do?

12 A Once we left from the meeting place at the
13 airport, we followed her, Ms. Thomas, towards
14 Johnston on Highway 121. She turned right outside
15 of Johnston right inside of the county there on
16 Monument Road (sic) to the left headed back towards
17 Highway 23 towards Bledsoe's is where we were
18 headed, towards Bledsoe's Car Lot, which is located
19 on the end of Monument Drive and Highway 23. I was
20 close enough I could watch her, keep her in sight.

21 Right past, you would say, where the road cuts
22 off to Rolling Avenue, a couple hundred yards or so
23 past, she met Mr. Lytes and the female in the
24 highway. I had to go just around them. And at that
25 time, I observed Mr. Lytes get into -- out of the

1 vehicle with the lady he was riding with and get
2 into the vehicle with Ms. Thomas. They turned
3 around, headed back towards Highway 121.

4 Q Who turned around and headed back?

5 A Ms. Thomas turned around and then the lady in
6 the car that was driving Mr. Lytes followed them.

7 Q What vehicle was the defendant in this case,
8 Mr. Lytes, in at that time?

9 A He had gotten into Ms. Thomas' vehicle. He was
10 originally in like, I think, it was a green color
11 Dodge or Chrysler car that he was riding with with
12 Ms. -- the lady that was driving him. They headed
13 back towards --

14 Q Let me ask you this. I'm going to show you
15 what's previously been marked as State's Exhibit 5.
16 Can you identify that?

17 A Yes, sir, I can.

18 Q What is that photograph of?

19 A That's the picture of the vehicle that he got
20 out of that -- when he got into the vehicle with Ms.
21 Thomas, the one that the lady was driving.

22 Q The one he came in originally?

23 A Right.

24 Q Is that picture a fair and accurate
25 representation of that vehicle?

1 A Yes, sir, it is.

2 MR. MAYE: I'd move to admit it into evidence
3 at this time.

4 THE COURT: Subject to previous objection?

5 MR. SNELL: Yes, Your Honor.

6 THE COURT: Anything else?

7 MR. SNELL: Nothing further.

8 THE COURT: Mark it in the record, please,
9 ma'am.

10 (State's Exhibit Number 5, photograph,
11 admitted into evidence.)

12 BY MR. MAYE:

13 Q Okay. You've laid out where they all are.
14 Where did they go?

15 A Once they headed back, I flipped around, turned
16 around in the road, started back following them.
17 They were headed back towards Highway 121. And they
18 turned, some people may call it Shop Road where the
19 school bus shop is, but it's also known as Rolling
20 Avenue, that will come back into Johnston.

21 They headed back into Johnston on Rolling
22 Avenue right past the school bus shop. The school
23 bus shop is on the right, right past it on the left
24 is a little church, Lotts Grove Baptist Church I
25 think is the name of it, sits right there on the

1 edge of the road. They turned and they -- after
2 going past -- going on down the road, they turned in
3 and pulled into Lotts Grove Baptist Church into the
4 parking lot.

5 The first vehicle in was Ms. Thomas' along with
6 her rider, Mr. Lytes, was in there with her and then
7 the lady pulled up behind them. I was notified the
8 deal was done at that time --

9 Q What were you looking for? What signal were
10 you waiting for or what were you waiting for at that
11 point in time?

12 A I was waiting for the word that the deal had
13 been done, that the transaction had taken place and
14 the money had changed hand and the drugs were turned
15 over to the -- given to the CI.

16 Q Once you received that, what did you do?

17 A I then -- at that time, we just came up in the
18 road as quick as we could to Lotts Grove Baptist
19 Church, came in behind the vehicles, blocked them
20 in, jumped out. At that time, Mr. Odoury Lytes was
21 getting out of Ms. Thomas' vehicle and at that time
22 some agents went and secured the car. I grabbed
23 him, placed him under arrest, put him in handcuffs.

24 Q Did you identify yourself to him at that point
25 in time?

1 A Yes, sir, I did. And I had a SLED raid vest
2 on.

3 Q Did y'all have weapons? Were you armed? What
4 did you do to identify yourself as law enforcement
5 officers?

6 A Yes, sir. We had weapons and our weapons were
7 drawn.

8 Q Did y'all take control of the scene at that
9 point in time?

10 A Yes, sir, we did.

11 Q You took him into custody and charged him with
12 what?

13 A Trafficking in crack cocaine.

14 Q Okay. Once you took him into custody and
15 charged him with crack cocaine -- with trafficking
16 crack cocaine in this case, did you give him his
17 rights?

18 A Yes, sir, I did.

19 Q Okay. Go through for the ladies and gentlemen
20 of the jury and tell them the circumstances about
21 you giving him his rights.

22 A Okay. His rights, I give him his rights just
23 so he knows exactly, you know, that he's been
24 arrested, that he has the right, that he can
25 cooperate, talk to us or he doesn't have to.

1 Q Please go through them just as you gave them to
2 him at that time.

3 A I told him, It's my duty to advise you that
4 you're under investigation by, and I told him who I
5 was and who I worked for, the South Carolina Law
6 Enforcement Division. I told him that you have the
7 right to remain silent, anything you say will be
8 used against you in the court. You have the right
9 to have a lawyer and counsel with him before and
10 while answering any question. And if you cannot
11 afford a lawyer, one will be provided for you
12 without cost. And I went over to, you know, ask him
13 if he understood.

14 Q Did he indicate to you that he understood his
15 rights?

16 A Yes, sir, he did.

17 Q Did you do that in a controlled and calm enough
18 situation that you were able to categorically go
19 through his rights with him?

20 A Yes, sir.

21 Q Did he indicate to you after listening to all
22 that you told him, that he understood his rights?

23 A Yes, sir.

24 Q What did he tell you at that point in time
25 after you advised him of his rights?

1 MR. SNELL: Objection, Your Honor.

2 THE COURT: Hold on just a moment.

3 Yes, sir.

4 MR. SNELL: I would just make an objection
5 based on prior grounds.

6 THE COURT: All right. The objection's
7 overruled.

8 You may continue.

9 BY MR. MAYE:

10 Q Tell the ladies and gentlemen of the jury after
11 he was given his rights and he indicated that he
12 understood them, what he told you.

13 A At that time, he made the statement, he says,
14 It's not hers. She's not involved. It's all mine.
15 It's mine.

16 Q And who was --

17 A I wasn't questioning him. He just made -- he
18 just --

19 THE COURT: Hold a second. I can't hear both
20 of y'all talk.

21 MR. MAYE: Sorry.

22 BY MR. MAYE:

23 Q Who did he refer to as her who was not
24 involved?

25 A He was pointing to the lady in the car that was

1 sitting beside us right there in the parking lot.

2 Q Ms. Thomas, the CI, or the individual that had
3 driven him there?

4 A The lady that had driven him there not Ms.
5 Thomas.

6 Q Okay. Ms. Thomas was your confidential
7 informant?

8 A Right. Right.

9 Q The other lady drove him there --

10 A It was the other lady that was in the car that
11 he had gotten out of, not the one that he was in
12 with Ms. Thomas at the time that I arrested him
13 where he was getting out. It was the lady that had
14 driven him to where he got in the car with her.

15 Q Did you ask him any specific questions prior to
16 him telling you that or did he just tell you that
17 information after you gave him his rights?

18 A He just gave me that information. I didn't ask
19 him anything.

20 Q Did you threaten him in any way?

21 A No, sir.

22 Q Did you make him any promises there?

23 A No, sir.

24 Q Did you offer him any hope of reward for
25 talking with him (sic)?

1 A No, sir.

2 Q Did you do anything to influence whether or not
3 he spoke to you or whether or not he told you
4 anything at that time?

5 A No, sir, I did not.

6 Q You gave him his rights and he made that
7 statement?

8 A Right. And all this was done there in the
9 church yard. It's in the city limits of Johnston in
10 Edgefield County.

11 Q I was going to ask you the next thing. Did all
12 of this transaction, what county did it take place
13 in?

14 A It took place in Edgefield County, South
15 Carolina.

16 Q The money that you had given Antoinette Thomas,
17 the confidential informant in this case, and
18 photocopied, did you retrieve that money and where
19 did you retrieve it from and from whom?

20 A Yes, sir. It was \$1625 that I had given her.
21 Sixteen hundred was actually for the drugs.
22 Twenty-five, she was helping him out for gas, for
23 his convenience. The \$1625 at the time when I
24 arrested him, I recovered it out of his left front
25 pocket.

1 Q Did you take possession of drug evidence there
2 from the interior of that vehicle and from whom did
3 you get that?

4 A Yes, sir. After I had gotten the money off of
5 Mr. Lytes and had him handcuffed and then I let
6 another officer take custody -- take him right there
7 just to hold him, I then immediately went over to
8 Ms. Thomas, who was instructed not to get out of the
9 vehicle to stay in her vehicle. I went over and at
10 that time, she turned the evidence over to me, the
11 drugs that she had gotten from Mr. Lytes.

12 THE COURT: I can't hear you.

13 THE WITNESS: That she had turned the drugs
14 over to me that she had gotten from Mr. Lytes.

15 THE COURT: Say it again, please.

16 THE WITNESS: Once I had gotten through with
17 Mr. Lytes and gotten my buy money back off of him, I
18 then let another officer hold on to him. I went
19 back over to Ms. Thomas, who stayed in her vehicle
20 like she was instructed to do. And at that time,
21 she turned the crack cocaine that she had gotten
22 from Mr. Lytes over to me.

23 I did a search under the seat in the general
24 area right there at the time when she turned it over
25 to me and then I placed it in a plastic bag.

1 BY MR. MAYE:

2 Q The drug evidence that she turned over to you,
3 did she have anything like that on her when she was
4 searched initially or in her vehicle prior to
5 Mr. Lytes arriving on the scene and getting in her
6 vehicle?

7 A No, sir. And that's why we searched the
8 vehicle and searched her. She was later searched
9 again. Without being out of our presence, a female
10 was put in the vehicle with her and taken to another
11 location where she was searched again and the
12 vehicle was searched again.

13 Q Let me ask you this. The evidence that you
14 believed at that point in time to be crack cocaine
15 that you got from Ms. Thomas, did you take that into
16 your custody and what form was that evidence?

17 A It was in a rock form like a, I guess you could
18 say, a cookie sort of like, hard form.

19 Q What did you do with it once you got it from
20 her and what did you do to preserve that evidence
21 and document that?

22 A It was in like a little sandwich bag. And what
23 I do is I place it into a, like, a little Ziploc bag
24 and I put where it came from, who it came from, the
25 time of the buy, the place. And then at the bottom,

1 I put on there time secured and then I put my
2 initials on it and I also have the CI initial it
3 also and I place it -- when it's in that bag. Then
4 later I put it into a best bag.

5 Q What is a best pack -- so you took that and you
6 made notes on the bag and you placed it in a plastic
7 bag?

8 A Right.

9 Q And your put your initials on that?

10 A Right.

11 Q Okay. I'm going to show you what's been marked
12 as State's Exhibit 6 for I.D. I'm going to ask you
13 if you could look inside that bag without opening it
14 and tell me is the original plastic bag that you
15 retrieved and put that drug evidence in that you got
16 from Antoinette Thomas there on the 24th, 2007, was
17 that bag in there?

18 A Yes, sir. You'll see the little sandwich bag
19 right here in the corner.

20 Q Okay. Can you recognize your initials on that?

21 A This is the bag, the other plastic bag that I
22 had put it in and it was in it. And if you'll look
23 in the bottom of it, you'll see where I put
24 approximate time secured at 6:55 p.m. and my
25 initials right on the bottom. And then I have the

1 confidential informant, who was Antoinette Thomas,
2 also initial it.

3 Q Did she do that in your presence?

4 A Yes, sir.

5 Q And you sealed that up in the smaller bag?

6 A And then I put it in that small bag along with
7 all the other information on it.

8 Q Okay. And you talk about then putting that in
9 something that you called a best kit, what's that?

10 A Right. And then at a later -- after that day
11 when I took it to SLED to turn it into the SLED lab,
12 I made photocopies of all of my stuff and then I
13 have to put it in this other blue bag in here, which
14 is a best kit. And once I put it in it, it's sealed
15 with a tamper resistant seal. And it has to be cut
16 open. It can't be torn open or it would tear up the
17 top. So I turned it into the lab in that form.
18 Then I turned it --

19 Q Let me ask you this. From the time that you
20 got it from Ms. Thomas to the time you sealed it up
21 in the best kit, did you keep it into your custody
22 and control the whole time?

23 A Yes, sir, I did.

24 Q Did you change or alter that evidence in any
25 way prior to putting it in the best kit?

1 A No, sir, I didn't.

2 Q After you sealed it up in the best kit, where
3 did you take it?

4 A I took it to the SLED drug lab in Columbia on
5 October the 26th, 2007, and turned into Selena
6 Kinard in the lab.

7 Q During that time, once you sealed it up and
8 taken it there and given it to Selena Kinard at the
9 lab, did you change or alter it in any way at that
10 point in time?

11 A No, sir, I didn't.

12 Q You preserved it just as you got it?

13 A Just as I got it. The only thing different
14 today with it's, from being handled so much, it's
15 cracked up where it was in a bigger form at the
16 time.

17 Q Let me ask you this. State's 5 that you have
18 there, how did you get that back in your custody
19 here today?

20 A It was brought here today from SLED by the
21 chemist and her name is Kukila Stanley was the
22 chemist that tested it and she's the one that
23 brought it back to Edgefield to me today. It's been
24 kept at SLED until today.

25 Q But you didn't maintain after it was tested.

1 It was kept at SLED and brought back to you here
2 today --

3 A No, sir.

4 Q Okay. Did y'all field weigh those drugs prior
5 to taking them out to SLED? Did y'all get a weight
6 on them? Did y'all weigh them initially to
7 determine what your weight was in making these
8 charges in this case?

9 A Yes, sir. We took them, I think it was at the
10 -- back to the office and placed it on the scale. I
11 placed it on the scale to get just an approximate
12 weight of what it would be.

13 Q Okay. Based on your weighing it and you
14 getting the drugs in this case that had been brought
15 there by Mr. Lytes, what charges did you institute
16 and make against Mr. Lytes, the defendant, in this
17 case?

18 A Trafficking in crack cocaine.

19 Q At what weight level?

20 A Over ten grams. It was 59 point something
21 grams I think.

22 Q Twenty-eight to a hundred grams?

23 A Twenty-eight to a hundred, yes, sir, 28 to a
24 hundred gram range.

25 MR. MAYE: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 (Pause.)

3 BY MR. MAYE:

4 Q What is the best kit number that you sealed
5 those drugs up in originally? What is that number?

6 A B is best kit, best 193376.

7 Q And that's the best kit that you sealed up and
8 dropped off at SLED with Selena Kinard?

9 A Yes, sir, that's it.

10 Q Is that the same number on the best kit that's
11 back there in that bag sealed up here today?

12 A Yes, sir, and on the lab check in.

13 Q Let me just ask you this specifically. Where
14 the transaction took place, what county is that in?

15 A We were in the city limits of Johnston, I
16 think, but the County of Edgefield, South Carolina.

17 MR. MAYE: Please answer any questions the
18 defense has for you.

19 THE COURT: Cross-examination?

20 MR. SNELL: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SNELL:

23 Q Agent Perry?

24 A Yes, sir.

25 Q Does all of your knowledge of what exactly

1 transpired in the automobile during the incident in
2 question come either from what you've heard from Ms.
3 Thomas or the audio recording?

4 A What I just testified to was what comes from my
5 knowledge.

6 Q But as far as what exactly transpired in the
7 vehicle when the doors were closed?

8 A That would be what Ms. Thomas tells us later,
9 yes, sir.

10 Q Was there any evidence that, during this time,
11 anyone actually ingested or used any of the crack
12 cocaine?

13 A I don't have any knowledge of that.

14 Q Let me show you a Form C, I guess, this
15 document entitled Form C and Rule 6.

16 A Right. Yes, sir.

17 Q And ask if you can identify that?

18 A Yes, sir. I guess that's the form I turned it
19 in to SLED.

20 MR. SNELL: And, Your Honor, at this time, I
21 would like to move this document into evidence and
22 have it marked and moved in.

23 MR. MAYE: No objection.

24 THE COURT: Without objection, mark it in
25 evidence, please.

1 (Defendant's Exhibit Number 1, Form C,
2 admitted into evidence.)

3 BY MR. SNELL:

4 Q Was Ms. Thomas your informant or was she
5 working for the -- for one of the other agencies
6 involved?

7 A Was she my informant?

8 Q Was she a SLED informant?

9 A Well, she would be a county informant, but she
10 would also become a SLED informant when she would
11 give SLED money because I have to document her as
12 receiving our money.

13 Q Did you use her for other operations other than
14 this one? Were you personally involved in other
15 operations with Ms. Thomas?

16 A Yes, sir, I have been.

17 Q Approximately how many?

18 A Up until this date?

19 Q Yes, sir.

20 A Probably about six, might be more.

21 Q Are those all felony drug cases?

22 A Basically every one with trafficking weight.

23 Q Other than an assurance not to prosecute her
24 for her own trafficking in crack charge, what else
25 is she receiving?

1 A No one's given her any assurance of not
2 prosecuting her in her trafficking charges, so she
3 has not been offered anything.

4 Q So to the best of your knowledge, has she ever
5 been arrested or indicted for trafficking in crack
6 based on the crack that was recovered in July of
7 2007?

8 A Based on my knowledge, she has not been charged
9 with that yet.

10 Q Are you aware of any plans in the immediate
11 future to arrest or charge her for that crack?

12 A I'm sure at the end of her cooperating, she
13 will be charged, yes, sir.

14 Q So after Ms. Thomas, for two years and multiple
15 operations, assists in these undercover operations,
16 the culmination will be she will be arrested herself
17 and charged with trafficking in crack?

18 A Yes, sir, she will.

19 MR. SNELL: Thank you. No further questions.

20 THE COURT: All right. Redirect?

21 REDIRECT EXAMINATION

22 BY MR. MAYE:

23 Q Agent Perry, you haven't promised her anything,
24 have you?

25 A No, sir.

1 Q You did not have to burn -- when do you have to
2 burn a confidential informant?

3 A In a buy-bust situation, we have to burn them.

4 Q When you took down Ms. Thomas, though, what did
5 she do, what was her reaction and what was she
6 acting like and who all did you place under arrest
7 there at the scene along with Odourri Lytes?

8 A She acts just like she doesn't know who we are.
9 She acts just like she's a normal person that she's
10 placed under arrest, taken in, too, so.

11 Q Did she show signs of distress and, basically,
12 did she act at that point in time?

13 A She did. She cried and was very upset.

14 Q Okay. Did y'all take her into custody?

15 A Yes, sir. We took her in.

16 Q The female that drove Mr. Lytes, did you also
17 take him -- her into custody?

18 A Yes, sir. We took her into custody, also.

19 Q So you arrested them all?

20 A Right.

21 Q Why do you do that? If you've got somebody
22 that's working for you as a confidential informant,
23 why did y'all have her play act and arrest her, too?
24 What were y'all doing?

25 A Because we're trying to protect her or the

1 informant the best we can so maybe we can further on
2 our investigations.

3 Q Sometimes even on a buy-bust situation if they
4 play act, you can still use them on and on?

5 A Right. Sometimes they never figure it out and
6 you continue on, that's what we hope for. The more
7 we can get with them, the better it is. It takes
8 someone of her caliber to help us in the field. I
9 mean, that's what we like to try to get to continue
10 our investigations.

11 Q She did continue working as well, didn't she?

12 A In several other counties in the state.

13 MR. MAYE: Nothing else. Thank you.

14 THE COURT: Recross?

15 RECROSS-EXAMINATION

16 BY MR. SNELL:

17 Q So if I understand it that Ms. Thomas was, for
18 lack of a better term I guess, I guess, she was --
19 y'all pretended to arrest her on October 24, 2007 in
20 order to maintain secret her status as an informant?

21 A Yes, sir. That's what we did, yes, sir.

22 Q And at a later date, she was actually arrested
23 for real?

24 A Yes, sir. She'll be charged just like anyone
25 else would be.

1 **MR. SNELL:** Thank you so much. No other
2 questions.

3 **THE COURT:** All right. You may step down.
4 Thank you, sir.

5 Call your next witness.

6 **MR. MAYE:** Your Honor, I've got two individuals
7 from the South Carolina Law Enforcement Division
8 here. They have not -- they had a little bump up on
9 the way here and were not able to arrive exactly on
10 time. I'd like to call them and get them out of
11 here before we end today, but I'm going to need just
12 a moment to speak with them.

13 **THE COURT:** All right. Ladies and gentlemen,
14 if you'd step back in the jury room, please. Don't
15 discuss the case. We'll get you back out here as
16 quickly as we can.

17 (The jury retires to the jury room.)

18 **THE COURT:** Folks in the audience, y'all really
19 need to understand it's not permitted in the
20 courtroom to be talking. It's not permitted to show
21 agreement or disagreement with testimony. You have
22 to stay still and stay quiet. If you can't do that,
23 I'm either going to put you in jail or bar you from
24 the courtroom. Just be careful. You can't react.

25 Why has that lady got her head down there and

1 shaking it?

2 LADY: Because it's cold in here.

3 THE COURT: Well, all I can tell you is people
4 may misinterpret what you all are doing over there
5 and it rarely helps a defendant.

6 DEFENDANT: Can I give her my jacket?

7 THE COURT: Yes, sir, you can give her your
8 jacket.

9 I'm not fussing at anybody. I'm trying to be
10 helpful. Now, if folks want to turn around and have
11 conversations while I'm trying to talk to them or
12 lay their heads on the rails and shake their head,
13 they're just going to have to be subject to
14 understanding that I might not interpret it the same
15 way they're meaning.

16 We're at ease.

17 (Brief Recess.)

18 THE COURT: All right. Is the State ready for
19 the jury?

20 MR. MAYE: The State's ready. Thank you.

21 THE COURT: Defense?

22 MR. SNELL: Yes, Your Honor.

23 THE COURT: Bring in the jury, please.

24 (The jury returns to the courtroom.)

25 THE COURT: All right. Call your next witness,

1 please.

2 MR. MAYE: The State calls Selena Kinard from
3 the South Carolina Law Enforcement Division.

4 SELENA KINARD,
5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your
7 full name and spell your last name, please.

8 THE WITNESS: Selena Kinard, K-i-n-a-r-d.

9 DIRECT EXAMINATION

10 BY MR. MAYE:

11 Q Ms. Kinard, where are you employed?

12 A South Carolina Law Enforcement Division, also
13 known as SLED.

14 Q Let's go back to October the 26th of 2007, in
15 what capacity were you employed with the South
16 Carolina Law Enforcement Division?

17 A I am a forensic technician and, at that time,
18 was a forensic technician in the evidence control
19 department.

20 Q Let me ask you this. I'm going to show you
21 this document right here and ask you on October 26th
22 of 2007, did Special Agent Coby Perry of the South
23 Carolina Law Enforcement Division deliver to you the
24 items in the best kit that are contained in State's
25 Exhibit 6 and could you please tell the ladies and

1 gentlemen of the jury the circumstances?

2 A Yes, sir. On, as you said, on October the 26th
3 of 2007 at 12:15 p.m., Coby Perry, Special Agent
4 Coby Perry, did bring the evidence into our evidence
5 control department and I did log that information
6 into our computer system. And it was a sealed --
7 inside this sealed part, not this outer package, but
8 the inside part is what he would have brought into
9 us.

10 Q Was it sealed up and tampered -- was it sealed
11 up and not tampered with at the time that he gave it
12 to you?

13 A That is correct. The green part of the best
14 pack has to be sealed or we will not accept that in
15 the evidence control department.

16 Q I show you what's been marked -- I mean, I show
17 you --

18 MR. MAYE: I'll ask this to be marked as
19 State's Exhibit for I.D.

20 (State's Exhibit Number 7, SLED evidence
21 receipt, was marked for identification.)

22 Q I'm going to show you what's been marked as
23 State's Exhibit 7 for I.D., ask you if you can look
24 at that document, identify the signatures on it?

25 A Yes, sir, I can. This would be the receipt

1 that the officers receive once the evidence is
2 logged into our system. And it is signed by Coby
3 Perry, Special Agent Coby Perry and myself, which my
4 signature is an electronic signature generated.

5 Q Is there a tab from the best kit stapled and
6 attached to that?

7 A Yes, it is.

8 Q What is the number on that?

9 A That is B-193376.

10 Q Ask you to look at State's 6 and tell me if
11 that's a match?

12 A Yes, sir, it is.

13 MR. MAYE: I'd move to admit that document into
14 evidence at this point in time, Your Honor, the one
15 that's been identified as State's 7.

16 THE COURT: Any objection to that?

17 MR. SNELL: No objection, Your Honor.

18 THE COURT: Mark it in evidence, please.

19 (State's Exhibit Number 7, SLED evidence
20 receipt, admitted into evidence.)

21 BY MR. MAYE:

22 Q Did you change or alter that in any way while
23 it was in your custody?

24 A No, sir.

25 Q Okay. Did you log that in a secure evidence

1 storage there at SLED?

2 A Yes, sir, that's correct.

3 MR. MAYE: Answer any questions that the
4 defense has for you.

5 THE COURT: Cross?

6 MR. SNELL: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SNELL:

9 Q Ms. Kinard, it's my understanding that the two
10 documents marked as Exhibit 7 bear a computer
11 generated signature.

12 A That is my computer generated signature so that
13 I don't have to sign after logging in every single
14 case, but when each officer comes in, they have to
15 sign every single time they come in.

16 Q So this would bear Mr. Perry's signature and a
17 digital signature from you?

18 A Right.

19 Q Is that the same kind of digital signature
20 sometimes you see on the bottom of people's e-mails?

21 A That's correct. That's correct.

22 Q When you received the item from Agent Perry,
23 did you weigh it yourself?

24 A No, sir. We do not do that in evidence
25 control.

1 Q Is your testimony limited in scope to just
2 being a -- basically amounts to an evidence
3 custodian?

4 A That's correct.

5 MR. SNELL: No further questions. Thank you.

6 THE COURT: Redirect?

7 MR. MAYE: Nothing else. Thank you.

8 THE COURT: Thank you, ma'am. You may step
9 down.

10 Call your next witness, please.

11 MR. MAYE: The State calls Kukila Stanley,
12 South Carolina Law Enforcement Division.

13 THE COURT: Come around and be sworn please,
14 ma'am.

15 KUKILA STANLEY,

16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat. State your full name
18 and spell your last, please.

19 THE WITNESS: My name is Kukila Stanley. Last
20 name is spelled S-t-a-n-l-e-y.

21 DIRECT EXAMINATION

22 BY MR. MAYE:

23 Q Ms. Stanley, where are you employed?

24 A I'm employed with the South Carolina Law
25 Enforcement Division also known as SLED.

1 Q Let me ask you this. What special training and
2 expertise do you have with the South Carolina Law
3 Enforcement Division? What service do you perform
4 for them?

5 A I do performance of test and analysis for the
6 purpose of identifying controlled substances and I'm
7 qualified to do that by I went to the University of
8 South Carolina. I have a BS in chemistry and I've
9 also received all of the necessary training at SLED
10 to identify controlled substances.

11 Q Have you previously been qualified as an expert
12 witness in the area of drug identification in the
13 courts of the State of South Carolina?

14 A Yes, I have.

15 Q Approximately how many times?

16 A Fourteen.

17 Q You have specialized training in the area of
18 analyzing controlled substances; is that correct?

19 A Correct.

20 MR. MAYE: I'm going to offer her to the
21 defense, if they care to cross-examine her,
22 regarding her qualifications. I'm going to offer
23 her as an expert in the area of drug identification,
24 specifically the identification of controlled
25 substances.

1 THE COURT: Voir dire?

2 MR. SNELL: Briefly.

3 VOIR DIRE

4 BY MR. SNELL:

5 Q Ms. Stanley, has all of your professional
6 experience in dealing with drug analysis working
7 with SLED?

8 A Correct.

9 Q Has all your testimony, has it always been
10 provided at the request of the prosecution or law
11 enforcement?

12 A Correct.

13 MR. SNELL: No other questions.

14 THE COURT: Is there any objection?

15 MR. SNELL: No objection, Your Honor.

16 THE COURT: All right. She is so recognized.
17 You may continue, Solicitor.

18 BY MR. MAYE:

19 Q Let me ask you this. What is it that you do
20 for SLED? You've been qualified as an expert in
21 this case in the area of drug identification, what
22 do you do for SLED?

23 A What I do for SLED is I work in their drug
24 analysis department. I perform test and analysis on
25 anything that is submitted for the identification of

1 controlled substances.

2 Q Let me ask you this. I'm going to show you
3 what's been marked as State's Exhibit 6. I'm going
4 to ask you if you retrieved that from the secured
5 drug storage or drug I.D. storage at SLED and
6 performed a chemical analysis or test on that when
7 you received it?

8 A Yes, I did receive it from the log-in
9 department and I received it on 11/13/2007.

10 Q When you received it, was the tamper resistant
11 seal intact on that, had that been tampered with,
12 the item that you received there into evidence?

13 A No, it has not -- no, it wasn't. When I
14 received it, what we do when we first receive
15 evidence is to make sure that this tamper proof seal
16 has not been touched. If it has been touched in any
17 way or if the packaging has been punctured in any
18 way, we do not do analysis on the evidence that's
19 been submitted.

20 Q Prior to bringing it out of that seal and
21 testing it, did you do anything to change or alter
22 it at that point in time?

23 A No, I did not.

24 Q Okay. When did you perform the testing on
25 those materials to determine whether or not they

1 were controlled substances? And please tell the
2 ladies and gentlemen of the jury what you did to
3 conduct and carry out those tests.

4 A Okay. I performed this testing on November
5 14th, 2007. What I did when I receive the evidence,
6 as I said, I first make sure that the seal has not
7 been broken, that the packaging has not been
8 punctured in any way.

9 Once I do that, I retrieve the evidence from
10 whatever packaging that's on the inside of this
11 packaging. I do a weight first. Once I do the
12 weight, I take a small amount of the sample. I do
13 what we call a color test and that's a presumptive
14 test, that test gives me an idea as to what the
15 substance may be.

16 Once I do that, I then do a confirmatory test.
17 The confirmatory test tells me exactly what the
18 substance is that has been submitted.

19 MR. SNELL: Your Honor, at this point, I'd
20 object to this line of questioning, her testimony.
21 There have been no prior disclosures made to the
22 defendant regarding the specifics of the testimony
23 being provided.

24 THE COURT: I'm not sure I understand. Do I
25 need to send the jury out?

1 **MR. SNELL:** Yes, Your Honor, please.

2 **THE COURT:** Ladies and gentlemen, please step
3 back in the jury room. Don't discuss the case.

4 (The jury retires to the jury room.)

5 **THE COURT:** What's your objection, Mr. Snell?

6 **MR. SNELL:** Your Honor, I guess, first, I would
7 ask if the witness is using notes or reports or has
8 any prepared documentation that she's testifying on
9 to refresh her recollection of the dates and times.

10 **THE COURT:** Are you using notes, ma'am?

11 **THE WITNESS:** No, I don't have any notes.

12 Prior to coming here, I looked to see what day I got
13 the evidence before I left SLED. And, also, on the
14 packaging, it tells me when I opened the package.
15 So the initial and date that's here, it reflects the
16 day that I actually worked the evidence.

17 **THE COURT:** All right. What's your objection,
18 Mr. Snell?

19 **MR. SNELL:** Your Honor, I don't have any
20 documentation regarding the chain of custody to show
21 that the materials were ever signed out to a
22 Stanley. I don't have any documentation to show
23 that she obtained them on November 13th. I also
24 have no materials regarding any November 14th
25 testing.

1 The only -- I've got a single page report from
2 Ms. Stanley that also doesn't specifically mention
3 that type of examination. So I think that based on
4 the, just the beginning of the testimony I've heard,
5 there's obviously chain of custody documentation and
6 test results that we don't have.

7 **MR. MAYE:** Your Honor, I'm not relying on Rule
8 6 in this case. I don't mean to speak prematurely,
9 but I'm not relying on Rule 6 in this case. I've
10 brought live witnesses for the chain of custody.
11 I've had each of them testify, you know, that --
12 Agent Perry, that he got up there at the scene and
13 he sealed the best kit, he dropped it off with
14 Selena Kinard that was placed in secure storage at
15 SLED.

16 She's testified that she retrieved it on which
17 day. There's a standard report generated and she's
18 testifying as an expert witness as to the chemical
19 test that she performed and he can certainly
20 cross-examine her regarding any testing that she
21 did, but it's the standard report that any chemist
22 would generate from SLED, and that's all that we
23 would have in this case or would have in any drug
24 case.

25 **MR. SNELL:** I've seen, Your Honor, one, just my

1 experience I've seen different -- I've seen more and
2 different documentation than what I've been provided
3 in this case. And, two, Rule 5 --

4 **THE COURT:** Well, if they're under Rule 6, and
5 I don't -- if you do a Rule 6, then that is designed
6 so that the chemist doesn't have to come from
7 Columbia to testify and that's usually where there's
8 no dispute that the drugs are, in fact, drugs and --
9 and that, obviously, there's a whole lot more
10 documentation than a Rule 6 case.

11 **MR. SNELL:** Absolutely, Your Honor. I have not
12 been provided -- well, one, I think Rule 5 --

13 **THE COURT:** Rule 5 states that they have to
14 give you at your request or permit you to inspect
15 and copy any results or reports of scientific tests
16 or experiments that are within the possession,
17 custody or control of the prosecution, the existence
18 of which is known, or by the exercise of due
19 diligence may become known, to the attorney for the
20 prosecution, and which are material to the
21 preparation of the defense or are intended for use
22 by the prosecution as evidence in chief at the
23 trial.

24 If there's scientific tests and there are
25 reports, then I need to know which ones you're .

1 taking about.

2 MR. SNELL: I believe, Your Honor, the witness
3 just testified to a particular type of test, the --
4 I'm sure it's a rule, I'm going to mispronounce it,
5 but it starts with a G. And I don't have -- I don't
6 have any record of that particular test being
7 performed.

8 And it may be helpful, Your Honor, just to ask
9 the witness, I can show the witness what I've been
10 provided and ask if there's additional documentation
11 that's been produced or that's at SLED or the
12 machine printed out.

13 THE COURT: Make whatever proffer you want to
14 make on this issue because right now I'm lost.

15 MR. SNELL: Thank you.

16 EXAMINATION

17 BY MR. SNELL:

18 Q This is the single page document I received.

19 A Uh-huh.

20 Q How many separate drug tests or separate tests
21 did you actually perform on the substance?

22 A I said I did a presumptive test. It's a color
23 test --

24 THE COURT: Wait a minute. I'm sorry.

25 THE WITNESS: -- that gives me an idea what the

1 substance is.

2 THE COURT: Do me a favor, instead of talking
3 to him, talk into that microphone for me. I'm up
4 here and this thing captures sound and that thing
5 that looks like a Sputnik satellite out there, it
6 will send the signal from that microphone to every
7 corner to this room, but if you face him, I can't
8 hear you, okay.

9 THE WITNESS: Okay. I said I did a presumptive
10 test, which is a color test that gives me an idea of
11 what the substance is. And then I said I did a
12 confirmatory test which tells me exactly what the
13 substance is.

14 BY MR. SNELL:

15 Q What type of reports are generated when you
16 perform this test?

17 A That report that you have is generated and then
18 there's also the B and C forms that are supplied by
19 the officers that are attached to those reports.

20 Q Do you have a copy of the B and C forms with
21 you?

22 A I have a copy of my report here, yes.

23 Q Does it have the B and C forms attached?

24 A Yes.

25 Q May I?

1 What I'm showing you is marked as Form A. Is
2 that also part of your report?

3 A Yes.

4 Q Other than your report with the Form A, Form B
5 and Form C used, are there any other documentation
6 or documents or results of the scientific testing
7 that you would have created?

8 A I have a worksheet and everything that I would
9 do when I'm actually working the case and the data
10 that comes from the instrumentation that I use to
11 identify the substance.

12 Q Is that work sheet, does it -- does that record
13 the specific, maybe, the results that are calculated
14 during the testing that you use before creating the
15 final report?

16 A Yes.

17 Q So that would give the results of the
18 individual experiments performed or the individual
19 analysis performed on the records?

20 A It's a documentation of everything that I did.

21 Q Do you have a copy of that document with you?

22 A No, I do not.

23 Q Have you ever provided a copy of that document
24 to the Solicitor's office in this case?

25 A No, I have not.

1 MR. SNELL: Thank you. No other questions.

2 THE COURT: All right. What's your objection?

3 MR. SNELL: Your Honor, just my review
4 indicates that there is a document titled Form A
5 which the defense doesn't have which indicates with
6 some specificity what tests were conducted. In
7 addition, there appears to be a work sheet which
8 would have specific lab results listed which also
9 hasn't been provided to the defense. We consider
10 those to be material to the defendant's preparation
11 in this case.

12 I think it would be helpful at this time, Your
13 Honor, if I could get a photocopy of her Form A, B
14 and C along with her report and have it marked just
15 as a court's exhibit.

16 THE COURT: What is A?

17 MR. SNELL: A is a report of analysis for
18 controlled dangerous substances.

19 THE COURT: Is that what you got?

20 MR. SNELL: I did not get this. If you would
21 like me to hand it up, Your Honor.

22 THE COURT: All right. These are Rule 6 forms,
23 that's what they are. These are Rule 6 forms that
24 they use when they don't bring the live person to
25 testify. And your objection is that you don't have

1 these forms in advance and what else?

2 **MR. SNELL:** That's it, they weren't provided in
3 discovery. They appear to me to be covered by the
4 scope of Rule 5(b).

5 I understand in a Rule 6 case, we're waiving
6 that those forms would be in lieu of -- or they're a
7 series of forms and documents could be in lieu of
8 the live witness testimony.

9 **THE COURT:** All right. Form A is captioned
10 Report of Analysis for Controlled Dangerous
11 Substances, and then in parentheses, Substance
12 found. And it states that Ms. Stanley is a chemical
13 analyst employed by SLED, certified by SLED as a
14 chemist or an analyst qualified to perform testing
15 for controlled substances under the statutes and
16 rules that are cited. It states that she has two
17 years and four months of experience as a chemical
18 analyst. This is in November of 2007.

19 During that period, I've been qualified as an
20 expert witness and testified in court no less than
21 five times. I've received training as a chemical
22 analyst. She has a BS in chemistry from the
23 University of South Carolina in 2004. She has been
24 trained at SLED forensic drug analysis in 2005. She
25 had legal training at the Criminal Justice Academy

1 in 2005 and served as a lab technician in Blythewood
2 in 2004.

3 She states that on October 26th, 2007, I
4 received in the best kit, which has a number 193376,
5 from Special Agent Coby G. Perry of the South
6 Carolina Law Enforcement Division Vice, that she
7 tested the items following legally reliable forensic
8 laboratory procedures approved by SLED. She
9 performed a chemical test, an infrared spectroscopy
10 -- am I anywhere close on that?

11 **THE WITNESS:** Spectroscopy.

12 **THE COURT:** Okay. What she said. And it
13 refers to a drug analyst report of L07-15754 for
14 results. She signed it November 21, 2007.

15 Form B is a chain of custody. It's not a test.
16 And Form C is a chain of custody.

17 What they're required to disclose to you or
18 permit you to inspect and copy yourself are
19 scientific tests or experiments.

20 Do you have the cover sheet of this?

21 **MR. SNELL:** Yes, Your Honor, I have the first
22 page.

23 **THE COURT:** That's the only one that contains
24 the test or experiments. I mean, there is a
25 reference in Form A that she performed a chemical

1 test and the infrared test.

2 MR. SNELL: And, Your Honor, she's also
3 testified there's a separate document on the work
4 sheet that has the results of the specific
5 experiments run. Because I've never seen a -- I
6 haven't seen it, so I don't know what it is, but
7 apparently there's another form with data on it
8 that's a result of the experiments that hasn't been
9 provided.

10 THE COURT: All right. Let me see your Rule 5
11 request.

12 MR. MAYE: Your Honor, we were not relying on
13 Rule 6. There was a specific request to produce the
14 chemist live, but we -- we're not relying on Rule 6.
15 I assured Mr. -- I assured Mr. Snell that we would
16 have the chemist here live and that would not
17 necessitate him making a demand under Rule 6 for us
18 to do so. I assured him that we would call the
19 chemist live. So he did inquire to me about whether
20 or not I was having the chemist come and I did tell
21 him that I was.

22 But we are in no way relying on Rule 6 to
23 introduce this evidence. We're having every link of
24 the chain come testify as to the chain of custody
25 and having live testimony by the chemist.

1 (Pause.)

2 MR. SNELL: Your Honor, I'm handing up a March
3 31st, 2008 motion that was filed by prior counsel.
4 I believe there may be an additional motion filed as
5 well, Your Honor.

6 THE COURT: All right. Number nine in the Rule
7 5 request reads, Make available any and all
8 scientific or medical, psychiatric, legal or other
9 information, reports or records which might tend to
10 reflect on the credibility or competence of any
11 other perspective witnesses for the State.

12 Number 12, Make any chemist, analyst and all
13 persons within the chain of custody appear in court
14 for the purpose of personally testifying. Attorney
15 for the defense thus objects to the introduction of
16 any chemists or analysts' report pursuant to Rule 6
17 South Carolina Rules of Criminal Procedure. This
18 was entered by Attorney Randall D. Williams on March
19 31, 2008.

20 Belinda Ellison on December 31, 2008, requests
21 all information available to the defense under
22 Criminal Practice Rule 5 and then she's got it
23 broken down into categories including (a) (1) (D),
24 which is what I read to you.

25 All right. I still don't know -- I apologize

1 to you what I'm missing. What is your motion?

2 MR. SNELL: Your Honor, I...

3 THE COURT: Is it for the production of those
4 things that she says she doesn't have here? Is it
5 to exclude the evidence because you didn't have Form
6 A, B and C?

7 MR. SNELL: Your Honor, I would make a motion
8 to exclude the evidence because I didn't have forms,
9 specifically Form B -- or, excuse me, specifically
10 Form A along with the work sheet, they weren't
11 previously disclosed. And I'd also move to have
12 this witness' testimony regarding any of the tests
13 stricken.

14 THE COURT: Yeah, but why?

15 MR. SNELL: I would move to suppress the
16 results of the drug testing based on the fact that
17 the defense was not provided with Form A or the work
18 sheet that she has testified to. In addition, we'd
19 also move to have the witness' testimony so far
20 stricken because she's testified to the tests and
21 these calculations that haven't been provided to the
22 defense in accordance with the proper rules.

23 THE COURT: All right. Rule 5(a)(1)(D) states
24 that upon request of a defendant, the prosecution
25 shall permit the defendant to inspect and copy any

1 results or reports of any scientific tests or
2 experiments, or copies thereof, that are within the
3 possession, custody or control of the prosecution,
4 the existence of which is known, or by the exercise
5 of due diligence may become known, to the attorney
6 for the prosecution and which are material to the
7 preparation of the defense or are intended for use
8 by the prosecution as evidence in chief at the
9 trial.

10 The way I read that, they authorize you to get
11 it. What I understand is the State provided you
12 with a report from Ms. Stanley dated November 21,
13 2007, which is a drug analysis which contains the
14 results of the drug test. It states that it was
15 cocaine base, which is the new terminology in the
16 statute for crack cocaine, 59.74 grams in a plastic
17 bag obtained by SLED from Special Agent Coby Perry,
18 or SLED lab from Special Agent Coby Perry.

19 Tell me, ma'am, what's on the work sheet
20 exactly. I know you said everything that you -- the
21 day that it comes from the instrumentation and a
22 record of everything you did, but what is this work
23 sheet you're -- what is this work sheet that you
24 were talking about?

25 **THE WITNESS:** What the work sheet is is it's

1 for my personal notes as I'm working the case. I
2 write down how I received the packaging. I note
3 whether or not this particular bag here was sealed
4 when I received it. My name and date is on it. I
5 also put the weight of the substance, the color test
6 that I performed, the results of those, and also the
7 results of the confirmatory test is all on this work
8 sheet.

9 And from that work sheet, I then generate the
10 report. And I put pretty much everything that's on
11 the work sheet on to that report except for the
12 specific colors that I saw when I did the
13 presumptive test.

14 **THE COURT:** And the report you're talking about
15 is this document here?

16 **THE WITNESS:** Yes, sir.

17 **THE COURT:** Madame Court Reporter, has this
18 been marked in another form?

19 **MR. MAYE:** I have not. I intended to offer it
20 and mark it into evidence. We can put it as a
21 State's Exhibit.

22 **THE COURT:** Mark that for I.D., State's I.D.

23 (State's Exhibit Number 8, SLED report,
24 marked for identification.)

25 **THE COURT:** Mark those as a Court's Exhibit.

1 (Court's Exhibit Number 2, Rule 6 forms,
2 marked for identification.)

3 THE COURT: All right. Court's 2 are forms A,
4 B and C, which are Rule 6 forms, which we've already
5 discussed.

6 State's 8 is the SLED analysis report, the
7 formal report, what I would call it, which is a
8 compilation that's prepared.

9 The work sheet is what it sounds like, it's a
10 work sheet. The motions are denied.

11 Do you need anything else on the record?

12 MR. SNELL: Your Honor, in addition to
13 specifically our motion regarding the work sheets,
14 we'd also like to extend that to encompass any
15 documents showing where the alleged -- where the
16 drugs were signed out and/or signed back in because
17 we also don't have that.

18 Your Honor, I think the main thrust of this is
19 I'm working off of. -- I've got several documents
20 demonstrating the chain of custody that have been
21 provided. I just don't have -- I've just got holes
22 and it's to the extent that the discovery didn't
23 provide for a complete -- showing the complete
24 chain.

25 THE COURT: All right. I may be jumping the

1 gun, but so far what I've heard is Agent Perry was
2 at the scene. He said from the stand, he took the
3 drugs. He put them in a best bag, sealed it, if
4 I've heard correctly. I can't remember that lady's
5 name over there, but he gave them to that lady over
6 there who is an evidence custodian at SLED, a
7 records custodian or evidence custodian at SLED.

8 MR. SNELL: Yes, Your Honor.

9 THE COURT: She came to Edgefield and
10 testified. She got them from Agent Perry. She
11 logged them in. She signed for them electronically,
12 put them in the SLED system. And then I've got on
13 the stand now Ms. Stanley who is the analyst who
14 said that she got them, the best bag was still
15 intact, I believe she said that.

16 THE WITNESS: Yes, sir.

17 THE COURT: She would not analyze them if there
18 was any problem with the best bag and that she did
19 the analysis. And you're saying something about
20 where the drugs are signed out or go to --

21 MR. SNELL: And, Your Honor, and I'll tell you,
22 I, you know, we just recently got a Court of Appeals
23 opinion directly on point regarding --

24 THE COURT: I read it.

25 MR. SNELL: And it's my understanding, just

1 simply the fact that the bag was sealed and remains
2 sealed isn't sufficient and that --

3 **THE COURT:** I agree. I read that case. It
4 just came out.

5 **MR. SNELL:** Yes, sir. And --

6 **THE COURT:** Matter of fact, ironically, we just
7 had something on our listserv of the judges, all the
8 judges can e-mail each other through a listserv, and
9 somebody somewhere was struggling with an issue
10 about the chain of custody, I think it was in
11 Georgetown or somewhere like that. And they were
12 wrestling with it and then this case comes down.

13 **MR. SNELL:** I think, Your Honor, the witness
14 has testified that she signed the drugs out on
15 November 13th, 2009. I haven't been provided with
16 any paperwork or documentation, and she's testified
17 she reviewed this documentation prior to coming into
18 court and testifying, and we haven't been provided,
19 so I haven't had the same opportunity to look at it
20 and determine if there are any inconsistencies or
21 irregularities or anything else that can be
22 challenged.

23 The sanctity and the validity of the results in
24 this chain of custody, I think, is going to be
25 critical for the jury in making its determination if

1 the State's met its burden. So I would just -- to
2 the extent that there are written prepared documents
3 that should have been provided within the scope of
4 Rule 5 that haven't been provided and that I don't
5 have --

6 THE COURT: Hand me 8 right there, please.
7 She got it on what date?

8 MR. SNELL: She's testified that she took the
9 drugs out on November 13th, 2009.

10 THE COURT: November 13 what year?

11 MR. SNELL: Excuse me, 2007. And she testified
12 that she tested them on November 14th, 2007. I've
13 got a report dated November 21st, 2007. So I --
14 what documentation I do have doesn't sync up with
15 her testimony and her testimony indicates there's
16 other documents.

17 THE COURT: What other documents other than her
18 work sheet?

19 MR. SNELL: The work sheet -- it may just be
20 the work sheet, Your Honor.

21 THE COURT: Okay.

22 MR. MAYE: May it please the Court, Your Honor.
23 This Rule 6 stuff that's come out, we're not relying
24 on Rule 6. Agent Perry testified that he got it
25 right there at the scene from where the deal went

1 down. He took it to SLED. We brought the person
2 that he dropped it with at SLED. And she's
3 testified that it was sealed when she got it. She's
4 put it in secure evidence storage there. She
5 testified that she got it from secure evidence
6 storage.

7 She's testified that the tamper resistant seal
8 was not tampered with in this case. There's
9 certainly nothing to indicate that anybody tampered
10 with this. We've got a complete chain on how it
11 went to SLED, how it's made its way to her. She's
12 given a result of what her test was.

13 If they had whatever this work sheet was, I
14 don't know what they could do with it about
15 cross-examining her from a purely practical
16 standpoint. And all a chain of custody is to ensure
17 is that the items that got seized there at the scene
18 are the same one that she tested. And I think
19 there's adequate and ample evidence in there.

20 I know that in some of the chain of custody
21 cases, they say even if a chain of custody is
22 broken, for example, if somebody is dead, you have
23 to apply a reasonable standard to it. There's just
24 nothing to indicate that anybody tampered with this
25 or it's anything other than what Agent Perry seized

1 there at the scene.

2 I think we've certainly complied with proving
3 the rule, the chain of custody in this case, Your
4 Honor. And it's just not reasonable to assume that
5 anything else happened or this was tampered with.

6 This is clearly an attempt to exclude it based
7 on some, what we would maintain, is a technicality
8 or just any attempt to exclude it. And I just don't
9 think that's part of the spirit of the chain of
10 custody or that it's a legitimate objection, Your
11 Honor.

12 If they had any of this other information, I
13 don't think there's any inference that could be
14 raised for it or anything that could be done to
15 significantly challenge what she said. If they had
16 this work sheet, I don't know what they could do
17 with it about trying to challenge her on it.

18 **THE COURT:** Anything else?

19 **MR. SNELL:** Your Honor, and the final reason I
20 think that I would argue we're very concerned about
21 this is in between the field weight and the final
22 report, we lose over six grams of crack and...

23 **THE COURT:** How much does the bag weigh?

24 **MR. SNELL:** The -- originally, it was 65.77
25 grams.

1 **THE COURT:** That scale right there has got a
2 bag. There's a Ziploc bag.

3 **MR. SNELL:** But, Your Honor, the -- I would
4 assume they set the tare on the scale.

5 **THE COURT:** I don't know.

6 **MR. SNELL:** Well, Your Honor, they produced a
7 warrant and there's an affidavit from Officer Miller
8 sworn to saying there's 65.77 grams of the whitish
9 rock substance. So they've sworn we've got 65 grams
10 of white substance and the final test comes out to
11 59.74 grams.

12 And, Your Honor, those scales, you know, I know
13 from the grocery store, every scale you set the tare
14 on and you figure out how much that bag weighs and
15 the scale automatically adjusts it. And if it's the
16 bag, then that means that when law enforcement
17 procured the original arrest warrant in the case and
18 swore to that, they were misrepresenting or
19 misstating the facts or they never bothered to weigh
20 the bag.

21 **MR. MAYE:** Your Honor, again, that all goes to
22 weight rather than admissibility in this case, the
23 bag's play on the scale, they can certainly ask any
24 of the experts.

25 Certainly, in this case, they had a field

1 weight. They weighed the bag. It loses moisture
2 content over time, the weight changes. All of those
3 things are fodder for cross-examination, but they go
4 to weight not admissibility and that's certainly
5 fodder for cross-examination. If he wants to ask
6 all of the witnesses about that, I think it would be
7 proper, but it doesn't go to the admissibility of
8 evidence is the State's contention.

9 THE COURT: All right. The case that you were
10 referring to is the case that came out August 5,
11 2009, State versus Hatcher. The person missing in
12 that case that is not missing in this case is Ms.
13 Kinard.

14 Now, I'm not saying she was in the Hatcher
15 case, but her role in this was not testified to in
16 the Hatcher case. They had the officer who got the
17 drugs from an informant, sealed it in a best bag,
18 took it to SLED, apparently put it in a drop box and
19 then somebody picked it up.

20 I don't know if this is going to go up on
21 appeal to the Supreme Court or not, but the person
22 who was missing in the Hatcher chain is not missing
23 in the Lytes chain, so -- go ahead.

24 MR. SNELL: Your Honor, I would simply say I
25 think reading that case, I know we don't have --

1 actually, I will tell you originally I thought we
2 were going to have a Hatcher issue because the --
3 Defendant's Exhibit 1, Form C, isn't filled out to
4 SLED specifications, they didn't identify the
5 individual at the evidence room that the materials
6 would have been turned over to.

7 And so I read that case, actually I usually
8 read everything, but I read this one in particular
9 with this case in mind. They didn't produce that
10 witness, although I think the spirit of the case
11 goes to show, you know, the seriousness and the
12 importance of the chain even when you can show that
13 you have an unbroken bag. We're not dealing
14 specifically with questions about tampering,
15 although that's very significant.

16 **THE COURT:** Well, you can -- I mean, you can
17 cross-examine this lady and if it appears that
18 there's some sort of break in the link or she left
19 the drugs laying on the counter where other people
20 have access to it or those other what ifs that we
21 talked about ad infinitum this morning, then fine,
22 but I need to deal with what's before me. And
23 what's before me is there's the officer who said he
24 took it, there's the lady he said he gave it to,
25 that lady said that she gave it to this lady and

1 this lady analyzed it.

2 **MR. SNELL:** And, Your Honor, I think when I
3 kind of extended the scope of the motion, it was
4 simply to cover the fact that Ms. Stanley testified
5 that to sign out the substance and testing it and
6 recording that on written documentation, that we
7 contend would have been -- should be discoverable
8 pursuant to Rule 5 that hasn't been.

9 **THE COURT:** I've already ruled on that one.

10 **MR. SNELL:** Yes, Your Honor.

11 **THE COURT:** All right. I don't know where we
12 were. Unfortunately -- well, fortunately, I have
13 been blessed with a court reporter who does real
14 time. So, normally, I can sit up here and read the
15 transcript whenever there's a question that arises.
16 I've gotten spoiled, because her computer broke and
17 she can't do that this week, so I don't know where
18 we were.

19 I don't know where your chain is or I don't
20 know any of that so don't be misled, that thing
21 that's marked is for I.D. only.

22 **MR. MAYE:** I know that.

23 **THE COURT:** And whatever you need to establish,
24 I don't want to mislead you into thinking that I've
25 ruled this admissible because I haven't made that

1 ruling yet.

2 MR. MAYE: I understand.

3 THE COURT: I'm just saying that for my benefit
4 more than anything.

5 MR. MAYE: Thank you, Your Honor.

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

7 (The jury returns to the courtroom.)

8 THE COURT: All right. You may continue.

9 BY MR. MAYE:

10 Q Ms. Stanley, you were testifying to the ladies
11 and gentlemen of the jury about how you conducted
12 the test to determine what the substance in State's
13 Exhibit 6 actually was. Please continue to tell the
14 ladies and gentlemen of the jury about how you
15 tested that to determine what that substance is.

16 A I first take the weight of the substance, take
17 it out the initial packaging, put it on the scale,
18 take the weight of it. Once I do that, I take a
19 portion of the sample, do a color test, which is a
20 presumptive test and it gives me an idea of what the
21 substance is. I then do a confirmatory test which
22 tells me exactly what the substance is.

23 Q Did you perform that on the substances that we
24 have that have been marked for I.D. in State's 6 and
25 what were your results?

1 A Yes, I did. And may I see the report?

2 Q Sure. I'm going to show you what's been marked
3 as State's Exhibit 8 for I.D.

4 A My results were cocaine based crack found,
5 59.74 grams, 921.90 grains. And it's a scheduled
6 two drug.

7 Q So do you have an expert opinion as to what the
8 items or the substance in State's 6, what that
9 substance is? What's your expert opinion on that?

10 A My expert opinion is that it's cocaine based
11 crack.

12 Q It's crack?

13 A Yes.

14 Q How much does it weigh?

15 A 59.74 grams.

16 Q Okay. So let me ask you this. Is the weight
17 that you get on this including the bag or what's the
18 weight based on?

19 A The weight is excluding the bag. It's without
20 the bag.

21 Q So you took all the bags out?

22 A Correct.

23 Q Just like pouring sugar out on the scales?

24 A Correct.

25 Q And you weighed it?

1 A Yes.

2 Q And how much crack is there?

3 A 59.74 grams.

4 Q And you tested it scientifically and it's your
5 expert opinion that's crack cocaine based on the
6 scientific tests that you performed?

7 A Yes.

8 Q Okay. Let me ask you this. And I'm going to
9 show you what's been marked as State's 4 for I.D.
10 there, ask you if you can look at that and take a
11 look at that, State's 4.

12 A Okay.

13 Q You see that photograph?

14 A Yes.

15 Q Okay. What's the weight that's indicated on
16 that scale?

17 A 65.77 grams.

18 Q Okay. If you weighed the bag along with the
19 controlled substance, would you get more or less
20 weight?

21 THE COURT: Hold on just a moment.

22 Yes, sir.

23 MR. SNELL: Objection, Your Honor. I think
24 this line of questioning calls for speculation,
25 conjecture on the part of the witness.

1 THE COURT: There's not enough foundation.

2 BY MR. MAYE:

3 Q Let me ask you this. If you took this white
4 powder here and weighed it with the bag that it came
5 in, would you get more weight or would you get less
6 weight?

7 A More weight.

8 Q You would get more weight, wouldn't you?

9 A Correct.

10 Q Okay. Let me ask you this. As a compound
11 dries out and loses moisture, does it gain weight or
12 does it lose weight?

13 A It loses weight.

14 Q Okay. Over time with a substance that's got
15 moisture in it, for example crack cocaine, if you
16 just lay it out and let it sit, is it going to gain
17 weight over time or lose weight over time?

18 A It'll lose weight.

19 Q Okay. And you want to know how much, as a
20 chemist of a controlled substance, is there not the
21 packaging -- how much the packaging weighs?

22 A Correct.

23 Q That's correct. So you strip out whatever
24 packaging you've got and you weigh it, right?

25 A Correct.

1 Q And the weight that you got on the day that you
2 test it is based on the moisture content that it has
3 on that day, right?

4 A Right.

5 Q If it was weighed some months or years earlier,
6 it can certainly weigh more, can't it?

7 A Correct.

8 Q And if you test it on -- as time goes by and
9 it's tested on further down, it can continue to lose
10 weight because it can continue to lose moisture;
11 isn't that correct?

12 A Correct.

13 MR. MAYE: At this point in time, Your Honor,
14 I'll move to admit the results of her report, which
15 has been marked State's Exhibit 8 for I.D. at this
16 point in time, into evidence.

17 THE COURT: Subject to previous objection?

18 MR. SNELL: Yes, Your Honor.

19 THE COURT: Anything else?

20 MR. SNELL: No, Your Honor.

21 THE COURT: Thank you.

22 Mark it in evidence, please.

23 (State's Exhibit Number 8, SLED report,
24 admitted into evidence.)

25 BY MR. MAYE:

1 Q Ms. Stanley, let me ask you this. During the
2 time that you -- when you got this, it was sealed up
3 in the best kit, right?

4 A Right.

5 Q No evidence that it was tampered with, correct?

6 A Correct.

7 Q Okay. At any time that you had that bag open
8 and you took those items out, did you allow it to
9 get outside of your custody and control at any time?

10 A No, I did not.

11 Q Did you allow anybody to alter it, tamper with
12 it or mess with it in any way?

13 A No, I did not.

14 Q Okay. Did you maintain continuance custody and
15 control on it from the time that you opened the
16 sealed best kit until the time that you carried out
17 your weight and chemical analysis test on it?

18 A Yes, I did.

19 Q Okay. Did you then seal it back up after you
20 performed all of those tests in this case?

21 A Yes.

22 Q Okay.

23 MR. MAYE: Your Honor, at this point in time,
24 I'll move to admit what's been marked as State's
25 Exhibit 6 into evidence at this point in time.

1 **THE COURT:** And you object on all the grounds
2 previously argued in the chain of custody?

3 **MR. SNELL:** On all previous grounds. And,
4 additionally, just to make sure the Court noted it
5 previously, there's an issue noted, the prior issue
6 raised about the compliance with the SLED internal
7 procedures for document keeping.

8 **THE COURT:** Ladies and gentlemen, you have to
9 step back in the jury room. Don't discuss the case.

10 (The jury retires to the jury room.)

11 **THE COURT:** All right. I heard what you said a
12 minute ago about that you had intended to raise an
13 objection about failing to comply with SLED's
14 internal regulations.

15 **MR. SNELL:** Well, I'd say they're not -- not
16 necessarily their internal. It's actually not their
17 internal regulations. It is the regulations as
18 promulgated by SLED, specifically 73-80 E, which
19 simply requires that the law enforcement agency
20 employing the evidence custodian to whom the
21 controlled substance will be delivered be
22 specifically listed on this document marked form --
23 or Form C, which has been marked as Defendant's
24 Exhibit 1.

25 And this document says that they delivered the

1 item to, and where the blank will be named, they put
2 SLED, of, and then the law enforcement agency also
3 SLED. So the specific name was omitted from Form C
4 and that's where Agent Perry -- that's the form
5 Agent Perry filled out when he turned the documents
6 into evidence.

7 THE COURT: That's a Rule 6 form. I don't
8 understand. I -- go ahead.

9 Do you have something?

10 MR. MAYE: I'm sorry, Your Honor. I just think
11 it gets back to a fundamental misunderstanding of
12 what Rule 6 is in place for.

13 I often times don't even ask the agents to fill
14 it out unless we're going to rely on Rule 6. I
15 think the Rule 6 forms can all be blank in this
16 case. I mean, it negates us having to bring the
17 chemist for live testimony. And I think even over
18 their objections, if the Rule 6 forms are intact, I
19 think under Rule 6, it's got to be allowed in and
20 negates us bringing in all of these live witnesses.

21 But in this case, we never intended to rely on
22 Rule 6. I don't think it makes any difference which
23 forms were provided, which ones are blank or which
24 ones are filled out because we're not relying on the
25 Rule 6 forms.

1 And what he is citing is an internal regulation,
2 that wants them to make sure that the Rule 6 forms
3 are filled out so that we can rely on Rule 6 if we
4 need to. We're not relying on Rule 6. We've got
5 live testimony as to chain of custody. We brought
6 the chemist. We brought the lab technician that
7 received the items.

8 And any of the objections about either not
9 being provided with the Rule 6 forms or anything
10 being blank on them are meaningless because we're
11 not relying on Rule 6 in this case and I think
12 that's a fundamental misunderstanding of what the
13 purpose of those forms are and what the purpose of
14 Rule 6 is.

15 **THE COURT:** All right. Mr. Snell, do you have
16 anything else?

17 **MR. SNELL:** Your Honor, I will just state the
18 -- and I thought -- I want to make sure I had a
19 ruling on this issue specifically, but I would
20 disagree. That regulation 73-80 is not an internal
21 regulation or policy of SLED which would not have,
22 you know, necessarily the force or effect of law.

23 This is a regulation as promulgated by the
24 agency and approved by the Legislature one way or
25 the other that mandates the way that form is to be

1 filled out and completed and that was not done. So
2 to the extent that issue --

3 THE COURT: May I see the regulation?

4 (Mr. Young hands document to the Judge.)

5 THE COURT: 73-80 subsection (E)?

6 MR. SNELL: Yes, Your Honor, and specifically
7 (2).

8 THE COURT: 73-80 subsection (E) (2)?

9 MR. SNELL: Yes, Your Honor.

10 (Pause.)

11 THE COURT: How do I know that Defendant's
12 Exhibit Number 1 is the same form that this
13 regulation refers to as the initial custody form?

14 MR. SNELL: Your Honor, that's the only
15 document I've been provided with in this case or any
16 other that would serve to satisfy that purpose.

17 MR. MAYE: Initial custody is Form B.
18 Subsequent custody forms are all -- Form C is a
19 subsequent chain of custody form. You fill out rule
20 -- Form B for initial custody and Form C for
21 subsequent chain of custody, every other link in the
22 chain.

23 But, again, that gets back to Rule 6. We're
24 not relying on Rule 6 here at all. And the State's
25 contention in this case is none of these forms could

1 have ever have been filled out and as long as we
2 bring in live witnesses -- because many agencies
3 wouldn't even have the availability of these forms.
4 And they -- it would -- if that was the case, then
5 it would exclude any evidence that you couldn't do
6 anything that was seized in the field unless you had
7 these forms. And this is only as an exception to
8 the normal chain of custody circumstance.

9 I know Rule 6 was enacted in order to keep
10 chemists from having to run up and down the road and
11 to keep SLED people from having to run up and down
12 the road, but it's not utilized. Seldom do any
13 prosecutors utilize Rule 6 because it's subject to
14 attack if these forms aren't filled out perfectly
15 and if they're not notarized. So we just don't rely
16 on that. And I don't think many prosecutors across
17 the state rely on Rule 6, I've never used it and
18 don't know many others that have. But what he's
19 talking about is if you're relying on Rule 6 and we
20 are not.

21 **THE COURT:** Anything else that needs to be on
22 the record?

23 **MR. SNELL:** Your Honor, I would just say that,
24 in response, that number 6 of the same subsection
25 provides for a specific exclusion regarding the

1 notarization requirement in the event that the form
2 is used to comply with Rule 6. There is no such
3 requirement on subsection (2) where we are. The
4 rule is the same whether or not it's a Rule 6
5 situation or not. I think that's inapplicable here.

6 **THE COURT:** All right. Your objection is
7 noted. It's overruled.

8 Bring the jury back in.

9 (The jury returns to the courtroom.)

10 **THE COURT:** The objections are overruled. Mark
11 it into evidence.

12 You may continue.

13 (State's Exhibit Number 6, crack cocaine,
14 admitted into evidence.)

15 **BY MR. MAYE:**

16 **Q** Now that this is in evidence, State's 6, based
17 on your expert opinion, what is that substance and
18 how much does it weigh? That white powder substance
19 in there, what is it and how much does it weigh?

20 **A** It's cocaine based crack found, 59.74 grams.

21 **Q** How many grams in an ounce?

22 **A** I don't know off the top of my head.

23 **MR. MAYE:** Answer any questions that the
24 defense has for you.

25 **THE COURT:** Cross?

CROSS-EXAMINATION

1

2

BY MR. SNELL:

3

Q And, ma'am, you testified previously that you performed your drug analysis on November 14th, 2007; is that correct?

5

6

A Correct.

7

Q Are you aware that the original field weight in this case was 65.77 grams?

8

9

A Yes.

10

Q And is it possible that discrepancy could be due to fluctuations in the weight of the substance based on environmental conditions?

11

12

13

A Correct.

14

Q Did you ever perform any specific testing to determine the moisture content of this particular sample?

15

16

17

A No, I did not.

18

Q What's the normal range for moisture content of crack?

19

20

A I don't know.

21

Q Do you know what the ingredients are used to make crack?

22

23

A Not right at this moment.

24

Q Are you aware that water is a primary

25

ingredient used in making or manufacturing crack?

1 A Yes.

2 Q In your experience, does crack ordinarily
3 fluctuate in weight by 10 or 12 percent
4 approximately in the span of 7 to 14 days if it's
5 kept and maintained in a stable environment?

6 A I don't know.

7 Q Do you have any opinion on the ability on the
8 rate at which crack would gain or lose weight based
9 on the environmental factors?

10 A No, I don't.

11 Q So you're unable to provide an opinion if the
12 12 percent -- approximately 12 percent fluctuation
13 of weight that we have present in this case is
14 normal or abnormal?

15 A I don't know.

16 Q Do you have an opinion on the percent of
17 cocaine compound contained in this particular
18 sample?

19 A No, I don't.

20 Q But you would agree that the cocaine represents
21 a small percentage of ordinary makeup of typical
22 crack cocaine?

23 A I don't know.

24 MR. SNELL: Thank you. No other questions.

25 THE COURT: Redirect?

1 **MR. MAYE:** Nothing. Thank you.

2 **THE COURT:** Thank you, ma'am. You may step
3 down.

4 Ladies and gentlemen, we're going to recess for
5 the day. I need you back in the jury room, please,
6 at 9:30 in the morning. Don't discuss the case.

7 If any of you have a family member or a friend
8 who's been watching the trial, you cannot talk about
9 this with that family member or friend. They can't
10 talk to you about anything that's been going on
11 outside of your presence, so make sure that doesn't
12 take place, please.

13 I hope you have a very pleasant evening. I
14 need you in the jury room at 9:30. If you have some
15 true emergency that arises, please call the Clerk's
16 office because we can't do anything until we get you
17 all here. Thank you.

18 (The jury was excused for the day.)

19 **THE COURT:** Let me give y'all an instruction I
20 give in every case. Please don't think I'm singling
21 anybody out, I'm not. I do this in every trial I
22 do.

23 You all be really careful as you leave here
24 that you don't have any contact with a juror. Don't
25 be talking about anything related to the case until

1 you're clear of the courthouse property unless
2 you're absolutely sure that no juror is within
3 earshot.

4 You may think that they've cleared out and gone
5 and they may have gone to the restroom or made a
6 phone call or something. So as you're exiting here,
7 be really careful that you're not talking about this
8 case. They're probably going to come out into the
9 same areas that you're going to be going into and
10 they may be coming from a different direction or
11 they will be coming from a different direction, so
12 just be real careful.

13 All right. Court's in recess until 9:30 in the
14 morning.

15 (The proceedings were concluded for August
16 11, 2009.)

17 (The following proceedings were held on
18 August 12, 2009.)

19 **THE COURT:** Are you ready?

20 **MR. MAYE:** The State's ready.

21 **THE COURT:** Mr. Snell, are you ready?

22 **MR. SNELL:** Yes, Your Honor.

23 **THE COURT:** All right. Bring in the jury.

24 (The jury enters the courtroom at 9:35 a.m.)

25 **THE COURT:** All right. Ladies and gentlemen,

1 good morning. We're going to continue with the
2 State's case.

3 Call your next witness.

4 MR. MAYE: The State calls Crystal Leaphart.

5 CRYSTAL MONIQUE LEAPHART,

6 having been duly sworn, testified as follows:

7 THE CLERK: State your full name and spell your
8 last name, please.

9 THE WITNESS: Crystal Monique Leaphart,
10 L-e-a-p-h-a-r-t.

11 DIRECT EXAMINATION

12 BY MR. MAYE:

13 Q Ms. Leaphart, if you will, kind of speak up
14 over here. This room kind of swallows your voice,
15 so talk as loudly as you can. Tell the ladies and
16 gentlemen of the jury where you're from.

17 A Batesburg-Leesville, South Carolina.

18 Q How long have you lived in Batesburg?

19 A Since I graduated, 2006.

20 Q Where else have you lived and where did you
21 grow up?

22 A Ridge Spring, South Carolina.

23 Q Have you got family in the area?

24 A Yes, sir.

25 Q Let me ask you this. How do you know the

1 defendant in this case, Odouri Lytes?

2 A I used to talk to one of his cousins.

3 Q Okay. Let me ask you specifically, on October
4 24th of 2007, how did you come to be around Odouri
5 Lytes, the defendant in this case, and how did you
6 come to drive him over here into Edgefield County?

7 A He had asked for a ride.

8 Q Okay. Tell the ladies and gentlemen of the
9 jury exactly the circumstances about how you first
10 encountered him that day and where you were. Where
11 were you when you first saw him that day?

12 A I was dropping my cousin off at my aunt's
13 house.

14 Q Who is your cousin?

15 A Brittany Sires.

16 Q Okay. So how did you get up with him that day
17 then if you saw him when you were dropping your
18 cousin off?

19 A He had called and asked that he needed a ride
20 to go somewhere.

21 Q To whom did he call originally?

22 A Brittany Sires.

23 Q How did it end up that you gave him a ride?
24 What happened that he ended up in your car that day?

25 A She didn't have a car and she had asked me

1 would I drop him off.

2 Q Okay. What was he going to do for you in
3 exchange for you driving him somewhere that day?

4 A Nothing, he just put gas in my car.

5 Q Okay. How much gas did he put in your car and
6 did any money change hands in regard --

7 A Ten dollars and I kept the other change and ten
8 dollars.

9 Q Did you know where you were going when you left
10 Batesburg?

11 A To Bledsoe Car Lot.

12 Q Who told you to go there?

13 A Odouri Lytes.

14 Q Did you know what you were going for?

15 A No, sir.

16 Q What did he tell you prior to y'all leaving
17 Batesburg-Leesville about where you were going to go
18 and what he was going to do?

19 A He just asked me will I take him up there.

20 Q Okay. So he paid for your gas and you drove
21 him there; is that right?

22 A Yes, sir.

23 Q Okay. Did you know what he intended to do when
24 he got to Bledsoe Car Lot. Did he share with you in
25 any way what he was going to do?

1 A No, sir.

2 Q Okay. What happened when he got over here in
3 Edgefield County? Tell the ladies and gentlemen of
4 the jury everything you saw and what happened.

5 A When we got to Bledsoe, I backed up and we
6 turned on the side road and he got out of my car and
7 got in the other car. And I --

8 Q What other car are you talking about?

9 A A black Escalade.

10 Q So he got out of your car and got into the
11 black Escalade. What did you do then?

12 A I followed them down the road to the church.

13 Q Okay. What happened when y'all got down there?

14 A When I pulled up, that's when the polices (sic)
15 pulled up. Like when I parked --

16 Q When the police pulled up.

17 A Uh-huh.

18 Q What happened when the police got there?

19 A They put us in handcuffs.

20 Q They arrest everybody there?

21 A Yes, sir.

22 Q Okay. Let me ask you, what, if anything, did
23 he have anything on him or with him?

24 A He had a brown bag.

25 Q Okay. Whose car were y'all in?

- 1 A We was in my vehicle.
- 2 Q What kind of car did you have?
- 3 A A Plymouth Breeze.
- 4 Q I'm going to show you what's been marked
- 5 State's 5. Is that your automobile?
- 6 A Yes, sir.
- 7 Q Police seized it, too, didn't they?
- 8 A Yes, sir.
- 9 Q I'm going to show you what's been marked
- 10 State's Exhibit 3. I think this is for I.D.
- 11 purposes at this point in time. Take a look at this
- 12 photograph and see if you can tell me what that
- 13 depicts.
- 14 A The brown bag on the seat.
- 15 Q Whose brown bag?
- 16 A Odouri Lytes.
- 17 Q Okay. Whose -- what is that the interior of?
- 18 Is that a shot -- what does that picture show?
- 19 A Brown bag sitting on the seat.
- 20 Q Of whose car?
- 21 A Of my car.
- 22 Q You can tell that's your car from the
- 23 photograph?
- 24 A Yes, sir.
- 25 Q Does that picture fairly and accurately reflect

1 the interior of your car there and the paper bag?

2 A Yes, sir.

3 MR. MAYE: Your Honor, I'm going to move to
4 admit this into evidence at this time.

5 THE COURT: Subject to previous objections?

6 MR. SNELL: Yes, Your Honor.

7 THE COURT: Mark it in the record, please,
8 ma'am.

9 (State's Exhibit Number 3, photograph,
10 admitted into evidence.)

11 BY MR. MAYE:

12 Q Did you know what was in that bag?

13 A No, sir.

14 Q Ms. Leaphart, let me just ask you this. Did
15 you have any idea that he was going to go there and
16 exchange drugs with an individual when you left
17 Batesburg-Leesville?

18 A No, sir.

19 Q Have you ever been in any trouble?

20 A No, sir.

21 Q Have you ever been arrested for anything?

22 A No, sir.

23 Q Did you have anything to do with any
24 transaction of drugs that day other than driving
25 this gentleman, Mr. Lytes, over here, over here to

1 do this?

2 A No, sir.

3 Q You got charged in this case, though, didn't
4 you at the scene?

5 A Yes, ma'am -- yes, sir. I'm sorry.

6 Q Has anybody told you anything one way or
7 another or made you any promises in regard to your
8 charges of what's going to happen to you in this
9 case?

10 A No, sir.

11 MR. MAYE: Answer any questions the defense has
12 for you.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. SNELL:

16 Q Ms. Leaphart, would it be fair to say that back
17 in October of 2007, that \$1600 wasn't a lot of money
18 to you or to Mr. Lytes?

19 A Yes, sir.

20 Q And it's your testimony that you had no
21 knowledge, prior knowledge at all of any kind of
22 alleged drug transaction?

23 A No, sir.

24 MR. SNELL: Thank you. No other questions.

25 THE COURT: Redirect?

1 MR. MAYE: Nothing. Thank you. I'd ask that
2 she be released at this point in time.

3 THE COURT: Any objection to the witness being
4 excused?

5 MR. SNELL: No objection, Your Honor.

6 THE COURT: Thank you, ma'am. You're free to
7 go.

8 Call your next witness.

9 MR. MAYE: With the Court's indulgence, Your
10 Honor, they're checking to see if the witness is
11 here.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. MAYE: The State would call Heidi Presley
15 to the stand.

16 HEIDI MORGAN PRESLEY,
17 having been duly sworn, testified as follows:

18 THE CLERK: Please state your full name and
19 spell your last name.

20 THE WITNESS: Heidi Morgan Presley,
21 P-r-e-s-l-e-y.

22 DIRECT EXAMINATION

23 BY MR. MAYE:

24 Q Ms. Presley, tell the ladies and gentlemen of
25 the jury where you're employed and how long you've

1 been there.

2 A I work with the Edgefield County Sheriff's
3 Office. I've been there 13 years.

4 Q Let me ask you this. Sometimes do you assist
5 Investigator Young on any his narcotics
6 investigations?

7 A Yes, sir.

8 Q Okay. What special area of assistance do you
9 usually become involved in when you're helping him?

10 A When there's a female CI, I pat them down and
11 search, like, their pocketbooks and that's about it.

12 Q Let me ask you this. On October the 24th of
13 2007, did you have an occasion to search Antoinette
14 Thomas, the confidential informant in this case,
15 prior to her going and doing this transaction?

16 A Yes, sir.

17 Q Okay. Did you conduct and carry out a search
18 of her at that time?

19 A Yes, sir.

20 Q Did she have any drugs or any contraband or any
21 currency other than -- did she have anything at all
22 on her when you searched her?

23 A No, sir.

24 Q Okay. Did you assist them in putting the wire
25 transmitter on her?

1 A Yes, sir.

2 Q Were you involved in the search before she did
3 the deal?

4 A Yes.

5 Q And after she did the deal; is that correct?

6 A Yes. That's right.

7 Q Did you find anything outside of what y'all had
8 given her and the wire and the information?

9 A No, sir.

10 MR. MAYE: Answer any questions the defense has
11 for you.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MR. SNELL:

15 Q Can you describe the search that Ms. Antoinette
16 was given in detail?

17 A It was a pat down search of her entire body.

18 Q Did it involve her removing any articles of
19 clothing?

20 A No.

21 Q Did it involve searching her undergarments?

22 A No.

23 Q Did it involve searching her mouth?

24 A No.

25 Q Did it involve her taking off her shoes?

1 A Yes.

2 Q Did it involve her taking off her socks?

3 A Yes.

4 Q But not her pants or her brassiere or any other
5 clothes?

6 A Well, during a pat down search, you don't have
7 to take off your undergarments, you feel under them
8 and check, you know, you lift them up and, like, in
9 the bra area, but you don't go into their panty
10 area, no.

11 MR. SNELL: No other questions.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. MAYE:

15 Q Did you find anywhere on the pat down 58 grams
16 of crack cocaine on her before she left?

17 A No, sir.

18 MR. MAYE: Okay. Thanks.

19 THE COURT: Recross?

20 MR. SNELL: No questions, Your Honor.

21 THE COURT: Thank you, ma'am. You may step
22 down.

23 Call your next witness.

24 MR. MAYE: The State would call Antoinette
25 Thomas to the stand.

1 ANTOINETTE THOMAS,
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat. State your full name
4 and spell your last, please.

5 THE WITNESS: My name is Antoinette Thomas.
6 It's T-h-o-m-a-s.

7 DIRECT EXAMINATION

8 BY MR. MAYE:

9 Q Ms. Thomas, if you would, tell the ladies and
10 gentlemen of the jury where you're originally from.

11 A I'm originally from Florida.

12 Q Okay. Where in Florida did you grow up?

13 A In West Palm Beach County, Belgrade.

14 Q Tell the ladies and gentlemen of the jury how
15 you initially came here to Edgefield County and what
16 your connection to Edgefield was.

17 A My husband was a farm labor crew leader. We
18 ran labor camps in the area, provided workers for
19 the farmers. And he's deceased and I decided to
20 stay up and continue to live here.

21 Q You and your husband were involved with migrant
22 labor camps?

23 A Exactly.

24 Q Okay. Where were y'all living when he died?
25 Did he die when y'all were up here?

1 A Well, he died in Florida, but I was up here
2 still working in Edgefield County.

3 Q Did you just decide to stay on and make your
4 home here?

5 A Exactly.

6 Q Ms. Thomas, let me ask you this. Now, in the
7 past, you got a conviction for fraud and swindling
8 involving running those migrant camps one time from
9 1997; is that right?

10 A Yes.

11 Q You've gotten caught one time for petit larceny
12 back many years ago, too, for stealing. What was
13 it?

14 A A mango when I was a kid about 14.

15 Q When you were 14?

16 A About 14.

17 Q You stole a mango?

18 A Yes.

19 Q Prior to October the 24th of 2007, Investigator
20 Roosevelt Young executed a search warrant at a
21 residence that was your residence, didn't he?

22 A Exactly.

23 Q And found some crack and a little bit of
24 marijuana, didn't he?

25 A Exactly.

1 Q Did you get charged as a result of Investigator
2 Young executing that search warrant at your house?

3 A Not as of yet, no.

4 Q Not as of yet?

5 A No.

6 Q What did you agree to do for Investigator Young
7 because -- in lieu of him charging you there when
8 you got caught on that search warrant that day?

9 A I agreed to help him find some other people
10 that was selling crack cocaine, that's what I did.

11 Q Okay. Let me ask you this. On October the
12 24th of 2007, were you working with law enforcement,
13 with SLED and with Edgefield County, specifically
14 Investigator Young trying to help him with drug
15 investigations?

16 A Exactly.

17 Q In the earlier part of that day, were you
18 working on Odouri Lytes initially or were you
19 working on something else?

20 A On something else.

21 Q On October 24th of 2007, that morning, did you
22 have occasion to contact Odouri Lytes? And tell the
23 ladies and gentlemen of the jury how you contacted
24 him.

25 A I called him on my mobile and talked to him

1 about purchasing some crack cocaine and talked to
2 him about the price. And he called me later on that
3 day to confirm that he could -- he had it and that
4 he could deliver it around five o'clock that day and
5 so we set that up.

6 Q You called him that morning?

7 A Yes, sir.

8 Q Okay. Was law enforcement around or with you
9 when you called that morning?

10 A Yes, they was with me.

11 Q Okay. How did you contact him or how did you
12 know to contact him? Did you have his phone number?

13 A I previously had his phone number.

14 Q Okay. So who was present when you made that
15 phone call to him?

16 A The officers, Roosevelt Young, Officer Coby and
17 Officer Miller.

18 Q All right. You said that he called you back
19 later in the day. Well, tell the ladies and
20 gentlemen of the jury about how much y'all talked
21 about buying and what, if any, conversation y'all
22 had about a price.

23 A Well, earlier that day when I called him, we
24 talked about purchasing two ounces of crack cocaine.
25 He told us the price would be \$800 and --

1 Q Eight hundred dollars, what, total or \$800 --

2 A No, for each ounce. So that means \$1600 I
3 needed to have. And we talked about what time of
4 day that he could have it there for me.

5 And he called back in the middle of that time
6 frame to assure that -- the person that he was
7 bringing it from that I was for real about
8 purchasing the crack cocaine. So he called back to
9 confirm on the phone that the person that he was
10 bringing it from wanted to know for sure whether I
11 was serious about bringing the -- about purchasing
12 the drugs. So I assured him that I had the money
13 and I was for sure, so we just proceeded on. Later
14 on in the day, he called back --

15 Q How many times did he call you that day?

16 A He called about three times -- well, I'd say
17 about two times because I initially called him. And
18 I called him on the way, when he was on the way,
19 just to see where he was at, when he was bringing
20 it.

21 Q Okay. Were y'all actually doing something else
22 that day?

23 A Yes, we was. We was working on another case
24 when this incident come up with him.

25 Q When he called more than one time, did y'all

1 stop what y'all were doing on that case --

2 A Exactly.

3 Q -- and work on this one?

4 A Yes.

5 Q Once the decision was made to stop what y'all
6 were doing on that case, where did they take you
7 before you did the deal?

8 A We went to Edgefield County to the airport in
9 Saluda -- Saluda County to the airport.

10 Q Okay. What did they do in regard to getting
11 you ready to go do this controlled transaction with
12 Mr. Lytes, the defendant in this case?

13 A They had the officer lady come out to search
14 me. They wired me and got me ready to go.

15 Q Did you bring any outside drugs into this?

16 A No, no, no.

17 Q Did you have anything on you when they searched
18 you?

19 A No, no, no, no.

20 Q Did you bring any outside money in?

21 A No, no, no.

22 Q What were you driving that day?

23 A I was driving my vehicle, a black Cadillac
24 Escalade.

25 Q Did they do anything to record what was going

1 to go on during the transaction and how did they
2 address that with you?

3 A They put, I think, monitoring devices in my
4 vehicle and they also had me wired.

5 Q They wired you up there?

6 A Uh-huh. Yeah.

7 Q Okay. What happened when you left out at the
8 airport area after they searched you and searched
9 your vehicle and all, what did you do then? Where
10 did you go?

11 A We went to the National Guard -- after the
12 airport, I went -- after we left the airport, we
13 went up there to meet him about the drugs at the
14 church.

15 Q Okay. Let me ask you this. How did you get
16 there? Did you drive?

17 A I drove.

18 Q What kind of vehicle did you drive?

19 A My Cadillac Escalade.

20 Q Okay. So tell the ladies and gentlemen of the
21 jury everything that happened from the time that you
22 left up there after they searched you till the time
23 that you encountered Mr. Lytes in this case, tell
24 them what went on.

25 A Okay. As I was driving to meet him at the

1 location, and I think that's the time that I asked
2 him how far was -- how far was he and he said he
3 would be there -- he wasn't that far. So he was
4 like, I'd be there in like two minutes. So that's
5 when I met him on the side of the road of Highway 23
6 right before the road where we turned to go into the
7 church and I had him follow me on down into the
8 church where we did the transaction about the drugs.
9 I counted the money and gave him the drugs and, at
10 that time, that's when the officers came.

11 Q How much money did they give you?

12 A Sixteen hundred and 25 dollars. Twenty-five
13 dollars is supposed to be for his gas expense of
14 bringing the drugs.

15 Q So when he got there, how -- how did he arrive
16 there when he got to the scene?

17 A He come in a little green and red car. He had
18 somebody bring him down. And when he saw me, he got
19 out the car with them -- out of the car with them
20 and got in the car with me and we drove down to the
21 church. I told him I wanted to drive down to the
22 church so we could count the money. And so, anyway,
23 I guess the girl in the car, she followed us on down
24 there and the police came and that was that.

25 Q Let me ask you this. How much money did you

- 1 give Odouri Lytes?
- 2 A Sixteen hundred and 25 dollars.
- 3 Q Okay. What did he give you in exchange for the
- 4 \$1625?
- 5 A Two ounces, I suppose, of crack cocaine.
- 6 Q Okay. How was it -- how did he have it? How
- 7 was it -- did he have it in his hands or how did he
- 8 have it?
- 9 A He had it in his hand in a plastic bag and he
- 10 handed it to me.
- 11 Q He gave it to you. Where were you when he gave
- 12 it to you?
- 13 A In the car at the church.
- 14 Q Tell the ladies and gentlemen of the jury
- 15 everything you can remember about the conversation
- 16 or anything that he said to you inside of that
- 17 vehicle, tell them anything that you can remember
- 18 that was said inside the vehicle.
- 19 A He talked about the amount of the drugs, which
- 20 was 28. And 28 should have been, like, each ounce
- 21 should have been 28 grams and he confirmed that,
- 22 that it should have been 56, but he had a little
- 23 over, which was 61. That was talked about in the
- 24 conversation.
- 25 Q Okay. So he told you it was a little bit over?

1 A Yes.

2 Q That you got a little bit more than what you
3 bargained for?

4 A Exactly.

5 Q Okay. What happened once y'all had done the
6 deal and the money had changed hands and he gave you
7 the drugs, what happened then?

8 A He observed that the polices was coming, so he
9 said, Here, go the cops. So he was getting out at
10 that time. So when he got out, I immediately locked
11 my door. And the police came and I guess subdued
12 him or whatever and they came to me and I gave them
13 the drugs.

14 Q Okay. You were obviously in on this, but what
15 did you act like when the cops came? What did you
16 do?

17 A Well, I acted as if I was part of being the --
18 I was on his side. In other words, I was acting as
19 if I was getting busted, too.

20 Q What did you do to play act to try to lead
21 somebody to believe that? How did you act?

22 A I just went to crying and acting as if I was a
23 part of the problem, as if I was -- to make him
24 think that I was getting busted, too, along with
25 him. So that's what I pretended to act as if they

1 were busting me, too, so he wouldn't know that I was
2 the informer, but he knew.

3 Q Or so you hoped he wouldn't think you were the
4 informer?

5 A Yeah.

6 Q You did not get charged initially when
7 Investigator Young caught you with crack. And you
8 had crack?

9 A Right.

10 Q You didn't initially get charged, did you?

11 A No, sir.

12 Q And you've worked with Investigator Young and
13 Investigator Perry on a number of cases since that
14 time, haven't you?

15 A Exactly.

16 Q Has anybody told you specifically what's going
17 to happen to your charges or what is going to be
18 done?

19 A No, sir. Nobody's told me anything. I'm just
20 doing what I think is right to help my own self.

21 Q You obviously have some expectation in this
22 case that you're better off helping than not
23 helping?

24 A Exactly.

25 Q I mean, that's fair to say?

1 A Exactly.

2 Q Have you done what they've asked you to do
3 since that time --

4 A Yes, I have.

5 Q -- about assisting them in apprehending other
6 people selling crack?

7 A And when the situation came up that they asked
8 for my help, I provided my help.

9 Q The drugs that you got from Odouri Lytes, what
10 did you do with them after the police came? Who did
11 you give them to?

12 A To Officer Coby Perry.

13 Q To Officer Perry?

14 A Uh-huh.

15 Q Let me ask you this. What name did you know
16 Odouri Lytes by?

17 A Gravy.

18 Q Was that his nickname?

19 A That was his nickname. That's the name I knew.
20 I didn't know no Omouri (sic). I just knew Gravy.

21 Q The \$1625 that you gave to him in exchange for
22 the two ounces, where did you get that money from?

23 A From Officer Coby, Edgefield County Sheriff's
24 Department.

25 Q Okay. Just one thing, is Odouri Lytes, the

1 defendant, is he present in the courtroom? The guy
2 that you made the drug transaction with, is he
3 present here in the courtroom?

4 A Yes.

5 Q Could you point him out and tell the ladies and
6 gentlemen of the jury how he's dressed?

7 A That's him sitting over by the gentleman right
8 there.

9 Q Okay. Is he in the lighter colored suit or the
10 dark --

11 A In the black coat, yeah.

12 MR. MAYE: Your Honor, I would just like the
13 record to reflect she's identified the defendant,
14 Mr. Lytes.

15 THE COURT: It is so noted.

16 MR. MAYE: Answer any questions the defense has
17 for you.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. SNELL:

21 Q Ms. Thomas, would it be fair to say that back
22 during 2007, you were fairly involved in the local
23 drug community, you knew a lot of drug dealers, knew
24 a lot of drug people?

25 A I guess you could say that.

1 Q And were you on drugs yourself back during that
2 time?

3 A No, sir.

4 Q You were only selling drugs?

5 A Yes, sir.

6 Q Okay. And you'd agree with me that the amount
7 of crack that you, yourself, are found to have in
8 your position in July would be enough to charge you
9 with trafficking in crack?

10 A Uh-huh.

11 Q It's over 28 grams?

12 A Uh-huh.

13 THE COURT: I'm sorry, what was your answer? I
14 couldn't hear you. You can't say uh-huh and
15 huh-huh.

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 All right. Go ahead, Mr. Snell, ask your next
19 question.

20 BY MR. SNELL:

21 Q And now is it your belief or your hope that
22 your testimony here today and your cooperation in
23 this case is going to make things go easier on you
24 later?

25 A Yes.

1 Q I mean, you think that may result in perhaps
2 you getting probation or a good reduction in your
3 charges?

4 A Well, maybe.

5 Q How easily would it have been for you,
6 yourself, to procure or obtain crack cocaine on your
7 own back during the Fall of 2007?

8 A Not very easy.

9 Q It wouldn't have been?

10 A Other than to him.

11 Q So he was the only individual you knew back
12 there in 2007 that could have provided you with
13 crack?

14 A That I knew personally, yes. One of them,
15 yeah.

16 Q Okay. Now, isn't it true that you've assisted
17 the law enforcement, the police, on multiple other
18 occasions and helped them -- actually at least five
19 other occasions; is that right?

20 A No.

21 Q How many times?

22 A Two other occasions.

23 Q Only twice?

24 A Yes.

25 Q So you haven't been involved in a total of six

1 cases so far?

2 A Not in this -- on this, no. Yeah, in a life
3 history, yes, maybe so.

4 Q How many drug cases have you assisted Agent
5 Perry, who's the gentleman seated in the middle in
6 the sport coat, with?

7 A Excuse me?

8 Q How many cases have you assisted Agent Perry,
9 who's the gentleman in the sport coat seated right
10 in the middle, how many cases have you helped him
11 with?

12 A Maybe about four or five.

13 Q Okay. So it's been more than two?

14 A Uh-huh.

15 Q And did all of those occur after your July 2007
16 arrest or -- not arrest --

17 A No.

18 Q -- but when you were caught in July of 2007
19 with crack?

20 A Yes.

21 THE COURT: Speak up, please.

22 THE WITNESS: Okay. Yes, sir.

23 BY MR. SNELL:

24 Q So during that period of time when you were at
25 least four or five drug dealers total that you were

1 able to help law enforcement with, is it still your
2 testimony that you could not have procured or
3 obtained crack if you wanted to?

4 A Well, I could with the money, if I had the
5 money.

6 Q If you had the money, how long would it take
7 you to find crack?

8 A Not long.

9 Q An hour?

10 A It's according to how much crack you were
11 talking about.

12 Q Say two or three cookies?

13 A It would take some time.

14 Q But that's something you could do?

15 A That's something I would --

16 Q That is something that could have been done?

17 A Yes.

18 Q And can you tell the jury what a cookie is?

19 A A cookie is a round piece of crack cocaine
20 that's cooked up hard and they call it a cookie.
21 It's a round piece of crack cocaine.

22 Q About how much does a cookie weigh?

23 A About 28 ounces. That's what it's supposed to
24 -- that's what an ounce is supposed to weigh. So a
25 cookie can be any size. It's according to what size

1 of the drug you want.

2 Q When you say 28 ounces, did you mean 28 grams?

3 A I meant 28 grams. I'm sorry.

4 Q Do you know what the ingredients are in crack
5 cocaine?

6 A Not really.

7 Q Do you know how crack cocaine is made?

8 A Not really.

9 MR. SNELL: Okay. Thank you. No other
10 questions.

11 THE COURT: Redirect?

12 MR. MAYE: No.

13 Thank you.

14 THE COURT: Thank you, ma'am. You may step
15 down.

16 Call your next witness.

17 MR. MAYE: The State calls Investigator
18 Roosevelt Young to the stand.

19 ROOSEVELT YOUNG,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat, please. State your
22 full name and spell' your last.

23 THE WITNESS: Roosevelt Young, Y-o-u-n-g.

24 *****

25 *****

1 DIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Investigator Young, tell the ladies and
4 gentlemen of the jury where you're currently
5 employed, where you've been working, about your
6 background in law enforcement.

7 A I'm currently employed at the Edgefield County
8 Sheriff's Office and I've been there approximately
9 14 years. And I'm the supervisor over narcotics in
10 Edgefield County.

11 Q Who else do you work with? Do you work with
12 other agencies other than just employees of the
13 Edgefield County Sheriff's Department? Tell the
14 ladies and gentlemen of the jury a little bit about
15 that.

16 A I'm on a task force with SLED and McCormick and
17 Saluda County.

18 Q How long have y'all been doing that?

19 A About eight years.

20 Q Investigator Young, is your primary emphasis
21 with the sheriff's office, I know you have some
22 supervisory responsibilities, but is your primary
23 emphasis working on narcotics?

24 A Yes, sir.

25 Q In this and the other counties here?

1 A Yes, sir.

2 Q Okay. How did you first encounter Antoinette
3 Thomas, the lady that y'all used as a confidential
4 informant in this case against Mr. Lytes?

5 A Back in the early part of July of 2007, an
6 informant made contact with myself and Investigator
7 Miller and advised us that Ms. Thomas had a quantity
8 of drugs at her house. We met with the informant
9 and developed enough probable cause to get a search
10 warrant issued for her residence.

11 Q What did you find when you went out to her
12 house?

13 A We found a large quantity of crack cocaine and
14 marijuana.

15 Q Okay. Once you discovered that she had crack
16 cocaine, how did you go to work? What did you do at
17 that point in time?

18 A She was initially in Florida. Myself and Agent
19 Perry contacted her and got her to come back to
20 South Carolina. We interviewed her a couple of
21 weeks later and we developed an operation with this
22 gentleman called Gravy.

23 Q Let me ask you this. Did you charge Antoinette
24 Thomas at the outset? Did you go get warrants for
25 her, did you lock her up, did you do all that?

1 A No, sir.

2 Q Okay. Why didn't you do that or what was your
3 motivation in not doing that? What were you trying
4 to do?

5 A Trying to keep her name good. If you arrest
6 someone immediately with a large quantity of drugs
7 and put them in the system, anybody can call the
8 jail and find out what the charges is, therefore,
9 they won't be no good to us if we're trying to
10 apprehend other people of her caliber.

11 Q Did she agree to start working for you?

12 A Yes, sir, she did.

13 Q Did she work on just the case involving
14 Mr. Lytes here or did she work with you on other
15 cases?

16 A She worked on other cases.

17 Q The people that she was going to work, did she
18 always identify who it was or did y'all identify
19 people for her? How did that work?

20 A She identified the possible suspects that we
21 was going to be involved with.

22 Q Okay. Based on what she told you, tell the
23 ladies and gentlemen of the jury about what happened
24 or what y'all were working on October 24th of 2007.

25 A She basically told us that she made contact

1 with Gravy. He was from the Batesburg-Leesville
2 area. That was the only name she knew him by. And
3 she said that he would be able to deliver a large
4 quantity of drugs, approximately two ounces of crack
5 cocaine.

6 Q How did she make contact or were you present
7 when she did that?

8 A Yes, sir. She made contact by a cell phone.
9 And myself and Agent Perry and Investigator Miller
10 was all present.

11 Q Once y'all made the determination that y'all
12 were going to do a transaction involving Odouri
13 Lytes in this case, tell the ladies and gentlemen of
14 the jury what y'all did and why you did that.

15 A We immediately, I got enough officers together
16 because I didn't know anything about Mr. Lytes,
17 that's to protect the officers and the informant to
18 make sure we had enough people in case it went south
19 on us when we took him down. We wired her up, got
20 Officer Presley to wire her up after we made the
21 phone call. And Agent Perry issued her the money
22 and we set the operation in order.

23 Q Okay. Once y'all searched her and gave her the
24 money and wired her up, what did you do and how did
25 you travel to the scene? What was your involvement?

1 A I was in a trail vehicle is what we call it. I
2 was monitoring the wire. I had a receiver in the
3 vehicle that I was in, myself along with two other
4 officers. And we was probably a couple vehicles
5 behind Agent Perry and Investigator Miller and I was
6 just monitoring the conversation what the informant
7 was saying.

8 Q Okay. How does that wire transmitter work?
9 How is it that you're able to monitor and listen and
10 what do you do to document that?

11 A It's a one watt transmitter that we install on
12 the informant's body. It's concealed, nobody can
13 see it. Only the informant knows that the wire is
14 on him or her. It's a receiver and it transmits
15 through the receiver, therefore I can hear what's
16 going on, any and all conversation that's being made
17 there.

18 Q Were you listening to that wire live?

19 A Yes, sir, I was.

20 Q Okay. Was it being recorded as well?

21 A Yes, sir, it was.

22 Q How was it being recorded?

23 A Through an audio cassette tape.

24 Q Let me ask you this. Do you have that cassette
25 in this case?

1 A Yes, sir.

2 Q You do?

3 A Investigator Miller does.

4 Q Have you listened to it since that time? Did
5 you listen to the live feed?

6 A Yes, sir.

7 Q Okay. Have you subsequently listened to the
8 audio portions of what was recorded on there?

9 A Yes, sir.

10 Q Okay. Is what's on the recording, does it
11 fairly and accurately reflect, at least what you
12 could hear that day, is it the tape of the
13 transaction that you heard?

14 MR. SNELL: Objection.

15 THE COURT: Yes.

16 MR. SNELL: Just like to renew all of my
17 previous objections concerning the audio recording.

18 THE COURT: All right.

19 MR. MAYE: Mark that for I.D.

20 (State's Exhibit Number 9, tape, was marked
21 for identification.)

22 BY MR. MAYE:

23 Q I'm going to show you what's been marked as
24 State's 9, ask you if you can identify that?

25 A Yes, sir. This is the audio tape that we took

1 from the operation back in October the 24th of '07.

2 Q Okay. Let me ask you this. What's the clarity
3 like of what you hear? What are the challenges that
4 y'all have in getting a clear audio recording?

5 A You've got a lot of variables. It's just like
6 a cell phone signal. Just like today, it was
7 raining, it's kind of ironic because it was raining
8 the same day that we'd done this deal here. If
9 you're in a bad location, it's going to come -- the
10 signal is going to fade in and out, you're going to
11 hear bits and pieces, but the experience and the
12 training that I have, that's all I do all day
13 everyday is monitor wires so I was still
14 understanding what was going on.

15 Q Okay. Why were you listening to a live feed?
16 What was the purpose of that, you listen to it?

17 A Number one, the informant safety and to let the
18 other officers know when the transaction has been
19 made.

20 Q Okay. Were you able to hear, from monitoring
21 the live feed on the wire, were you able to hear
22 that the transaction had been consummated or done,
23 it was finished?

24 A Yes, sir. Once I heard them talking about the
25 different weights, 28 per ounce, I was signaling for

1 Agent Perry and them to go ahead and take him down.

2 Q The tape that you have there, it fairly and
3 accurately reflects what you were able to hear over
4 the live feed?

5 A Yes, sir, it does.

6 MR. MAYE: I move to admit that into evidence
7 at this time.

8 THE COURT: Subject to your previous
9 objections?

10 MR. SNELL: Yes, Your Honor.

11 THE COURT: Mark it in the record, please,
12 ma'am. The objections are overruled.

13 (State's Exhibit Number 9, tape, admitted
14 into evidence.)

15 BY MR. MAYE:

16 Q Investigator Young, I'm going to ask you to do
17 this. Let's publish that to the jury if we can,
18 just let them listen to it. (Pause.)

19 Investigator Young, just come down off the
20 stand, if you will. Let's play that tape for the
21 jury, the audio portion.

22 A (Witness leaves the witness stand.)

23 (Whereupon, State's Exhibit Number 9 was
24 played for the jury.)

25 (Witness resumes the witness stand.)

1 Q At what point in time during that conversation,
2 did you notify the other officers that you thought
3 that the deal had been done?

4 A At the point when he said 28 grams and he put a
5 little bit more in there, that's when I signaled for
6 Agent Perry and them to come on in and take them
7 down.

8 Q What did y'all do -- once you gave the signal,
9 what happened then?

10 A Once I gave the signal, like said, I was a
11 couple vehicles back in the convoy, when we got
12 there in my vehicle, Mr. Lytes was already in
13 handcuffs and Agent Perry was mirandizing him when I
14 pulled up.

15 Q Did you hear Agent Perry give him his Miranda
16 warnings?

17 A Yes, sir, I did.

18 Q Okay. Did he indicate to you that he
19 understood his Miranda warnings there at the scene?

20 A Yes, sir, he did.

21 Q Okay. What did he say after being advised of
22 his Miranda rights?

23 MR. SNELL: Objection, Your Honor.

24 THE COURT: Yes, sir.

25 MR. SNELL: I would object on all prior

1 grounds.

2 THE COURT: All right. The objections are
3 noted and overruled.

4 You may continue.

5 THE WITNESS: He said that Ms. Leaphart, which
6 is the young lady that drove him to Edgefield
7 County, didn't have anything to do with it and
8 everything in the vehicle was his.

9 BY MR. MAYE:

10 Q Let me ask you this. Did y'all threaten him in
11 any way?

12 A No, sir.

13 Q Did you promise him anything?

14 A No, sir.

15 Q Did you do anything to influence his decision
16 one way or another whether he spoke to you?

17 A No, sir.

18 Q What he told you, was it in response to any
19 direct question to you, or after you gave him his
20 Miranda rights, did he just start speaking?

21 A Yes, sir, it was just spontaneous. He just
22 come right out after his Miranda warnings.

23 Q What happened afterwards? After y'all got him
24 in custody, what was he charged with and what
25 happened?

1 A He was transported to the county detention
2 center up here in Edgefield and I charged him with
3 trafficking in crack cocaine and conspiracy to
4 trafficking in crack cocaine.

5 Q What county did that transaction of the
6 exchange of the \$1625 for that crack cocaine with
7 Mr. Lytes, what county did that take place in?

8 A Edgefield County.

9 Q Were you present when Agent Perry took custody
10 of the drugs?

11 A Yes, sir.

12 MR. MAYE: Answer any questions the defense has
13 for you.

14 THE COURT: Cross-examination?

15 MR. SNELL: Your Honor, at this time, can I
16 have a brief recess to confer with my client?

17 THE COURT: Sure.

18 Ladies and gentlemen, I need to ask you to step
19 in the jury room. Don't discuss the case.

20 (The jury retires to the jury room.)

21 THE COURT: Investigator Young, during the
22 break, you can step down, but you cannot discuss
23 your testimony with anyone; you understand?

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

1 We're at ease.

2 (Brief recess.)

3 THE COURT: Defense ready for the jury?

4 MR. SNELL: We are, Your Honor. Thank you.

5 THE COURT: State?

6 MR. MAYE: The State's ready, Your Honor.

7 Thank you.

8 THE COURT: Bring them in.

9 (The jury returns to the courtroom.)

10 THE COURT: Cross-examination?

11 MR. SNELL: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SNELL:

14 Q Officer Young, when Mr. Lytes was taken into
15 custody, did y'all find any guns or weapons or
16 anything like that on him?

17 A No, sir.

18 MR. SNELL: No other questions. Thank you.

19 THE COURT: Redirect?

20 MR. MAYE: Nothing. Thank you, Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 Call your next witness.

23 MR. MAYE: The State rests. Thank you.

24 THE COURT: All right. Ladies and gentlemen, I
25 told you that whenever this happened, I had to send

1 you out of the courtroom to discuss legal issues
2 with the attorneys no matter whether you've been in
3 here 30 seconds or 30 minutes or three hours. So I
4 realize you just came back in, but you've got to go
5 back out. This takes about 20 minutes usually and
6 I'll get you back out here as quickly as I can.
7 Don't discuss the case.

8 (The jury retires to the jury room.)

9 **THE COURT:** Motions?

10 **MR. SNELL:** Your Honor, at this time, the
11 defense would move for a directed verdict. I
12 believe the evidence submitted taken in the light
13 most favorable to the State fails to meet -- fails
14 to demonstrate each necessary element for the
15 offense of trafficking in crack cocaine 28 to 100
16 grams. We'd make a motion for a directed verdict at
17 this time.

18 **THE COURT:** All right. The Court respectfully
19 denies your motion. There's evidence that goes to
20 each essential element of the crime charged and jury
21 issues have been created.

22 All right. Mr. Lytes, I have to go over some
23 things with you now and I need your responses under
24 oath. Would you raise your right hand for me,
25 please?

1 ODOURI LYLES,

2 having been duly sworn, testified as follows:

3 THE COURT: We've reached the stage of the
4 trial where the State has rested its case in chief.
5 And the next thing that would happen is that your
6 side, the defense, is given the opportunity to
7 present evidence for the jury to consider. You
8 understand where we are in the trial?

9 DEFENDANT: Yes, sir.

10 THE COURT: Now, in that regard, you may call
11 witnesses to testify on your behalf, if you wish.
12 And if you want to testify yourself, you may. Do
13 you understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: No one can force you to testify.
16 You have an absolute right to remain silent. And if
17 you choose not to testify, I'm going to tell that
18 jury that they cannot hold your silence against you
19 in any way at all, they're not to discuss it in the
20 jury room during their deliberations, it's not to
21 enter their mind in making the decision of whether
22 the State has proven you guilty beyond a reasonable
23 doubt or failed to meet that burden; you understand?

24 DEFENDANT: Yes, sir.

25 THE COURT: Now, this decision about whether

1 you testify or not, it is your decision to make and
2 yours alone; you understand that?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** I expect that you might confer with
5 your attorney or family members, friends, anyone
6 whose opinion you value on important decisions, but
7 it is your call, you're the man on trial and it's
8 your decision to make and yours alone; you
9 understand?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** Does he have any prior criminal
12 record that would subject him to impeachment?

13 **MR. MAYE:** Your Honor, he has a 2005 malicious
14 injury to personal property one to \$5,000 out of
15 Lexington County. He also has an assault and
16 battery of a high and aggravated nature conviction,
17 looks like, 7/19/2005. I believe that these would
18 subject him to impeachment.

19 He has a number -- he has a multitude of drug
20 offenses Your Honor, but they're for distribution of
21 crack first offense, proximity of crack,
22 distribution of crack and distribution of crack,
23 Your Honor. I would imagine those crack offenses,
24 Your Honor, with my previous experience with the
25 Court, I would imagine although they would probably

1 be -- they are within the ten years, the prejudicial
2 effect, that the Court would probably deem, would
3 outweigh the probative value where we're trying him
4 for trafficking of crack. I'm not going to attempt
5 to impeach him with those.

6 If he testifies, I would offer the malicious
7 injury and the lynching, impeach him. They're
8 within the ten years. They're 2004 and 2005
9 convictions respectively, I believe, Your Honor.

10 **THE COURT:** All right. Under Rule 609 of the
11 South Carolina of Rules of Evidence subsection
12 (a)(1), it provides that evidence that a witness has
13 been accused -- excuse me -- convicted of a crime
14 that was punishable by imprisonment in excess of a
15 year is to be admitted.

16 However, if the witness is a person accused of
17 a crime and on trial, in order for the court to
18 allow that to be admitted, the court has to
19 determine the probative value of admitting the
20 evidence outweighs the prejudicial effect to the
21 accused. It also provides that if a witness has
22 been convicted of any crime that involved dishonesty
23 or false statement, it shall be admitted regardless
24 of the punishment.

25 If there are prior drug convictions, I

1 certainly would not allow those in. The two that
2 are being offered or proposed to be offered by the
3 State, malicious injury to personal property and
4 assault and battery of a high and aggravated nature
5 from 2005, are within the ten year time frame. They
6 do carry more than a year in prison as a possible
7 punishment. However, the Court is unable to find
8 that admitting that evidence outweighs -- the
9 probative value of admitting the evidence outweighs
10 the prejudicial effect to the accused.

11 What that means, Mr. Lytes, is if you do take
12 the stand, I'm not going to allow the State to ask
13 you questions about your prior criminal record; you
14 understand that?

15 **DEFENDANT:** Yes, sir.

16 **THE COURT:** The only way that could come in is
17 if you open the door to it in some way. Now, the
18 typical way that happens is if I rule like I just
19 ruled in your case and don't allow that to come in
20 through the State, I have had some people get on the
21 stand then and make a statement like, I've never
22 been arrested, or a statement like, I've never been
23 in any trouble with the law, and obviously that's
24 opening the door because that's not true for those
25 people and so then the State was allowed to ask

1. questions about that.

2 But if that evidence were to come in any
3 fashion, I would then instruct the jury that they
4 could consider it, if at all, only on the issue of
5 your credibility or believability and for no other
6 purpose. You understand all of that?

7 DEFENDANT: Yes, sir.

8 THE COURT: Now, he put in an exhibit, didn't
9 he?

10 COURT REPORTER: Yes, sir.

11 THE COURT: So, Mr. Lytes, have you understood
12 everything we've been over now about your right to
13 testify?

14 DEFENDANT: Yes, sir.

15 THE COURT: And whatever decision you've made,
16 is it your own decision made of your own free will?

17 DEFENDANT: Yes, sir.

18 THE COURT: I know you've been in jail, but
19 have you had any kind of substance that would affect
20 your thinking today?

21 DEFENDANT: No, sir, just not too much sleep,
22 but I don't think it'll affect me.

23 THE COURT: Okay. Well, I'm going to make a
24 finding, Mr. Lytes, that whatever decision you make
25 regarding your decision to testify or not to

1 testify, that you've made it freely, knowingly,
2 voluntarily and intelligently. You understand you
3 have a right to testify. You understand you have a
4 right not to testify. You understand that nobody
5 can force you to testify and you have an absolute
6 right to remain silent.

7 You understand that if you choose not to
8 testify, I'm going to tell that jury they cannot
9 hold your silence against you in any way at all.
10 You understand that the decision about testifying,
11 it's your decision to make and yours alone.

12 And, Mr. Lytes, I don't know what your decision
13 might be, so I'm not trying to talk you into or out
14 of anything, but whatever your decision is, you can
15 change your mind until such time as you actually
16 come up here and take the witness stand. Do you
17 understand all of that?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** All right. Mr. Snell, do you all
20 anticipate offering any evidence? Do you need to
21 talk?

22 **MR. SNELL:** Just let me confer.

23 (Pause.)

24 **MR. SNELL:** Your Honor, we don't propose to
25 offer any defense testimony.

1 **THE COURT:** All right. Mr. Lytes, is that your
2 decision, made of your own free will?

3 **DEFENDANT:** Yes, sir.

4 **THE COURT:** So you don't want to call any
5 witnesses and you don't want to testify yourself; is
6 that correct?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** That's correct?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Folks, I don't know what to do
11 because I don't know if the Internet is down, if I
12 can print from up here. I don't think I can.

13 (Pause.)

14 **THE COURT:** We're at ease.

15 (Brief Recess.)

16 **THE COURT:** Bring the jury in, please.

17 (The jury returns to the courtroom.)

18 **THE COURT:** Members of the jury, I've been
19 informed that you have all of the evidence that
20 you're going to have to decide the case. And I need
21 to give you an instruction at this point, so I
22 invite your close attention.

23 I instruct you and emphasize to you that the
24 fact that the defendant in this case elected not to
25 testify is not a factor to be considered by you in

1 any way in your deliberations and in your
2 consideration on the question of whether he is
3 guilty or not guilty. His decision not to testify
4 must not be considered by you in any manner
5 whatsoever against Mr. Lytes.

6 An accused has a constitutional right to remain
7 silent and the assertion of that right cannot and
8 must not be considered by you in your deliberations.

9 Under your oath, you are to reach no inference
10 and you are to draw no conclusion whatsoever from
11 the fact that Mr. Lytes elected not to testify. His
12 decision not to testify should not be discussed by
13 you in the jury room. It should not enter your
14 minds in making your decision.

15 The burden of proof, as I've told you
16 repeatedly, is upon the State to prove every
17 essential element of the offense charged against
18 this defendant beyond a reasonable doubt and
19 Mr. Lytes has no obligation to prove anything at
20 all.

21 Now, I told you when I was going through my
22 initial comments to you at the beginning of trial,
23 that I was going to tell you how we were going to
24 proceed and I gave you a few landmarks to look for
25 and that after you came back from the break, when

1 the State had arrested, I will tell you where we
2 went from there.

3 There are two stages that remain in this trial,
4 the closing arguments from the attorneys and then
5 the part where I give you the law and that's called
6 the charge.

7 Now, what we're going to do next is I have
8 printed out for the attorneys what I intend to tell
9 you about the law. They've had it for a while, but
10 they haven't had a full chance to read it. I did
11 that while you were doing your lunch orders. So I
12 have to send you back in the jury room.

13 We're going to discuss what I intend to tell
14 you. As soon as that part is over, and I don't know
15 how long it will take, hopefully not very long, I'll
16 bring you out here and you will hear the closing
17 arguments from the two attorneys. I always take a
18 break between when they take -- when they give you
19 their closing arguments and when I tell you the law
20 so I can get set up. It's usually a very brief
21 recess. It's usually three to five minutes tops.
22 And then I'll bring you out here and tell you the
23 law. It's going to take me, unless I change it, 22
24 minutes to tell you the law.

25 You can't discuss the case yet. If you'll just

1 go back to the jury room. As soon as the attorneys
2 and I finish discussing what I intend to tell you
3 and I get that squared away, we'll bring you out
4 here and you'll hear the closing arguments. You'll
5 get the case today. All right, thanks very much.

6 (The jury retires to the jury room.)

7 THE COURT: All right. Have y'all had a chance
8 to finish reading the charge?

9 MR. MAYE: I have, Your Honor. No objections
10 from the State.

11 THE COURT: Have you had a chance to read it
12 yet?

13 MR. SNELL: I have, Your Honor, just one --
14 just one point I just wanted to ask the Court about.
15 On page number four, there's a listing of the
16 elements of the Miranda advisement.

17 THE COURT: Yes, sir.

18 MR. SNELL: Number F states that the advisement
19 include a right that he can stop answering questions
20 at any time.

21 THE COURT: Yes, sir.

22 MR. SNELL: My understanding, that previously
23 the Court had ruled that that wasn't the law.

24 THE COURT: No, sir. You raised the issue. I
25 said that the Miranda warnings, there's no magic

1 terms and that the substantial equivalent of those
2 rights had to be read. If you go back and read the
3 original Miranda case, that's not in there.

4 MR. SNELL: That's right, Your Honor.

5 THE COURT: Most people give that as part of
6 the charge. I think the argument is that it's
7 implicit.

8 In this case, I don't think it makes much --
9 well, I don't know. It depends on the jury's view
10 of the evidence. I mean, the only testimony in the
11 record is that this was a spontaneous utterance by
12 the defendant, but I'm going to charge that. You
13 can argue it, if you want to.

14 MR. SNELL: Thank you. I just wanted to -- I
15 didn't want -- I wanted to make sure that was
16 supposed to be in there.

17 THE COURT: Well, I've debated about taking it
18 out at various times. That's just what I usually
19 charge. And I think it's implicit that the
20 defendant has to understand that he can stop talking
21 at any time, which may be implicit from the very
22 first statement that you have a right to remain
23 silent, any statement you make can and will be used
24 against you in court. That means if you make one
25 statement, you know that one can be used against

1 you. You have to make a decision about whether to
2 make the second statement, as well as the first.

3 MR. SNELL: No objections, Your Honor.

4 THE COURT: Okay. I don't think there's
5 evidence of anything except trafficking more than 28
6 grams or not guilty.

7 MR. MAYE: I don't see anything else, Your
8 Honor. Thank you.

9 THE COURT: Are y'all ready to argue?

10 MR. MAYE: The State's ready, Your Honor.

11 THE COURT: Mr. Snell, you're ready?

12 MR. SNELL: We're ready, Your Honor.

13 MR. MAYE: If I can have about ten seconds,
14 Your Honor, to grab that.

15 THE COURT: We'll be at ease a few minutes.

16 (Brief Recess.)

17 THE COURT: Defense ready for the jury?

18 MR. SNELL: We are, Your Honor.

19 THE COURT: State?

20 MR. MAYE: The State's ready, Your Honor.

21 Thank you.

22 (The jury returns to the courtroom.)

23 THE COURT: Ladies and gentlemen, as I
24 explained to you, the next step in the process is
25 that the attorneys will make their closing arguments

1 to you. I told you at the outset of the trial, that
2 in opening statements, the attorneys were not
3 permitted to engage in argument.

4 We have reached the stage of the trial now
5 where the attorneys may use the art of advocacy to
6 attempt to get you to see things as they would like
7 you to see them on behalf of their respective
8 positions. Now, that doesn't change the burden of
9 proof. The burden of proof remains entirely upon
10 the State.

11 The way this will work is that since the State
12 has the burden of proof, the prosecutor, the
13 Solicitor, gets to go last. So you'll first hear
14 from the defense attorney and then from the
15 Solicitor. I invite your close attention.

16 Mr. Snell, you're recognized for your closing
17 argument.

18 MR. SNELL: And, Your Honor, do I have an
19 election regarding the order of closing?

20 THE COURT: Do you have an election to do what
21 now?

22 MR. SNELL: Regarding the order of closing.

23 THE COURT: If you mean can you go last?

24 MR. SNELL: Yes, sir.

25 THE COURT: No, you entered an exhibit.

1 MR. SNELL: Thank you, Your Honor.

2 THE COURT: If you had not entered the exhibit,
3 you can go last.

4 MR. SNELL: Thank you, Your Honor.

5 CLOSING ARGUMENTS

6 MR. SNELL: Ladies and gentlemen, again, I'm
7 James Snell, the attorney representing Mr. Odouri
8 Lytes, who's the defendant in the case. You know,
9 we've introduced you to him at the opening
10 statement, but his family, his mother and his aunt,
11 have come in to support him and be with him here
12 today.

13 You know, Odouri is a 28-year-old man and this
14 is the most important day in his entire life. And
15 your decision as jurors in this case will be the
16 most important decision anyone will ever make
17 affecting Mr. Lytes in his future.

18 The State's going to have you believe and
19 they're going to argue that this thing is open and
20 shut, that it's one of the most straightforward
21 things probably that they'll tell you they ever seen
22 and there's really no decision to make. You know,
23 we arrested him, we prosecuted him, we brought him
24 into court, we convened a jury, nothing else to do.
25 That's not how the system works. And there is a lot

1 to consider in this case.

2 The burden of proof that the Judge is going to
3 instruct you on is proof beyond a reasonable doubt.
4 The defendant in this case, Mr. Lytes, and I
5 advocating on his behalf, we have no obligation, no
6 requirement to prove his innocence because if you
7 think about it, in criminal cases frequently, it
8 would be impossible to prove your innocence. You
9 can't prove a negative, but you certainly can hold
10 the State to its burden of proof, certainly can
11 point out the inaccuracies, the inconsistencies, the
12 difficulties in the State's case and that's what my
13 role in this case is and my role in this argument,
14 final argument to y'all.

15 But the State's got the entire burden of proof.
16 And I'd submit to you that you should demand of the
17 State they produce to you a tight enough case that
18 without hesitation, you can convict Mr. Lytes. I
19 don't think they can do it.

20 Now, the allegation against Mr. Lytes is that
21 on October 24th, 2007, Mr. Lytes was involved in
22 trafficking in crack cocaine. And the evidence of
23 that comes from the testimony of the confidential
24 informant. And let's talk about her.

25 She's a convicted cheat and thief who is only

1 testifying to try to do herself, her own self some
2 good. She's someone who just months before, could
3 have been arrested for trafficking in crack cocaine,
4 but wasn't. She is the only eyewitness to what
5 occurred inside that vehicle. So when you think
6 about what happened, you must consider the source.

7 If you recall the testimony provided concerning
8 how she was patted down and searched, I'd submit to
9 you that was a, you know, it wasn't a comprehensive
10 search. There certainly was opportunities to hide
11 small objects in clothes, undergarments. You know,
12 I don't know if that was as sufficient as a lot of
13 folks get going through the airport, but that's the
14 methodology used by the law enforcement in this case
15 and that's what they brought you and are asking you
16 to convict Mr. Lytes on.

17 Another piece of evidence that you have to
18 consider to tell you what happened inside of that
19 car was that audio recording. I, unfortunately, had
20 the opportunity to listen to that audio recording
21 several times and I'd submit to you that the
22 majority of it, including all the portions inside
23 the car, is unintelligible. I can't make out what
24 they're saying. And I'd submit to you it's
25 impossible to make out what they're saying.

1 I think there's a lot of conjecture and
2 guessing and speculation as to what's on that tape.
3 The beginning of the tape and the end of the tape is
4 very clear. There certainly are portions that you
5 may be able to make out a syllable or a few words,
6 but it's a very poor quality tape. That, along with
7 the testimony of Ms. Thomas, those are the only two
8 pieces of direct evidence to show you what happened
9 in the car.

10 The rest of the evidence that's presented to
11 you by the State, what you heard from the witness
12 stand, the documents you have, those are all
13 circumstantial. I want you to consider that.
14 Although, the Judge will instruct you that direct --
15 the law makes no distinction between direct and
16 circumstantial evidence. Other than that poor audio
17 tape, other than the testimony of a convicted cheat
18 and swindler trying to save her own hide, that's the
19 only direct evidence in the case.

20 There's been no evidence of any kind that there
21 were any weapons or guns involved in this
22 transaction. There were no weapons -- or, excuse
23 me, there's been no evidence, in fact, there's
24 evidence to the contrary that there wasn't any guns
25 or weapons. And there's also evidence that there

1 wasn't any use of crack or anyone smoking or using
2 drugs.

3 In making your decision in determining whether
4 or not Mr. Lytes was in actual possession of the
5 crack cocaine or was involved in trafficking, you
6 know, this high level drug possession case, I want
7 you to consider carefully and closely those facts.

8 Now, in weighing the credibility of all the
9 witnesses, I point out to you that there was a
10 substantial difference in testimony between Agent
11 Perry, the SLED agent who testified initially, and
12 the confidential informant, Ms. Thomas, concerning
13 how many times she has helped and assisted them in
14 their cases. I thought it was a little strange and
15 unusual. And I submit to you it goes to show that
16 there's some unreliability, actually a lot of
17 unreliability with that testimony.

18 I still would submit to you that based on the
19 evidence you heard today, we don't have a straight
20 answer on that and we don't know exactly what the
21 truth of that matter is.

22 I'd also tell you and I'd submit to you that
23 Agent Perry testified that as soon as Ms. Thomas, as
24 the informant, finishes up her testimony and her
25 work for the State on her different cases, that

1 she's going to be arrested and prosecuted for
2 trafficking in crack cocaine and be put in the same
3 chair as the defendant. That's been two years ago.

4 She's helped on six cases, according to Agent
5 Perry. I tell you I don't think that's an offering
6 (ph). And I'd submit to you that that's a
7 misrepresentation. And I'd submit to you that's
8 every expectation on the part of Ms. Thomas that her
9 charges will get dropped and dismissed. I submit to
10 you that she's -- wouldn't have done this otherwise.

11 And I'd submit to you that Agent Perry, when he
12 told you that she was going to be prosecuted, that
13 he wasn't being forthright and honest with you. And
14 the credibility of the State's witnesses in a case
15 like this is very important.

16 As I said before, I think this ought to be an
17 awfully tight case to meet the burden of proof
18 required of proof beyond a reasonable doubt
19 necessary to convict Mr. Lytes. I think when you
20 consider, you know, certainly that -- the testimony
21 you heard, the conflicting testimony concerning
22 those issues, I think it goes to show there is
23 reasonable doubt in this case.

24 We also heard from Crystal Leaphart, who was
25 the young lady that testified this morning, who was

1 the driver, who allegedly drove Mr. Lytes to the
2 location where he met with Ms. Thomas.

3 Now, Ms. Leaphart testified that she had no
4 idea that Mr. Lytes was going to do a drug
5 transaction or had any -- involved in drugs at all.
6 She thought he was just going to meet someone in a
7 parking lot, I guess, in an Escalade about, you
8 know, for no reason at all, like that's something
9 that she felt was perfectly ordinary and normal.
10 I'd submit to you that was not reliable testimony
11 either. I submit to you that anything she said, I
12 don't think can be believed or trusted.

13 You know, her involvement, whatever the extent
14 it is or is not, there's no way to gauge, hence
15 there's no way to gauge her credibility, but she's
16 an important witness on the part of the State.

17 I'd also tell you there's been some evidence of
18 a statement allegedly made by Mr. Lytes. And it's
19 been -- the officer testified that prior to, this is
20 Investigator Young, prior to that statement being
21 given, a Miranda warning was given by Agent Perry.

22 The Miranda warning and advisement as given to
23 you by the Judge, we contend does not match up or
24 sync up with the Miranda warning that was actually
25 given to Mr. Lytes on the side -- on the incident

1 site. I want you to listen very carefully to the
2 instructions the Judge gives you specifically
3 regarding the Miranda advisement. I don't think
4 it'll sync up with the testimony you've heard.

5 Now, I've pointed out these issues and
6 inconsistencies and these problems in the case.

7 Does any of it prove that Mr. Lytes didn't do it, is
8 innocent? I don't know because that's impossible in
9 a case like this to prove.

10 Does it show there are problems and
11 inconsistencies, unanswered questions remaining and
12 lingering from the State's case? I contend
13 absolutely.

14 Did those problems and issues and unanswered
15 questions, would they make -- shouldn't they make a
16 reasonable person and a juror following their oath
17 and instruction pause and hesitate before reaching a
18 final conclusion? I submit to you absolutely.

19 Is that pause or hesitation enough that Mr.
20 Lytes is entitled to a verdict of not guilty?
21 Absolutely. And that's exactly what the Judge is
22 going to instruct you and that is the law.

23 It's important for y'all to set aside any
24 preconceived ideas or notions or prejudices. A lot
25 of folks believe that if you have a trial and

1 there's a judge and a jury and this process has run
2 this far, that means someone is automatically
3 guilty. If they're weren't, why would they be here?
4 That's not true.

5 And, you know, the jury service and the jury
6 system is the best system in the world.. You should
7 all be thankful we live in the United States and
8 specifically in South Carolina. And I tell you the
9 great thing about Edgefield County and this
10 courthouse is we've got probably one of the best
11 courthouses in the country to come in here and try
12 cases.

13 It's paramount that each and every one of you
14 individually and coming together as a group,
15 faithfully execute the oath that you took. The
16 Judge is going to instruct you that he's looking for
17 a unanimous verdict. If any one of you individually
18 has any remaining and lingering questions, doubt,
19 hesitation, it's your obligation, in serving under
20 your oath and serving as a juror, not to freely give
21 those up to suit the will, the whim or the pressures
22 of anyone else.

23 So if you have hesitations, if you have
24 reasonable doubt, you're not to give that up just
25 because you think someone else may want you to,

1 because you think that's what the Court wants you to
2 do, if you think that's what the State wants you to
3 do. Each and every one of you is entitled to your
4 own decision, your own feelings about the case and
5 you have to come to a unanimous, comprehensive and
6 just a full agreement on your verdict.

7 The State's going to say that they've presented
8 a case that you can just connect the dots and every
9 one will just lead you down a clear, straight road
10 so you should find Mr. Lytes guilty of this offense.
11 It's an awful lot of reasons why it's not such a
12 straight road. I submit to you that all of these
13 issues, inconsistencies and problems create
14 reasonable doubt. You must hesitate in this case.
15 I know you're going to have to think about it long
16 and hard. And after thinking about it long and
17 hard, I think you'll have to come to the conclusion,
18 you can't come to a ready conclusion without some
19 more hesitation, then that's you're reasonable
20 doubt.

21 So I want you to go in the jury room and
22 carefully consider all of the evidence. I want you
23 to be satisfied that this is how you think a law
24 enforcement operation investigation should go, this
25 is how a case should be presented, this is how

1 someone should be put on trial for a trafficking
2 level offense, be well satisfied with everything, I
3 think if you do and you hold the State to the burden
4 of proof, they won't be able to meet it.

5 Again, I thank y'all all for your time and
6 consideration. I know we had a lot of running in
7 and out during the room (sic). Any time there's a
8 case like this at this level of court, there are
9 always a lot of legal issues, but -- although we try
10 to keep the case running as quickly as possible,
11 and, of course, this morning went, I think, went a
12 lot faster than yesterday, just as soon as you get
13 in that jury room, you need to slow it down, take
14 this thing slow and carefully. The end result, I'm
15 sure, you'll find a -- that you can't be convinced,
16 you can't find proof beyond a reasonable doubt, I'd
17 ask you to return a verdict of not guilty for Mr.
18 Lytes on this charge of trafficking.

19 Thank y'all so much.

20 **THE COURT:** Thank you, Mr. Snell.

21 Solicitor, you're recognized for your closing
22 argument.

23 **MR. MAYE:** Thank you, Your Honor.

24 Ladies and gentlemen, I doubt when any of y'all
25 got your jury notices, when they came to you in the

1 mail, that you immediately called your spouse or the
2 people in your life that were most important to
3 express the joy that you felt in being called up
4 here as jurors. I doubt that was many of you of
5 your reaction when you got that.

6 I've heard some older people say that men used
7 to have to go out and work on the road. They
8 certainly had the draft. They've had all sorts of
9 things in the past that were compulsory public
10 service. This is the last one. This is the last
11 compulsory public service that we have.

12 I think Winston Churchill said that the highest
13 duty that a citizen has during peacetime is service
14 on a jury. And this is, this is the last compulsory
15 public service that we've got left, but it is
16 vitally important because the 12 of you are going to
17 go back in that jury room and deliberate and sit as
18 the judges of the facts in this case.

19 I told you when we got up here just as surely
20 as Judge Keesley is sitting up there as the judge of
21 the law, and he's going to charge you in great
22 detail when I get through speaking here with what
23 the law is in this case and you take the law as
24 Judge Keesley gives it to you, but just as surely as
25 he sits up there as the judge of the law in this

1 case, as presiding over this case, you sit as the
2 judges of the facts in this case.

3 One of the great things about a jury system is
4 that you bring into this courtroom the sum total of
5 all of your collective wisdom, all of the different
6 jobs, all of the different life experiences in
7 weighing the credibility, believability, in dealing
8 with your children and dealing with people at work.
9 The 12 of you that go back in that jury room to
10 deliberate, the collective wisdom of the 12 of you
11 certainly outstrips that of any one person and
12 that's a great thing about a jury system.

13 And this is vitally important for everyone here
14 in Edgefield County because let's distill this down
15 to exactly what it is because there was some talk in
16 this case about moisture and water and cocaine and a
17 lot of people were asked what goes into this and
18 what does it distill down into.

19 But you heard the chemist up there saying that
20 she tested this and this is crack cocaine. And that
21 is human misery distilled down about as pure as you
22 can get and that's exactly what Odouri Lytes brought
23 over here on October the 24th of 2007 from over
24 there in Batesburg to drop off here in Edgefield
25 County with a bag of human misery. Shattered lives,

1 addiction, not to mention the kids on the street
2 selling 20 dollar rocks out of it.

3 And I told you at the outset of this case there
4 would be talk about trafficking and what that was.

5 And Judge Keesley is going to go through in great

6 detail and tell you all about what trafficking is,

7 but this isn't somebody with a bag of marijuana.

8 This isn't some kid on the street corner even

9 selling a 20 dollar rock of crack cocaine. This is
10 at the wholesale level.

11 There was some question here and he was asking,

12 Oh, were y'all using it? No, they weren't using it,

13 because this is not the delivery and sell and

14 transaction of crack cocaine down at the street

15 level, this is at the wholesale level.

16 Sure, they're not using it there. This is a

17 wholesale distribution as surely as the Thomas and

18 Howard truck comes around and delivers to the

19 grocery store. That's how it gets in here and

20 that's what these officers are trying to address.

21 Sure, they're going to pinch the people that

22 are doing street level deals, but they're always

23 trying to work their way up the ladder bigger and

24 bigger to follow it as far as they can follow it to

25 figure out how it gets in here, this human misery,

1 that what made its way into Edgefield in that paper
2 bag in Odouri Lytes' hand as he gets this young lady
3 to bring him over here from Batesburg, that's what
4 they're constantly trying to figure out, that's what
5 they're constantly trying to do. They're trying to
6 get back and get the people that are making the big
7 money on it.

8 Because make no bones about it, what this case
9 comes down to is greed and selfishness because he's
10 going to bring this human misery over here because
11 he wants to get his hands on \$1600 in cash. That's
12 what this boils down to.

13 They're working another deal. They've got
14 Antoinette Thomas.

15 And I'm going to tell you up here from the
16 outset, Antoinette Thomas is sorry. She's a dope
17 dealer herself. And it's unfortunate that these
18 officers, that that's who they have to deal with,
19 but that's the only way they can do it in this case.
20 Because what they want to do is not pinch the people
21 on the streets, they want to get it where it's
22 coming in here and do something about it. And it's
23 unfortunate that they've got to deal with somebody
24 like Antoinette Thomas, but that's what it takes.

25 Sure, she expects something out of this. She

1 didn't come up and volunteer. She didn't seek out
2 Roosevelt Young and say, oh, Lord, I can help you
3 out. She got pinched. These officers know what
4 they're doing.

5 Coby Perry in this case spent all of his time
6 at SLED. Investigator Young spent the last 15 years
7 doing this, he knows what he's doing. He pinched
8 her and he didn't arrest her. Why? Because she'd
9 have been burned.

10 And you better believe if word gets out on the
11 street, that somebody gets pinched, the Odoury Lytes
12 of this world, they're not going to have anything to
13 do with her because she's burned. They can only
14 work an informant until the point in time comes in
15 the community and among drug dealers that somebody
16 doesn't know that she's involved with the police and
17 if they'd gone down and locked her up, she would
18 have been burned.

19 She was certainly burned when she got up here
20 and testified under oath. It's over with now.
21 However many times they want to tell you, oh,
22 they're discrepancies, just trying to pick any kind
23 of thing to get some discrepancy whether it was four
24 or five times, two or three times, six times that
25 she did it, one thing about it she's not going to do

1 it anymore because she's burned at this point in
2 time.

3 And the officers, that's one of the reasons we
4 went into all of the detail that we went into in
5 this case because you see how this works. They
6 needed to get somebody to help them. They put it
7 over her and hang it over her head. And she's
8 certainly selfish in what she's doing in this case,
9 but she did, whether it was begrudgingly or not, she
10 helped them in this case and that's what it takes to
11 catch traffickers and that's what they did in this
12 case. Sure, she's got an expectation that she's
13 going to get some help, but she helped them.

14 I want you to think about it in this case, when
15 we talked about possession cases, another one would
16 be distribution, moving up the ladder from there,
17 distribution case. You heard what they do in this
18 case, wiring people up. And the reason that we went
19 through all of this great detail, and you heard the
20 same tedious thing from many of the witnesses in
21 this case, but they don't take this lightly. This
22 is not their first day, these officers in this case.

23 They searched her to make sure that she didn't
24 bring in anything, that she didn't bring any drugs
25 in to try to set somebody up or make it look like

1 somebody was doing something that they weren't, so
2 they searched her to make sure that she didn't have
3 anything.

4 They made sure that she didn't have any money
5 in this case. Any money that they gave her, they
6 made photocopies of it before they gave it to her.
7 They searched her automobile. They controlled every
8 variable they could.

9 You heard her, she didn't even know whether or
10 not they had a wire in her car or not. She knew
11 they had been in that car, but they wired her up.
12 She didn't know whether they were recording her or
13 not.

14 Why are they doing this? So they can keep
15 control of what's going on in this case, so you
16 don't have to rely strictly on the word of a
17 confidential informant in this case. That's why
18 there's an audio tape here, that's why these
19 officers are monitoring it live, that's why they
20 search her, that's why they searched her car so they
21 can keep control on it so you don't have to rely on
22 a confidential informant alone.

23 You can listen to these officers up here as
24 they testify under oath in this case because they
25 were listening to what was going on, they were

1 eyeballing this from a distance where they could
2 see. They controlled the transaction.

3 Typically, though, like Agent Perry talked
4 about letting the money walk, in a typical deal like
5 this, they might have done this transaction and just
6 let Mr. Lytes go and done other transactions over
7 time. But when you're talking about a deal at this
8 level, \$1600 worth, two ounces second tier
9 trafficking, 28 to a hundred grams in this case,
10 they weren't going to let that money walk. They
11 didn't need anymore on him.

12 They had him there at the trafficking level 28
13 to a hundred grams, two ounces of crack cocaine, and
14 they weren't going to let that money walk and they
15 didn't. So they did the tightest and most
16 controlled and most overwhelming thing that they can
17 do, they swooped in right there on the spot.

18 The officer was listening, and you can hear
19 this tape, you can hear Mr. Lytes in there, there
20 weren't but two of them in the car. And you can
21 hear the lady in there talking and you can
22 hear Mr. Lytes talking about 28, 28, I even gave you
23 a little extra. He's being a generous businessman
24 in this case, keeping his customer happy.

25 Lord knows she called him that morning and he's

1 ringing her phone off the hook while they're trying
2 to do something else. They stop. He's so motivated
3 to bring this human misery over here in Edgefield
4 County and to get his hands on that \$1600, he's
5 bugging her to come over here.

6 They have to stop what they're doing, go back
7 out there to the off site location, search her and
8 conduct this operation while they're trying to do
9 something else. He's not going to wait. That's the
10 greed and the selfishness that is right here with
11 Mr. Odourí Lytes that's sitting here in this
12 courtroom. He's going to bring this misery over
13 here to Edgefield County to get his hands on this
14 money.

15 Never mind the consequences and the shattered
16 lives and the human misery that bring this stuff
17 over here entails for everybody in Edgefield County,
18 I want that money. I'm going to bring those drugs
19 and I'm going to make sure that you've got that
20 money.

21 Because what did she tell you in this case? He
22 wanted to be sure that she had the money before he
23 came over here because he's got to get himself a
24 ride.

25 Now, the one decent thing he did that day was

1 when he does get caught, he says this young lady
2 that drove him over there didn't know anything about
3 it. And she didn't. She hadn't been in trouble.
4 She got up here and she told you, I gave this guy a
5 ride because he brought me some gas money and I
6 drove him over here. And she got charged, too...

7 But, ladies and gentlemen, you don't leave your
8 common sense at home when you come to the courthouse
9 in this case. Sure, she got charged with
10 trafficking and she came up here and testified. Is
11 she going to be dealt with like the defendant in
12 this case? Use your common sense.

13 Antoinette Thomas in this case, as sorry as she
14 is, certainly she got up here and testified, and the
15 defense wants to make a deal, certainly she's got an
16 expectation that she's going to be treated
17 differently. Use your common sense, how many people
18 would agree to cooperate with Mr. Young and
19 Mr. Perry in this case if they got treated exactly
20 the same way?

21 Certainly there's an expectation on her part,
22 this confidential informant, that her case is going
23 to be dealt with differently. They can't do their
24 jobs unless they can roll out these confidential
25 informants and go after other people.

1 And go after other people they did over and
2 over and over again. She was working on another
3 deal the day she did Odourri Lytes. That's just the
4 way the narcotics business is, but that's how you
5 have to deal with people who don't care enough about
6 other folks that are so selfish and so greedy that
7 they'll bring this misery over here for \$1600, never
8 mind the consequences for anybody else here.

9 That's what it takes to deal with drug
10 traffickers unfortunately, but there's no other way
11 to do it because you can rest assured in 30 years,
12 Coby Perry would have figured out another way to
13 deal with it if there was another way to deal with
14 it other than making deals with the people like the
15 Antoinette Thomases of the world, but that's it.
16 This is a nasty business and that is one more nasty
17 substance.

18 They did what they were supposed to do. They
19 monitored it. They controlled it. They gave her
20 \$1625 of SLED money that they took from other dope
21 dealers.

22 And where does that money end up? The defense
23 in this case will tell you, oh, there's no direct
24 evidence in this case. You can't hear what went on
25 in that tape. You don't know what happened in

1 there.

2 We know one thing, from the direct evidence in
3 this case, Antoinette Thomas went down there to that
4 location with \$1625 SLED's money in her pocket, she
5 went down there with no drugs. He gets in that
6 Cadillac Escalade and sitting right down at that
7 church here in Edgefield County in that car, she
8 ends up with what? Fifty-six -- 58 grams of crack
9 cocaine and that's what she's got in her hands.

10 And where does the SLED money come from when
11 they swoop in there, guns drawn and descend on
12 Odourι Lytes and Antoinette Thomas in that Escalade?
13 Well, \$1625 in SLED money has made its way into
14 Odourι Lytes' pockets and the drugs are with
15 Antoinette Thomas. And she didn't have those drugs
16 when she went and he didn't have that money when he
17 got there. That's direct evidence as sure as has
18 ever been put up in this courtroom. It speaks for
19 itself. That's the control and the tightness of a
20 buy-bust operation.

21 But the danger in that is and what you've got
22 to do is you've got to burn up your CI. And there
23 are only so many people they can get a hold of at
24 that level of play that can do this.

25 That's why they had her play acting afterwards

1 because they don't want to burn her because somebody
2 that can deal with the drug traffickers of the
3 world, the Odouri Lytes from over in
4 Batesburg-Leesville and anybody else that she dealt
5 with, they don't come across that everyday because
6 these are wholesalers. These are not the people
7 that are using it. These are the people that are
8 selling it at the wholesale level and driving
9 Cadillac Escalades and bringing this misery in here
10 to the detriment of everybody else in Edgefield
11 County.

12 And there are only so many of those people to
13 come by thank goodness, but when they get them,
14 they've got to use them and they don't want to burn
15 them, if they can help, from it. So more -- they
16 had her play acting out there, just like some how or
17 another they figured out some other way that the
18 drug deal was going on in hopes that they can
19 continue to use her, but they sure can't use her
20 anymore.

21 She got up here under oath in this case in the
22 courtroom where the court reporter is taking down
23 everything, there's not a drug dealer within a
24 hundred miles of here that doesn't know that
25 Antoinette Thomas is burned at this point in time

1 and she's certainly no good to them at this point in
2 time. That's just the way drug business works.

3 I told you in this case at the outset that
4 we've got the burden of proof and we welcome it in
5 this case. It couldn't be any tighter around him.
6 The evidence couldn't point anymore directly to him,
7 a buy-bust. They caught him red-handed, money in
8 his pocket, drugs in her hand. There's no question
9 that's how this crack cocaine got here in this
10 courtroom today.

11 You heard every link in the chain. You heard
12 and I told you at the outset of this case, I got up
13 witness after witness, we tell you that the officers
14 dotted their Is and they crossed their Ts. They
15 searched who they were supposed to search. They
16 gave this man his rights out there as they were
17 supposed to give them to him. Nobody got hurt.
18 They got their money back so they can put that right
19 back to work trying to find drug dealers and putting
20 that money that they took from drug dealers to begin
21 with to work to catch the drug traffickers that
22 would bring this stuff into Edgefield County and
23 into South Carolina.

24 They did what they were supposed to do, could
25 not have done a better job. No one got hurt. They

1 got the money. They got the drugs. And they got
2 Odouri Lytes and here he sits in this courtroom.

3 Ladies and gentlemen, the Judge is going to
4 charge you with the law in just a moment when I sit
5 down and he's going to tell you about trafficking.
6 And trafficking encompasses people that aid, abet,
7 conspire, provide financial assistance, even
8 somebody that drives somebody if they knowingly do
9 so, anything. When we're talking about at a
10 wholesale level, if you help them, if you handle it,
11 if you assist them, if you provide financial
12 assistance, you're a trafficker.

13 But we don't even have to worry about that in
14 this case because we've got trafficking down at its
15 purest, most selfish form at the hands of Odouri
16 Lytes in this case. He brought it here personally
17 to Edgefield County because he wanted that \$1600,
18 that is trafficking in its purest form.

19 You don't leave your common sense at home when
20 you come to the courthouse. All that I ask that the
21 12 of you do is go back into that jury room and come
22 back with a verdict that speaks the truth for
23 everyone here in Edgefield. If you will have done
24 that, you will have done your oath and carried out
25 your oath as jurors in this case. I submit to you

1 that seated right there at that table is a drug
2 trafficker. Do the right thing in this case.

3 **THE COURT:** Thank you, Mr. Maye.

4 Ladies and gentlemen, as I told you, I always
5 take a brief break, a very brief break, between the
6 closing arguments and the charge. As soon as I'm
7 set up out here, I'll send for you. It won't be
8 more than about three minutes. Thank you. Don't
9 discuss the case yet.

10 (The jury retires to the jury room.)

11 **THE COURT:** Court's in recess for three
12 minutes.

13 (Brief recess.)

14 **THE COURT:** All right. During the charge, I
15 need for everybody to stay still and stay quiet,
16 don't move around, don't do anything to distract the
17 jury. Absent an emergency, please don't be moving
18 around or say anything, don't be having
19 conversations.

20 All right. Bring in the jury.

21 **BAILIFF:** Judge, the food is here.

22 **THE COURT:** Go ahead and let them eat. All
23 right, we're at ease. I'm not going to make them
24 eat cold food.

25 (Whereupon, there was a luncheon recess.)

1 **THE COURT:** Bring the jury in, Mr. Dunn.

2 (The jury returns to the courtroom.)

3 **CHARGE OF THE COURT**

4 **THE COURT:** Ladies and gentlemen, the food
5 order was supposed to be here at 12:30, which would
6 have worked out perfectly, but they brought it at
7 12:05 and I didn't want your food to be cold, so I
8 let you go ahead and eat. And now I have the
9 pleasure of trying to explain law to you right after
10 you've just eaten. So bear with me, I'll go through
11 this as quickly as I can.

12 Members of the jury, all of the evidence has
13 been presented. You've heard the arguments of
14 counsel. It's now time for me to instruct you on
15 the law that applies to the case. Please continue
16 to pay close attention during this next stage.

17 Now, first, you need to understand some basic
18 ground rules. You, the jury members, are the sole
19 judges of the facts. You decide all of the issues
20 of fact. You alone determine the truth of the
21 evidence, its effect, its value and its weight. You
22 alone judge the credibility of witnesses, in other
23 words, whether or not a witness' testimony is
24 believable.

25 In evaluating the testimony of the witnesses,

1 including any expert witnesses, you may believe all
2 that a witness said or none of it; you may believe
3 part of what a witness said and not believe the
4 balance; you may believe one witness against many or
5 many against one; you may consider any bias,
6 interest or prejudice that you feel that a witness
7 has in the case; you may consider the demeanor and
8 the appearance of the witness and the opportunity
9 for knowledge that the witness had. You may
10 consider the lack of evidence presented by the
11 State.

12 But you're not to exercise these considerations
13 arbitrarily. What I want you to do is to use your
14 common sense, use your sense of logic and reason and
15 your good judgment.

16 It's not proper for me to give you a charge on
17 the facts of the case. I can't discuss the facts
18 with you. I'm not permitted to even convey to you
19 an impression as to what, if any, personal opinions
20 I may develop about the facts of a case as it goes
21 along.

22 So if, during any stage of this trial, you
23 develop an impression that I've got a personal
24 opinion about the facts, you have to remove that
25 totally from your mind. You're the sole judges of

1 the facts.

2 Now, I am the judge of the law that applies to
3 the case. And under your oath, you must accept and
4 apply the law as I give it to you, that means if
5 you've got conflicting ideas about what the law is
6 or what it should be, you must abandon those. I
7 give you the law, you apply it to the facts as you
8 determine them to be and in that way, you reach your
9 verdict.

10 It's also my job to decide what evidence is
11 admissible. If I've ruled something inadmissible or
12 told you to disregard something, you're not to
13 consider those things in arriving at your verdict.
14 Base your verdict on the competent evidence before
15 you, consider the testimony of the witnesses and the
16 exhibits admitted in the trial.

17 I need to explain to you that there are two
18 types of evidence generally presented in a trial.
19 There's direct evidence and there's circumstantial
20 evidence.

21 Direct evidence is evidence of direct
22 perception, including the testimony of a person who
23 asserts or claims to have actual knowledge of a fact
24 such as an eyewitness.

25 Now, circumstantial evidence is proof of a

1 chain. It's proof of a chain of facts and
2 circumstances indicating the existence of a fact.

3 The law makes absolutely no distinction between
4 the weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than
7 of direct evidence. What you need to do is to weigh
8 all of the evidence in the case. And after weighing
9 all of the evidence, if you're not convinced of the
10 guilt of the defendant beyond a reasonable doubt,
11 you must find him not guilty.

12 I also need to explain to you, ladies and
13 gentlemen, that testimony has been given about
14 statements allegedly made by this defendant to law
15 enforcement officers. In evaluating these alleged
16 statements, you first need to determine if the State
17 has proven that the defendant, in fact, made the
18 statement. If not, then you cannot consider that
19 alleged statement in any way against Mr. Lytes.

20 If you find that the defendant did make the
21 statement, the next thing that you are going to have
22 to determine is whether the defendant was in custody
23 and if he was, whether the statement was given in
24 response to police questioning.

25 So in order for you to know what the law

1 requires concerning statements made to police
2 officers, I need to explain some things to you.
3 You've probably heard about Miranda warnings. And
4 Miranda warnings are that you have a right to remain
5 silent, that any statement made can and will be used
6 against you in court, that you have the right to
7 have an attorney and if you do not have the
8 resources to hire a lawyer, the court will appoint
9 one for you at no expense, that you have the right
10 to consult a lawyer before answering any questions
11 or making any statement, that you have the right to
12 have the lawyer present with you at all times during
13 all interviews and interrogations and that you may
14 stop answering questions at any time.

15 Now, while these exact words do not have to be
16 used to convey Miranda warnings, the substantial
17 equivalent must be communicated in order to
18 constitute Miranda warnings.

19 Now, Miranda warnings only relate to
20 interrogations by the police or law enforcement
21 officials. If I say police, I mean any law
22 enforcement official.

23 Now, police interrogation means that the police
24 are questioning the defendant or they're performing
25 the substantial equivalent of questioning, in other

1 words, where a police officer makes a statement or
2 engages in some conduct that's designed to elicit a
3 response. So Miranda warnings are not required
4 unless the police are questioning a person who is in
5 custody.

6 If a person makes a spontaneous statement not
7 prompted by police interrogation, the statement can
8 be considered by a jury even if Miranda warnings
9 were not properly given.

10 If someone is in custody, the police cannot
11 question or interrogate that person unless Miranda
12 warnings have been given and the person has waived
13 his rights and voluntarily elected to answer the
14 police questions.

15 If a statement was made by the defendant in
16 response to police interrogation, the State has to
17 prove that the defendant was properly warned of his
18 constitutional rights, the Miranda warnings, prior
19 to the questioning and the giving of the statement.

20 The next requirement is that the State would
21 have to prove that the defendant knowingly and
22 intelligently waived his constitutional rights and
23 made the statement to the police.

24 And the final requirement is that the statement
25 must have been given voluntarily. The State has to

1 prove that the statement was the expression of the
2 defendant's own free will and it was not improperly
3 induced by compulsion, duress, force or fear or by
4 the promise of some reward or hope of reward.
5 Unless the statement was freely and voluntarily
6 given, you may not consider it against the
7 defendant.

8 If a statement was made while in custody to a
9 law enforcement officer in response to police
10 questions, I instruct you that you cannot use that
11 statement against the defendant unless you're
12 satisfied that the State has proven beyond a
13 reasonable doubt every requirement about which I've
14 just instructed you, that Miranda warnings were
15 given, that the defendant knowingly and
16 intelligently waived his rights, and that he freely
17 and voluntarily made the statement in question.

18 All right. The defendant in this case, Mr.
19 Lytes, is presumed to be innocent. This is no mere
20 legal theory. It is a fundamental and substantial
21 right to which everyone is entitled. It's been
22 described as being like a robe of righteousness
23 that's placed around an accused and remains with him
24 through every stage of the trial. It continues to
25 exist after you go back to your jury room to

1 deliberate so that he is presumed to be innocent
2 unless and until you, the jury, determine that the
3 State has proven the defendant guilty beyond a
4 reasonable doubt.

5 I remind you and emphasize to you once again
6 that the fact that Mr. Lytes elected not to testify
7 is not a factor to be considered by you in any way
8 in your deliberations and in your consideration on
9 the question of whether he's guilty or not guilty.
10 It must not be considered by you in any manner
11 whatsoever against Mr. Lytes.

12 An accused has a constitutional right to remain
13 silent and the assertion of that right cannot and
14 must not be considered by you in your deliberations.
15 Under your oath, you are to reach no inference, you
16 are to draw no conclusion whatsoever from the fact
17 that Mr. Lytes elected not to testify. His decision
18 not to testify should not be discussed by you in the
19 jury room. It should not enter your minds in making
20 your decision.

21 The burden of proof, as I've told you
22 repeatedly, is entirely on the State to prove every
23 essential element of the offense charged against
24 this defendant beyond a reasonable doubt and an
25 accused has no obligation to prove anything.

1 So, ladies and gentlemen, a defendant is
2 presumed to be innocent and he is not required to
3 prove his innocence. He's not required to prove
4 anything at all. The burden is on the State to
5 prove the guilt of the defendant beyond a reasonable
6 doubt and it's required that every essential element
7 of the offense charged be proven by the State beyond
8 a reasonable doubt.

9 Now, that doesn't mean that the State has to
10 prove the guilt of the defendant beyond all doubt or
11 beyond every doubt. The appropriate standard is
12 proof beyond a reasonable doubt.

13 Some of you may have served as jurors in civil
14 court and if you have, you know that the burden of
15 proof in civil court requires the party with the
16 burden to establish that something is more likely
17 than not, that it's probable. And we call that the
18 greater weight or preponderance of the evidence.
19 But in a criminal court setting, which is what we're
20 in now, the standard is much higher and the proof
21 must be much stronger than what we require in civil
22 court. The burden of proof in this case is proof
23 beyond a reasonable doubt.

24 So what do I mean by that term? Proof beyond a
25 reasonable doubt is proof that leaves you firmly

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

5 If, based on your consideration of the
6 evidence, you are firmly convinced that the
7 defendant is guilty of the crime charged, then you
8 must find him guilty of that crime. If, on the
9 other hand, you think there is a real possibility
10 that he is not guilty, then you must give him the
11 benefit of the doubt and find him not guilty on the
12 charge.

13 There's no obligation on the part of Mr. Lytes
14 to raise any doubt or any other possibility. He is
15 presumed to be innocent. The State has the entire
16 burden of proof and has to prove to you that the
17 defendant is guilty to the exclusion of any other
18 real possibility.

19 All right. Now, let's turn to the specific
20 charge that's made in this case. The defendant is
21 charged with trafficking in crack cocaine.

22 It's alleged in the indictment that the
23 defendant did in Edgefield County on or about
24 October 24, 2007, knowingly, intentionally and
25 willfully sell, manufacture, cultivate, deliver,

1 purchase or bring into this state or that he
2 provided financial assistance or otherwise aided,
3 abetted, attempted or conspired to sell,
4 manufacture, cultivate, purchase or deliver or bring
5 into the state or that he was knowingly in actual or
6 constructive possession of or knowingly attempted to
7 become in actual or constructive possession of crack
8 cocaine weighing more than 28 grams.

9 I read the indictment to you at the beginning
10 of the trial and I caution you once again that an
11 indictment has no evidentiary value.

12 The Legislature has established that certain
13 defined activities are unlawful and these activities
14 are called trafficking. One of the things that
15 constitutes trafficking is where a person knowingly
16 is in actual or constructive possession of more than
17 28 grams of crack cocaine.

18 Crack cocaine is an alkaloidal cocaine or a
19 free based form of cocaine, which is the end product
20 of a chemical alteration whereby the cocaine in salt
21 form is converted to a form suitable for smoking.
22 It is also now known in the law by the term cocaine
23 base.

24 If the State proves that the defendant was in
25 actual or constructive possession of more than 28

1 grams of crack cocaine on the date alleged in the
2 indictment and that he did so knowingly and
3 intentionally and willfully in Edgefield County,
4 then the State has proven the defendant guilty of
5 trafficking.

6 So in order to prove the defendant guilty of
7 trafficking crack cocaine, the State has to prove
8 certain things beyond a reasonable doubt. First,
9 that the substance in question was crack cocaine.
10 Second, that the conduct involved more than 28 grams
11 of crack cocaine. Third, that the defendant
12 actually or constructively possessed the crack
13 cocaine.

14 Actual possession of a controlled substance
15 exists when the person has actual physical custody
16 of that substance. Constructive possession of a
17 controlled substance exists when a person does not
18 have actual physical possession of the controlled
19 substance but exercises dominion and control over
20 it. Someone who has both the power and the intent
21 to control the disposition or use of the controlled
22 substance has possession of it within the meaning of
23 the law.

24 Now, obviously, ladies and gentlemen, there's
25 also an allegation of a sale. As I read to you in

1 the definition, trafficking can involve the sale of
2 more than 28 grams of crack cocaine or the actual or
3 constructive possession of more than 28 grams of
4 crack cocaine.

5 Now, mere presence of the controlled substance
6 in proximity to the defendant is not enough. The
7 State has to prove that the defendant knew that the
8 drug was present and that he was exercising dominion
9 and control over it. So whether possession is based
10 on actual possession of the drug or constructive
11 possession, either type requires that the State
12 prove actual knowledge by the defendant of the
13 presence of the controlled substance.

14 Mere presence around a controlled substance and
15 prior knowledge that a crime was going to be
16 committed without more is insufficient to constitute
17 guilt. The State may establish constructive
18 possession by either circumstantial evidence or
19 direct evidence or a combination of both.

20 And, finally, ladies and gentlemen, the State
21 has to prove that the offense occurred in Edgefield
22 County, South Carolina, on October 24, 2007 or
23 around that date.

24 The final thing I have to tell you on the law
25 is that the defendant is entitled to every

1 reasonable doubt arising in the entire case. If,
2 upon any issue of fact essential to a conviction,
3 you have a reasonable doubt as to how that issue
4 should be resolved, then you must resolve that doubt
5 in favor of the defendant.

6 If, upon reviewing the entire case, you have a
7 reasonable doubt as to whether the defendant has
8 been proven guilty, he is entitled to that doubt and
9 a verdict of not guilty.

10 On the other hand, if, upon reviewing the
11 entire case, you find that the State has proven
12 every essential element of the case against the
13 defendant beyond a reasonable doubt, it is equally
14 your duty to find the defendant guilty. That's the
15 law.

16 Ladies and gentlemen, when you go back to the
17 jury room to decide the case, you're going to have
18 with you all of the exhibits that have been admitted
19 in the trial. We'll send a cassette player back so
20 you can listen to the tape if you want to. And
21 you're going to have this verdict form. On this
22 form, you're going to tell us your decision.

23 I'm supposed to tell you that you're not to
24 infer from the order in which I state these that I'm
25 trying to suggest one form of verdict over another.

1 I've got to list one thing first and one thing
2 second.

3 Now, the verdict form reads: As to the charge
4 of trafficking crack cocaine greater than 28 grams
5 but less than 100 grams, we, the jury, unanimously
6 find the defendant, and you have two options, you
7 may find the defendant not guilty or you may find
8 the defendant guilty of trafficking crack cocaine
9 greater than 28 grams.

10 Mr. Foreman, part of your job is going to be to
11 record the verdict for me. And I think you'll find
12 the form self-explanatory. Just check the response
13 the jury chooses and sign your name in the signature
14 line.

15 Now, ladies and gentlemen, how you go about
16 your deliberations, how you go about taking your
17 votes, all of that is in your discretion subject to
18 this requirement: The verdict must be unanimous.
19 All 12 of you must agree before the foreman can
20 record your verdict. You cannot do anything to
21 change the requirement of the verdict being
22 unanimous. And when you come back out in the
23 courtroom and your verdict is published, you can be
24 asked individually if that was, in fact, your
25 verdict and if it still is your verdict. So please

1 understand the verdict must be unanimous.

2 When you've reached your verdict, knock on the
3 door, the bailiff will respond to your knock.

4 Over the past couple of days, I probably told
5 you dozen of times now that you're not to discuss
6 the case until I tell you to. Well, believe it or
7 not it's not time yet. The law says that I have to
8 go over with the attorneys what I just told you and
9 that's just common sense, we don't want you back
10 there deciding the case using the wrong law. So if
11 I said something wrong or they disagree with what I
12 told you about the law, then I have to give them a
13 chance to point it out to me before you start
14 deliberations.

15 Now, as I already explained to you, I printed
16 this out before. We've already been over it, but I
17 never read it verbatim. Sometimes I say things that
18 I don't even realize I said. The lawyers don't get
19 to stand up and object when I'm talking. They have
20 to wait until I finish and I ask them if they have
21 any objections to what I told you.

22 So here's the signal that you need to look for.
23 If I'm satisfied with what I told you, then I will
24 send in the exhibits and the verdict form. The
25 bailiff will bring the two alternates out, close the

1 door. When it's just the 12 of you in there and
2 you've got the exhibits and the verdict form, you
3 can start talking about the case that second, you
4 don't have to wait another second, but don't talk
5 about it until then.

6 I greatly appreciate your attention. You may
7 retire to your jury room. Thank you.

8 (The jury retires to the jury room.)

9 **THE COURT:** Please state for the record
10 exceptions, additions or objections to the charge,
11 from the State.

12 **MR. MAYE:** None from the State, Your Honor.
13 Thank you.

14 **THE COURT:** Defense?

15 **MR. SNELL:** None from the defense, Your Honor.

16 **THE COURT:** Thank you very much.

17 Well, folks, I greatly appreciate the respect
18 you've shown to the Court throughout the trial.
19 It's been a pleasure being with you folks. It's a
20 very difficult situation. The jury has the hardest
21 job in the courthouse. We'll put it in their hands
22 and let them decide it.

23 I need the attorneys to check the exhibits,
24 check the verdict form. When you're satisfied, give
25 those to the bailiff. I guess the bailiff needs to

1 take that cassette player, if that's okay.

2 And, Mr. Bailiff, when you've got everything
3 back there, have them bring the two alternates out.

4 (Pause.)

5 THE COURT: Both sides satisfied with the
6 exhibits?

7 MR. SNELL: Yes, Your Honor.

8 THE COURT: All right. Mr. Dunn, have them
9 bring the alternates out.

10 (The alternates enter the courtroom.)

11 THE COURT: Mr. Jones, Ms. Miles, the jury made
12 it through the case without anyone getting sick or
13 having a problem, so I can discharge you from the
14 jury now.

15 I do want to explain to you that in about half
16 of the cases, I have to use one of the alternates,
17 sometimes I have to use both alternates, so I didn't
18 have you sitting over there for nothing. Once I
19 swear the jury, jeopardy attaches under the double
20 jeopardy rules so I have to keep going forward with
21 the case. So even though you won't get to
22 deliberate on this case, you performed a valuable
23 service. I appreciate it.

24 I do have to go to that meeting in Charleston
25 tomorrow so we will not have court tomorrow and so

1 I'll just cut y'all loose for the rest of the week.
2 If you need any kind of slip for work, just check
3 with the Clerk there and she'll direct you to the
4 proper place. If you want to stay, you're welcome
5 to stay. If you want to go, you're free to go.
6 Thank you.

7 (The alternates were excused.)

8 THE COURT: Court's in recess pending a
9 verdict.

10 (The jury commences its deliberations at
11 1:05 p.m.)

12 (A recess transpired.)

13 THE COURT: I've been informed the jury has a
14 verdict.

15 This is an announcement I make in every case,
16 please don't think I'm singling anyone out. When
17 the verdict is published and thereafter, I expect
18 you to stay still and stay quiet, don't show any
19 sign of approval or disapproval with the verdict,
20 don't shake your head in agreement or disagreement,
21 don't make any sounds, just stay still, stay quiet,
22 we'll get through this just fine. Anybody who
23 violates that directive can be sent to prison for up
24 to six months.

25 Bring in the jury.

1 (The jury returns to open court to report
2 its verdict at 2:05 p.m.)

3 **THE COURT:** Madame Clerk.

4 **THE CLERK:** Mr. Foreman, would you please pass
5 the verdict to the bailiff?

6 (The bailiff hands the verdict to the
7 Judge.)

8 **VERDICT OF THE JURY**

9 **THE COURT:** This is State of South Carolina
10 County of Edgefield, the State versus Odourri Lamont
11 Lytes, case number is 2007-GS-19-00753. As to the
12 charge of trafficking crack cocaine greater than 28
13 grams but less than one hundred grams, we, the jury,
14 unanimously find the defendant guilty of trafficking
15 crack cocaine greater than 28 grams, signed by the
16 foreman.

17 Mr. Foreman, members of the jury, if I've
18 accurately stated your verdict, that is guilty as
19 charged, please signify by raising your right hand.

20 All 12 hands are raised. Thank you.

21 Are there any matters to take up prior to the
22 jury being discharged, from the State?

23 **MR. MAYE:** Nothing from the State, Your Honor.
24 Thank you.

25 **THE COURT:** From the defense?

1 **MR. SNELL:** Nothing from the defense, Your
2 Honor.

3 **THE COURT:** All right. Ladies and gentlemen,
4 that's going to conclude your jury service. There
5 is some information I need to share with you before
6 you go. I have to take up some matters with the
7 attorneys.

8 If any of you want to see the sentencing, I'll
9 let you come out and watch the sentencing. If not,
10 I need for you to wait back there for me in the jury
11 room. And as quickly as I can, I'll be back there
12 and give you that information and you'll be on your
13 way. You'll be through for the week, all right.
14 Thank you. Follow the bailiff, please.

15 (The jury retires to the jury room.)

16 **THE COURT:** Motions?

17 **MR. SNELL:** Your Honor, at this time, we'd make
18 -- the defense will make a motion for a new trial
19 based on prior motions, objections made during the
20 course of the proceedings.

21 Additionally, we'd also -- in the alternative,
22 in addition, we'd also make a motion for the Court
23 to set the verdict aside and also under the
24 thirteenth juror doctrine, that the Court set the
25 verdict aside.

1 **THE COURT:** All right. The motion for a new
2 trial is denied. The Court has reconsidered all
3 previous rulings and finds that there is evidence to
4 support the jury's verdict and no basis upon which
5 the Court believes that the verdict should be
6 overturned.

7 The Court declines to set aside the verdict or
8 to exercise the thirteenth juror doctrine in this
9 criminal case.

10 You have a sentence sheet?

11 **MR. YOUNG:** It's attached to it, Your Honor.

12 **THE COURT:** It's on the indictment?

13 **MR. MAYE:** Yes, sir.

14 **THE COURT:** See if any of them wants to watch
15 the sentencing.

16 (The jurors return to the courtroom.)

17 **THE COURT:** Does the State have anything on
18 sentencing?

19 **MR. MAYE:** Yes, sir, Your Honor. He has two
20 rounds of previous convictions for drugs. I have
21 certified true copies of his sentence sheets and
22 indictments from the Lexington County Clerk's
23 Office, Your Honor, that I'm going to hand forward
24 to the Court. Given the level of the sentencing
25 here, I'd ask that they be made a part of the

1 Court's record in this case.

2 He has indictment 2001-GS-32-1061 and
3 2001-GS-32-1062, both for distribution of crack
4 cocaine, one for distribution of proximity, one for
5 distribution of crack cocaine. He pleaded to PWID
6 powder cocaine, PWID powder proximity. He also --
7 he did those in front of you in 2001. I'll hand
8 these up to the Court.

9 He had another round of drug charges in
10 Lexington. He actually was convicted again pursuant
11 to a guilty plea on indictment 2005-GS-32-2635. It
12 was a distribution of crack third offense that he
13 pleaded down to distribution of crack cocaine first
14 offense. He was sentenced to three years on 7/19 of
15 2005.

16 Contemporaneous with that, he also pleaded to
17 apparently another count of distribution of crack
18 cocaine first offense on indictment 2004-GS-32-5033.
19 He received three years, apparently, concurrent on
20 that.

21 He also was convicted of assault and battery of
22 a high and aggravated nature and malicious injury to
23 personal property 1,000 to 5,000. All of those
24 occurred 7/19 of 2005 in Lexington County. And I
25 hand all of these up to the Court in this case. All

1 of his record, prior convictions come out of
2 Lexington County.

3 And, Your Honor, I leave, given the level of
4 offense and the sentencing range, I'd just leave it
5 to the discretion of the Court in this case.

6 **THE COURT:** All right. You're maintaining this
7 is a third drug offense?

8 **MR. MAYE:** Yes, sir. It is a third drug
9 offense. He has multiple prior offenses, but they
10 occurred some years apart. The convictions occurred
11 some years apart.

12 We maintain that he should properly be
13 sentenced to trafficking crack cocaine 28 to a
14 hundred grams as a third drug offense, Your Honor,
15 and that's why I brought those certified true copies
16 of his record given the level of sentencing that
17 that invokes.

18 **THE COURT:** 2001 and 2002; is that right?

19 **MR. MAYE:** Your Honor, he has two sets of them,
20 some occurred in 2002 and another series of them
21 occurred 7/19 of '05. He pleaded before you, I
22 believe, it was in 2002 and got probation. Then he
23 came back again 7/19 of 2005 and got three years,
24 but he pleaded to you and got probation.

25 It looks like he came back and his probation

1 was revoked for a year on that first series. Then
2 he came back -- he got out, got a new series of
3 charges and on 7/19 of 2005, disposed of numerous
4 drug charges, a malicious injury and a lynching in
5 Lexington. So he has multiple convictions two
6 separate dates.

7 **THE COURT:** I see it. I thought the five was a
8 two. 2001 and 2005?

9 **MR. MAYE:** Yes, sir. So, unquestionably, they
10 occurred some years apart. They weren't all --

11 **THE COURT:** I'm just checking to see if they
12 were within the last ten years.

13 **MR. MAYE:** Yes.

14 **THE COURT:** Okay. Mr. Snell, do you have
15 anything on sentencing?

16 **MR. SNELL:** I do. Additionally, there is an
17 outstanding probation matter that I'd like to ask
18 the Court to take up at the same time.

19 **THE COURT:** Have y'all served him?

20 **PROBATION AGENT:** No, sir, Your Honor. I need
21 about two minutes to serve him.

22 **THE COURT:** All right. Go ahead.

23 (Pause.)

24 **THE COURT:** All right. What's his probation
25 situation?

1 All right. These papers indicate that he --
2 Mr. Lytes was sentenced for malicious injury to
3 personal property by Judge Lockemy in Lexington
4 County in August of 2006. He gave him -- I'm sorry
5 -- in July of 2005. He gave him a sentence of one
6 year suspended, one year probation. The probation
7 did not begin until he was released from the
8 department of corrections apparently on other
9 charges.

10 The papers indicate that he is before the Court
11 alleging a violation of probation. It's alleged
12 that he failed to report March, April 5 and April
13 16, May 17 and June 7, 2007, and having last
14 reported May 31st, 2007, failing to complete drug
15 treatment as scheduled, failed to work diligently at
16 a lawful occupation, never providing proof of
17 employment, failed to contact and advise his agent
18 immediately of an arrest for disorderly conduct in
19 May of 2007, failing to pay his money as directed.

20 They're recommending that his probation be
21 revoked and any financial obligations outstanding be
22 enrolled as a civil judgment against him.

23 Anything else on his probation case?

24 **PROBATION AGENT:** Nothing further, Your Honor.

25 **THE COURT:** All right. Mr. Snell, we're back

1 to you then.

2 MR. SNELL: As far as his probation violation,
3 Your Honor?

4 THE COURT: Both.

5 MR. SNELL: Your Honor, my understanding -- to
6 the extent necessary, my understanding is Mr. Lytes
7 is willing to waive any notice on the probation case
8 and is willing to concede the violation, just would
9 ask that any time to run concurrently.

10 Your Honor, Mr. Lytes is 28 years old. He is
11 sick and has some liver problems. He's here today
12 with his family, his mother and an aunt and some
13 nieces. He had family here yesterday. He does have
14 family support of people that do care and love him.

15 Your Honor, I recognize the sentencing range
16 that's mandated in this type of case. Mr. Lytes has
17 always been, he's been a good client for me to have.
18 He's always been very appreciative. I found him to
19 be kind and respectful.

20 It was sort of a perfect storm of events, if
21 you will, that led to this case having to be tried
22 rather than resolved in some other type of fashion.

23 Your Honor, I would just ask the Court to
24 consider imposing a minimum sentence. I think
25 that's more than substantial in this case.

1 Would you like to say anything?

2 **DEFENDANT:** I just -- Judge, just have mercy on
3 me.

4 **MR. SNELL:** And he has indicated a significant
5 amount of remorse and, I think, sadness for his poor
6 decisions in his life and kind of taken, you know,
7 enough forks in the road that's led him to where we
8 are here today, so -- nothing further, Your Honor.

9 **THE COURT:** Thank you. This is classified as a
10 serious offense, isn't it, not a most serious?

11 **MR. YOUNG:** Serious, Your Honor.

12 **THE COURT:** And it's a violent crime?

13 **MR. YOUNG:** No parole, violent.

14 **THE COURT:** So Mr. Lytes, have you been in jail
15 since October 24th, 2007?

16 **DEFENDANT:** Yes, sir.

17 (Pause.)

18 **THE COURT:** All right. Mr. Lytes, any appeal
19 from this proceeding has to be done in writing. It
20 has a narrow time frame in which to file a notice of
21 intent to appeal. And if you don't file within that
22 time frame, you're going to lose your right to
23 appeal. So I suggest to you that you advise your
24 attorney of your desire to file a notice of intent
25 to appeal if that is, in fact, your desire. I would

1 assume somebody in your position would normally do
2 that. And then the South Carolina Office of
3 Indigent Defense would appoint an attorney to pursue
4 your appeal for you.

5 Do you understand all that?

6 DEFENDANT: Yes, sir.

7 THE COURT: All right. Put him in cuffs.

8 (Pause.)

9 SENTENCE OF THE COURT

10 THE COURT: All right. Mr. Lytes, considering
11 the fact that this is a no parole offense, which
12 means that you have to do at least 85 percent of the
13 time day-for-day, the sentence of the Court is that
14 you be committed to the South Carolina Department of
15 Corrections for 25 years plus costs and assessments.
16 The sentence is concurrent.

17 You're given credit for jail time served under
18 section 24-13-40, that'll be calculated and applied
19 by the department of corrections. I've written on
20 your sentence sheet that you're entitled to credit
21 from October 24, 2007.

22 Pay your court costs within 180 days of being
23 released from prison.

24 With regard to your probation violation, I find
25 that you have violated the terms and conditions of

1 your probation. In light of the fact that you have
2 a no parole sentence of 25 years, it really is a
3 situation where I don't really want parole -- I'm
4 sorry -- probation and no parole offenses with
5 community supervision running together. You've
6 already been in jail now for almost two years and
7 you had a one year sentence, so I'm just going to
8 terminate you from supervision on that case and
9 enroll any financial obligations as a civil
10 judgment. So that malicious injury charge is over
11 except for the payment of the money.

12 You understand your sentences?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** All right. Good luck to you, sir.

15 (The jury was excused.)

16 (Court's Exhibit Number 3, indictments, was
17 marked for identification.)

18

19 **END OF PROCEEDINGS**

20

21

22

23

24

25

C E R T I F I C A T E

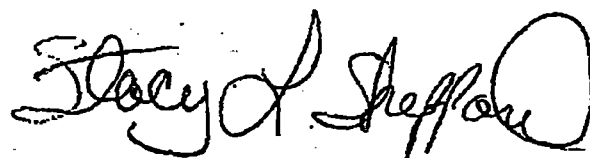
STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 11th of August, 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 15, 2010



Stacy L. Sheppard, RPR
Circuit Court Reporter

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA

County of EDGEFIELD

2012 SEP 10 PM 2:12

IN THE COURT OF COMMON PLEAS

2012-CP-19-296

ODOURI LAMONT LYLES, #282918

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

ALAN WILSON, ATTORNEY GENERAL

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR. INSTITUTION, 4460 BROAD RIVER RD., COLUMBIA, SOUTH CAROLINA 29210
2. Name and location of Court which imposed sentence EDGEFIELD COUNTY COURT OF SESSION, EDGEFIELD COUNTY COURTHOUSE, EDGEFIELD, S.C.
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-19-753 TRAFFICKING IN CRACK COCAINE
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) AUGUST 12, 2009 (25) YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty FOUND GUILTY
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JANUARY 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. ANDERS V. CALIFORNIA 386 U.S. 738 (1967)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
N/A
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

STATE OF SOUTH CAROLINA—COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS

ATTACHED SHEET FROM 10 (a) 11 (a) PAGE (3)

ODURI LAMONT LYLES, #282918)
APPLICANT-PRO-SE)

-VS-

STATE OF SOUTH CAROLINA)
RESPONDENT.)

APPLICATION FOR POST-CONVICTION
RELIEF

APPLICANT ASSERTS THAT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION WAS VIOLATED. IN THAT TRIAL COUNSEL(S) FAILED TO PROVIDE REASONABLE PROFESSIONAL ASSISTANCE, WITHIN THE STANDARD OF PROFORMANCE DEMANDED OF ATTORNEYS RESPECTING CLIENTS IN CRIMINAL MATTERS. THAT THE APPLICANT INCLUDES ALL FACTS KNOWN TO HIM BY ATTACHING THE HEREIN MATERIALS AS ISSUES TO BE REVIEWED AND RESERVES HIS RIGHTS TO AMEND THE APPLICATION UPON THE APPOINTMENT OF COUNSEL BY THE COURT. FOR WHICH APPLICANT REQUEST THAT HIS CONVICTIONS BE REVERSED/ REMANDED/ VACATED.

s/ Oduri Lamont Lyles
Oduri LAMONT LYLES, #282918
BRCI-WATEREE #225
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA
29210

SEEN TO AND BEFORE ME THIS

6 DAY OF SEPT, 2012

Eugene Kempf (I.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: My Commission Expires April 4, 2018

ARGUMENT-1ATTACHMENT TO PAGE #3 10(a)
AND 11 (a) PAGE #1 OF 13

THE TRIAL JUDGE ERRED IN DENYING A DISMISSAL OF THE CASE BASED ON RULE 5 AND BRADY VIOLATIONS CLEARLY THE SOLICITOR WITH HELD DOCUMENTS FOR IMPEACHMENT OR CROSS EXAMINATION THEREFORE THE APPELLANT WAS PREJUDICED AS A RESULT.

COUNSEL FOR APPELLANT ARGUES THE APPELLANT WAS ARRESTED ON OCTOBER 24th AND THE RULE 5 AND BRADY WERE FILED ON DECEMBER 31st BY CORRESPONDENCE DATE JANUARY 28th, 2009. THE DEFENDANT HERE CURRENTLY HAS FOUR CHARGES. THERE IS A CONSPIRACY THAT'S NOT BEING TRIED, THERE'S A TRAFFICKING OFFENSE, A CONTRABAND OFFENSE RELATED TO AN ALLEGED INCIDENT OCCURRING AT THE JAIL AND AN OBSTRUCTION OF JUSTICE CHARGE RELATED TO ALLEGED COMMUNICATION MADE EITHER BY THE DEFENDANT OR SOMEONE ACTING ON THE DEFENDANT'S BEHALF AND AT HIS DIRECTION OR CONTROL. THAT INDIVIDUAL IS LISTED AS, ONE, A CO-DEFENDANT ON THE CONSPIRACY CHARGE, AS AN EYEWITNESS TO THE ALLEGED INCIDENT THAT THE DEFENDANT'S ON TRIAL FOR TODAY AND IS LISTED AS WITNESS NUMBER EIGHT ON THE WITNESS LIST AS PRODUCED OR PRESENTED BY THE STATE. Tr. p 72, LINE 1-25 IN BRADY -V- MARYLAND 373 US 83,87,83 S.CT. 1194,1196 10 LEAD 215(1963).

THIS COURT HELD THAT THE SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED UPON REQUEST VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR PUNISHMENT. THE ISSUE IN THE PRESENT CASE CONCERNS THE STANDARD OF MATERIALITY TO BE APPLIED IN DETERMINING WHETHER A CONVICTION SHOULD BE REVERSED BECAUSE THE PROSECUTOR FAILED TO DISCLOSE REQUESTED EVIDENCE THAT COULD HAVE BEEN USED TO IMPEACH GOVERNMENT WITNESSES.

MOST COMPELLING IN THE CASE, AT BAR, THE RECORD WILL DEMONSTRATE THAT THE PROSECUTION WITH HELD FAVORABLE EVIDENCE MATERIAL TO IMPEACH THE STATES MATERIAL WITNESS.

Tr.p.80 LINES 5-15

5. THE COURT: YOU'RE REQUIRED TO DISCLOSE HIS
6. PRIOR CRIMINAL RECORD, YOU'RE REQUIRED TO DISCLOSE
7. OR ALLOW THEM TO INSPECT ANY BOOKS OR PAPERS,
8. DOCUMENTS, PHOTOGRAPHS, TANGIBLE OBJECTS, BUILDINGS
9. OR PLACES, OR COPIES OR PORTIONS THEREOF, IN THE
10. STATE'S POSSESSION THAT ARE MATERIAL TO THE
11. PREPARATION OF THE DEFENSE OR INTENDED TO USE AS
12. EVIDENCE IN CHIEF IN THE TRIAL BY THE PROSECUTION,
13. OR WERE OBTAINED FROM OR BELONGED TO THE DEFENDANT.

- 14. YOU'RE REQUIRED TO DISCLOSE ANY TESTS OR
- 15. EXAMINATIONS THAT WERE DONE

THUS, AT THE COURT REQUEST THE SOLICITOR'S OFFICE HAND OVER THE DOCUMENT'S A TOTAL OF SEVEN PAGES DURING THE PROCESS OF TRIAL, U.S. -VS- TURNER, 104 F3d 217(8th CIR. 1997) U.S. -VS- BLAISE, 98 F3d 647(1st CIR.1996)

(1) BRADY ERROR OCCURS WHEN THE GOVERNMENT SUPPRESSES MATERIAL INFORMATION THAT IS FAVORABLE TO DEFENSE; INFORMATION IS MATERIAL IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO DEFENSE, RESULT OF PROCEEDING WOULD HAVE BEEN DIFFERENT .

(2) BRADY RULE, WHICH PROHIBITS GOVERNMENT FROM SUPPRESSING EVIDENCE FAVORABLE TO DEFENSE APPLIES TO IMPEACHMENT EVIDENCE AS WELL AS TO EXCULPATORY EVIDENCE.

THE COURT OF APPEAL APPARENTLY HAS BASED ITS REVERSED.

HOWEVER ON THE THEORY THAT THE GOVERNMENT'S FAILURE TO DISCLOSE THE REQUESTED BRADY INFORMATION THAT RESPONDENT COULD HAVE USED TO CONDUCT AN EFFECTIVE CROSS EXAMINATION IMPAIRED RESPONDENTS RIGHT TO CONFRONT ADVERSE WITNESSES.

VERY SIMILAR TO THE CASE AT BAR COUNSEL FOR THE APPELLANT DIDN'T HAVE AN OPPORTUNITY TO REVIEW DOCUMENTS SITTING DOWN TO PLAN A PROSPECTIVE CROSS-EXAMINATION FOR THE STATES MATERIAL WITNESS. SEE; GILES -VS- MARYLAND 386 U.S. 66,87 S.CT. 793(1959); GIGLIO -VS- UNITED STATES 405 U.S. 150,92 S.CT. 763(1972) CLEARLY THE CIRCUIT COURT ERRED IN DENYING APPELLANTS MOTION ON RULE 5 AND BRADY VIOLATION FAILURE TO COMPLY WITH DISCOVERY RULES VIOLATES FIFTH,SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND OF THE SOUTH CAROLINA STATE CONSTITUTION.

ARGUMENT-2

THE TRIAL JUDGE ERRED IN DENYING APPELLANTS MOTION FOR A CONTINUANCE.

AT TRIAL, COUNSEL FOR THE APPELANT REQUESTED A CONTINUANCE BASED ON THE FACT THE PROSECUTION WITHHELD FAVORABLE EVIDENCE TO THE ACCUSED PURSUANT TO RULE 5 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE AND BRADY -VS- MARYLAND WHO MOVES THE PROSECUTION TO PERMIT THE DEFENDANT TO INSPECT AND COPY OR PHOTOGRAPH AS WELL AS SITTING DOWN TO PLAN PROSPECT CROSS-EXAMINATION WITHIN THIRTY DAYS OF THE SERVICES OF THIS MOTION AND IN AT LEAST WITHIN TEN DAYS PRIOR TO TRIAL.

HERE IN THE CASE AT BAR THE TRIAL JUDGE REQUESTED THE SOLICITOR'S OFFICE TO HAND OVER THE DOCUMENT'S, BUT DENIED COUNSELS CONTINUANCE.

RULE 7. CONTINUANCES

WHEN A MOTION FOR A CONTINUANCE IS BASED UPON THE CONTENTION THAT COUNSEL FOR THE DEFENDANT HAS NOT HAD TIME TO PREPARE HIS CASE , IT'S DENIAL BY THE TRIAL COURT HAS RARELY BEEN DISTURBED ON APPEAL; IT IS AXIOMATIC THAT DETERMINATION OF SUCH MOTION MUST DEPEND UPON THE PARTICULAR FACTS AND CIRCUMSTANCES OF EACH CASE STATE -VS- OWENS (U.S. 2001) 346 S.C. 637 552 5E2d 745 REHEARING DENIED APPEAL AFTER NEW SENTENCING HEARING 378 S.C. 536,664 5E2d 80 CERTIORAI DENIED 129 S.C.T. 1004,173 LE 2d 300 CRIMINAL LAW KEY 590(2)

HOWEVER UNDER THE CTRCUMSTANCES APPELLANT COUNSEL ARGUES;

TR.p 88,LINES14-25, TR.p 89,1-7

14. MR. SNELL: WELL, FIRST OF ALL YOUR HONOR
15. THIS IS THE FIRST TIME I'VE HAD AN OPPORTUNITY TO
16. REVIEW THIS MYSELF. SO UP UNTIL I MADE MY MOTION
17. AND HAD THE SOLICITOR'S OFFICE HAND THIS OVER AT THE
18. COURT'S REQUEST, I HAD NO IDEA WHAT I WOULD GET IN
19. RESPONSE.
20. SO AT THIS POINT, YOUR HONOR, AND I'VE GOT, YOU
21. KNOW, WOULD STATE THAT I DO THINK IT'S RELEVANT. I
22. THINK SITTING DOWN TO PLAN A PROSPECTIVE
23. CROSS-EXAMINATION OF THIS WITNESS, THIS IS SOMETHING
24. THAT I WOULD HAVE LIKED TO HAVE AND I THINK THE
25. DEFENDANTS ENTITLED TO HAVE HIM AND HIS LAWYER TO

1. BE ABLE TO THINK ABOUT FOR, YOU KNOW, MORE THAN A
2. FEW HOURS BEFORE THE WITNESS TAKES THE STAND. I
3. JUST THOUGHT THAT WAS A DISCOVERY ISSUE AND I WANTE
4. TO BRING IT TO THE COURT'S ATTENTION.
5. THE COURT: IF THE STATE IS INTENDING TO OFFER
6. THESE DOCUMENTS, I UNDERSTAND WHERE YOUR GOING.
7. MR. SNELL: YES, SIR.

THUS DENIAL OF A CONTINUANCE NECESSARY TO PERMIT ADEQUATE ASSISTANCE OF COUNSEL IS AN ABUSE OF DISCRETION AMOUNTING TO A DEPRIVATION OF A FAIR TRIAL.

THE SIXTH AMENDMENT, AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT, GUARANTEES A DEFENDANT IN A STATE CRIMINAL PROCEEDING THE RIGHT TO ADEQUATE ASSISTANCE OF COUNSEL BEFORE HE/SHE CAN BE VALIDLY CONVICTED AND PUNISHED WITH IMPRISONMENT. THEREFORE FOR REASONS STATED IN THE APPELLATE COUNSEL MOTION FOR A CONTINUANCE ACCOMPANYING WITH THE UNITED STATES CONSTITUTION THE TRIAL JUDGE ABUSED

HIS DISCRETION, AMOUNTING TO A DEPRIVATION OF A FAIR TRIAL.

ARGUMENT-3

THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION THAT THE STATE ESTABLISH A SUFFICIENT CHAIN OF CUSTODY.

AT TRIAL, CONFIDENTIAL INFORMANT ANTOINETTE THOMAS TESTIFIED ON OCTOBER 24th OF 2007 SHE CONTACTED THE DEFENDANT ODOURI LYLES BY HER MOBILE PHONE AND OFFICERS ROOSEVELT YOUNG, OFFICER COBY PERRY AND OFFICER MILLER WERE PRESENT AS SHE SET UP THE UNDERCOVER BUY. THOMAS STATED THAT POLICE OFFICER PERRY PLACED \$1,625.00 CASH ON HER AFTER THE DEAL WAS CONFIRMED. AFTER WHICH OFFICERS YOUNG AND PERRY FOLLOWED THE INFORMANT ANTOINETTE THOMAS AND MAINTAINED VISUAL CONTACT WITH HER AS SHE TRAVELED TO MEET THE DEFENDANT ODOURI LYLES. THE INFORMANT WORE A CONCEALED MICROPHONE AND MADE THE PURCHASE WITH THE MONEY THE POLICE PROVIDED. THE INFORMANT ANTOINETTE THOMAS TESTIFIED THE TWO OUNCES WAS IN A PLASTIC BAG WHEN THE DEFENDANT HANDED IT TO HER MAINTAINING ONE-WAY RADIO CONTACT WITH POLICE. WHEN THE DEAL WAS DONE THE POLICE CAME AND SUBDUED THE DEFENDANT AS HE WAS GETTING OUT OF THE CAR.

THE INFORMANT STATED WHEN THE POLICE CAME TO HER CAR DOOR SHE HANDED OVER THE DRUGS AND IMMEDIATELY LOCKED HER DOOR ACTING AS IF SHE WERE GETTING BUSTED AND PRETENDING TO CRY. THE INFORMANT ALSO STATED THE TWO OUNCES WAS MORE THAN SHE BARGAINED FOR IN THE RANGE OF 61.

OFFICER COBY PERRY ACCEPTED THE DRUGS FROM THE INFORMANT, HE TESTIFIED IT WAS IN LIKE A LITTLE SANDWICH BAG. AND WHAT I DO IS PLACE IT INTO A LITTLE ZIP LOCK BAG AND I PUT WHERE IT CAME FROM, WHO IT CAME FROM, THE TIME OF THE BUY, THE PLACE AND THEN AT THE BOTTOM, I PUT ON THERE THE TIME IT WAS SECURED AND THEN I PUT MY INITIALS ON IT AND I ALSO HAVE THE C.I. INITIALS ON IT ALSO AND I PLACE IT WHEN IT'S IN THE BAG. THEN LATER I PUT IT INTO A BEST BAG FOR PROCESSING BY THE STATE LAW ENFORCEMENT DIVISION (SLED). OFFICER COBY PERRY TESTIFIED HE TOOK IT TO THE (SLED) DRUG LAB IN COLUMBIA S.C. ON OCTOBER 26th 2007 AND TURNED IT INTO SELINA KINARD IN THE LAB.

Tr.P.187 LINE-17, P.188-190 LINE1-6

OFFICER COBY PERRY ALSO TESTIFIED HE DID A FIELD WEIGH TO DETERMINE THE WEIGHT AS TO MAKING A TRAFFICKING IN CRACK COCAINE INDICTMENT AND THE WEIGHT WAS 59. SOMETHING GRAMS HE THINKS.

Tr.P. 191 LINE 4-21

SELINA KINARD TESTIFIED SHE WAS EMPLOYED AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, AT THAT TIME SHE WAS A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL DEPARTMENT.

SHE STATED THAT SPECIAL AGENT COBY PERRY ON OCTOBER 26th 2007 AT 12:15pm BROUGHT EVIDENCE INTO OUR EVIDENCE CONTROL DEPARTMENT AND SHE LOGGED IN THE INFORMATION INTO OUR COMPUTER SYSTEM AND IT WAS SEALED UP AND NOT TAMPERED WITH AT THE TIME HE GAVE IT TO HER.

Tr.P.200 LINE 11-25, Tr.P. 201 LINE 1-15

KUKILA STANLEY S (SLED) CHEMIST, TESTIFIED SHE RECEIVED THE BET KIT FROM (SLED) LOG-IN DEPARTMENT ON 11/13/2007. SHE STATED IT WAS NOT TAMPERED WITH. SHE PERFORMED HER TEST ON NOVEMBER 14th 2007. DID A CONFIRMATION TEST TESTIFYING TO THE WEIGHT, COLOR TEST AND WHAT THE SUBSTANCE IS.

AT TRIAL COUNSEL FOR THE APPELLANT OBJECTED TO THE LINE OF QUESTIONING OF HER TESTIMONY

THERE HAVE BEEN NO PRIOR DISCLOSURES MADE TO THE DEFENDANT REGARDING THE SPECIFICS OF THE TESTIMONY BEING PROVIDED.

BRADY -VS- MARYLAND

1. UNDER THE UNITED STATES SUPREME COURT DECISION IN BRADY -VS- MARYLAND, 373 U.S.83,83 S.CT. 1194(1963), THE SOLICITOR HAS AN OBLIGATION TO PRODUCE ALL BRADY MATERIAL FOR THE DEFENDANT WELL IN ADVANCE OF THE SCHEDULED TRIAL DATE.

COUNSEL FOR THE APPELLANT ARGUED THE TESTIMONY IN ANALYING AND POINTING OUT THE RULE 5 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE UNDER THE UNITED STATES SUPREME

COURT DECISION IN BRADY -VS- MARYLAND.

MR.SNELL: YOUR HONOR, I DON'T HAVE ANY DOCUMENTATION REGARDING THE CHAIN OF CUSTODY TO SHOW THAT THE MATERIALS WERE EVER SIGNED OUT TO A STANLEY. I DON'T HAVE ANY DOCUMENTATION TO SHOW THAT SHE OBTAINED THEM ON NOV. 13th. I ALSO HAVE NO MATERIALS REGARDING ANY NOVEMBER 14th TESTING. THE ONLY--I'VE GOT A SINGLE PAGE REPORT FROM MS. STANLEY THAT ALSO DOESN'T SPECIFICALLY MENTION THAT TYPE OF EXAMINATION. SO I THINK THAT BASED ON THE, JUST THE BEGINNING OF THE TESTIMONY I'VE HEARD THERE'S OBVIOUSLY CHAIN OF CUSTODY DOCUMENTATION AND TEST RESULTS THAT WE DON'T HAVE.

COUNSEL FOR THE APPELLANT MOVE TO SUPPRESS THE RESULTS OF THE DRUG TESTING BASED ON THE FACT THAT THE DEFENSE WAS NOT PROVIDED WITH FORM A OR THE WORK SHEET THAT SHE HAS TESTIFIED TO. IN ADDITION, WE'D ALSO MOVE TO HAVE THE WITNESS' TESTIMONY SO FAR STRICKEN BECAUSE SHE TESTIFIED TO THE TEST AND THESE CALCULATIONS THAT HAVE'NT BEEN PROVIDED TO THE DEFENSE IN ACCORDANCE WITH THE PROPER RULES.

THE ADMISSION OF EVIDENCE IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT. STATE -VS- WILLIAMS, 297 S.C. 290,293 376 S.E. 2d 773,774(1989). ON APPEAL, THE QUESTION PRESENTED IS WHETHER THE TRIAL COURT'S DECISION IS CONTROLLED BY AN ERROR OF LAW OR IS WITHOUT EVIDENTIARY SUPPORT. STATE -VS- TAYLOR, 360 S.C. 18,23 598 S.E. 2d 735,737(ct. App.2004). IF ANY EVIDENCE SUPPORTS THE TRIAL COURT'S DECISION,THE APPELLATE COURT WILL CONFIRM IT.

UNDER THESE CIRCUMSTANCES THE TRIAL JUDGE INDICATED,

THE COURT: ALL RIGHT. RULE 5 (a)(1)(d) STATES THAT UPON REQUEST OF A DEFENDANT, THE PROSECUTION SHALL PERMIT THE DEFENDANT TO INSPECT AND COPY ANY RESULTS OR REPORTS OF ANY SCIENTIFIC TESTS OR EXPERIMENTS OR COPIES THEREOF, THAT ARE IN THE POSSESSION, CUSTODY OR CONTROL OF THE PROSECUTION, THE EXISTENCE OF WHICH IS KNOWN, OR BY THE EXERCISE OF DUE DILIGENCE MAY BECOME KNOWN, TO THE ATTORNEY FOR THE PROSECUTION AND WHICH ARE MATERIAL TO THE PREPARATION OF THE DEFENSE OR INTENDED FOR USE BY THE PROSECUTION AS EVIDENCE IN CHIEF AT THE TRIAL.

Tr.P.220 LINE 23-25, Tr.p 221 LINE 1-9

WE ALSO NOTE THE RECORD CONTAINS TESTIMONY REGARDING THE WORK SHEET IS FOR HER PERSONAL NOTES AS SHE'S WORKING THE CASE. I WRITE DOWN HOW I RECEIVED THE PACKAGE. I NOTE WHETHER OR NOT THIS PARTICULAR BAG HERE WAS SEALED WHEN SHE RECEIVED IT, HER NAME AND DATE IS ON IT.

I ALSO PUT THE WEIGHT OF THE SUBSTANCE, THE COLOR TEST THAT I PERFORMED , THE RESULTS OF THOSE, AND ALSO THE RESULTS OF THE CONFORMATORY TEST IS ALL ON THE WORK SHEET, AND FROM THAT WORK SHEET, I THEN GENERATE THE REPORT AND I PUT PRETTY MUCH EVERYTHING THAT'S DONE ON THE WORK SHEET AND REPORT EXCEPT FOR THE SPECIFIC COLORS THAT I SAW WHEN I DID THE PRESUMPTIVE TEST.

Tr.P. 221 LINE 25, Tr.P. 222 LINE 1-13

TO THE CONTRARY TESTIMONY REGARDING REPORTS OF SUCH SCIENTIFIC TEST WHICH ARE MATERIAL TO THE PREPARATION OF THE DEFENSE IN THIS CASE VIOLATES DUE PROCESS AS A MATTER OF LAW UNDER BRADY -VS- MARYLAND OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE, ALSO COUNSEL FOR THE APPELLANT ARGUES,

MR. SMELL YOU HONOR, IN ADDITION TO SPECIFICALLY OUR MOTION REGARDING THE WORK SHEETS WE'D ALSO LIKE TO EXTEND THAT TO ENCOMPASS ANY DOCUMENTS SHOWING WHERE THE ALLEGED DRUGS WERE SIGNED OUT OR BACK IN BECAUSE WE ALSO DON'T HAVE THAT. YOUR HONOR, I THINK THE MAIN THRUST OF THIS IS I'M WORKING OF OF-- I'VE GOT SEVERAL DOCUMENTS DEMONSTRATING THE CHAIN OF CUSTODY THAT HAS BEEN PROVIDED I JUST DON'T HAVE-- I'VE JUST GOT HOLES AND IT'S TO THE EXTENT THAT THE DISCOVERY DIDN'T PROVIDE FOR A COMPLETE-- SHOWING THE COMPLETE CHAIN.

REFERRING TO STATE -VS- HATCHER 384 S.C. 372,681 S.E. 2d 925, HATCHER'S POINT WAS THE STATE FAILED TO ESTABLISH SUCH LINK IN IT'S CHAIN OF CUSTODY VERY SIMILAR TO THE CASE AT BAR. THE TRIAL COURT CLEARLY UNDERSTOOD AND RULED: IN MY VIEW, BASED ON RECENT CASES, THAT IS SUFFICIENT. YOU DON'T HAVE TO DOT EVERY "i", OR CROSS EVERY "t" BUT THERE IS A SUBSTANTIAL CHAIN HERE THAT WOULD JUSTIFY MY ADMITTING IT INTO EVIDENCE.

HAVING DETERMINED THE ISSUE WAS ADEQUATELY PRESERVED, WE NOW TURN TO THE MERITS. OFFICER LOCKLEAR AND AGENT WILSON BOTH ACTED AS CUSTODIANS OF THE EVIDENCE. HOWEVER. NEITHER IS DIRECTLY LINKED TO THE OTHER BY TESTIMONY OR DOCUMENTARY EVIDENCE. THE PARTY WHO RECEIVED THE EVIDENCE AT SLED IS NOT IDENTIFIED AND THE STATE PRESENTED NO TESTIMONY REGARDING HOW THE EVIDENCE WAS HANDLED WHILE IN OFFICER LOCKLEAR POSSESSION OR ONCE IT WAS SURRENDERED AT SLED. OFFICER WILSON TESTIFIED SHE RECEIVED THE EVIDENCE FROM THE LOG IN DEPARTMENT, BUT THAT IS THE EXTENT OF HER

TESTIMONY REGARDING HOW THE EVIDENCE CAME TO BE IN HER CUSTODY. THE RECORD DOES NOT REVEAL THE DATE THE EVIDENCE WAS LEFT AT SLED OR WHERE IT WAS STORED PENDING OFFICERS WILSONS RECEIPT AND ANALYSIS MORE THAN EIGHT MONTHS AFTER THE UNDER COVER DRUG BUY.

FN3. WE ALSO NOTE THE RECORD ALSO CONTAINS NO TESTIMONY REGARDING HOW THE DRUG EVIDENCE WAS TRANSPORTED BACK TO OFFICER LOCKLEAR. HOWEVER, THIS LINK IN THE CHAIN OF CUSTODY WOULD NOT NECESSARILY PREVENT ADMISSION OF OFFICER WILSONS REPORT PROVIDED THE OTHER PREVIOUS LINKS WERE SUFFICIENTLY ESTABLISHED.

WHILE THE CHAIN OF CUSTODY IS ONLY REQUIRED TO BE ESTABLISHED AS FAR AS IS REASONABLY PRACTICABLE, SOUTH CAROLINA COURT'S HAVE CONSISTENTLY HELD THAT ALL PERSONS IN THE CHAIN OF CUSTODY MUST BE IDENTIFIED AND THE MANNER OF HANDLING THE EVIDENCE MUST BE DEMONSTRATED FN3 SWEET, 374 S.C. AT 7-8,647 S.E. AT 206-07 (HOLDING CHEMIST REPORT INADMISSIBLE IN ABSENCE OF EVIDENCE THE CONFIDENTIAL INFORMANT PROCURED DRUGS FROM THE DEFENDANT); STATE -VS- CRIBB, 310 S.C. 518,522,426 SE2d 306(1992). REVERSING TRIAL COURTS ADMISSION OF BLOOD ALCOHOL EVIDENCE WHEN THE IDENTITY OF THE PERSON WHO DREW THE SAMPLE OR TRANSPORTED IT TO THE HOSPITAL LABORATORY WAS NOT IN EVIDENCE. RAINO -VS- GOODYEAR TIRE & RUBBER Co., 309 S.C. 255,258,422 SE2d 98,100(1992) AFFIRMING TRIAL COURTS SUPPRESSION OF BLOOD ALCOHOL EVIDENCE WHEN THE IDENTITY OF ANY PARTY HANDLING THE BLOOD WAS UNKNOWN EVEN THOUGH THE LABORATORY WAS IN CLOSE PROXIMITY TO WHERE THE SAMPLE WAS DRAWN; STATE -VS- TAYLOR, 360 S.C. 18,27-28,598 SE2d 735,739(Ct.App.2004) HOLDING CHAIN OF CUSTODY WAS ESTABLISHED WHEN IDENTITY OF EACH CUSTODIAN *378 WAS ESTABLISHED THROUGH DOCUMENTARY EVIDENCE AND TESTIMONY ALTHOUGH EVIDENCE CUSTODIAN WAS UNAVAILABLE TO TESTIFY AT TRIAL OR VIA AFFIDAVIT; STATE -VS- JOSEPH, 328 S.C. 352,364-365,491 SE2d 275,281-82(Ct.App.1997) HOLDING CHEMIST REPORT WAS NOT PRODUCED TO TESTIFY AFTER TIMELY OBJECTION TO REPORT AND CHEMIST WAS PARTY WHO RETRIEVED EVIDENCE FROM SLED

DROP BOX, RETAINED POSSESSION FOR SIX MONTHS, AND CONDUCTED TESTING. THESE REQUIREMENT'S ARE NOT MET IN THIS CASE ID. AT 629 N. 1 614 SE2d AT 646 N. 1 WE FIND THE FACTS OF COCHRAN TO BE READILY DISTINGUISHABLE FROM THIS CASE. THE CONFIDENTIAL INFORMANT, OFFICER LOCKLEAR, AND OFFICER WILSON TESTIFIED THE DRUG EVIDENCE HAD NOT BEEN TAMPERED WITH BETWEEN IT'S PROCUREMENT FROM HATCHER AND IT'S RECEIPT AND ANALYSIS. HOWEVER, EVIDENCE THE DRUGS HAD NOT BEEN TAMPERED WITH IS NOT SUFFICIENT TO OVERCOME MISSING LINKS IN THE CHAIN OF CUSTODY. SEE STATE -VS- CHISOLM, 355 S.C. 175,584 SE2d 401(Ct.App.2003) OVER RULED ON OTHER GROUNDS BY TAYLOR. 360 S.C. AT 27. 598 SE2d AT 739. IN CHISOLM THE TRIAL COURT ADMITTED DRUG EVIDENCE WHEN THE STATE OFFERED NO TESTIMONY OR AFFIDAVIT FROM THE TWO CUSTODIANS IN THE CHAIN OF CUSTODY BETWEEN THE INVESTIGATING OFFICER AND THE ANALYST. Id AT 177-78,584 SE2d AT 403, IN REVERSING THE TRIAL COURT, THIS COURT STATED:

THERE IS NO DISPUTE THAT THE STATE DID NOT SUBMIT THE TESTIMONY OF EACH INDIVIDUAL WHO HANDLED THE EVIDENCE NOR DID THE STATE COMPLY WITH THE RULE 6(b). THE TRIAL COURT, HOWEVER, ALLOWED THE INTRODUCTION OF THE EVIDENCE DESPITE THE MISSING LINKS IN THE CHAIN BECAUSE THE STATE DEMONSTRATED THAT THE EVIDENCE HAD NOT BEEN TAMPERED WITH BY THE TIME (THE CHEMIST) RECEIVED IT FOR ANALYSIS. THIS WAS ERROR.

FOR EXAMPLE IN THE CASE AT BAR THE DRUG ANALYSIS DID NOT PROVIDE THE RESULTS OF THE DRUG TESTING NOR DID SHE COMPLY PURSUANT TO RULE 6 OF THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE WHICH WAS ENTERED ON MARCH 31, 2008 TO PROVIDE A COMPLETE SHOWING IN THE CHAIN OF CUSTODY. MORE SO THE CHEMIST MRS. STANLEY TESTIFIED THAT SHE SIGNED THE DRUGS OUT ON NOVEMBER 13, 2009, BUT THERE WAS NO DOCUMENTATION TO THE DEFENSE. SHE AGAIN TESTIFIED THAT SHE TESTED THEM ON NOVEMBER 14, 2007, COUNSEL FOR THE DEFENSE INDICATED THAT HE ONLY GOT A REPORT DATED NOVEMBER 21, 2007, AGAIN NO DOCUMENTATION SHOWED TESTING MOST COMPELLING THE STATE PRODUCED A WARRANT AND AFFIDAVIT FROM OFFICER MILLER SWORN TO SAYING THAT THERE'S 65.77 GRAMS OF WHITISH ROCK SUBSTANCE BUT SHE'S TESTIFYING THAT THE FINAL TEST COMES OUT TO 59.74 GRAMS BETWEEN THE FIELD WEIGHT AND THE FINAL REPORT OVER 6 GRAMS OF CRACK WAS LOST SOMEWHERE IN THE CHAIN OF CUSTODY.

IN VIEWING STATE -VS- HATCHER 384 S.C. 372,681 SE2d 925 AND IT'S OVERVIEW IN SIMILARITY THEREFORE, BASED ON THE APPLICATION OF CHAIN OF CUSTODY AND THE DRUG EVIDENCE SHOULD HAVE BEEN SUPPRESSED. DUE PROCESS REQUIRES THE STATE TO PROVE EVERY

ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT. JACKSON -VS- VIRGINIA 443
U.S. 307(1979) CLEARLY THE CIRCUIT COURT ERRED IN DENYING THE APPELLANTS MOTIONS FOR
EACH SITE ISSUE ON AMEND PRO SE BRIEF INVIOATION OF THE FOURTEENTH AMENDMENT TO THE
UNITED STATES CONSTITUTION AND ARTICLE 1§3 OF THE SOUTH CAROLINA STATE CONSTITUTION.

NOTE: ALL 13 PAGE'S OF ATTACHMENT'S ARE BASE UPON TRIAL COUNSEL FAILURE TO
MAKE PROPER OBJECTION'S AND PRESERVE SAME OF DIRECT APPEAL.

ARGUMENT

The trial judge erred in denying appellant's Batson motion made after the solicitor used peremptory challenges in a discriminatory manner because it was clear that the solicitor's explanation that he struck the four African-American venirepersons in question due to their criminal records did not survive the race neutral test where a Caucasian venireperson, who had a criminal record also, was not struck by the solicitor and ultimately sat as a juror on the petite jury in the case. Appellant was prejudiced as a result of the solicitor's having struck the venirepersons in question because their prior associations with drugs might have rendered them more sympathetic to appellant's drug case.

At trial, confidential informant Antoinette Thomas testified that she conducted an undercover controlled buy of crack cocaine from appellant on October 24, 2007. Thomas stated the police officer Perry placed \$1625.00 cash on her after she contacted appellant to confirm their deal. According to Thomas' testimony, appellant promised to deliver the crack cocaine to her at 5:00 p.m. on October 24, 2007. Thomas stated that she met appellant on Highway 23 in Edgefield County. After the parties made the drug and money exchange, Thomas indicated this to police. Thereafter, Officers Young and Perry apprehended appellant at the scene. R. p. 260, l. 1 – p. 270, l. 5.

After the selection of the jury in the case, counsel entered a Batson motion on the ground that all the jurors struck by the solicitor were African-Americans. R. p. 46, line 19 – p. 47, line 3. A Batson hearing followed immediately thereafter.

The solicitor stated that he struck James E. Nicholson (black male) because he prosecuted his (Nicholson's) son previously and because Nicholson had a "pretty extensive record," i.e. DUI, 2nd, 1 DUS, assault, bad check and failure to stop. R. p. 47, lines 4 – 13.

The solicitor explained that he struck Antonio Counts (black male) because he had a "long criminal history," the most recent of which was simple possession of marijuana. R. p. 47, lines 14 – 22. The solicitor explained that Johnnie Mitchell (black female) had a "criminal history" also, one of which included a 1989 shoplifting conviction. R. p. 48, lines 2 – 11. The solicitor justified his strike for Cassandra McCollough (black female) on the ground that she had a cousin who was prosecuted for drugs, and because McCollough worked for Urban Outfitters, which was a company where it was rumored that many employees engaged in theft. R. p. 48, line 12 – p. 49, line 19.

Immediately, thereafter, the trial judge reviewed the list of jurors seated and their histories, and candidly acknowledged that white juror Linda J. McCall (#77), who was seated on the petit jury, had a record for criminal domestic violence albeit in another state. R. p. 49, line 20 – p. 56, line 2; R. p. 39, lines 4 – 10. Nonetheless, the court then found that the solicitor's explanation for the strikes were race neutral, and denied the Batson motion. R. p. 60, line 1 – p. 62, line 24.

The Equal Protection Clause prohibits the striking of venirepersons on the basis of race or gender. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2008); State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998). When a Batson motion is made, the proponent of the strike must offer a race/gender neutral explanation. The opponent must then show that the explanation was pretext by establishing that the proponent did not strike a similarly situated member of another race or gender. State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998); State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). In the case, at bar, the record demonstrates that the solicitor's strikes against Nicholson, Mitchell, and Counts were exercised in a discriminatory manner.

As a rule, the place of a venireperson's employment is considered a neutral reason for a strike. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996). Also, the existence of a venireperson's prior criminal conviction is a race neutral reason for a strike. State v. Martinez, 294 S.C. 72, 362 S.E.2d 641 (1987); State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997); Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994). Thus, the employment strike against McCullough was not race-based; however, the solicitor's prior criminal record explanations were problematic. Counts, Nicholson, and Mitchell, who are African American, were struck because they had prior criminal convictions, but McCall, who is Caucasian, was not struck and sat on the petit jury despite the fact that she had a prior criminal record (domestic violence conviction). Thus, there was a showing in this case that a similarly situated venireperson of another race as the venirepersons struck was not struck and sat from the petit jury at appellant's trial. Therefore, the finding of purposeful discrimination on behalf of the solicitor's selection of members of the petit jury can be supported by the trial record. Appellant demonstrated that the solicitor's explanation for his strikes against the African-Americans in question were pretextual in nature, which resulted in a violation of the Fourteenth Amendment Equal Protection Clause.

A criminal record is a criminal record notwithstanding the nature of the prior convictions. The trial judge erred in denying appellant's Batson motion because the Fourteenth Amendment Equal Protection Clause was violated during the jury selection process at appellant's trial.

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NONE
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NONE
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR IS THE AVENUE TO RAISE THESE ISSUE'S

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. JAMES R. SNELL, ESQUIRE (TRIAL ATTORNEY)

~~WANDA H. CARTER, DEPUTY CHIEF APPELLATE DEFENDER, P.O. BOX~~

ii. ~~11589, COLUMBIA, SOUTH CAROLINA 29211-1589~~

iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL

APPEAL

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

CONVICTION VACATED

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of EDGEFIELD)

VERIFICATION

I, ODOURI LAMONT LYLES, SCDC#282918, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Odour Lamont Lyles
ODOURI LAMONT LYLES, SCDC#282918

SWORN to and subscribed before me this 6
day of Sept, 2016

Eugene K. [Signature] (L.S.)
Notary Public

My Commission Expires: April 4, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, ODOURI LAMONT LYLES, #282918, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Odour LAMONT LYLES
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____.

Notary Public

My Commission Expires: _____

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) ELEVENTH JUDICIAL CIRCUIT
2013 MAR 25 PM 4:04) Case No. 2012-CP-19-296

Odour L. Lytes,
S.C.D.C. No. 282918)
Applicant,)
v.) RETURN
State of South Carolina,)
Respondent.)

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed September 10, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Edgefield County. The Applicant was indicted at the December 2007 term of the Court of General Sessions for Edgefield County for trafficking crack cocaine, greater than 28 grams but less than 100 grams (2007-GS-19-753). James R. Snell, Esquire, represented Applicant. On August 12, 2009, a jury convicted Applicant as indicted. The Honorable William P. Keesley sentenced Applicant to twenty-five years imprisonment.

Applicant appealed his conviction and sentence to the SC Court of Appeals and was represented by Wanda H. Carter, Esquire. On January 25, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal in unpublished opinion (No. 12-UP-11) and the matter was remitted to the lower court.

Attached herewith and incorporated herein by reference are the records of the Edgefield County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, the transcript of the proceeding against Applicant, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Trial counsel failed to make objections and preserve these issues for direct appeal
 - b. "Trial judge erred in denying a dismissal of the case based on Rule 5 and Brady violations"
 - c. "Trial judge erred in denying [Applicant's] motion for a continuance."
 - i. The continuance was necessary to "permit adequate assistance of counsel."
 - d. "Trial judge erred in denying [Applicant's] motion that the state establish a sufficient chain of custody."
 - e. "Trial judge erred in denying [Applicant's] Batson motion made after the solicitor used peremptory challenges in a discriminatory manner"

III.

The Applicant alleges ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined

IV.

State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v.

625.

the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at "there is a reasonable probability that, but for counsel's unprofessional errors, the result of Second, counsel's deficient performance must have prejudiced the Applicant such that professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Under this prong, attorney performance is measured by its "reasonableness under counsel. First, the Applicant must prove that counsel's performance was deficient. A two-pronged test is used in evaluating allegations of ineffective assistance of

S.E.2d 624 (1989).

overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must counsel rendered adequate assistance and made all significant decisions in the exercise of tion within the range of competence required in criminal cases. The courts presume that The proper measure of performance is whether the attorney provided representa-

2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, the proper functioning of the adversarial process that the trial cannot be relied upon as

Applicant raises additional direct appeal allegations. These allegations are not proper matters for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 833 (1975). Therefore, Applicant's direct appeal allegations must be summarily dismissed.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

IX.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: *[Signature]*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 22nd, 2013

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD) IN THE ELEVENTH CIRCUIT

2013 MAR 25) PM 4: 04

2012-CP-19-296

Oduri L. Lytes, # 282918

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

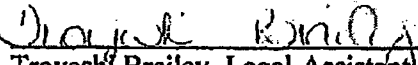
STATE OF SOUTH CAROLINA,

Respondent

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Frank D. Nelson, Esquire
Post Office Box 2208
Evans, GA 30809

DATED this 22th day of March, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

) COURT OF COMMON PLEAS
) 2012-CP-19-00296
_)

ODOURI L. LYLES
APPLICANT
vs.
STATE OF SOUTH CAROLINA
RESPONDENT

)
)
) TRANSCRIPT OF RECORD
)
_)

November 15, 2013
Lexington, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH, JUDGE.

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

ADAM NELSON, ESQ.
Attorney for the Applicant

WALTER WHITMIRE, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

WITNESS:

PAGE

JAMES SNELL

Direct Exam by Mr. Nelson

5

Cross-Exam by Mr. Whitmire

13

Redirect Exam by Mr. Nelson

23

EXHIBITS

(There were no exhibits marked.)

1 MR. WHITMIRE: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. WHITMIRE: The last matter before this court
5 today is Odouri Lytes V State of South Carolina,
6 2012-CP-19-296.

7 Mr. Lytes filed a timely application for
8 post-conviction relief September 10th, 2012. Mr. Lytes
9 was charged with trafficking, third offense. The State
10 called the case to trial. Mr. Lytes was found guilty as
11 indicted. He was represented by Mr. James Snell and
12 sentenced to 25 years in prison.

13 Mr. Lytes did file notice of appeal which was
14 perfected pursuant to Anders V California by Wanda Carter
15 of the Office of Appellate Defense. In an unpublished --
16 the Court of Appeals affirmed Mr. Lytes conviction and
17 sentence in an unpublished opinion.

18 THE COURT: Did they -- I'm looking at it. It
19 says the appeal was dismissed.

20 MR. WHITMIRE: It was a -- that's -- my
21 understanding is the Court of Appeals is pursuant to
22 Anders and in an unpublished opinion they say dismissed.
23 It was perfected and did go forward.

24 THE COURT: Got you. Okay.

25 MR. WHITMIRE: I believe Mr. Lytes raised

1 numerous allegations in his application. It's my
2 understanding Mr. Lytes is before the Court on two
3 allegations today: A Rule 5 discovery violation and a
4 Brady violation, prosecutorial misconduct.

5 I'd just ask that counsel -- if this is correct,
6 that counsel specifically enunciate which Rule 5
7 violation. Mr. Snell made five Rule 5 objections
8 throughout the trial.

9 THE COURT: Both of those being under the
10 heading of prosecutorial misconduct?

11 MR. WHITMIRE: Your Honor, either prosecutorial
12 misconduct or the failure to object for a continuance or
13 maybe for mistrial. It depends on the context.

14 MR. NELSON: Yes, Your Honor.

15 THE COURT: Clarify those for me, please.

16 MR. NELSON: Yes, Your Honor. By the way, my
17 name is Adam Nelson.

18 THE COURT: Nice to meet you.

19 MR. NELSON: I've never been before your court
20 before.

21 THE COURT: Lucky you.

22 MR. NELSON: I think that you would best
23 describe it, there are going to be allegations of a Brady
24 violation and a Rule 5 violation. To be honest with you,
25 it sounds both prosecutorial misconduct and somewhat

1 ineffective assistance of counsel. That may be more
2 forthcoming in my arguments that I make.

3 THE COURT: Okay. Got you.

4 All right. You can call your first witness,
5 please, sir.

6 MR. NELSON: Yes, Your Honor. I call Mr. James
7 Snell.

8 JAMES SNELL, after being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. NELSON:

12 Q Mr. Snell, do you know Mr. Odouri Lytes?

13 A I do.

14 Q When did you first meet Mr. Lytes?

15 A And if I may, I'm going to refer to a time sheet.

16 According to the time sheet, I first began work
17 on his case on June 16th, 2009.

18 Q Were you Mr. Lytes only criminal offense attorney?

19 A I was his third.

20 Q Do you know the date of trial?

21 A August 11, 2009, and August 12, 2009.

22 Q Is it your understanding that prior counsel defended
23 Mr. Lytes and had conversations with the prosecutors,
24 filed discovery motions?

25 A I know I took over the case for lawyer Belinda

1 Ellison, who is a lawyer here in Lexington. I know that
2 she had filed discovery motions. I don't know if the
3 first lawyer ever did or didn't.

4 Q Did you yourself ever engage in any plea
5 negotiations?

6 A We attempted.

7 Q Okay. Could you explain the response tendered?

8 A Well, I tell you, we're down in Edgefield, which is
9 what they call the tri-counties, and the lawyer, I'm down
10 there dealing with Ervin Maye and Frank Young and I --
11 recollection is I think we -- I think at one point they
12 offered a negotiated 22 years. I think Mr. Lytes had
13 asked -- he had indicated before, just looking at written
14 correspondence I had forwarded to the Solicitor's office,
15 that he would be willing to plead to a negotiated eight.
16 To the best of my recollection, their response to that
17 might have been if he took it quick they'd let him plead
18 to 20. But there was nothing beyond that.

19 Q So it's fair to say that you never got an offer from
20 the prosecutor that you -- that Mr. Lytes would have been
21 comfortable with?

22 A No, nothing. Nothing remotely close.

23 Q Okay. Mr. Snell, I'm going to refer to the trial
24 transcript some. I don't know if you have documents.

25 MR. NELSON: And for the Court's -- I will say

1 the page number when we get to where we are.

2 BY MR. NELSON:

3 Q At trial, was any incriminating statements offered
4 by -- or made by Mr. Lytes offered into evidence against
5 him?

6 A It was.

7 Q At what time in the chronology of Mr. White's case
8 did he make that statement?

9 A To the best of my recollection, the statement was
10 made to law enforcement at the time he was being arrested.

11 Q And I guess maybe we should set a foundation, too.

12 Mr. Lytes was charged with trafficking cocaine?

13 A Traffic crack cocaine, third.

14 Q Could you just provide a summary of the actual action
15 that took place that led to his charge?

16 A All right. What -- what he was accused of was
17 participating in a buy-bust controlled or set up by the
18 Edgefield County Sheriff's Department where he had contact
19 with a confidential informant allegedly and agreed to meet
20 that informant in a vehicle where a quantity -- I think
21 they were talking about cookies -- but a quantity of crack
22 cocaine was exchanged for a quantity of money in the car
23 with the informants, and immediately upon that transaction
24 completing -- you know, crack goes one way, money goes the
25 other -- law enforcement swarmed in and arrested him.

1 Q And when did Mr. Lytes or when was it alleged that
2 Mr. Lytes made an incriminating statement?

3 A After law enforcement swarmed in.

4 Q As his defense attorney, when did you first learn
5 that Mr. Lytes -- or, excuse me, that this statement was
6 going to be offered into evidence?

7 A All right. Looking through -- looking through
8 discovery, there were two -- it looked to me like there --
9 and looking at the transcript, it looked like there were
10 kind of two stages of disclosure. There was a disclosure
11 made immediately before -- like the day before trial.

12 Let me correct that. There was -- there had --
13 the complete disclosure wasn't made until the Jackson v
14 Denno hearing, which occurred right before trial. There
15 had always been -- my understanding had always been he had
16 always made a statement like -- he had been alleged to
17 make a statement something to the effect of, you know, the
18 other person had nothing to do with it. But at the
19 Jackson v Denno hearing held minutes before trial before,
20 you know, the rest of it began, it was revealed there was
21 a second part of the statement alleged that said not only
22 that but -- and the drugs are mine.

23 Q If you could look in the transcript at page 122, the
24 prosecutor when asked about a Jackson V Denno hearing
25 responds to the Court in the first paragraph. And if you

1 would, would you read that first paragraph?

2 A "Mr. Maye: Your Honor, the only thing I can think of
3 that's Jackson versus Denno is he stated that he" --
4 excuse me -- "that the -- the only thing we're going to
5 attempt to offer that he said after Miranda is that she
6 wasn't involved, Crystal Leaphart, the girl that was with
7 him. If they want a Jackson versus Denno hearing in that
8 regard, we'll certainly do that. We can stop and do it
9 right now. That's all we intend to offer is anything that
10 he said."

11 Q Now, I'm asking to you step back in time, but at the
12 time of this statement, was that what you understood the
13 statement that was going to be used against Mr. Lytes
14 amounted to?

15 A Yes.

16 Q If you'd look at page 129 -- well, actually, let me
17 ask you: Who did the State offer as -- in the form of
18 testimony, who were the two individuals they offered at
19 the Jackson v Denno hearing?

20 A Number one was Roosevelt Young and there was another
21 sheriff's department representative and I believe it's
22 Kobe Perry looking at the transcript.

23 Q On page 129, line 8, if you would, would you read
24 that line and then indicate is that the first time that
25 you knew the incriminating statement?

1 A The line says, "He just simply said Ms. Leaphart
2 didn't have anything to do with it, all the drugs were
3 his."

4 And the first part of that statement was not a
5 surprise or not new information. The second part of the
6 statement, being all the drugs was his, was new
7 information.

8 Q In fact, on page 131, you offered an explanation to
9 the Court, lines 12 through 19. Does that accurately
10 reflect your mindset at the time this new information came
11 to light?

12 A It did.

13 Q After you learned of this addition to the statement,
14 did you ask for a continuance?

15 A I'd have to rely -- again, I know -- I'd have to rely
16 on the transcript because I know I made -- I know there
17 were lots of continuance motions and different objections
18 and so I'd have to rely upon the transcript as to whether
19 or not I did or didn't.

20 Q And I can appreciate there was a lot of continuances,
21 a lot of different motions made during this trial. But if
22 I represented to you that after the new information came
23 on this statement, that you did not move for a
24 continuance; would you disagree with that?

25 A If it's not in the transcript I have no reason to

1 disregard it or disbelieve the transcript.

2 Q Okay. Did you have an opportunity to discuss this
3 new additional statement with your client prior to trial?

4 A You know, I know -- I know we would have had some
5 opportunity. Things were -- there was an awful lot going
6 on that morning with sort of new details emerging and
7 different things, but I do know that me and Mr. Lytes did
8 have opportunities to talk and some -- some conversations.

9 Q If I said that within the next five minutes the jury
10 was in the room and the case was started, would that be
11 fair?

12 A I think that would be the level of time provided.

13 Q Thank you.

14 In addition to the incriminating statement that
15 was used against Mr. Lytes, was there testimony from a
16 confidential informant?

17 A There was.

18 Q When did you first learn that the informant was going
19 to offer testimony?

20 A I believe I found out the details of the informant
21 the day before -- my understanding or my recollection
22 concerns the evening before trial.

23 THE COURT: The day before?

24 THE WITNESS: Yes, sir, the evening before.

25 BY MR. NELSON:

1 Q So it was your understanding the prosecutor knew who
2 the informant was?

3 A The whole time.

4 Q Right. Did you ever ask for the identification of
5 the informant?

6 A Yes. And I was told I would get it right before
7 trial.

8 Q Okay.

9 A And I remember specifically I actually had to leave
10 Edgefield and drive to I think what used to be maybe an
11 old airport in Saluda to get the -- get that information.

12 Q In addition to the ID, did you receive any other
13 information about the informant?

14 A I believe at that time I listened to an audio
15 recording of the alleged transaction between Mr. Lytes and
16 the informant.

17 Q Did you receive any rap sheets, criminal history?

18 A Yes.

19 Q Do you consider that information important to
20 Mr. Lytes' defense?

21 A Yes, sir.

22 Q Could you explain why?

23 A Well, I think -- I think any time that an informant
24 is going to -- to testify, it's sort of a motive or a bias
25 they may have one way or the other is something that's

1 important for the jury to get to hear about when
2 determining their credibility. So in this case we had an
3 informant who had pending charges and had been going
4 around helping all kind of other people do things and I
5 think that the jury ought to have that information so they
6 can make a determination whether or not he's being
7 truthful or credible.

8 Q Given the late notice that you received, did you ask
9 for a continuance?

10 A I did.

11 Q Was it granted?

12 A No, it was not.

13 MR. NELSON: No further questions, Your Honor.

14 THE COURT: Cross-examination.

15 MR. WHITMIRE: Beg the Court's indulgence.

16 (Pause.)

17 CROSS-EXAMINATION

18 BY MR. WHITMIRE:

19 Q Good afternoon. Thank you for your patience.

20 Had Mr. Lytes been provided discovery from his
21 other attorneys?

22 A I believe he had.

23 Q And you indicated that to the Court -- on page 145,
24 Your Honor -- is that right?

25 A You said page 145? On 145 is not me talking.

1 All right. I'm sorry. On page 144 I tell Judge
2 Keesley that the original attorney, the first one,
3 provided materials -- on November 12th, 2008, he provided
4 44 pages of materials. And that would have been to -- and
5 then beginning of on line 25 I say, "My client has
6 indicated to me that Mr. Williams" -- and that references
7 the first attorney -- "when he forwarded him his discovery
8 last year did not include the photographs of the car to
9 scale."

10 I think there was a questioned of had we been
11 given some pictures:

12 Q And you're just exercising your due diligence at that
13 point?

14 A Yes.

15 Q Now, can you briefly recall circumstances that led to
16 you being the third attorney on this case?

17 A I don't know what happened between -- I don't know
18 why the first attorney -- I can't recall why the first
19 attorney was relieved or substituted out. Belinda
20 Ellison, the second lawyer, called and asked me if I
21 would -- if I would do her a favor and take it over. And
22 Ms. Ellison is a -- she used to be a public defender I
23 think years and years ago. She has a very good workers'
24 comp plaintiff practice here in Lexington, has always
25 done -- she's done a lot for me and for my practice and so

1 I was happy to be able to return the favor.

2 Q Mr. Snell, have you tried cases in the tri-counties
3 before?

4 A I have handled -- I've done a lot of work in Saluda
5 and I've done a -- actually, I've represented clients in
6 McCormick, Edgefield and Saluda Counties before having
7 taken Mr. Lytes' case and so I was familiar with generally
8 how it went.

9 Q And I believe you tried Mr. Lytes' case six or seven
10 weeks after you were substituted on it?

11 A No. It looks like the first thing I did was on
12 June 16th, which is I had gotten some material from the
13 case probably from Ms. Ellison and I sent Mr. -- what I
14 billed Indigent Defense for was sending Mr. Lytes a letter
15 explaining all the charges, all the elements of the
16 offenses, talking to a probation officer and filing a bond
17 motion, that was on June 16th. So it would have been
18 between June 16th and August 11th was trial prep.

19 Q But specifically you filed an independent Rule 5
20 motion?

21 A Yes.

22 Q And did you independently review the incident
23 reports?

24 A Yes.

25 Q Did you review the drug analysis?

1 A Yes.

2 Q Chain of custody?

3 A Yes.

4 Q Did you review surveillance?

5 A The audio portion.

6 Q Eventually?

7 A Eventually.

8 Q Can you describe the evidence, the State's evidence
9 against Mr. Lytes through the C.I.?

10 A I think what -- kind of my understanding, summarizing
11 what was alleged, the first thing was I think that the law
12 enforcement and the C.I. were actually interested in
13 investigating somebody else. And the day they were
14 setting up that buy with the evidence, what they tried to
15 show was that Mr. Lytes had contacted the C.I. requesting
16 his own transaction, that he had made repetitive inquiries
17 of the C.I. about setting up his own transaction, so law
18 enforcement decided to stop working on trying to bust the
19 first guy and instead bust Mr. Lytes. So they set up a
20 meeting in a car with the C.I. There was a wire, I
21 believe, and the officer had money that they had marked or
22 had recorded the serial number, gave the C.I. allegedly,
23 and put them in a car and they had Mr. Lytes accompany the
24 C.I. to the car where the transaction would have taken
25 place.

1 Q And you knew all this because they disclosed the
2 C.I.'s statement?

3 A They did. I had the statement before -- I have to
4 look at the date, but I did have the C.I.'s statement.
5 Previously I think the identity of the C.I. may have been
6 redacted.

7 Q Did Mr. Lytes tell you he knew who the C.I. was?

8 A I don't recall. And I was going to say at the
9 time -- at the time we had -- again, at the time, you
10 know, prior to trial wouldn't have had the disclosure of
11 the C.I., but now I think -- my understanding is he would
12 have known -- I mean, had some --

13 Q Didn't the C.I. testify that she was familiar with
14 Mr. Lytes?

15 A I believe so.

16 Q And do you recall the basis of not getting the C.I.,
17 the quote, C.I. specific name identity right before trial?

18 A I think a couple -- I think -- well, a couple of
19 things. Number one, it probably was at the time and may
20 very well still be kind of a prosecutor's practice. They
21 feel like when they disclose a C.I., you know, that's the
22 term "burning" the C.I. and they won't be able to use
23 them, you know, to snitch on other folks. So they try to
24 preserve and maintain the credibility of their witness for
25 use in other proceedings and investigations.

1 Q Prior to trial did you disclose and discuss all of
2 your investigations with Mr. Lytes?

3 A We did.

4 Q How many times did you meet with Mr. Lytes?

5 A I would have met with Mr. Lytes on the 10th, on July
6 30th -- on July 10th, at least on those dates. And of
7 course again on the 11th and also on the 12th.

8 Q What was Mr. Lytes' version of the facts that led to
9 his arrest as conveyed to you?

10 A I have no -- I tell you, I don't have any
11 recollection of anything different than what's been
12 provided in discovery. As far as other -- other things
13 that were said or not said, basically all I recall is
14 based on the transcript and the written discovery.

15 Q I'm asking do you recall what he told you what
16 happened to him when he got arrested?

17 A I think -- I think -- the understanding from his
18 perspective, he's in the car, law enforcement swarms in
19 and arrests him.

20 I'm using -- I don't think I understand the
21 question correctly. I don't think there's any question
22 that he's the one that was in the car, that he's the one
23 that got arrested.

24 Q I'm asking you what he told you as the basis of
25 decisions you would make later, in that context?

1 A I -- I don't recall anything other than -- anything
2 other than he found himself in the position of being in
3 the car with crack and money having been exchanged and the
4 police swarming in on him.

5 Q Did you review the State's evidence that numerous
6 phone calls between C.I. and Mr. Lytes occurred prior to
7 the transaction?

8 A I believe we did -- we did discuss that.

9 Q And how many trafficking or PWID trials had you
10 conducted over the years, approximately?

11 A Specifically traffic or PWID?

12 Q A drug offense.

13 A I would say this: As far as General Sessions, PWID
14 or trafficking, I have done one.

15 Q One distribution?

16 A As far as -- yes, I've done other distributions.
17 I've done other distributions, I've done other
18 possession-type offenses, but as far as PWID or
19 trafficking, it's the only one I've ever had that's
20 actually gone to trial. I've had other clients in other
21 cases.

22 Q What was your key defense here going into trial?

23 A Well, I tell you, I think this: It's -- you know,
24 it's a tough case because a lot of times there's a passage
25 of time and you can get into ID's, you know,

1 identification issues and everything else. This case
2 because it was a bust right contemporaneously with the
3 alleged transaction, you know, really the only thing you
4 can hope is that the State's going to, number one, at
5 trial is going to have some issue proving some element of
6 the case.

7 I remember looking back through some of my notes
8 and our closing arguments, I think we had a drug tech that
9 didn't know -- or the analyst didn't know how many grams
10 were in an ounce, and that's their expert. We had the
11 C.I. in law enforcement saying that she's not going to get
12 any preferential treatment for running around and helping
13 them arrest everybody else while she's got her own charges
14 pending. You know, there were -- there were those type
15 things in the case. I think there might have been a
16 discrepancy about the weight that was unexplained of the
17 actual -- the amount of crack recovered might have changed
18 and nobody could offer any explanation or anything
19 credible at trial. It's stuff like that just --

20 Q A general suppression defense?

21 A I don't know about suppression so much as it's just
22 there's a lot of stuff there that wasn't one hundred
23 percent -- we could argue maybe wasn't one hundred percent
24 right, and in order to convict somebody for something
25 serious, you know, a jury ought to have -- the State ought

1 to bring a pretty good case.

2 Q Did Mr. Lytes ever tell you that he made an oral
3 statement to the police?

4 A Yes.

5 Q Did he tell you the full extent of that statement?

6 A I understood -- my understanding the entire -- during
7 my previous discussions was there was a statement he had
8 made indicating that it was him and, you know, trying
9 to -- I think -- I think immediately after the arrest I
10 understood that he didn't think -- didn't know the other
11 person was a C.I., was a snitch, and he made some
12 statements trying to accept -- I don't want to say accept
13 responsibility, but basically saying something I had
14 something to do with it.

15 Q And the State never provided you written statements?

16 A I don't believe so.

17 Q Was there any indication that written statements were
18 actually provided to the State even?

19 A No. I think -- I think -- there looks like a -- if I
20 understand correctly, there was a -- he was offered a
21 chance to make a statement where he would have signed in
22 writing, you know, kind of waived his Miranda rights, but
23 he chose not to make a statement.

24 Q Did you speak with the arresting officer?

25 A I did.

1 Q Prior to trial?

2 A Yes.

3 Q Did you speak with the officer that interviewed him
4 at the detention center prior to trial?

5 A I will have to check and I'll have to look and see,
6 but I believe I would have. I know the main officer -- I
7 think all the officers that testified I had talked to
8 beforehand.

9 Q If I recall correctly during the Denno hearing you're
10 surprised that certain details, statements came out?

11 A Yes.

12 Q That he had told you he in fact made prior to trial?

13 A I knew that the statement -- I knew that there was an
14 allegation that he had made a statement stating kind of
15 like, you know, that they had nothing to do with it or,
16 you know, just exactly what Mr. Maye testified at the
17 beginning of the Jackson v Denno hearing -- not testify,
18 but exactly as Mr. Maye had said. So I knew we were going
19 to be dealing with something like that when Mr. Young said
20 "and the drugs were mine," or whatever that second part
21 was, that that was, I think, in the nuance.

22 Q Did that slight nuance change your trial strategy for
23 the remaining part of the trial?

24 A No.

25 Q That was during the preliminary phase of the trial?

1 A Yes.

2 Q You still made a Rule 5 motion on that; is that
3 correct?

4 A Yes.

5 Q And did you have any indication that Ervin Maye knew
6 of that extra little nuance?

7 A No. I will say, you know, Mr. Maye, I think he said
8 at the beginning what the statement would consist of. I
9 had no reason to think that Mr. Maye would not -- would
10 have tried to tell me something not right or try to tell
11 the Court something not right.

12 Q If I recall it correctly, you didn't need any
13 additional time or a continuance as a result of that
14 little extra nuance?

15 A I think we needed a continuance and for reasons --
16 motions for reasons previously made. I don't think
17 that -- if -- if one wasn't made, going back through and
18 thinking, I think it would have been a -- a what kind of
19 difference would it have made sort of thing. I mean,
20 just --

21 MR. WHITMIRE: No further questions, Your Honor.

22 Thank you, Mr. Snell.

23 MR. NELSON: Just a few, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. NELSON:

1 Q Mr. Snell, we talked about the audio that you
2 received. Did you receive that?

3 A I think I heard it the day before at the -- I'm going
4 to call it the old airplane place in Saluda. I think I
5 heard it there the first time, I believe, but then we got
6 to -- Mr. Lytes got to hear it for the first time morning
7 of trial.

8 Q And you requested it --

9 A Yes.

10 Q -- before then?

11 A Yes.

12 Q How long ago before?

13 A Well, I think it's -- I think it's covered -- I think
14 it's -- would have been covered by the basic discovery
15 motions.

16 Q Your Rule 5 motion?

17 A I think all that stuff is supposed to -- I mean, it's
18 a recording of a statement made by the defendant allegedly
19 and so I think that's covered under Rule 5.

20 Q The incriminating statement, it was -- was it orally
21 published to you? I mean, it was never written down and
22 handed over to you?

23 A Right, other than -- I believe it's -- I looked
24 through the discovery materials provided by the solicitor.
25 I don't see it, so I think it's always kind of an oral

1 disclosure.

2 Q Roosevelt Young never indicated in any discovery, in
3 any documents regarding the criminal activity, any
4 allegations never indicated that this statement went
5 further than the exoneration of Ms. Leaphart?

6 A Right. I always knew -- I always understood the
7 statement to be -- the exoneration of Ms. Leaphart's a
8 good way of putting it -- never was there a specific
9 statement that "the drugs are mine." That was -- again,
10 first came out morning of.

11 Q Okay. But you did object to its introduction at
12 trial, during the trial; is that correct?

13 A I do. Yes, sir, I saw that.

14 Q You would agree with me that the difference between
15 exoneration only and exoneration plus self-incriminating
16 would be important to your defense of Mr. Lytes?

17 A I say this: When you've got two folks in a car and
18 something's happened, I mean, there's crack, there's
19 money, there's a transaction, and only two, and when you
20 say, well, it wasn't the other person, you know, that's --
21 I think that's self-incriminating by itself. You know, of
22 course, it's always better not to say anything. So when
23 you go from -- I don't know -- I'm trying to think through
24 this. I don't know how big of a jump it is to go from
25 "they had nothing to do with it" to "it's mine," because

1 if they had nothing to do with it, the only other person
2 it could be is you.

3 Q I understand. I understand.

4 There was a question brought about regarding
5 trial strategy. You would agree with me that this was a
6 difficult case to see a not guilty verdict coming back?

7 A Yes.

8 Q However, you would also agree with me there are going
9 to be opportunities or circumstances during a trial that
10 may break apart the State's case?

11 A Absolutely.

12 Q And that's why you had the opportunity to try the
13 case?

14 A Absolutely, yes.

15 Q And so even if it is slam dunk at discovery, you
16 never know when something may happen along the way?

17 A Never can. And so people -- people lose trials and
18 they surprise people when they win things. They have
19 no -- you know, people can be surprised.

20 Q And you had that mindset when you were defending
21 Mr. Lytes during his case?

22 A Yes. I mean, absolutely, he's got a shot.

23 MR. NELSON: Thank you. No further questions.

24 MR. WHITMIRE: May Mr. Snell be released and be
25 on his way?

1 THE COURT: Any objection?

2 MR. NELSON: Not at all. I respect Mr. Snell
3 hanging around as long as he has.

4 THE COURT: All right. Let me make sure I
5 understand.

6 Thank you, sir. You're excused.

7 The allegation for relief or the grounds for
8 relief are either through the rubric of prosecutorial
9 misconduct or ineffective assistance of counsel, that
10 there's Rule 5 or Brady violations, that the defendant's
11 statement was not produced until the day before trial or
12 the day of trial, the Jackson V Denno hearing, and also
13 some alleged photographs, the scale of the car and
14 something else were not produced until the day of trial,
15 day before; is that right?

16 MR. NELSON: Yes, Your Honor. There were a
17 number of documents that Mr. Snell got provided the night
18 before trial. He did -- Mr. Snell, to his credit, moved
19 for a continuance. He asked that -- he did some other
20 preliminary motions to try to get that information or
21 evidence not in. With respect to the statement, though,
22 that's the only thing that that round of asking for
23 continuances happened prior to that Jackson V Denno
24 hearing.

25 THE COURT: So it's really limited to that

1 statement?

2 MR. NELSON: Yes, Your Honor. And I'm not going
3 to present any more evidence. I was going to try to cover
4 some of these in my arguments in closing. But that's kind
5 of where we're headed.

6 The reason I still claim there's an ineffective
7 assistance of counsel argument would be that Mr. Snell did
8 not move for a continuance after this information came to
9 light. I do agree with him that he would have been hard
10 pressed to get it considering the way the transcript
11 reads; however, for Mr. Lytes' sake, it probably should
12 have at least been put on the record.

13 THE COURT: Okay. All right.

14 MR. WHITMIRE: Your Honor. In reply --

15 MR. NELSON: Oh, I'm sorry, Your Honor.

16 THE COURT: I'll let you go last.

17 MR. NELSON: Okay. In fact, I'll just go ahead
18 and do that. That will be easier for you, Walt. Okay.
19 Thank you.

20 Your Honor, there's two issues that were
21 discussed. Let me discuss one first.

22 The confidential informant issue to me is not as
23 important to Mr. Lytes' case. In fact, it's not his lynch
24 pin. But I will say that Mr. Lytes finds himself where
25 many individuals do, criminal defendants do when a

1 confidential informant is involved. I understand the
2 policy of protecting the identity of the confidential
3 informant. I certainly don't want to put anybody's life
4 in danger and who knows what the circumstances are.
5 However, in this case we have it the night before. And I
6 do realize that Mr. Lytes probably knows who it is, but
7 there's information about that informant, such as her
8 criminal history, her biases, her involvement with other
9 cases being worked by SLED, that could be very important
10 to his defense.

11 THE COURT: Well, what would be the difference
12 between that and the Rule 5 discovery rules, that if you
13 have statements by a witness against a defendant that you
14 don't have to provide their criminal record until after
15 they testify? What would be the difference?

16 MR. NELSON: Well -- and I think you make a good
17 point. I think the issue that I have, though, is that
18 maybe the criminal history is not as important, but this
19 witness, this confidential informant, had worked four or
20 five cases. She testified to such. I think for
21 Mr. Lytes' defense, he would want to know what her
22 involvement, how deep did it run. Because, to be honest
23 with you, you could almost characterize her as a law
24 enforcement agent at this point. I'm not going to make
25 that jump, but I would not argue against that if someone

1 did because she was -- I'm not saying she was on the
2 payroll, but she was getting pretty close.

3 THE COURT: I know what you're saying.

4 MR. NELSON: But the reason I say that is that I
5 want to highlight to this Court a problem that I see in a
6 lot of these cases with confidential informants. I don't
7 want you to have to give me the answer either. I just do
8 think that you do have to consider Mr. Lytes'
9 Constitutional rights to be able to present a defense.

10 But with respect to the statement, obviously
11 Rule 5 covers that statement. And whether or not the
12 prosecutor had some evil intention, I'm not trying to say
13 that. It's not about the intent. It's about what
14 actually happened. And we have evidence from Mr. Lytes'
15 counsel that he first learned of this incriminating
16 statement, and that it would be used against his client,
17 no more than three minutes before the trial started.

18 THE COURT: Well, Mr. Snell seemed to indicate
19 that why he did not know the further taking ownership
20 aspect of it and the specific statement since, that he did
21 seem to not be surprised because the statement was in
22 effect taking ownership of the drugs from the initial
23 statement.

24 MR. NELSON: Certainly, Your Honor.

25 THE COURT: So why wouldn't that be a harmless

1 error?

2 MR. NELSON: And that's why it goes to the
3 buy-bust situation that we find ourselves in. We have a
4 mound of evidence that's mounting up against Mr. Lytes.
5 But I reason I think that it's prejudicial is that
6 Mr. Lytes actually took his case to trial. And if
7 Mr. Lytes had been known -- had been aware and Mr. Snell
8 had an opportunity to talk to his client about this
9 additional information, that they're going to bring all
10 this evidence against you, but you know what else they're
11 going to do? They're going to say you stepped out of the
12 car and admitted to everything. If Mr. Lytes would have
13 heard that, he would have had the opportunity to consider
14 the plea that was given to --

15 MR. WHITMIRE: Your Honor, that's a whole new
16 allegation.

17 THE COURT: I --

18 MR. NELSON: That's the prejudicial effect, Your
19 Honor. I'm not saying that --

20 THE COURT: But to the extent you're raising new
21 ground, I'm not going to let you, but go ahead. I hear
22 you argue prejudice. But to that extent, you agree with
23 me, Mr. Nelson, that criminal defendants don't have a
24 constitutional right to a plea.

25 MR. NELSON: Yes, sir, Your Honor.

1 THE COURT: So what would be the prejudice to
2 that?

3 MR. NELSON: But Mr. Lytes needs, in my opinion,
4 and the way I read Strickland, in order to bring about his
5 defense, the idea behind Brady, behind Rule 5, is that
6 they be given the opportunity to know everything that's
7 before them. And he's sort of operating in a dark room.
8 Mr. Snell was as well. I do realize that the mound of
9 evidence -- and I can't get rid of that, but the mindset
10 that an incriminating statement in which you are basically
11 losing the entire case, it very well may have changed his
12 mind on moving forward.

13 THE COURT: Okay. Thank you very much.

14 MR. NELSON: Thank you, Your Honor.

15 MR. WHITMIRE: Brief reply, Your Honor.

16 Regarding the confidential informant issue, I
17 refer to Hyman V State. I believe the appropriate
18 balancing test was employed in this situation. Mr. Lytes'
19 attorneys had the confidential informant's statement.
20 They had statements and police reports from detectives
21 from SLED that worked with the confidential informant.
22 The confidential informant's name was not released until
23 right before trial, which in this case there's a long
24 history of case law that supports that decision in
25 particular.

1 Second of all, there is no prejudice. Although
2 counsel indicated that Mr. Lytes was familiar with the
3 C.I., the C.I. in fact testified that she was familiar
4 with Mr. Lytes and that's how he ended up becoming the
5 second go-to man in this buy-bust. They originally had a
6 different target.

7 Second (sic) of all, Your Honor, regarding the
8 oral statement not disclosed to Mr. Lytes under
9 prosecutorial misconduct, there is no evidence that Ervin
10 Maye had any knowledge that the statement had that
11 additional nuance. He told the Court it meant one thing,
12 the cop testifies differently. It's never in writing. No
13 indication it is in writing.

14 THE COURT: Say that again, please.

15 MR. WHITMIRE: Your Honor, the statement was
16 never made -- his statement was never --

17 THE COURT: No, I want you to tell me what Mr.
18 Maye didn't have the nuance of what, please?

19 MR. WHITMIRE: There's no evidence produced that
20 Mr. Maye had any indication that that extra nuance that
21 was testified to during the Denno hearing was actually in
22 play. Opposing counsel -- counsel had indicated on the
23 stand that he had no reason to believe that Mr. Maye would
24 have been dishonest. Mr. Maye, in fact, said we're
25 putting up a detective to say -- the statement, that

1 little extra part at the end, nothing at all. And, Your
2 Honor, I would ask the opportunity to get a quick
3 affidavit from Mr. Maye if that is a concern of this
4 court.

5 THE COURT: That is a concern, the reason being
6 is that the prosecutor has a duty not to foister things
7 that are not necessarily the case either. And so if that
8 would be -- in other words, if that was something that he
9 hadn't heard for the first time until the time of hearing,
10 that should give you some pause.

11 MR. WHITMIRE: And the way that he had framed
12 the issues in the application I would -- had no need to
13 get Mr. Maye to attend today. The way they came out
14 today, I believe an affidavit would be helpful if it's
15 something that's a concern for this court. But I don't
16 believe it's prejudicial.

17 THE COURT: I was going to ask Mr. Nelson back
18 on that, too.

19 How is that additional statement prejudicial?
20 You're thinking from the totality of everything else it
21 would have made him push harder on the plea deal?

22 MR. NELSON: Yes, Your Honor. And I'm not --
23 I'm not here with the jury that convicted Mr. Lytes. They
24 may have believed the confidential informant, they may
25 have believed the investigators. They may have hung it on

1 the statement, but that's not an issue.

2 THE COURT: Okay. I just want to make sure I'm
3 clear.

4 MR. WHITMIRE: And, Your Honor, the testimony
5 from counsel today indicated that his chief strategy was a
6 suppression or attack on the weight or the credibility of
7 the chain of custody. He knew Mr. Lytes' statement. He
8 was well aware of it; Mr. Lytes had disclosed the
9 substance of it. There was really no new knowledge to him
10 going in. If there was a Rule 5 violation, the

11 appropriate remedy would have been a quick 20, 30-minute
12 continuance for him to review it, do what he needed to do.

13 THE COURT: I don't know if I necessarily agree
14 with that, okay?

15 MR. WHITMIRE: That's what Judge Keesley granted
16 him earlier. He actually granted one of his Rule 5
17 motions earlier in the trial, just going by that.

18 But in this particular case, the context of this
19 trial, it's a C.I. buy-bust, trafficking. It's not
20 necessarily a trial where identity's really in question.
21 This is a case where Mr. Lytes didn't know the C.I.
22 Mr. Lytes had told counsel, according to counsel's
23 testimony today if I have it right, made the statement
24 very close to what actually came out at the Denno hearing.
25 And also this is in the preliminary Denno hearing. It's

1 not as if it's in front of the jury and it's an "I got
2 you, what do I do." He had time to prepare and consult
3 with Mr. Lytes. And he said his trial strategy really
4 didn't change substantially because of it. So it did not
5 affect his performance.

6 He did object and the judge denied his
7 objection. This appeal was made pursuant to Anders. If
8 it was renewed properly I cannot speak to it right now,
9 but he did object and notice that he did not indicate
10 today that it was a major concern in his representation of
11 Mr. Lytes, but I do understand the Court's concern.

12 THE COURT: All right. What is the standard on
13 a Brady violation for relief under post-conviction?

14 MR. WHITMIRE: It's materiality, Your Honor.

15 THE COURT: Yes, it's materiality.

16 MR. WHITMIRE: Same with Brady and Rule 5. And
17 Your Honor responded --

18 THE COURT: And I said Brady. This is not a
19 Brady situation.

20 MR. WHITMIRE: Hyman V State has become the
21 capstone case on Rule 5, Brady, and C.I. disclosures. It
22 covers sort of the whole rubric of everything that would
23 be in play in this case, and it's very similar factually.
24 Respondent would ask the Court to look at that case in
25 particular, but it's still materiality.

1 THE COURT: Okay.

2 MR. WHITMIRE: Trial counsel said there was
3 really no materiality. That's direct words.

4 MR. NELSON: And, Judge, I agree.

5 I will say this, though. The way I read the
6 Hyman case, it uses the Rule 5 -- the case to me is a
7 little bit strange because it doesn't really -- it's an
8 ineffective assistance of counsel claim. It's very
9 similar to why we're here, that's right, because it -- I
10 think it talks about what the prosecutor did, but then it
11 looks through the guise of the Strickland test, which is a
12 little bit strange because when you read the opinion, it
13 doesn't really get into what his defense counsel did. It
14 looks at what the prosecutor did and then it looks at
15 prejudice. So I do think the Strickland two-prong
16 approach still stands. Hyman, though, in my opinion
17 doesn't quite look at the defense counsel's actions as
18 much as it looks at what the prosecutor did.

19 And I will make one point. I do want the Court
20 to also consider that we didn't harp on it too much, but
21 Mr. Snell did not ask for a continuance prior.

22 THE COURT: Right. I got that. But let me just
23 say this. In regards to this is not a Brady violation
24 because it's not a failure to provide exculpatory
25 information, this was inculpatory, so it would be under

1 Rule 5, okay?

2 MR. NELSON: Yes, Your Honor.

3 THE COURT: As to the C.I., from what I
4 understood from the record, the statement of the C.I. was
5 made available to the defendant, their name and
6 involvement with the State was not made available until
7 right the day of or shortly before trial. You know, you
8 equate that over to Rule 5 where a witness for the State
9 testifies and you don't have to give their record until
10 after they testify. I find no prejudice there. And I
11 find no defective performance on the part of the lawyer
12 for not asking for a continuance in that regard.

13 As far as the statement by the defendant in this
14 matter, that's a little bit more concerning because that's
15 just right there. They added something to it. However,
16 from -- and sometimes in 20/20 vision, you know, looking
17 back at something, asking for a continuance is always
18 probably a good thing if you're a criminal defense lawyer.
19 But Mr. Snell honestly stated that, you know, he was
20 treating the statement that Mr. Lytes made when he stepped
21 out of the vehicle as being incriminating; in other words,
22 "it's not mine" meaning -- I mean, "it's not hers, it is
23 mine." So to the extent that this is a little more
24 clarified, it's not a surprise necessarily and it doesn't
25 prevent the way that he would pursue the case. I don't

1 think that failure to ask for a continuance would
2 constitute a level of deficient performance. But even in
3 the event that it does, it would not be prejudice to the
4 defendant because he's on notice that his statement was
5 incriminatingly made at the time it was given to law
6 enforcement.

7 So are there any other grounds, Mr. Nelson, that
8 I have not addressed at this point?

9 MR. NELSON: I don't think so, Your Honor, to
10 the effect that we stayed within where we talked about.

11 THE COURT: Right. And to the extent that there
12 was an objection to any new material being brought up, I'm
13 sustaining that objection. I'm denying your petition.
14 I'm going to ask Mr. Whitmire to draft me an order.

15 MR. WHITMIRE: Thank you, Your Honor.

16 THE COURT: Thank you, gentlemen.

17 MR. NELSON: Thank you, Your Honor.

18 (The proceedings were concluded.)

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
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34 STATE OF SOUTH CAROLINA)
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I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Edgefield County, South Carolina, on the 15th day of November, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 15, 2014



CAROL M. THUEME, RPR
Circuit Court Reporter

COPY

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBLE

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

2014 MAY 29 AM 10:02

Odouri L. Lytes,
S.C.D.C. No. 282918,

Applicant,

v.

State of South Carolina,

Respondent.

C.A. No. 2012-CP-19-296

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 10, 2012. Respondent made its Return. An evidentiary hearing into the matter was convened on November 15, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Frank A. Nelson, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Edgefield County. The Applicant was indicted at the December 2007 term of the Court of General Sessions for Edgefield County for trafficking crack cocaine, greater than 28 grams but less than 100 grams (2007-GS-19-753). James R. Snell, Esq., 'counsel' represented Applicant. On August 12, 2009, a jury convicted Applicant as indicted. The Honorable William P. Keesley sentenced Applicant to twenty-five years imprisonment.

Applicant appealed his conviction and sentence to the SC Court of Appeals and was represented by Wanda H. Carter, Esq., of the Office of Appellate Defense. On January 25, 2012,

the South Carolina Court of Appeals dismissed Applicant's appeal in unpublished opinion (No. 12-UP-11) The remittitur soon followed.

At the PCR hearing, Applicant proceeded on the following allegations:

1. Prosecutorial misconduct
 - a. untimely disclosure of evidence related to the C.I. used in the controlled buy;
 - b. improper disclosure of only part of Applicant's oral statement to police.
2. Ineffective Assistance of Counsel:
 - a. failure to make a successful motion to suppress the narcotics.

SUMMARY OF TESTIMONY FROM THE PCR HEARING¹

Counsel testified at the PCR hearing and outlined his criminal practice and prior experiences handling narcotics cases in Edgefield County. It was his recollection that Applicant received a copy of the discovery disclosures in this case from his first attorney. He noted the discovery disclosures encompassed forty-four (44) pages of materials. He could not recall why Applicant's first attorney was relieved from case. Applicant's second attorney approached counsel about a substitution. As a result, counsel took on the representation here.

Counsel outlined his initial involvement in Applicant's case. He stated that he sent Applicant an introductory letter on June 16, 2009. Out of an abundance of caution, counsel made certain to apprise Applicant of the charge and elements of the offense. Counsel further filed a motion concerning Applicant's pre-trial detention and bond. Counsel filed his own discovery motions and began his investigation of the case. Counsel independently reviewed and evaluated the State's evidence, inspected the actual evidence, and interviewed the arresting officer. Counsel noted that he spoke with all of the officers prior to trial that testified during the State's case-in-chief.

¹ This Court notes that Applicant did not testify on his behalf at the PCR hearing.

He summarized the State's case as a standard controlled buy police investigation where the police utilized a confidential informant 'C.I.' to effectuate a narcotics transaction as a buyer. The C.I. wore a wire and was provided marked currency from the police. Counsel testified to two specific occasions he met with Applicant to discuss the case. He could not immediately recall other meetings but stated he may have met with Applicant on other occasions.

Counsel stated that he evaluated the C.I.'s redacted statement prior to trial. He discussed the matter with Applicant during a pre-trial consultation. He did not recall whether Applicant disclosed information regarding the C.I. that would have been helpful to the case. Counsel opined that it was indisputable that Applicant was in the vehicle that was identified in the controlled buy. Furthermore, it was also indisputable that Applicant had made or received a series of phone calls from the C.I. prior to the controlled buy. He reviewed the C.I.'s phone records with Applicant. Applicant disclosed the substance of his oral statement to police. In his spontaneous statement to police, he exculpated others at the scene. Further details of the statement were disclosed during pre-trial motions. Counsel asserted the additional details did not constitute a material variance in the substance of the inculpatory statement.

Counsel testified that plea negotiations were unfruitful. The solicitor offered to plead Applicant to a negotiated sentence of twenty-two (22) years imprisonment. He stated that Applicant was only willing to accept a plea that exposed him to eight (8) years or less of imprisonment. Thus, counsel prepared Applicant's case for trial. He asserted that he was fully prepared to effectively try Applicant's case when the solicitor called it to trial. The solicitor disclosed protective discovery materials regarding the C.I. on the eve of trial. Counsel traveled to the solicitor's base of operations, an Airport hangar in Saluda County, to inspect the previously protected discovery materials. Counsel stated that he had the opportunity to discuss the matter

with Applicant on the morning of trial. Counsel requested a continuance when the State called its case. Counsel stated that impeaching the C.I.'s credibility was instrumental to his trial strategy. The motion was ultimately denied but yielded counsel a partial success in a directive from the trial judge to allow counsel any additional time during the course of the trial to review the materials.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds counsel exhibited competent representation on the issues of ineffective assistance of counsel at issue. This Court notes that the solicitor could have disclosed discovery materials to counsel in a more expedient manner. However, this Court places great emphasis on counsel's detailed testimony concerning his pre-trial preparations and trial performance. Furthermore, Applicant's conviction and sentence were supported by overwhelming evidence of his guilt.

A.

This Court finds Applicant has failed to meet his burden to prove the solicitor committed prosecutorial misconduct that resulted in prejudice. "Challenges alleging prosecutorial misconduct typically involve a prosecutor's improper efforts to collect evidence or unfair trial tactics." State v. Needs, 333 S.C. 134, 145, 508 S.E.2d 857, 862 (1998) holding modified by State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004). "Rule 5 permits inspection of evidence in the State's possession "which [is] material to the preparation of his defense or [is] intended for

use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the defendant" upon request by the defendant." Hyman v. State, 397 S.C. 35, 47, 723 S.E.2d 375, 381 (2012) (citing Rule 5(a)(1)(C), SCRCrP). "Although the State is generally privileged from revealing the name of a confidential informant, disclosure may be required when the informant's identity is relevant and helpful to the defense or is essential for a fair determination of the State's case against the accused." State v. Humphries, 354 S.C. 87, 90, 579 S.E.2d 613, 614-15 (2003).

First this Court finds counsel made a timely pre-trial motion to suppress evidence related to the C.I. that was protected until the eve of trial. The trial judge noted the proper remedy here was to provide counsel the opportunity to request time to review the evidence at issue during the course of the trial. (Trial Tr. pp.87-97). This Court notes that the evidence at issue was not proven to be exculpatory, ergo within the purview of Brady². Thus, the cognizable matter before this Court here concerns whether the manner in which the solicitor disclosed sensitive evidence appertaining to the C.I. materially affected Applicant's right to a fair trial. What is of importance is that Applicant failed to produce credible evidence that showed the trial judge's remedy was grossly inadequately and thereby constituted an abuse of discretion. See Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 776 (2008). Furthermore, counsel was properly provided the C.I.'s prior record during the course of the trial.

Second, this Court finds Applicant failed to prove the incomplete pre-trial disclosure of Applicant's oral statement to police to counsel constituted a discovery violation.

Statement of Defendant. Upon request by a defendant, the prosecution shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by

² Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a prosecution agent.

Rule 5(a)(1)(A), SCR CrimP (emphasis added). Counsel testified that the undisclosed portion of the statement was not material where the police officer had already provided him with the substance of Applicant's oral statement. This Court agrees with counsel and finds his testimony on the matter convincing. Applicant told the police that narcotics did not belong to others at the scene, which readily showed by deduction that he was culprit. Therefore, additional statements as to possession were merely surplusage. This Court finds counsel's testimony on the matter credible. In light of counsel's diligent preparations, the additional disclosure did not materially impact counsel's ability to effectively represent Applicant at the Denno³ hearing. Neither did the matter materially impact counsel's ability to effectuate his valid trial strategy, a piecemeal attack to prove reasonable doubt. Furthermore, counsel had discussed the matter with Applicant. Applicant made the decision to not tell counsel about the extent of his brief statement to police. See U.S. v. Pellerito, 878 F.2d 1535, 1543 (1st Cir. 1989) ("Applicant could made the decision to not tell counsel about his brief statement to police. If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping Noriega in the dark, and then, by refusing to heed his advice. That is not the sort of "ineffectiveness" for which relief can be granted."). The issue did not warrant a continuance. See State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989). Therefore, these allegations are denied and dismissed.

B.

³ Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964).

Applicant's allegation that counsel was ineffective for failing to make a motion to suppress the narcotics based upon a defective chain of custody is without merit. Counsel made a timely objection to the admission of the narcotics. (Trial Tr. pp.209-39; pp.243-44). See Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) ("[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."). Regardless, Applicant has failed to make a credible argument that narcotics were improperly admitted into evidence because of a defective chain of custody. See State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001). Therefore, this allegation is denied and dismissed.

C.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

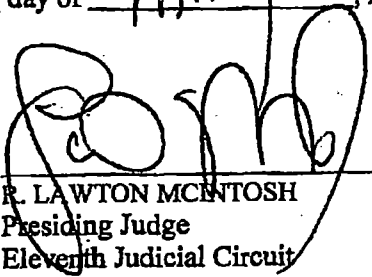
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 19 day of May, 2014.


R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

WITNESSES

Miller

EC SO

ARREST WARRANT NUMBER

J 605035

ACTION OF GRAND JURY:

Foreperson of Grand Jury
Date: DEC 05 2007

VERDICT

GUILTY

Foreperson of Petit Jury
Date:

AUGUST 12, 2009

DOCKET NO. 2007-GS-19- 753

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

THE STATE

vs.

ODOURL LAMONT LYLES

CDR# 0349

Indictment for

TRAFFICKING CRACK COCAINE

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF EDGEFIELD)

INDICTMENT FOR
 TRAFFICKING CRACK COCAINE

At a Court of General Sessions, convened on December 5, 2007 the Grand Jurors of Edgefield County present upon their oath:

A/K/A ODOURI *

That ODOURL[^]LAMONT LYLES did in Edgefield County on or about October 24, 2007, knowingly, intentionally, wilfully and unlawfully sell, cultivate, manufacture, deliver, purchase or bring into this state, or provide financial assistance or otherwise aid, abet, attempt or assist, conspire or participate with others to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession of, or knowingly attempt to become in actual or constructive possession of more than twenty eight (28) grams but less than One hundred (100) grams of Crack Cocaine, in violation of Section 44-53-370(C) of the 1976 South Carolina Code of Laws, 1976, as amended, constituting the criminal offense of Trafficking in Crack Cocaine, with punishment provided for in Section 44-53-375(C)(2)(c) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

* INDICTMENT AMENDED AUGUST 11, 2009,
 OVER DEFENDANT'S OBJECTION, TO CORRECT
 SCRIVENER'S ERROR WHEREBY THE LAST
 LETTER OF THE DEFENDANT'S FIRST NAME
 WAS CHANGED FROM "L" TO "I," TO CORRECT
 THE SPELLING.


 /S/ WILLIAM P. KEESLEY
 JUDGE

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

STATE VS.
ODOURL LAMONT LYLES

AKA:

Race: B

Sex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

1 RIDGELL STREET

City, State, Zip: BATESBURG, SC 29006

DL# _____

SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-19- 753

AW#: J605035

Date of Offense: 10/24/07

S.C. Code §: 44-53-375(C)(2)(C)

CDR Code #: 0349

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS:TO: TRAFFICKING CRACK COCAINE GREATER THAN 28 GRAMS BUT
LESS THAN 100 GRAMS (COCAINE BASE)in violation of § 44-53-375(C)(2) of the S.C. Code of Laws, bearing CDR Code # 0349☐ NON-VIOLENT☒ VIOLENT (C)☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 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. CREDIT TIME FROM OCTOBER 24, 2007 (WAS)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$ 100.00
\$100	
\$12	
\$500	
\$25	\$ 25.00
\$100	\$ 100.00
\$50	
\$	\$ 5.00
\$	\$ 6.90
\$	\$ 236.90

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: PAY COURT COSTS WITHIN 120DAYS OF RELEASE FROM PRISON☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Shirley J. Newby
Clerk of Court/Deputy Clerk

Court Reporter: Stacey Sheppard

SCCA/217 (10/2007)

PRESIDING JUDGE

Judge Code: 2101510Sentence Date: AUGUST 12, 2009