

21823

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LEROY CLIFTON GIBBS, III

APPELLANT

APPELLATE CASE NO. 2013- 001297

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

COURT OF GENERAL SESSIONS

Leroy Gibbs,)
)
 PLAINTIFF,)
)
 v.)
)
 State of South Carolina,)
)
 DEFENDANT.)

TRANSCRIPT OF MOTIONS
 C/A No. 2011-GS-43-01125

Sumter County Courthouse
 May 23, 2013

BEFORE:

HONORABLE GEORGE C. JAMES, JR., PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor John Meadors
 Attorney for State of South Carolina

Charles Brooks, Esquire
 Attorney for Leroy Gibbs

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

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LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

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1 Mr. Meadors: May it please the Court. This is Leroy
2 Clifton Gibbs, III.

3 The Court: All right.

4 Mr. Meadors: This is indictment 2011-1125. Mr. Gibbs
5 is with his attorney, Mr. Brooks, Your Honor. As, Your
6 Honor, knows and well remembers, we brought Mr. Gibbs for
7 a trial before, Your Honor, and a jury in February of
8 this year. It was a mistrial. After that time, Mr.
9 Gibbs has been out on bond. He has approximately thirty
10 charges in the office. Mr. Brooks filed ...

11 The Court: How many?

12 Mr. Meadors: Thirty.

13 The Court: Thirty.

14 Mr. Meadors: Mr. Brooks filed a motion to be
15 relieved. I do have him as number one on my trial docket
16 for week after next, Judge, but we are here on Mr. Brooks
17 motion.

18 The Court: Do you represent him on all thirty?

19 Mr. Brooks: I don't think. I think Will Brunson
20 represents him on a couple of those.

21 Mr. Meadors: Mr. Brunson has got him on two or
22 three.

23 The Court: All right. Your motion, Mr. Brooks.

24 Mr. Brooks: May it please the Court. Judge, this is
25 a motion to be relieved. If you'll recall you presided

1 over the case back in February as Mr. Meadors has said.
2 It ended up in a hung jury. Eleven to one, I believe
3 that was the count, unofficial count. And, since that
4 time, Mr. Gibbs has decided to file a grievance against
5 me for my services with the Office of Disciplinary
6 Counsel. I feel that is nothing more I can do for him.
7 I got him, what is considered to be a great deal
8 considering all those charges. The solicitor's office
9 had recommended, they had agreed to reduce all these
10 charges down to a three year sentence. I tried his case.
11 I kept him from going to prison for twenty, thirty years.
12 We sat here on a Friday night ...

13 The Court: What was he on trial for?

14 Mr. Brooks: He was on trial for distribution and I
15 don't know if you recall, you presided over it.

16 The Court: I remember it was a ...

17 Mr. Meadors: Judge, it was a nine count indictment.
18 We went forward on the trafficking in cocaine,
19 manufacturing cocaine and possession with intent to
20 distribute. So, we went forward on three of the nine
21 counts.

22 The Court: And you all had offered three years on all
23 thirty charges?

24 Mr. Meadors: That's correct, Your Honor. And during
25 the trial I think there was some talk about five but

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5

1 anyway ...

2 The Court: The basis for your motion is that he has
3 grieved you?

4 Mr. Brooks: He has grieved me. He want follow my
5 instructions. If you recall, Judge, I advised him not to
6 take the stand and he took the stand.

7 The Court: I remember that.

8 Mr. Brooks: Judge, there is nothing else I can do
9 for him. Perhaps he needs to represent himself. There
10 is nothing else I can do for him.

11 The Court: Mr. Gibbs, what is your position on this.
12 Of course, let me tell you this. On the charges you have
13 a right to remain silent so I caution you about talking
14 about any of the merits of the cases but do you have any
15 response to Mr. Brooks motion to be relieved?

16 Mr. Gibbs: No, sir.

17 The Court: Sir?

18 Mr. Gibbs: No, sir.

19 The Court: All right. Mr. Meadors.

20 Mr. Meadors: Judge, with all due respect to Mr.
21 Brooks and Mr. Gibbs, I think his motion was filed before
22 he was grieved, since then he has been grieved. There
23 was an issues about \$1100 I think Mr. Gibbs had in his
24 pocket.

25 The Court: That is definitely not a issue anymore

1 because ... the fact that somebody has money in their
2 pocket doesn't make them non indigent.

3 Mr. Meadors: Right.

4 The Court: He's not arguing that.

5 Mr. Brooks: I don't care about that.

6 Mr. Meadors: That was in the motion. I just wanted
7 to cover that. Judge, I ...

8 The Court: Well, what do we do in a situation where,
9 just hypothetically, the Defendant is coming up for trial
10 and he doesn't want you to try it. And he knows well if
11 I grieve my lawyer, I'm going to get a new lawyer.

12 Mr. Meadors: That's actually what I was about ...

13 The Court: And then the next time they get a lawyer,
14 they grieve that lawyer too and then they are never
15 tried. If you carry that out ...

16 Mr. Brooks: I understand, Judge.

17 The Court: Mr. Meadors, what is your take on all
18 this as a officer of the court wanting to make sure that
19 this defendant has effective assistance of counsel and
20 that he has not a perfect trial but a fair trial.

21 Mr. Meadors: Yes, sir. That's actually, I was
22 gathering how to say it. I don't know what would keep
23 him from, his next attorney grieving him. No matter who
24 it is. These are old. We've tried to bring them to
25 trial in front of, Your Honor. He had excellent

LEROY GIBBS VS. THE STATE OF SOUTH CAROLINA

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1 representation and it ended in a hung jury. I mean, you
2 know, he got him a result that wasn't a conviction in a
3 fairly strong case, in my opinion. I need to resolve
4 this on behalf of the state. We are ready to go forward.
5 I think he's had fine representation. It's a unique
6 position for me actually quite frankly, this scenario.
7 I'd like, Your Honor, to keep Mr. Brooks on. He did a
8 good job. I mean, he's not entitled to the lawyer of his
9 own choosing here. He's gotten an attorney appointed to
10 him that did an excellent job and now he's going to
11 grieve him. He can keep grieving and grieving and we
12 could never try this case. Judge, we'd ask Mr. Brooks be
13 ordered to stay on and in the alternative Mr. Gibbs to
14 represent himself. I want to call this ...

15 The Court: I'm going to come back to you, be still.

16 Mr. Meadors: I'd like to call this a week from
17 Monday for trial with or without a lawyer.

18 Mr. Brooks: Please, Judge. I appreciate all the
19 compliments from Mr. Meadors but please on this guy ...

20 The Court: Well, please isn't grounds for relief.

21 Mr. Brooks: I understand, Judge. And, Judge, you
22 know I've represented a murder case in Bishopville
23 shortly after that. At least my client would respect me
24 and at least come around and start listening to me. He
25 doesn't want me to represent him.

1 The Court: Well, he just said he doesn't have any
2 position on it.

3 Mr. Brooks: Well, maybe the court may inquire, but
4 obviously a person that keeps you from going to jail
5 twenty, thirty years and as a reward you turn around and
6 grieve him. He doesn't want me, Judge, and I don't want
7 him.

8 The Court: Well, do you have anything you want to
9 say Mr. Gibbs?

10 Mr. Gibbs: No, sir.

11 The Court: Well, I'm not going to relieve you Mr.
12 Brooks even though I'm tugging at my heart strings.
13 Here's the situation. Your relationship with Mr. Gibbs,
14 if it is as you say, is not going to be any different
15 with another lawyer. If he perhaps gets the same offer
16 or some other elevated offer, whatever the offer might
17 be. If Mr. Gibbs --- my recollection of the trial was
18 you did an excellent job and I remember he took the stand
19 and you had to do it under that relatively new case that
20 confirmed that if they want to get on the stand you have
21 to put them up there even if you disagree with them. And
22 then he didn't open the door to some cross examination,
23 he absolutely knocked it down when he testified. I can't
24 remember what it was but it was just, the door just blew
25 wide open which opened him up to some pretty damaging

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1 cross examination. The jury, of course, didn't convict
2 him. I don't know what bone he has to pick with you
3 unless it's a personal bone. I don't know. Maybe he just
4 doesn't like you, but in any event I'm going to deny your
5 motion. Mr. Gibbs, I'm just telling you, you know, you
6 didn't take a position on this today. You've got this
7 charge pending. I don't know which one the solicitor is
8 going to call but you need to act accordingly with your
9 lawyer. I don't know about the grievance, I don't want
10 to know about the merits of it, but you have a
11 relationship with an attorney and client with your lawyer
12 and you need to conduct yourself in a way that gives him
13 the opportunity to provide you with the best defense. If
14 you don't like him, you better put it aside or you're not
15 going to do anything but hurt yourself.

16 It may make you feel good to be rude to him. It may
17 make you feel good to be mouthy to him, but he's your
18 lawyer, do you understand?

19 Mr. Gibbs: Yes, sir.

20 Mr. Brooks: Judge, I was going to ask the Solicitor
21 if they know which case they are going to call.

22 The Court: I think it's reasonable for you to let
23 him know which set of charges.

24 Mr. Meadors: I'll let him know that today.

25 The Court: Okay.

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1 Mr. Meadors: Yes, sir.

2 Mr. Brooks: It won't be the same one?

3 Mr. Meadors: I'll let you know today. It may well
4 be. It might be easier on everybody to just do that.

5 The Court: Who is presiding that week. I know I'm
6 not here.

7 Mr. Meadors: Judge Young and Judge Cothran. So, I
8 don't know ...

9 The Court: Okay. Good luck to you.

10 (End of Motion)

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	
	)	2011-GS-43-1125
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Leroy Clifton Gibbs, III	)	)
DEFENDANT	)	June 3, 2013
		Sumter, South Carolina

B E F O R E:

WILLIAM JEFFREY YOUNG, JUDGE; and a jury.

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

JOHN MEADORS, Assistant Solicitor

TYLER BROWN, ASSISTANT SOLICITOR
Attorneys for the State

CHARLES T. BROOKS, III, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Wayne Dubose				
4	Mr. Meadors	29			
5	Mr. Brooks		40		
6					
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1 THE COURT: All right. Solicitor, what's the
2 first case you got for us.

3 MR. MEADORS: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. MEADORS: Your Honor, the State of South
6 Carolina now does call The State vs. Leroy Clifton Gibbs,
7 III. Mr. Gibbs is in the courtroom with his attorney Mr.
8 Charles Brooks, Your Honor. This is Sumter County true
9 billed indictment 2011-GS-43-1125 trafficking in cocaine
10 base, Your Honor, manufacturing cocaine base and
11 possession with intent to distribute cocaine.

12 THE COURT: May I have the indictment,
13 Solicitor.

14 All right. Ladies and gentlemen, this is the
15 case of The State of South Carolina vs. Leroy Clifton
16 Gibbs, III, under indictment 2011-GS-43-1125. Now, ladies
17 and gentlemen, the defendant is charged with three counts
18 and we're going to try it this term and I will read the
19 three counts. Count 1 that Leroy Clifton Gibbs, III, did
20 in Sumter on or about December 23rd 2008, knowingly sell,
21 deliver, purchase or bring into the State or did aid,
22 abet, attempt or conspire to sell, deliver, purchase or
23 bring into the State or was in actual or constructive
24 possession or attempted to become an actual or
25 constructive possession of a quantity of cocaine base in

1 an amount more than ten grams but less than 28 grams. The
2 same being a controlled substance with all in the meaning
3 of section of 44-53-370 sequential of the South Carolina
4 Code of Laws 1976 as amended and such possession not
5 having been authorized in being in violation of section
6 44-53-370 (E) (2) (A) of the South Carolina Code of Laws 1976
7 as amended for the crime of trafficking.

8 The next count is manufacturing cocaine base and
9 the indictment reads that in Sumter, South Carolina on or
10 about December 23rd 2008, the defendant, Leroy Clifton
11 Gibbs, III, did manufacture or aid, abet, attempt or
12 conspire to manufacture a quantity of cocaine base a
13 control substance under provision of section 44-53-110
14 sequential code of laws South Carolina 1976 as amended
15 such having not been authorized by law. All in violation
16 of section 44-53-375 of the code of laws of South Carolina
17 1976 as amended.

18 The next count is possession with intent to
19 distribute cocaine, that Leroy Clifton Gibbs, III, did in
20 Sumter County on or about December 23rd 2008, with
21 unlawfully possess with intent to distribute a quantity of
22 cocaine, a controlled substance under provision act number
23 445 act of 1971 General Assembly of South Carolina as
24 amended section 44-53-370 sequential South Carolina Code
25 of Laws 1976 as amended and such possession not having

1 been authorized by law.

2 Now, ladies and gentlemen, let me remind you
3 that the fact that the defendant was arrested, charged and
4 indicted in no way indicates he is guilty of the charges
5 contained in here. The defendant has pled not guilty and
6 therefore the State has the burden of proving his guilt
7 beyond a reasonable doubt. The indictment again as I said
8 is no indication that he's guilty. It's just a paper that
9 actually bring this case into court and the burden is now
10 and will always be on the State to prove his guilt beyond
11 a reasonable doubt.

12 Now, ladies and gentlemen, let me remind you
13 that you are under oath and I got some questions that I
14 need to ask you. Now, the reason that you're under oath
15 during this crucial stage of the trial, it's just like a
16 building. It must have a firm foundation to be strong and
17 protective of those who live in it, so it must be built
18 strong as the basis of a fair and impair trial for those
19 who participate, the Solicitor's office or the people and
20 the defendant who is on trial. Your answers to these
21 questions are the foundation by which these attorneys will
22 build a jury. And they're relying on your truthfulness in
23 answering these questions to help me strike a jury that is
24 unbiased and who will diligently listen to the facts and
25 deliver a just verdict. Again, thank you, ladies and

1 gentlemen, for your complete truthfulness as I ask you
2 these questions.

3 Ladies and gentlemen, the first question is has
4 anyone ever been related by blood or marriage or had a
5 close personal or business relationship with the
6 defendant, Leroy Clifton Gibbs, who is sitting at this
7 table over here with his attorney, if so please stand?

8 If you stand please, sir. Thank you, sir. You
9 may be seated.

10 The following is a list of possibly witnesses in
11 this case James Atkinson of Sumter County Sheriff's
12 Department, Cindy Pearson of -- she's formally with Sumter
13 County Sheriff's Office, who is the evidence technician.
14 Mitch Hanson formally of the Sumter County Sheriff's
15 Office, who is a drug analyst. Investigator Wayne Dubose
16 of the Sumter County Sheriff's Office, Sergeant of
17 Investigation Tripp Maze of the Sumter County Sheriff's
18 Office, Senior Investigator William Welch of the Sumter
19 County Sheriff's Office, Lieutenant Chris Moore of the
20 Sumter County Sheriff's Office, Lieutenant Dale Horton of
21 the Sumter County Sheriff's Office and Kimberly Gibbs. Is
22 there any member of the jury panel who is related by blood
23 or marriage to any of the people that I have just listed
24 or have you had a close, personal or business relationship
25 with any of these people, if so please stand?

1 Yes, ma'am, state your name and juror number.

2 PROSPECTIVE JUROR: Melissa Corrigan juror
3 number 36.

4 THE COURT: Okay. And who do you know?

5 PROSPECTIVE JUROR: Chris Moore is one of my
6 clients.

7 THE COURT: Okay. And would the fact that Chris
8 Moore is one of your clients make it so that you can't be
9 fair and impartial to the State or the defense in this
10 case?

11 PROSPECTIVE JUROR: I believe so.

12 THE COURT: So you can be?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: You can listen to the evidence and
15 base your decision on that?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you, ma'am.

18 All right. Anyone else?

19 Now, the attorneys on the case are Mr. John
20 Meadors for the Solicitor. Mr. Meadors, if you please
21 introduce yourself and the other attorneys who will be
22 working with you.

23 MR. MEADORS: May it please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. MEADORS: My name is John Meadors. Tyler

1 Brown will also be assisting me this week. Of course,
2 this is Solicitor Finley.

3 THE COURT: Thank you.

4 Mr. Brooks, could you please introduce yourself.

5 MR. BROOKS: Attorney Charles Brooks practicing
6 here in Sumter, just me representing my client Mr. Gibbs.

7 THE COURT: Thank you.

8 Has any member of the jury panel ever been
9 represented by either of these attorneys or their law
10 firms or the Solicitor's office, if so please stand at
11 this time?

12 Yes, ma'am, Ms. Dawson.

13 PROSPECTIVE JUROR: Yes, Your Honor. I not been
14 represent, but, of course, worked with Mr. Brooks.

15 THE COURT: Would the fact that you worked with
16 Mr. Brooks before make it so that you can't be fair and
17 impartial to the State or the defense in this case?

18 PROSPECTIVE JUROR: I can be fair, Your Honor.

19 THE COURT: Thank you, ma'am.

20 Somebody is raising their hand. Would you
21 please stand?

22 PROSPECTIVE JUROR: I think Mr. Brooks
23 represented me on my house closing.

24 THE COURT: Would the fact that -- what's your
25 name please?

1 PROSPECTIVE JUROR: Brian Gerlt juror number 62.

2 THE COURT: Would the fact that Mr. Brooks
3 represented you on your house closing make it so that you
4 can't be fair and impartial to the State or the defendant
5 in this case?

6 PROSPECTIVE JUROR: I can do my job.

7 THE COURT: Thank you, sir.

8 Yes, sir.

9 PROSPECTIVE JUROR: Edward Sanders.

10 THE COURT: Yes, sir, Mr. Sanders.

11 PROSPECTIVE JUROR: Solicitor was a former
12 attorney.

13 THE COURT: Okay. The fact that -- you talking
14 about the Solicitor not the one Mr. Meadors, right?

15 PROSPECTIVE JUROR: The Solicitor.

16 THE COURT: The fact that the Solicitor was your
17 former attorney make it so that you can't be fair and
18 impartial to the State or the defense in this case?

19 PROSPECTIVE JUROR: I can be fair.

20 THE COURT: Thank you, sir, that's all we ask.

21 Yes, sir, your name and juror number?

22 PROSPECTIVE JUROR: Mr. Brooks did my house
23 closing.

24 THE COURT: Okay, what's your name and number?

25 PROSPECTIVE JUROR: Derek Hampton.

1 THE COURT: All right. Mr. Hampton, would the
2 fact that Mr. Brooks did your house closing make it so
3 that you can't be fair and impartial to the State or the
4 defendant?

5 PROSPECTIVE JUROR: No problem.

6 THE COURT: Thank you, sir.

7 Anyone else? Has any member of the jury panel
8 form or express an opinion about any issue or do you know
9 anything about the case, if so please stand?

10 (WHEREUPON, no one stood.)

11 THE COURT: Talk with anyone about this case, if
12 so please stand?

13 (WHEREUPON, nobody stood.)

14 THE COURT: All right. Have any of you or any
15 members of your family ever been the victim of or charged
16 with a violent crime? If you like to speak privately down
17 here, I'll allow you to do so.

18 Yes, sir, your name and number.

19 PROSPECTIVE JUROR: Juror 20 Robert Burke.

20 THE COURT: All right, Mr. Burke.

21 PROSPECTIVE JUROR: Michael Baxter was my step
22 son and you sentence him back. He just now got out on
23 parole.

24 THE COURT: Would the fact that ---

25 PROSPECTIVE JUROR: No, not at all.

1 THE COURT: Okay, very good. Thank you. He had
2 no problems being fair and impartial.

3 Yes, sir.

4 PROSPECTIVE JUROR: My name is Patrina Calhoun
5 number 21 and my brother was convicted of murder and
6 Charles Brooks represented him.

7 THE COURT: Okay.

8 MR. BROOKS: What's your brother's name?

9 PROSPECTIVE JUROR: Raheem.

10 THE COURT: I tried that case as well. Would
11 the fact that your brother was tried in this court by
12 Mr. Brooks and by me make it so that you can't be fair and
13 impartial in this case?

14 PROSPECTIVE JUROR: I can be.

15 THE COURT: You can be?

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Okay. Thank you, ma'am.

18 THE CLERK: Number nine Margaret Bowers.

19 THE COURT: Good morning, Ms. Bowers.

20 PROSPECTIVE JUROR: We were victims of a
21 drive-by shooting six or seven years.

22 THE COURT: Would the fact that that happen to
23 you make it so that you can't listen to the evidence in
24 this case and be fair and impartial?

25 PROSPECTIVE JUROR: No, it will not.

1 THE COURT: Okay. Thank you very much.

2 PROSPECTIVE JUROR: You're welcome.

3 THE COURT: Anyone else?

4 THE CLERK: Number 24 David Capers.

5 THE COURT: Yes, Mr. Capers.

6 PROSPECTIVE JUROR: My sister killed her
7 husband.

8 THE COURT: Okay. And when was that?

9 PROSPECTIVE JUROR: It was in the '80's.

10 THE COURT: Would the fact that that happened in
11 your family make it so that you can't be fair and
12 impartial to the State or the defendant?

13 PROSPECTIVE JUROR: No, it will have no affect.

14 THE COURT: Okay, thank you, sir.

15 THE CLERK: Juror number 33 Jill Connor.

16 THE COURT: Ms. Connor, how are you doing?

17 PROSPECTIVE JUROR: Good. How are you?

18 THE COURT: Good.

19 PROSPECTIVE JUROR: I was a victim of strong arm
20 robbery.

21 THE COURT: How long ago was that?

22 PROSPECTIVE JUROR: Been probably seven to ten
23 years.

24 THE COURT: Okay. Would the fact that you were
25 the victim of a strong arm robbery make it so that you

1 can't listen to the evidence and make a decision based on
2 this evidence?

3 PROSPECTIVE JUROR: No.

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

5 Thank you. Is there any member of the jury
6 panel who is aware of any bias or prejudice towards either
7 the State or the defendant in this case, if so please
8 stand? Thank you. No one is standing.

9 Is there any member of the jury panel who is a
10 member of the grand jury which indicted this case, if so
11 please stand? Thank you. No is one standing.

12 And is there any member of the jury panel who is
13 a member of or contributor to any group which has as its
14 primary concern the promotion of law enforcement or
15 victims' rights? These groups will include but certainly
16 not be limited to mother's against drunk drivers or
17 students' against drivers or citizens against violent
18 crime, if so please stand? Thank you. No one standing.

19 Does any member of the jury panel know of any
20 reason whatsoever why or she should not serve as a juror
21 in this case with particular emphasis being placed on your
22 ability to be fair and impartial to both the State and the
23 defendant, if so please stand? Thank you, no one
24 standing.

25 Does the State have any additional questions it

1 would like for me to ask?

2 MR. MEADORS: No, sir.

3 THE COURT: Does the defense have any additional
4 questions they would like for me to ask?

5 MR. BROOKS: Judge, we respectfully ask that the
6 Court inquire the jury if they have any moral opposition
7 to drugs since this is a case of drugs.

8 THE COURT: You all come up here for a second.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury panel, but out of the hearing of
11 the jury panel.)

12 THE COURT: That's all the questions we have.
13 Ladies and gentlemen, what will happen now is the computer
14 will spit out your names. And when your name is called,
15 come forward through the bar and come to the front and
16 face General Thomas Sumter. The State will have an
17 opportunity to strike you as well as the defendant. And
18 once we have 12 jurors plus one, that's when we will stop.
19 Please don't take it personally if you're struck from the
20 jury. These attorneys have some ideas as to the jury
21 they're looking for and that's what they will be making
22 their decision on.

23 MR. BROOKS: Is it five and ten?

24 THE COURT: Yes.

25 (WHEREUPON, a pause in the proceedings.)

1 THE COURT: Okay.

2 THE CLERK: Please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 THE CLERK: Ladies and gentlemen, when your name
5 is called, please come through the double gate on your
6 left or the single gait on your right, which is most
7 convenient, come up to the front of the rail, turn around
8 face Thomas Sumter in the back of the courtroom please and
9 bring with you any personal belongings that you may have.
10 Juror number 48 Renee Dubose.

11 (WHEREUPON, a white female, comes forward.)

12 THE CLERK: What say the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What say the defendant?

15 MR. BROOKS: Please excuse this juror.

16 THE CLERK: Have a seat back with the panel.

17 You been excuse from this trial please, ma'am.

18 Juror number 158 Kristina Strickland.

19 (WHEREUPON, a white female, comes forward.)

20 THE CLERK: What say the State?

21 MR. MEADORS: Please present the juror.

22 THE CLERK: What say the defendant?

23 MR. BROOKS: Please seat the juror.

24 THE CLERK: Have a seat in the jury box please,

25 ma'am.

1 Juror number 36 Melissa Corrigan.

2 (WHEREUPON, a white female, comes forward.)

3 THE CLERK: What say the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What say the defendant?

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

8 THE CLERK: Have a seat back with the panel.

9 You been excuse from this trial please, ma'am.

10 Juror number 17 Debra Brunson.

11 (WHEREUPON, a white female, comes forward.)

12 THE CLERK: What say the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What say the defendant?

15 MR. BROOKS: Seat the juror for this case.

16 THE CLERK: Have a seat in the jury box please,
17 ma'am.

18 Juror number 16 Wilbur Brown.

19 (WHEREUPON, a white male, comes forward.)

20 THE CLERK: What say the State?

21 MR. MEADORS: Please excuse the juror.

22 THE CLERK: Have a seat back with the panel.

23 You been excused from this trial, sir.

24 Juror number 62 Brian Gerlt.

25 (WHEREUPON, a white male, comes forward.)

1 THE CLERK: What say the State?

2 MR. MEADORS: Please present the juror.

3 THE CLERK: What say the defendant?

4 MR. BROOKS: Please seat the juror on the trial
5 of this case.

6 THE CLERK: Have a seat in the jury box please,
7 sir.

8 Juror number 101 Henry Lamb.

9 (WHEREUPON, a white male, comes forward.)

10 THE CLERK: What say the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK: What say the defendant?

13 MR. BROOKS: Seat the juror.

14 THE CLERK: Have a seat in the jury box please,
15 sir.

16 Juror number 149 Paul Shaw, II.

17 (WHEREUPON, a white male, comes forward.)

18 THE CLERK: What say the State?

19 MR. MEADORS: Please present the juror.

20 THE CLERK: What say the defendant?

21 MR. BROOKS: Please seat the juror.

22 THE CLERK: Have a seat in the jury box please,
23 sir.

24 Juror number 83 Geneva Hopkins.

25 (WHEREUPON, black female, comes forward.)

1 THE CLERK: What say the State?
2 MR. MEADORS: Please present the juror.
3 THE CLERK: What say the defendant?
4 MR. BROOKS: Seat the juror.
5 THE CLERK: Have a seat in the jury box please,
6 ma'am.
7 Juror number 142 David Roberts, Jr.
8 (WHEREUPON, a black male, comes forward.)
9 THE CLERK: What say the State?
10 MR. MEADORS: Please present the juror.
11 THE CLERK: What say the defendant?
12 MR. BROOKS: Please seat the juror.
13 THE CLERK: Please have a seat in the jury box
14 please, sir.
15 Juror number 180 Sandy Williams.
16 (WHEREUPON, a black female, comes forward.)
17 THE CLERK: What say the State?
18 MR. MEADORS: Please present juror.
19 THE CLERK: What say the defendant?
20 MR. BROOKS: Please seat the juror.
21 THE CLERK: Have a seat in the jury box please,
22 ma'am.
23 Juror number 24 David Capers.
24 (WHEREUPON, a black male, comes forward.)
25 THE CLERK: What say the State?

1 MR. MEADORS: Please present the juror.

2 THE CLERK: What say the defendant?

3 MR. BROOKS: Seat the juror.

4 THE CLERK: Have a seat in the jury box please,
5 sir.

6 Juror number 187 Jessica Zaragoza.

7 (WHEREUPON, a Hispanic female, comes forward.)

8 THE CLERK: What say the State?

9 MR. MEADORS: Please present the juror.

10 THE CLERK: What say the defendant?

11 MR. BROOKS: Please seat the juror.

12 THE CLERK: Have a seat in the jury box please,
13 ma'am.

14 Juror number 124 Fulton Moya, III.

15 (WHEREUPON, a white male, comes forward.)

16 THE CLERK: What say the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK: What say the defendant?

19 MR. BROOKS: Seat the juror.

20 THE CLERK: Have a seat in the jury box please,
21 sir.

22 Juror number 41 Deborah Dawson.

23 (WHEREUPON, a black female, comes forward.)

24 THE CLERK: What say the State?

25 MR. MEADORS: Please excuse the juror.

1 THE CLERK: Have a seat back with the panel.
2 You been excused from this panel please, ma'am.

3 Juror number 58 Regina Fullard.

4 (WHEREUPON, a black female, comes forward.)

5 THE CLERK: What say the State?

6 MR. MEADORS: Please excuse the juror.

7 THE CLERK: Have a seat back with the panel.
8 You been excuse from this trial please, ma'am.

9 Juror number five Pearlie Baxter.

10 (WHEREUPON, a black female, comes forward.)

11 THE CLERK: What say the State?

12 MR. MEADORS: Please present the juror.

13 THE CLERK: What say the defendant?

14 MR. BROOKS: Please seat this juror.

15 THE CLERK: Have a seat in the jury box please,
16 ma'am.

17 Juror number 31 Tony Coleman.

18 (WHEREUPON, a black male, comes forward.)

19 THE CLERK: What say the State?

20 MR. MEADORS: Please present the juror.

21 THE CLERK: What say to the defendant?

22 MR. BROOKS: Please excuse the juror in this
23 case.

24 THE CLERK: Have a seat back with the panel.

25 You been excused from this trial, sir.

1 Juror number 174 Pamela Wheeler.

2 (WHEREUPON, a white female, comes forward.)

3 THE CLERK: What say the State?

4 MR. MEADORS: Please present the juror.

5 THE CLERK: What say to the defendant?

6 MR. BROOKS: Beg the Court's indulgence.

7 (WHEREUPON, a pause in the proceedings.)

8 MR. BROOKS: Strike the juror.

9 THE CLERK: Have a seat back with the panel.

10 You been excuse from this panel please, ma'am.

11 Juror number 111 James McDougal.

12 (WHEREUPON, a black male, comes forward.)

13 THE CLERK: What say the State?

14 MR. MEADORS: Please excuse the juror.

15 THE CLERK: Please have a seat back with the
16 panel. You been excuse, sir.

17 Juror number 33 Jill Connor.

18 (WHEREUPON, a white female, comes forward.)

19 THE CLERK: What say the State?

20 MR. MEADORS: Please present the juror.

21 THE COURT: Any reason for cause from the
22 defendant?

23 MR. BROOKS: Please seat the juror.

24 THE CLERK: Have a seat in the jury box please,
25 ma'am.

1 THE COURT: Please call out all the names of the
2 jurors.

3 THE CLERK: All right, sir.

4 Ladies and gentlemen, when I call your name
5 please raise your right hand Kristina Strickland, Debra
6 Brunson, Brian Gerlt, Henry Lamb, Paul Shaw, II, Geneva
7 Hopkins, David Roberts, Jr., Sandy Williams, David Capers,
8 Jessica Zaragoza, Fulton Moye, III, Pearlie Baxter and
9 Jill Connor. Thank you.

10 THE COURT: All right. Ladies and gentlemen,
11 you all have been selected as the jurors for this trial.
12 I'm going to send you back to the jury room for just a few
13 minutes. And while you're back there, if you can discuss
14 amongst yourselves who you want to be your foreman or
15 forelady of the jury. What that would mean is that that
16 person will be the spokesman here in court and will be
17 your leader in the jury room. So while you're back there,
18 if would select your own foreperson. All right. Thank
19 you. I'm going to excuse you for just a few minutes.

20 (WHEREUPON, the jury retired to the jury room.)

21 THE COURT: Are there any objections from the
22 State or the defendant to the jury, to the jury that been
23 selected or the matter which they have been selected?

24 MR. MEADORS: Nothing from the State.

25 MR. BROOKS: Nothing from us, Judge.

1 THE COURT: Well, ladies and gentlemen, that
2 means that there are jurors and you want be needed today.
3 It may be possible that you will be needed further in the
4 week, but what I will do is I'm going to release for the
5 day with instruction that you call back.

6 And they got numbers, don't they?

7 THE CLERK: Yes, sir, Your Honor.

8 THE COURT: That you call back after 11 o'clock
9 tomorrow morning. And they will give you further
10 instructions as to when you need to reassemble for jury
11 duty. So, ladies and gentlemen, thank you for being here.
12 You may not get selected as a jury, but you were in the
13 courthouse during the last week and the first time the
14 jury ever be seated somewhere else in a hundred years.
15 Thank you, ladies and gentlemen.

16 (WHEREUPON, the remain jury panel is excused.)

17 THE COURT: Okay. I think I will bring the jury
18 out and dismiss them until 9:30 tomorrow morning. Then we
19 will be back here at two for any posttrial motions which
20 -- how long do you think -- why don't we go ahead and do
21 the posttrial motions this afternoon. It's only 11:50.
22 We probably be done by one o'clock.

23 MR. BROOKS: I think it's going to be some
24 testimony, Your Honor, posttrial motions like Jackson vs.
25 Denno hearings.

1 THE COURT: How many ---

2 MR. MEADORS: I'll do whatever you want me to
3 do.

4 THE COURT: Let's go ahead. Let me go ahead and
5 get these jurors back out.

6 (WHEREUPON, the jury came into open court.)

7 THE COURT: Mr. Robinson, I believe they
8 selected you to be the foreperson on the jury; is that
9 correct?

10 FOREPERSON: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen,
12 when you come in, you can sit wherever you want to with
13 the exception of Mr. Roberts and the alternate have
14 reserved seats. Now, ladies and gentlemen, thank you for
15 being part of this jury. This trial will not start until
16 tomorrow morning. We have some other things that we need
17 to take up this afternoon. So, ladies and gentlemen, I'm
18 going to release you for the day with the instructions
19 that you not talk to anybody about the case. Don't go
20 looking in any newspapers or anything that would give
21 information about this case other than what you're going
22 to receive from this witness stand and from the exhibits
23 that are presented here in court. And you know the
24 easiest way to do that is just don't tell anybody I'm on a
25 jury and because then they'll want to know what kind of

1 case is it and they go I heard about it. So just say you
2 had your business for the morning and don't say anything.
3 So, ladies and gentlemen, have a nice afternoon, have a
4 nice evening, be well rested and be ready to start trying
5 this case tomorrow morning at 9:30. Thank you, ladies and
6 gentlemen. At that time, you will be sworn as jurors.

7 (WHEREUPON, the jury is excused for the day.)

8 THE COURT: Let's take a 15 minute recess and
9 then we'll start our posttrial motions -- pretrial
10 motions. Okay. All right.

11 MR. BROOKS: I did inform my client of having
12 tried cases with you before which are general policy is
13 about once cases are called as far as defendant being
14 held. My client is requesting that he be allowed to
15 remain free on bond. He has come to court in the past
16 trial. He has shown up for roll call and thing of that
17 sort, but I did tell him that he wanted to go ahead and
18 address the Court on that issue.

19 THE COURT: Thank you.

20 What's the State's position on that?

21 MR. MEADORS: Your Honor, in every case I've
22 always tried in my 26-year career for a violent offense
23 and this is clearly a violent charge, I've always
24 respectfully requested and we think is appropriate when
25 the case is called for Your Honor to consider locking the

1 defendant up and we so request now.

2 THE COURT: That is generally my policy on that.
3 I've had -- I started after I did not do it a couple times
4 when somebody decided they didn't want to be there for
5 their trial. And I'm sure that may not be the case this
6 time, but I'm not going to take any chances. So the
7 defendant will now be incarcerated, case has been called.
8 Thank you.

9 MR. MEADORS: Thank you.

10 THE COURT: We will take a 15 minute recess and
11 start back.

12 (WHEREUPON, a break was taken.)

13 THE COURT: All right. Mr. Brooks, this is your
14 motion.

15 MR. BROOKS: Judge, the motions I have is file a
16 sequestrator. In particular, the fact witnesses that the
17 State have, Ms. Gibbs, and it's a couple other officers
18 who took my client to the detention center who's obviously
19 going to testify about their statements that my client
20 made.

21 THE COURT: Who is the chief investigator in the
22 case you, Mr. Dubose?

23 MR. DUBOSE: Yes, sir.

24 THE COURT: He will be allowed to be in here at
25 all times, other witnesses will be sequestered until they

1 have testified.

2 MR. MEADORS: We understand.

3 MR. BROOKS: The other motion I have is in
4 regards to basically Jackson vs. Denno. There's a couple
5 statements that have been raised.

6 THE COURT: Which ones in particular are you
7 taking about?

8 MR. BROOKS: Statements?

9 THE COURT: Yes, sir.

10 MR. BROOKS: First statement was when my client
11 was arrested, the officers that took him down to the
12 detention center, he allegedly says drug dealing is a
13 lifestyle for me. And, of course, they come back and tell
14 Officer Dubose that. Then there's a second statement on
15 the next day when Officer Dubose goes to the jail and is
16 questioning my client. And the alleged statement when
17 Officer Dubose says, Hey, what about didn't you tell some
18 officers X, Y, Z. He says -- allegedly says drug
19 dealing -- no, I got to do this to support my family
20 something to that effect. Those are basically the
21 particular statements that we're obviously going to
22 challenge.

23 THE COURT: All right. Is the State ready to
24 proceed?

25 MR. MEADORS: Yes, sir.

1 THE COURT: Call your first witness.

2 MR. MEADORS: Investigator Wayne Dubose.

3 THE CLERK: Place your left hand on the Bible,
4 raise your right hand. State your name please?

5 THE WITNESS: Investigator Wayne Dubose.

6 THE CLERK: Place your left hand on the Bible
7 raise your right hand. State your name please.

8 THE WITNESS: Investigator Wayne Dubose.

9 THE COURT: Solemnly swear or affirm your
10 testimony to the Court should be the truth, the whole
11 truth and nothing but the truth so help you God?

12 THE WITNESS: Yes, sir.

13 THE CLERK: Thank you. Spell your last name for
14 the record.

15 THE WITNESS: Investigator Wayne Dubose

16 D-U-B-O-S-E.

17 WHEREUPON,

18 Wayne Dubose,

19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION IN-CAMERA

21 BY MR. MEADORS:

22 Q Good morning, Investigator.

23 A Yes, sir.

24 Q I'm going to ask you to talk about the opportunity
25 you had to speak with the Defendant Gibbs on specifically

1 December 23rd of '08. You understand that?

2 A Yes, sir.

3 Q And prior to that, Investigator, can you give Your
4 Honor a brief background of how you all came to be or why
5 you were at [REDACTED] here in Sumter?

6 A Yes, sir. Your Honor, prior to going to this house
7 on this date, officers with the Sheriff's Office had made
8 purchases, control purchases from the defendant with a
9 informant. We made purchases from the defendant at [REDACTED]
10 [REDACTED] on October 29th. We made another purchase
11 from that residence on November 24th. We made another
12 purchase from the defendant on December the 1st at that
13 residence. We made two additional purchases from the
14 defendant on December 18th, that occurred at number [REDACTED]
15 [REDACTED]. And we made another purchase on
16 December 17th 2008 at the Young's Market at Manning Avenue
17 in Patricia.

18 Q So you had those warrants. And on December 23rd of
19 2008, were you going to serve those warrants on the
20 defendant at [REDACTED]

21 A That's correct.

22 Q And who else was with you?

23 A Myself, Investigator Maze, Sergeant Horton, Sergeant
24 Moore, Captain Daley, we had a couple agents from SLED and
25 Corporal Welch.

1 Q Did you yourself go to the door of [REDACTED]

2 A Yes, sir.

3 Q And did you knock on the door?

4 A I did.

5 Q All right. What happened?

6 A We knocked on the door at the residence, served those
7 warrants. And we didn't get an immediate answer. We
8 heard rummaging around in the residence. After about two
9 minutes, someone finally opened the door.

10 Q And you say two minutes. Was there a length of time
11 that you put in your report approximately two minutes
12 before somebody came to the door?

13 A That's correct.

14 Q Who came to the door?

15 A Kimberly Gibbs which is the defendant's wife.

16 Q What happened after that?

17 A She open the door. We were in a -- dressed as police
18 officers. We advised her at that time that we had arrest
19 warrants for Mr. Gibbs and asked if he was there and she
20 said he was. He was in the bedroom. At that time, I seen
21 Mr. Gibbs right there in the hallway. We went in and
22 encountered Mr. Gibbs. At that time, we went ahead and
23 arrested him on those warrants. And at that time, while
24 we were in the hallway, we could smell an odor of
25 marijuana in the residence, seated Mr. Gibbs in the living

1 room which is just adjacent to that room. And at that
2 time, he asked about getting a pair of pants cause he was
3 in a pair of boxers when we encountered him. He said his
4 pants were in the bedroom floor. I went into the bedroom
5 retrieved those pants from off the floor, went in and
6 searched the pants before I gave them to him to make sure
7 there were no guns or anything like that in there. I
8 located in the pants pocket about \$1,355 dollars in cash,
9 immediately took that money out and gave him the pants at
10 that time.

11 Q And had you at this point or somewhere here had an
12 occasion to read Miranda to the defendant?

13 A At that time, I advised both of them. We smelt the
14 marijuana in the house and we were also there with the
15 warrants for Mr. Gibbs. We advised both of them of their
16 Miranda Rights.

17 Q And please tell the judge how you advised Mr. Gibbs
18 his Miranda Rights on December 23rd 2008 on [REDACTED]
19 [REDACTED]?

20 A I have a card. This is not the exact card. It has
21 been some years ago, but it is the same card of Miranda
22 Rights.

23 Q Has the same words on it as the other card?

24 A Yes, sir. I usually keep one in my wallet also in my
25 vest that I wear, but I advised them from my card.

1 Q Okay. Do it like you did then please for his Your
2 Honor?

3 A You had a right to remain silent, anything you say
4 can and will be used against you in the court of law. You
5 have the right to talk to an attorney and have him or her
6 present while you are being questioned. If you cannot
7 afford to hire an attorney, one will be appointed to
8 represent you before any questioning if you wish. You
9 decide at any time to exercise these rights ---

10 Q Slow down a little bit.

11 A --- to exercise these rights and I'll answer any
12 questions or make any statements. And then I ask they
13 understand them. And if they did understand, would they
14 mind talking to us.

15 Q And you were -- for these purposes here, you were
16 familiar with Mr. Gibbs prior to this obviously?

17 A Yes, sir.

18 Q So you were familiar with that or you knew that he
19 was familiar with the criminal justice system?

20 A Yes, sir.

21 Q And you had some conversation with him apparently
22 about his pants, wanting his pants. Did you have any
23 trouble understanding him during that process?

24 A No, sir.

25 Q You said you smelled an odor of alcohol excuse me --

1 an odor of marijuana I apologize, but did Mr. Gibbs appear
2 to be under the influence of anything?

3 A No, sir, neither one of them did.

4 Q All right. When you read him Miranda Rights, did he
5 appear to understand them?

6 A He appeared to understand them.

7 Q And at this point, we're in the house; correct?

8 A Yes, sir.

9 Q And did he tell you, Investigator Dubose, I didn't
10 want to talk to you?

11 A He never said he didn't want -- he didn't want to
12 talk to me, did want to talk to me he never stated.

13 Q Did he ever say I want a lawyer?

14 A No.

15 Q Okay. And did you threaten, coerce or hold out any
16 hope or promise of reward while you were in the house on
17 [REDACTED] and then initially after you came in to the
18 defendant in exchange for a statement?

19 A No, sir.

20 Q And what was it he told you in the house?

21 A Sir?

22 Q What did he tell you in the house?

23 A What did -- what now?

24 Q What did he say to you in the house?

25 A Well, when we -- after he was arrested, placed on the

1 couch, I ask Mrs. Gibbs and him at that time would they
2 mind us searching the house, would they give us consent to
3 search the house. We didn't have a search warrant. We
4 could smell the marijuana in there. Mrs. Gibbs told me at
5 that time sure we could. I asked her about bringing a dog
6 in. She said we could. Mr. Gibbs made a remark at that
7 time that he didn't live there. So at that time, I asked
8 Moore and Horton to go and transport him to the jail on
9 those warrants. And we went ahead and started dealing
10 with Mrs. Gibbs at that house where she signed a written
11 consent let us search the house.

12 Q So for these purposes the statement besides asking
13 for his pants and the defendant said to you in the house I
14 don't live here?

15 A That's right.

16 Q And then you said who transported him from the house
17 to the detention center?

18 A It will have been Sergeant Moore and Sergeant Horton.

19 Q And did you hear back from either one of them and if
20 you did please tell His Honor who?

21 A They did ---

22 Q Let me finish please, sir. I'm sorry. After they
23 came back to the house?

24 A They did. They came back to the house at that time
25 when they both came up to me and told me that Mr. Gibbs

1 had made a statement in the car while they were
2 transporting him to the jail. And the statement that they
3 said that Mr. Gibbs made is that selling drugs is just a
4 lifestyle for him.

5 Q And did you document that at the time?

6 A I did I documented it in the report.

7 Q Now ---

8 MR. MEADORS: And, Your Honor, I don't know if
9 it's initially here, but while we're here on the record, I
10 have State's Exhibit 1 for identification at this point.

11 (WHEREUPON, State's Exhibit No. 1 was marked for
12 identification only.)

13 BY MR. MEADORS:

14 Q Did Mrs. Gibbs end up giving you consent to search
15 the house?

16 A She did.

17 Q And she sign that?

18 A She did.

19 Q And at this point, Mr. Gibbs had denied just said I
20 don't live there; correct?

21 A That's right. He didn't live there so we transported
22 him out of there and had Mrs. Gibbs go through the
23 paperwork.

24 Q Did you have an occasion to see Mr. Gibbs the next
25 day?

1 A I did.

2 Q Please tell the judge about that?

3 A The following day I went down to the jail with
4 additional warrants from what we had found at the
5 residence that day. Again, I encountered Mr. Gibbs in one
6 of the pods. Mirandized him again.

7 Q The Sumter Lee Regional Detention Center?

8 A That's correct. Mirandized him again.

9 Q Do it like you did then?

10 A I did. I went through with my card.

11 Q And do it again please, sir. And I want to ask you
12 and what's your practice and tell this judge this day do
13 you read your suspect in this case Mr. Gibbs the Miranda
14 prior to going over the arrest warrants with him?

15 A I made it a point any time I serve warrants on
16 someone to Mirandize him before in case when Mirandize
17 them and I start reading the probable cause to them. If
18 they make a statement, then they've already been advised
19 of their rights, that's just something I commonly do.

20 Q And that's what you did in this case?

21 A That's what I did that day. Again, I advise him you
22 had a right to remain silent. Anything you say can and
23 will be used against you in a court of law, have a right
24 to talk to an attorney, have him or her present with you
25 while you're being questioned. If you cannot afford to

1 hire an attorney, one will be appointed to represent you
2 for any question if you wish. You can decide at any time
3 to exercise these rights not answer any questions or make
4 any statements. And I ask if you understood the rights
5 and if you mind talking to me.

6 Q And did he understand his rights?

7 A He never said he did understand them. He never said
8 he didn't understand them. I -- appeared to me at the
9 time and at the house that he understood his rights.

10 Q Now, at this point this would be Christmas Eve of
11 2008, correct December 24th?

12 A That's correct.

13 Q You read him his rights. Did he appear to be under
14 the influence Mr. Gibbs of any alcohol, drugs or any other
15 intoxicants?

16 A No, sir.

17 Q Did he say Investigator Dubose I don't want to talk
18 to you?

19 A He never told me that.

20 Q Did you hold out any hope of reward or promise in
21 exchange for any statements he may give?

22 A No, sir, I just read him his warrants.

23 Q You basically read him his rights and his waiver of
24 rights and then serve him his warrants; correct?

25 A That's right.

1 Q And did you -- did he make any statements to you at
2 the detention center in reference to the comments he had
3 made to the two officers who transported him the day
4 before?

5 A He did. He made a comment after I read him his
6 warrants about stuff that was found in the house. He made
7 a remark to me that the stuff wasn't his. It had to be
8 his wife's. And then I specifically asked him about the
9 comment that he made to Moore and Horton in a car about
10 selling drugs being a lifestyle for him. At that time, he
11 told me that he had to support his family and that was the
12 extent of the conversation.

13 Q And specifically as to what -- it may be 15 on your
14 report there, Officer. After you had Mirandized him and
15 advised him of the items, you advised him of what was
16 found in the house; correct?

17 A That's correct.

18 Q Did he deny any of those were his?

19 A He denied that any of the items in the house was his.

20 Q And that he didn't live there?

21 A That's correct.

22 Q And specifically what did he say his wife --
23 specifically what did he say that his wife -- about his
24 wife?

25 A Leroy said his wife must have had someone else there

1 because it was not his and it had to be hers.

2 Q She must have had somebody else there because it was
3 not his and it had to be hers?

4 A That's correct.

5 Q And you documented that?

6 A I did.

7 Q And that he had to feed his family that was his
8 response to explaining selling drugs as a lifestyle?

9 A He had to support his family.

10 Q Apologize. And he never said I want to talk to you
11 or give me a lawyer?

12 A No.

13 Q Is the individual that made the statement to you at
14 the house at [REDACTED] on [REDACTED] on December 23rd, that he
15 didn't live there and the individual that made the
16 statements to you on December 24th of 2008, that those
17 were not his drugs and they had to be his wife's. And she
18 had to live with somebody else and that he had to support
19 his family is an explanation for the statement the day
20 before about selling drugs is a lifestyle, is that person
21 in this courtroom?

22 A Yes, sir, he's the defendant sitting beside
23 Mr. Brooks.

24 MR. MEADORS: We like the record so reflect.

25 THE COURT: Record will so.

1 Mr. Brooks.

2 CROSS-EXAMINATION

3 BY MR. BROOKS:

4 Q Did your report in the case indicate the time that
5 you guys showed up at the residence; is that correct?

6 A Excuse me.

7 Q Your report indicates what time you guys showed up at
8 the residence?

9 A Yes, sir, I believe it does.

10 Q Okay. It was early in the morning; isn't that
11 correct?

12 A No, sir, it was at lunchtime at 12 o'clock.

13 Q At lunch time. You all showed up around lunchtime.
14 As you entered into residence Mr. Gibbs -- Mrs. Gibbs
15 approach -- she the one that opens the door?

16 A After a couple minutes, yes, sir, she's the one who
17 open the door, answer the door.

18 Q Okay. He indicated to you that he did not live
19 there; is that correct?

20 A That's correct.

21 Q Okay. And that was all the statements that he made
22 other than let me put on my pants?

23 A Correct.

24 Q Okay. Now, you don't -- you were not present as he
25 was being transported to the detention; is that correct?

1 A No, sir, I was not.

2 Q Okay. When you showed back up at the detention
3 center the following day, what all did you question him
4 about prior to getting to that question about this alleged
5 statement?

6 A I read all his warrants to him from all the warrants
7 that we had from the prior day. I went through the
8 warrants and read them to him. And then after that, I
9 asked him about the comment that he made in the vehicle
10 that the officers told me about.

11 Q Did you read the Miranda warnings to him again prior
12 to that?

13 A Yes, sir, before I served the warrants on him.

14 Q Did he sign a statement acknowledging?

15 A No, sir, he did not give anything in writing.

16 Q Okay. Did you ask him to do that?

17 A I don't recall if I asked him to give a statement in
18 writing, but he would not -- he didn't sign anything.

19 Q Okay. And that conversation at the jail was just
20 between you and him; is that correct?

21 A Yes, sir.

22 Q So there's no other witnesses, no signed
23 documentation and you don't recall requesting him to sign
24 documentation about whether or not he had received Miranda
25 warnings again that following day at the detention center?

1 A No, sir, I know I Mirandized him that day at the
2 jail. I don't recall if I asked him to give a written
3 statement or do it in writing. I don't recall that. But
4 he did not give anything in writing.

5 Q Okay. As far as the second Miranda warning which
6 would have been at the detention center, do you
7 customarily read defendants their Miranda warnings again
8 if you're questioning them at the jail?

9 A If I'm going to question them without warrants, I
10 always Mirandize them whether it be from a card or whether
11 it be from a form, they're always Mirandized. I always
12 Mirandize them before I serve warrants simply as I stated
13 in case after I read the warrant if they make a statement,
14 they already been advised of their rights.

15 Q When you saw him at the detention center, had he gone
16 up for bond in front of the magistrate before or after the
17 conversation with you, do you know?

18 A He had not been at bond because the warrants hadn't
19 been served on him yet.

20 Q Okay. And you say you're sure that you gave him a
21 second Miranda warning?

22 A Yes, sir.

23 Q Nobody else around acknowledged that except for you;
24 is that right?

25 A No, sir, I served the warrants that day and it was

1 just me and Mr. Gibbs.

2 Q Okay.

3 MR. BROOKS: No other questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. MEADORS:

7 Q Did you all also find a .45 caliber handgun and a .38
8 caliber?

9 A Yes, sir, in the residence.

10 MR. MEADORS: That's all.

11 THE COURT: Any recross-examination?

12 MR. BROOKS: Not on that issue.

13 THE COURT: All right. Thank you. You may step
14 down.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. BROOKS: Before they call the next witness,
18 Judge, this is just basically to kind of maybe shorten
19 things up. One of my other motions is basically a motion
20 in limine like the last time when we tried this matter.
21 The State was prohibited from mentioning the fact that
22 they come out there to arrest him and what they arrested
23 him for. The last time when they got into it they talked
24 about when we came to serve warrants.

25 THE COURT: Yeah, I agree with you. You don't

1 have any objection to that, do you?

2 MR. MEADORS: Mr. Brooks, what came to my memory
3 was that they were there to serve arrest warrants but not
4 for what they're for just -- because it's got to be an
5 explanation ---

6 THE COURT: They got to have a reason to go out
7 there.

8 MR. MEADORS: Right.

9 THE COURT: What are you going to do drop by
10 your door and just say hello.

11 MR. BROOKS: Obviously, Judge, what I'm
12 concerned about is prejudicing my client.

13 THE COURT: Right, but they won't say -- they
14 will say nothing about why they were there. As far as
15 they know, it could be for not paying child support.
16 There will be no mention as to the fact that they were
17 arresting him on drug charges.

18 MR. BROOKS: Unless, we open the door.

19 THE COURT: Unless, you open the door. If you
20 say he was just minding his own business and they had no
21 reason to be there, guess what? That's opening the door.

22 MR. BROOKS: And basically one of the things
23 that, Judge, I'm concerned about is the -- I don't live
24 here issues. If -- I wanted to get clarification we -- if
25 we assert that, is the Court now to going to consider that

1 as opening the door for purposes of Officer Dubose to come
2 up and then say, oh, he says he doesn't live there.

3 THE COURT: I don't know that that opens the
4 door to all of the charges. I mean, they're going there
5 because they had that as a valid address. I don't think
6 the fact that what they were going there to do, I don't
7 think that opens the door for that.

8 MR. BROOKS: This is what I'm asking, Judge, and
9 I think I'm trying ---

10 THE COURT: Well, how about let me just stick to
11 one issue at a time. We're doing the Jackson v. Denno
12 unless you're conceding that.

13 MR. BROOKS: The reason I was asking that,
14 Judge, is he had asked Officer Dubose -- he got into, you
15 know, some background why did you go out there. We made
16 these buys et cetra et cetra.

17 THE COURT: And this is for this purpose of this
18 hearing.

19 MR. MEADORS: I was trying to give Your Honor a
20 background.

21 THE COURT: At trial, he's not going to be able
22 to go into all that.

23 MR. BROOKS: I understand, Judge, but I guess
24 what I'm trying to do is I'm trying to anticipate my
25 colleague here, you know, based on certain things

1 happening. Of course, Your Honor, was not the first
2 judge, you know, when we had this trial before. I'm
3 worried for my client's sake that if my -- I guess, what
4 I'm saying, Judge, if my client gets up and says and I
5 don't live here. I don't live here is that going to be
6 equivalent of opening the door for Officer Dubose to come
7 up and say, well, in November so and so we sent a C.I. and
8 he was here then. And then in December so and so we sent
9 a C.I. and ---

10 THE COURT: That may very well. And if he says
11 I never been to his house before and they got evidence of
12 a control buy for that house with him, he's saying
13 something that they have ready proof, that isn't the case.
14 He's not going to be able to use that as a shield and as a
15 sword. He got to take his pick on it. He can't say I
16 don't live here and then say, well, they can't ask me any
17 questions about it. I mean, it's pretty evident if they
18 believe, but initially, they'll just say I suppose that
19 they were going to the house to serve some warrants.
20 Innocuous, we don't say whether they're for him or for
21 anybody else. But, you know, if he gets into, well, I
22 don't live here. They had no reason to come here, that's
23 coming from his testimony. He's going to have to take the
24 stand and assert that. And then he's on the stand and
25 they can ask him anything they want to about it.

1 MR. BROOKS: And I see where Your Honor's going.

2 THE COURT: I don't want to give any advisory
3 opinions. I'm trying to work with you, but I can't until
4 it presents itself in the proper terms, I can't make a
5 ruling on it.

6 MR. BROOKS: I understand, Judge. You have
7 answered my questions.

8 MR. MEADORS: Judge, he just went on a couple
9 issues so but before I forget and just think the testimony
10 will be presented if you say it's okay would be that he is
11 -- was there to serve warrants on Mr. Gibbs without saying
12 what it was.

13 THE COURT: That's right.

14 MR. MEADORS: And, Judge, what he's talking
15 about is if Mr. Gibbs takes the stand and I would in and
16 of itself the fact ---

17 THE COURT: You know, that's a couple days from
18 now.

19 MR. MEADORS: I wasn't trying to go into those
20 if he just said I didn't live there. I don't know if that
21 opens the door. I'm not sure how much more that he can
22 say that wouldn't, but that in and of itself, I'm not
23 saying I'm not trying to do those just on that.

24 THE COURT: Again, I don't want to make a ruling
25 on that until it's is properly before me.

1 MR. BROOKS: I understand, Judge.

2 MR. MEADORS: I'm going to step out and get my
3 book. Mr. Tyler is ready.

4 THE COURT: Okay, yes, sir.

5 MR. BROWN: May it please the Court, we'll call
6 Dale Horton.

7 THE CLERK: Place your left hand on the Bible
8 and raise your right hand. State your name please.

9 THE WITNESS: Dale Horton.

10 THE CLERK: Solemnly swear or affirm the
11 testimony to the Court should be the truth, the whole
12 truth and nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you, sir, have a seat. Please
15 state your full name, spell your last name for the record.

16 THE WITNESS: Dale Horton H-O-R-T-O-N.

17 WHEREUPON,

18 Dale Horton,

19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION IN-CAMERA

21 BY ATTORNEY:

22 Q That's Lieutenant; correct?

23 A That is correct.

24 Q Now, Lieutenant Horton, you were present on
25 December 23rd 2008, on the arrest warrant being served at

1 Leroy Gibbs residence?

2 A That's correct.

3 Q And what was your official capacity there?

4 A Initially was the yard perimeter and then if there
5 was any arrest, then also transport.

6 Q At some juncture while you were there at the house
7 over on [REDACTED], did you get the assignment of
8 transporting Mr. Leroy Gibbs?

9 A That is correct.

10 Q Who was assigned transporting with you?

11 A That would be Lieutenant Chris Moore.

12 Q Okay. And did you all transport him?

13 A We did.

14 Q Take me to that car tell me who was sitting where and
15 what was going on?

16 A Chris Moore was the driver. I was passenger and
17 Mr. Gibbs was in the backseat under arrest.

18 Q Approximately, how far a drive is it from the house
19 on [REDACTED] over to Sumter County Lee Regional
20 Detention Center?

21 A Maybe 15 minutes maybe, probably less than that.

22 Q And as you all made this drive, were you all carrying
23 on any conversation with Mr. Gibbs?

24 A It wasn't so much we were carrying on a conversation,
25 but he was doing a lot of talking just steadily talking.

1 Q Were you all talking to him back or was he just
2 talking himself?

3 A He was basically talking to himself. We didn't
4 engage him. We didn't ask him any questions, he just kept
5 on talking.

6 Q Okay. And prior to you all putting him in the car,
7 did you all Mirandize him or anything?

8 A I didn't. The investigators on scene they did.

9 Q They place him under arrest?

10 A Yeah, they placed him under arrest. All we did was
11 transport.

12 Q Okay. And so during that ride out, was anything in
13 particular said that caught your attention?

14 A Like I said, when we were driving there and he was
15 doing a lot of talking, lot of talking. And then he said
16 selling drugs is a lifestyle and that right there I
17 immediately looked over at Chris. And like I didn't say
18 anything, just in like amazement did he just say that.

19 Q Now, right before he made that statement, did you ask
20 him any questions?

21 A No, it was no questions asked.

22 Q Did you ask him for any statements?

23 A No statements.

24 Q Did you make any promises or give him any false hopes
25 if he did make a statement?

1 A No.

2 Q Did you ask any follow-up questions to that
3 statement?

4 A No.

5 Q And did you continue to transport him or did Officer
6 Moore continue to transport him to Sumter Lee Regional
7 Detention Center after that?

8 A We did. We went through the booking process and then
9 we came back to the scene because they were still waiting
10 for other investigators to come.

11 Q When you got to that scene, was Investigator Dubose
12 still there?

13 A Yes, everybody originally was still there.

14 Q All right. Did you or Officer Moore or both of you
15 do anything to let Investigators know about what happened
16 that day?

17 A We immediately told Investigator Dubose that -- what
18 his statement was and he documented it.

19 Q Okay. And so that's been documented now with the
20 Sumter County Sheriff's Department?

21 A Uh-huh.

22 Q And is the individual who stated that selling drugs
23 is a lifestyle for me is he here in the courtroom here
24 today?

25 A He is.

1 Q Is that the individual seated right there at defense
2 table?

3 A It is.

4 Q Leroy Gibbs?

5 A It is.

6 MR. BROWN: Thank you. No further questions.

7 THE COURT: Mr. Brooks.

8 CROSS-EXAMINATION

9 BY MR. BROOKS:

10 Q Officer Horton.

11 A Yes, sir.

12 Q How you doing today?

13 A Outstanding, sir.

14 Q So you had my client in your car and you transport
15 him to the jail. You didn't say anything at all to him?

16 A Not a thing.

17 Q And you're telling us that without any provocation or
18 without any prodding discussion between you or Officer
19 Moore, he just says selling drugs is a lifestyle for me?

20 A That's correct. Like I said, when someone says
21 something like that, immediately like I can't believe he
22 just said that.

23 Q Okay. Now, you acknowledge, you didn't give him any
24 type of Miranda warning?

25 A No.

1 Q Okay.

2 A Didn't ask him any questions.

3 Q Okay. You didn't ask him any questions. You didn't
4 talk to him. You didn't give him any Miranda warnings any
5 way, shape or form. You just transport him to jail. You
6 were driving ---

7 A I was passenger.

8 Q You were passenger. Moore was driving?

9 A That's correct.

10 Q Took him to the detention center and he's just --
11 you're saying he's just shattering?

12 A Yes, sir.

13 Q And do you recall what else he said?

14 A He was apologetic. I mean, just kept on he had to
15 support his family stuff like that. But like I said, when
16 someone says selling drug is lifestyle, that sticks out to
17 you, that's what I remember. I mean, because I just can't
18 believe he said that.

19 Q Is it by chance that maybe he said a statement of I
20 don't live here?

21 A No, I don't remember anything like.

22 Q Because that wouldn't stand out to you?

23 A No, sir.

24 Q But you're saying the only thing that stood out to
25 you was the quote unquote selling drugs is lifestyle for

1 me?

2 A Yes.

3 MR. BROOKS: No other questions.

4 THE COURT: Any redirect?

5 MR. BROWN: None, Your Honor.

6 THE COURT: All right. Thank you, you may step
7 down.

8 (WHEREUPON, the witness leaves the witness
9 stand.)

10 MR. MEADORS: Your Honor, that's all we have.

11 THE COURT: Mr. Brooks.

12 MR. BROOKS: Beg Court's indulgence.

13 (WHEREUPON, a pause in the proceedings.)

14 THE COURT: All right. Mr. Gibbs, come forward
15 be sworn for this hearing only. This is not a waiver of
16 Fifth Amendment in trial.

17 THE CLERK: Place your left hand on the Bible
18 and raise your right hand. State your name please.

19 THE WITNESS: Leroy Clifton Gibbs, III.

20 THE CLERK: You solemnly swear or affirm the
21 testimony to the Court shall be the truth, the whole truth
22 and nothing but the truth so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please state your full name, spell
25 your last name for the record.

1 THE WITNESS: Leroy Gibbs, G-I-B-B-S.

2 MR. BROOKS: Ready, Judge?

3 THE COURT: I'm ready.

4 WHEREUPON,

5 Leroy Clifton Gibbs,
6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q Mr. Gibbs, do you recall being arrested on that day?

10 A Yes, sir.

11 Q Do you recall the conversation that you had with law
12 enforcement?

13 A Yes, sir.

14 Q What -- did you tell them selling drug is a lifestyle
15 for you?

16 A No, sir.

17 Q Okay. Do you recall what anything you may have told
18 law enforcement on that day?

19 A On the way to the jail or when they appeared?

20 Q Well, let's start on the way to the jail first.

21 A When I went to the jail, I had nothing to say to any
22 officer because they only was transporting me to the jail
23 for a warrant.

24 Q Okay. At the house as they were putting you in
25 custody, do you recall saying anything to them?

1 A No, sir.

2 Q Did you say anything about let me get my pants?

3 A That just when they arrived.

4 MR. MEADORS: I'm sorry could you ---

5 THE COURT: That's when they arrived.

6 BY MR. BROOKS:

7 Q Okay. Did you ask for your pants?

8 A Yes, ask for my pants.

9 Q Did you say anything else?

10 A That they had a search warrant.

11 Q I understand that, but did you say anything else to
12 them. We're talking about statements that you may or may
13 not have made. Did you say anything else to them while
14 you were at the residence?

15 A No, sir.

16 Q All right. As the two officers were transporting you
17 to the detention center, did you say anything?

18 A No, sir.

19 Q Did you say anything to them?

20 A No, sir.

21 Q Did you just say anything out loud?

22 A No, sir.

23 Q Now, the next day do you recall Officer Dubose coming
24 out and talking to you?

25 A Yes, sir.

1 Q Okay. Did you -- do you recall what statement you
2 made to him if any?

3 A Only thing I said to Mr. Dubose was -- was concerning
4 the warrants what I'm being charged with.

5 Q Were you asking him?

6 A Yeah.

7 Q Okay. You asked him what am I being charged with?

8 A Yes.

9 Q And what did he tell you?

10 A He said that he'll have the warrants, you know what
11 I'm saying, in the next couple -- next hours or day or
12 two.

13 Q Okay. Did you say -- and did he -- did you say
14 anything after that?

15 A No, sir.

16 Q Did he ask you anything about some alleged statement
17 the day before?

18 A No, sir.

19 Q Okay. Do you recall whether or not he told you the
20 Miranda warnings. Do you understand what Miranda warnings
21 are?

22 A Just my rights.

23 Q Right. Do you recall him telling you about your
24 rights at the jail?

25 A No, sir.

1 MR. BROOKS: No other questions, Judge.

2 THE COURT: Mr. Meadors.

3 MR. MEADORS: Thank you. May it please the
4 Court.

5 CROSS-EXAMINATION

6 BY MR. MEADORS:

7 Q Good morning, Mr. Gibbs. So you were staying there
8 the night before when the officers came on the 23rd?

9 A No, sir.

10 Q You hadn't spent the night there?

11 A No, sir.

12 Q And do you remember Investigator Dubose coming in the
13 house; correct?

14 A Yeah, that morning.

15 Q All right. And you remember that he read you your
16 Miranda rights when you came in that morning you and
17 Kimberly?

18 A No, sir. Kimberly was in another room. I was the
19 only one in the living room with him and the rest of the
20 other officers.

21 Q You remember him pulling out his card ---

22 A No, sir. No, sir. I remember him ---

23 Q Let me finish the question please, sir. Do you
24 remember him pulling out his card and reading the Miranda
25 rights on that card to you?

1 A I can't recall.

2 Q Okay. So he could have done that?

3 A Yeah, he could have.

4 Q And you familiar with your Miranda rights?

5 A Yes, sir.

6 Q You understand Miranda rights?

7 A Yes, sir.

8 Q No offense just cause your brush with the law before?

9 A Yes, sir.

10 Q No disrespect, but, I mean, you've had your Miranda
11 rights read to you a bunch, so you understand what they
12 mean. And you understand if you wanted to invoke your
13 Miranda or not talk, you know you could say I want a
14 lawyer and I don't want to talk to you. I mean, you smart
15 enough to know that?

16 A Yes, sir.

17 Q And you didn't do that in the house?

18 A Sir?

19 Q I mean, you didn't say I don't want to talk to you.
20 You didn't say give me a lawyer?

21 A I didn't have to because they had a warrant for my
22 arrest, so they arrest me and sent me to the jail.

23 Q Okay. So I was going to say you didn't invoke your
24 Miranda rights. Did you tell him and -- did you tell him
25 I don't live here?

1 A Yes, sir.

2 Q So you did tell him that in the house?

3 A Yes, sir.

4 Q And you will admit to His Honor that Investigator
5 Dubose and other officers threatened you, held out any
6 hope of reward or promise at [REDACTED] correct?

7 A State that again?

8 Q Investigator Dubose or any of those other officers
9 there, they didn't threaten you or try to trick you to
10 make any statements at [REDACTED] right?

11 A No, only thing I ask for is when he came he ask -- I
12 ask him did he have a search warrant because of the fact
13 that dogs and other officers was entering the house and
14 going into other rooms and that's when I ask him did he
15 have a search warrant. He stated that, well -- I think
16 was Tripp Maze or Captain Daley told him to go out to the
17 car, which when he returned he only had a picture of me
18 not nothing, you know, other than -- nothing showing the
19 reason why the officers and dog was in the other room. He
20 only said that he had a warrant for my arrest. And he
21 locked me up, took everything out my pocket and sent me to
22 the jail.

23 Q You can't recall whether he read your Miranda, but
24 you did admit that you told him I don't live here?

25 A Yeah, he ask me.

1 Q But you were asking about a search warrant. Kimberly
2 consented to the search?

3 A I don't know. I wasn't there at the time when she
4 did.

5 Q So based on your testimony, you wouldn't have any
6 grounds to object to doing a search if you weren't living
7 there, right?

8 A Yeah, because he said he had a warrant for my arrest
9 at this residence.

10 Q Okay. Well, you had made four undercover buys there
11 previously; hadn't you?

12 A No, sir.

13 Q Now, let's move on from there. When the two officers
14 took you from [REDACTED] to the jail, they didn't read you
15 your Miranda rights, did they?

16 A No, sir.

17 Q Matter of fact, they didn't ask you anything, did
18 they?

19 A No, sir.

20 Q They were just sitting there transporting you;
21 correct?

22 A Yes, sir.

23 Q And you were back behind them; correct?

24 A In the car, yes, sir.

25 Q If they had said anything, you could have heard them?

1 A Yes, sir.

2 Q I mean, there wasn't any question about that?

3 A Yes, sir.

4 Q And at this point that's when you said the statement,
5 no disrespect selling drugs a lifestyle for me; isn't it?

6 A No, sir.

7 Q But they never question you. They didn't try to get
8 you to talk. They didn't threaten you or coerce you or
9 anything, did they?

10 A No, the driver maybe said some type of statement, but
11 I can't recall what it was.

12 Q All right. Now, we get to the jail?

13 A Yes.

14 Q And Investigator Dubose and you know Investigator
15 Dubose here; correct?

16 A Yes, sir.

17 Q Now, when he's serving you your warrants on you, do
18 you remember when he pulled out his card again and read
19 you his Miranda rights?

20 A He never -- I never seen any card. He only spoke
21 what he knew on top of his head.

22 Q So he said the Miranda rights there?

23 A Yeah.

24 Q It's like his hat. The man can't help it. He
25 serving a warrant. You remember Miranda rights?

1 A I know my Miranda rights.

2 Q And you knew when he it read to you down there at the
3 jail what they were. You're familiar with them. And you
4 didn't say I don't want to talk to you. He didn't ---

5 THE COURT: Is that a affirmative or a negative.

6 A Sir? Can you ask the question ---

7 Q Go back in my mind. You're saying he didn't have his
8 card, but you remember Miranda rights, your rights. You
9 know your rights. And you remember them coming, right?
10 You remember him saying what your Miranda rights were.
11 You had a right to remain silent, right to a lawyer, and
12 waiving the rights. I think you just said, yeah, I
13 remember he said those?

14 A Yes, sir.

15 Q Just didn't have the card?

16 A Yes, sir.

17 Q And again you understood those?

18 A Yes, sir.

19 Q I mean, I told you before on the record you smart
20 fellow you understood your Miranda rights?

21 A Yes, sir.

22 Q You did not invoke them. You didn't say, Wayne, I
23 don't want to talk to you, give me a lawyer, right?

24 A Yeah.

25 Q All right. And he didn't threaten you or coerce you?

1 That fellow there didn't threaten you or coerce you?

2 A No, sir.

3 Q Okay. And didn't promise or holdout any hope of
4 reward, right?

5 A Yes, sir.

6 Q You saying he did not; correct?

7 A No. No, sir.

8 Q So at this point, he confronted you with the
9 statement about selling drugs is a lifestyle?

10 A Yes, sir.

11 Q And you said I got to support my family?

12 A I never told him anything like that.

13 Q But he did confront you with the statement though?

14 A He ask me that did I said anything to the officer and
15 I told him as well I didn't say anything to the officer.

16 Q Okay. But he did ask you what you had said to them?

17 A Yes.

18 Q You're just denying that you said I got to support my
19 family? You're saying you didn't say anything to him?

20 A Yes. Yes, exactly.

21 Q I'm not trying to trick you. You're saying to him I
22 didn't say that?

23 A I didn't say nothing.

24 Q I got you. And then finally when he ask you about or
25 told you what had been found in your residence, your

1 house, you told him that Kimberly must have been with some
2 other person and because you don't live there and those
3 drugs must have been hers. I mean, you did say that,
4 didn't you?

5 A No, sir.

6 Q You said something like that?

7 A Something like that?

8 Q Yeah. I mean, he didn't just make that up. You said
9 something the drugs weren't yours, did you?

10 A He ask me questions concerning the drugs inside the
11 house.

12 Q Right.

13 A I told him that I wasn't staying at the resident.
14 That she had other individuals staying there. So I don't
15 have no knowledge of it, so I can't speak upon.

16 Q Well, that's pretty much what he said, Mr. Gibbs. I
17 mean, that's pretty much. You said she had other people
18 staying there and you had no knowledge of it, so it must
19 been hers. I mean, that's kind a -- he wrote that down
20 pretty good. So you admit to saying that?

21 A Yes, sir.

22 Q Okay.

23 MR. MEADORS: That's all I have.

24 THE COURT: Any redirect?

25 MR. BROOKS: No, sir.

1 THE COURT: Thank you, sir. You may step down.
2 (WHEREUPON, the witness leaves the witness
3 stand.)

4 THE COURT: Okay.

5 MR. BROOKS: Judge, that's all we have in terms
6 of the Jackson vs. Denno.

7 THE COURT: Right.

8 MR. BROOKS: It's our position that those
9 alleged statements should be excluded from purposes of
10 this trial.

11 THE COURT: The purpose of this trial I got
12 testimony that he was Mirandized. I got his testimony.
13 He knew what Miranda warnings were and understood those.
14 On the first statement, drug dealing is the life for me.
15 I got testimony that he was Mirandized at the house. The
16 officers who transported him said they did not elicit any
17 testimony after that, that he made the statement. And
18 then the next day the testimony is that he was Mirandized
19 again. And he then made a statement that I must do this
20 to support my family. I find that the statements will
21 come into evidence. As to whether the jury decides to
22 believe him, is a matter entirely for them to decide. And
23 the State will have to prove that beyond a reasonable
24 doubt. If at this time, I find that the statements are
25 proper for being placed into evidence. Thank you.

1 MR. BROOKS: Thank you.

2 MR. MEADORS: May we approach, Your Honor?

3 THE COURT: You may.

4 (WHEREUPON, a bench conference was held in the
5 presence of the jury, but out of the hearing of the
6 jury.)

7 THE COURT: All right. Mr. Brooks, I think you
8 have something else you want to put on the record.

9 MR. BROOKS: Yes, sir. Judge, just to protect
10 my client's interest, he has a multitude of drug charges.
11 There was a lot of discovery that actually came my way. A
12 lot of this discovery actually didn't come to me directly
13 from the Solicitor's office. It actually came from his
14 prior counsel David Sullivan who's the public defender on
15 the case.

16 THE COURT: Right, who's not here anymore.

17 MR. BROOKS: Who's not here and he had it.
18 Obviously, when he left the public defender's office and
19 then went on to -- I don't know where he is now. And then
20 they -- the public defender's office sent this out to the
21 private bar. We had that. Of course, we did not know
22 exactly which case they were going to call to trial. The
23 first time until about two days before because of the
24 numbers of drug charges that he had. Solicitor's office
25 then told us that we're trying the actual case from the

1 arrest. And the search that came from those arrests and
2 that at that time I inform my client ---

3 THE COURT: We're not trying the control buys or
4 anything like that. This is strictly what happened at the
5 house and what was at the house?

6 MR. MEADORS: Yes, sir.

7 MR. BROOKS: And that's when I notified my
8 client these things that he had pertinent to this
9 particular case saw those. Obviously, that's what we
10 tried back in February. And I been informed by the
11 Solicitor's office and I see it in their witness list that
12 they're actually bringing the exact same witnesses for
13 that particular case. I just want to put that on the
14 record basically a discovery issue.

15 THE COURT: Is there any -- you're not alleging
16 there was any outstanding discovery that they had withheld
17 from you?

18 MR. BROOKS: No, sir, unless there's something
19 else because I don't know anything about, but at this
20 point in time, no, sir.

21 THE COURT: Okay.

22 MR. MEADORS: Judge, may it please the Court. I
23 don't want the Court to think two days beforehand this
24 just came up. He was on the trial docket.

25 THE COURT: You talking about last trial?

1 MR. MEADORS: Yes.

2 THE COURT: I'm not worried about that issue.
3 You all published this three weeks ago. I got a copy of
4 the trial list.

5 MR. BROOKS: No, no, no, I was just saying he
6 was on the trial list because he had a lot of charges.
7 This was back in February and then they basically said
8 we're going to try this one at that time.

9 THE COURT: One I presented ---

10 MR. MEADORS: We gave him appropriate notice
11 then, but this is the exact same case he has all the
12 discovery here. We gave it through the last trial and
13 it's the same discovery, same witnesses, the pictures.
14 There a lease we ended up putting in last time. We're
15 going to offer that again, but it is the exact same
16 information. For the record, I believe he has all the
17 discovery.

18 THE COURT: If you all could get here a little
19 early and pre-mark those, so we have them ready. It may
20 help the trial go.

21 MR. MEADORS: Might need to do that this
22 afternoon.

23 THE COURT: Do it this afternoon.

24 MR. MEADORS: Mr. Tyler, will be here about nine
25 to do that, Your Honor -- Mr. Brown.

1 MR. BROOKS: So other than that, we reconvene at
2 nine...

3 THE COURT: Thirty. We'll start at 9:30. So
4 you all be here at nine or something like that premarked.

5 MR. BROOKS: Thank you, sir.

6 THE COURT: Court adjourned until 9:30 in the
7 morning.

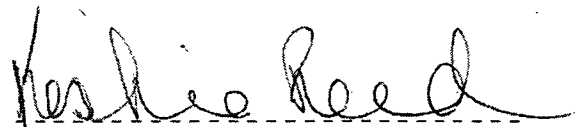
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 72, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for
Florence County, South Carolina, on the 6th day of June,
2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 8th day
of January 2014.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	CASE NO. 2011-GS-43-1125

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	

-vs-

)	TRANSCRIPT OF RECORD
)	(DAYS 2&3 OF 3)
)	

LEROY CLIFTON GIBBS, III,	)	
	)	
Defendant.	)	

June 4-5, 2013
Sumter, South Carolina

B E F O R E:

THE HONORABLE WILLIAM JEFFREY YOUNG, Judge

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

JOHN P. MEADORS, Esquire
TYLER BRYANT BROWN, Esquire
Attorneys for the Plaintiff

CHARLES BROOKS, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

1 JUNE 4, 2013 (Day 2 of 3)

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 proceedings began at 9:36 a.m.)

5 THE COURT: All right, Mr. Brooks.

6 MR. BROOKS: Judge, the first thing is I think my client
7 wants to be addressed. He is asking for this matter to be
8 continued, for me to be relieved as counsel, and he again to
9 be appointed new counsel in this case. I think he probably
10 wants to be heard on that.

11 THE COURT: All right. Mr. Gibbs, you may stand. Yes,
12 sir?

13 THE DEFENDANT: Yes. I would like to ask the Court to be
14 added as co-counsel to assist counsel ---

15 THE COURT: You can't do that. You're not an attorney.
16 I can't let you be co-counsel.

17 THE DEFENDANT: Or I can -- or -- well, I feel that in
18 this matter that my client is not going to represent me ---

19 THE COURT: Your client? You mean your lawyer?

20 THE DEFENDANT: My attorney is not going to represent me
21 to the fullest ---

22 THE COURT: Okay.

23 THE DEFENDANT: --- because of the fact that ---

24 THE COURT: Well, I mean I think he tried to get off last
25 week.

1 THE DEFENDANT: Yes, ma'am. Yes, sir.

2 THE COURT: Judge James didn't let him. So are you
3 asking that he be relieved now?

4 THE DEFENDANT: Yes.

5 THE COURT: So you don't want him on this case?

6 THE DEFENDANT: No, sir.

7 THE COURT: And you want me to appoint you a new lawyer?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If you -- if you want nothing to do with Mr.
10 Brooks, then I can relieve Mr. Brooks, but the case will go on
11 and you'll represent yourself.

12 THE DEFENDANT: Okay.

13 THE COURT: So you want to represent yourself?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. Brooks, I'm not going to allow him to do
16 that. We're at this stage. I'm going to leave you on. You
17 all have been through this long enough. I'm -- I'm going to
18 deny the request and Mr. Brooks will stay on the case. All
19 right, thank you.

20 MR. BROOKS: Judge, the other matter was he had ended up
21 filing his own motion to dismiss for lack of evidence.

22 THE COURT: All right.

23 MR. BROOKS: I think the Court has a copy of that.

24 THE COURT: The Court -- the Court reviewed that and --
25 and what I'll say is no evidence has been presented yet in

1 Mr. Meadors gets back, we'll bring the jury in, swear the
2 jury, and then I'll ---

3 MR. BROWN: The State will be ready.

4 THE COURT: We'll be ready.

5 MR. BROWN: Thank you, Your Honor.

6 (Whereupon, Mr. Meadors enters the courtroom.)

7 THE COURT: All right, let's bring our jury in.

8 (Whereupon, the jury enters the courtroom at 9:48 a.m.)

9 THE CLERK: Your Honor, we have all the jurors and the
10 alternate present in the courtroom.

11 THE COURT: Thank you, ladies and gentlemen, for being
12 here so promptly this morning. We had a few things we had to
13 talk about in here, but we were all ready to go at nine
14 thirty. We've been in here since nine thirty. I hope you've
15 had a good night's rest and are ready to hear some information
16 today. Mr. Bradley, would you please swear these jurors?

17 THE CLERK: Yes, sir, Your Honor. Ladies and gentlemen
18 of the jury, please stand and raise your right hand to be
19 sworn. For the State of South Carolina and County of Sumter
20 in the Court of General Sessions, Docket Number 2011-GS-43-
21 1125, the State of South Carolina versus Leroy C. Gibbs, III.
22 You shall well and truly try and a true deliverance make
23 between the State of South Carolina and the defendant, Leroy
24 C. Gibbs, III, whom you shall have in charge and a true
25 verdict give according to the evidence, so help you God.

1 Please respond by saying I will.

2 THE JURY: I will.

3 THE CLERK: Thank you. You may be seated.

4 THE COURT: Thank you, Mr. Bradley.

5 THE CLERK: Yes, sir.

6 THE COURT: And, Ladies and gentlemen, before we begin
7 this trial, which might very likely be the last trial held in
8 this building, I want to tell you that this trial will
9 probably be different from what you might expect. You know,
10 most people never have the chance to attend an actual court
11 session as y'all are today and may think from watching TV,
12 movies, or reading books that trials are always full of high
13 drama, intense action, and riveting circumstances.

14 Now, while all of these things may be true at times, this
15 trial is not for entertainment purposes. This is a real
16 trial, which is a fundamental part of our democracy. It's a
17 search for the truth in an effort to make sure that justice is
18 done, and searching for the truth and ensuring that justice is
19 done is often slow, deliberate, and repetitive, the opposite
20 of what you may have seen on television, in movies, or read in
21 books.

22 Now, ladies and gentlemen, this courtroom is a place of
23 honor that is dedicated to the protection and the preservation
24 of our citizens' rights through what has been called and I
25 truly believe to be the greatest justice system ever created

1 THE COURT: Defense?

2 MR. BROOKS: Yes, sir.

3 THE COURT: All right.

4 MR. BROWN: May it please the Court.

5 THE COURT: Yes, sir.

6 OPENING STATEMENTS

7 MR. BROWN: Good morning, ladies and gentlemen, my name
8 is Tyler Brown. I'm assistant solicitor here in Sumter, South
9 Carolina. Yesterday, you met Mr. John Meadors. He and I are
10 co-counsel in this case and we're here today to talk to you
11 about what we submit evidence will show is a lifestyle.

12 We're here to talk to you about a lifestyle involving
13 possessing drugs, a lifestyle of manufacturing drugs. We're
14 here to talk to you about a lifestyle of distributing drugs.
15 We're here to talk to you about the defendant's lifestyle,
16 Leroy Clifton Gibbs.

17 Mr. Gibbs has been indicted for three charges and those
18 charges have been brought before you today: one for
19 trafficking in crack cocaine, one for manufacturing crack
20 cocaine, and one for possession with intent to distribute
21 powder cocaine. As it stands today, that document indicting
22 him is only a charging document so that we can bring this case
23 in here today to you to present evidence to attempt to show
24 the guilt of the defendant.

25 It is our job as the attorneys for the State to prove

1 guilt beyond a reasonable doubt, that same doubt you hear talk
2 about on TV every single day. Beyond a reasonable doubt as a
3 burden is a burden that we welcome.

4 Now, I know a lot of attorneys have analogies, stories,
5 and anecdotal reasons of what reasonable doubt it, but I'm
6 just going to tell you very simply what the law is. The law
7 on beyond a reasonable doubt means that we must leave you as
8 the jury firmly convinced of the defendant's guilt by the end
9 of this trial. At the end of this trial, we have to leave it
10 so that you say I believe he committed those actions and,
11 ladies and gentlemen, evidence will show through this trial --
12 we submit that evidence will show through this trial that he
13 is guilty of those offenses.

14 He is charged to start with in trafficking of crack
15 cocaine. Trafficking is what a lot of people when they watch
16 TV they think that means 18-wheelers going up and down the
17 interstate loaded to the gills with drugs, something out of
18 Smokey and the Bandit or whatever particular movie you might
19 pick, but that's simply not it. Trafficking is a term of law
20 that we use in the legal world here in South Carolina which
21 means that he possessed over a certain quantity of that drug.
22 In South Carolina, if you possess over ten grams, you can be
23 found guilty of trafficking crack cocaine.

24 We submit that evidence will show through this case that
25 he -- that Mr. Gibbs either had actual or constructive

1 possession of crack cocaine that was found in the house at [REDACTED]
2 [REDACTED], not two and a half miles away from where you
3 sit here today, and that he had that possession. Now, when we
4 talk about actual and constructive possession, actual
5 possession means that you have it on your person at the time.
6 Like my pen is in my pocket right now, I actually possess
7 that. My remote control sits beside my bed when I go to sleep
8 at night; I'm constructively possessing that because I exhibit
9 dominion and control of that.

10 And those are the things you want to sit here and think
11 about. Did he actually or constructively possess the crack
12 cocaine in a quantity over ten grams? If you believe that he
13 did that, we submit to you that by the end of this case, you
14 will have the ability to deliberate on that and decide that
15 matter.

16 The second charge he's charged with is manufacturing
17 crack cocaine. You're going to hear evidence in this trial
18 that -- that when officers arrived at the house, we submit to
19 you the evidence will show that he had all the ingredients,
20 all the mechanisms, and that he actually had -- there was
21 evidence found that he had been using the house at [REDACTED]
22 [REDACTED] to actually make, manufacture, cook crack cocaine,
23 cocaine base, whichever one you want to call it. They are the
24 same thing.

25 Finally, he is charged with possession with intent to

1 distribute powder cocaine. There is a distinct difference
2 between powder and crack cocaine. Clearly, the difference is
3 that powder cocaine is the pure form. Cocaine base, crack
4 cocaine has actually been cooked, mixed, and broken down to
5 its base form.

6 But as pertains to possession with intent to distribute
7 powder cocaine, the things you'll be wanting to listen to for
8 this trial is particular inferences that the State will
9 present to you that will lead you to the conclusion that he
10 did attempt to distribute. Things you want to listen for, the
11 law says if it's over one gram, there can be a reasonable
12 rebuttable presumption that the defendant did intend to
13 distribute. If you find that there are baggies in the house,
14 that there are ways to divide, a razor, things of that nature,
15 if you find that there are scales, if you find money that is
16 in line with distributing, all of these things are things that
17 you'll be able to consider as you hear the facts, and as long
18 as you find that you believe that he committed those acts, if
19 the State leaves you firmly convinced, then we will have met
20 our burden.

21 It will be your jobs for the next day or so to listen to
22 all the facts in this case, to consider all the facts, and to
23 determine at the end of this after His Honor has charged you
24 on the law as to whether or not you believe the defendant did
25 this. Are you firmly convinced?

1 The State believes that evidence in this case will show
2 through the testimony of officers and other witnesses that on
3 the day of December 23rd, 2008, officers went to the home of
4 Leroy Clifton Gibbs, the defendant here on trial today, and
5 they executed an arrest warrant on him. After they left, a
6 Consent to Search was done.

7 As they searched the home, they found large quantities of
8 crack cocaine. When they searched the kitchen, they found --
9 we believe evidence will show that they found evidence that
10 the microwave had been used to cook crack cocaine, that all
11 the ingredients were right there, that the scales were there,
12 that the razors were there, and then as Mr. Gibbs was being
13 driven away to come to the courthouse -- or from his house to
14 the jail, he stated to law enforcement that selling drugs is a
15 lifestyle to him.

16 We believe the evidence will show all these things and
17 you will see the lifestyle that Leroy Clifton Gibbs leads. At
18 the end of this case, we'll come back to you in our closing
19 argument and ask you to find him guilty on these charges.
20 Thank you.

21 THE COURT: Thank you, Mr. Brown. Mr. Brooks?

22 MR. BROOKS: Thank you, Judge. Ladies and gentlemen, my
23 name is Charles Brooks and I represent Clifton Gibbs, who is
24 seated at the table, and Mr. Brown has quite an imagination,
25 but I'd like to tell you what this case is really about and

1 basically explain to you what your role here in this
2 courthouse is all about.

3 My client, Clifton, is presumed innocent. He has a
4 constitutional right everybody has in this country. He is
5 presumed innocent. He doesn't have to prove anything. The
6 State of South Carolina at this table, they have got to show
7 you in your judgment beyond a reasonable doubt that he did
8 these things that Mr. Brown was talking about earlier.

9 Now, that's very important. What is reasonable doubt?
10 Well, I like to equate reasonable doubt to those of us who get
11 up in the morning and go to work, put on our clothes, iron
12 them, and when we get on our way to work, if you're halfway to
13 the job and you think did you cut off the iron, now we have
14 doubt as to whether or not we cut off the iron. I equate that
15 to reasonable doubt.

16 Another thing that I equate to reasonable doubt is most
17 of us may be athletic, may be in sports, maybe not. We have a
18 general idea of how certain sports work. Like take, for
19 instance, the game of baseball. My client hits the ball into
20 the infield and the State, all the people in the infield and
21 the outfield, their job is to get the ball to the base before
22 the runner gets there. But any time they get the ball at the
23 same time, the tie goes to the runner. In this case, you must
24 resolve all doubt in favor of Clifton.

25 The game of football, the State has to get the ball all

1 the way into the end zone. It's not good enough for them to
2 get the ball across the thirty yard line or the fifty yard
3 line, or even if they get a field goal. They have got to get
4 the ball in the end zone.

5 We -- Clifton, he's presumed innocent. He doesn't have
6 to prove anything to you. Now, that's very, very, very
7 important, and that puts the burden on them.

8 More often than not, the State of South Carolina when
9 they come in and they say, hey, jury, use your common sense,
10 and we say, yes, use your common sense. Look at this with an
11 open mind. Look at all of the evidence and listen to
12 everybody on the stand, and remember they have to prove their
13 case beyond a reasonable doubt. Clifton has to prove nothing.

14 This is not an opinion poll on who you think is going to
15 win the NBA finals or what do you think the president should
16 do or who you think should run in 2016. Those are opinion
17 questions. This is a very, very serious question that you
18 have been endowed as the jury with the power to determine
19 whether or not the State has proven their case beyond a
20 reasonable doubt. We say they have not. We say they will
21 not.

22 And I think that after you listen to everything and
23 listen to the law as the judge will instruct you, possession,
24 actual or constructive, and you keep an open mind and we think
25 after you've heard it, we feel strongly that your conclusion

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 will be, well, I might have an opinion one way or the other,
2 but after I look at it and I look at it in the eyes of the
3 power that I have as the jury, I have doubts. I have
4 reasonable doubt and remember, any and all reasonable doubt
5 has to be resolved in the favor of Clifton. The tie goes to
6 the runner. Thank you.

7 THE COURT: Thank you, Mr. Brooks. The State may call
8 its first witness.

9 MR. MEADORS: If it please Your Honor, the State of South
10 Carolina would call Investigator Wayne Dubose.

11 THE CLERK: Please place your left hand on the Bible. If
12 you would, raise your right hand. State your name, please.

13 THE WITNESS: Investigator Wayne Dubose.

14 THE CLERK: Do you solemnly swear or affirm your
15 testimony to the Court shall be the truth, the whole truth,
16 and nothing but the truth, so help you God?

17 THE WITNESS: Yes, sir.

18 THE CLERK: Thank you. Have a seat up here, please.
19 Watch your step there. Please state your full name and spell
20 your last name for the record.

21 THE WITNESS: Investigator Wayne Dubose, D-U-B-O-S-E.

22 INVESTIGATOR WAYNE DUBOSE, being
23 first duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. MEADORS:

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Good morning, Investigator. Would you please tell the
2 ladies and gentlemen of this jury a little about Investigator
3 Wayne Dubose, where you -- where you were born, your
4 background, your education, your training, and specifically
5 your training in law enforcement, please?

6 A: I was born here in Sumter. I'm forty-one years old. I
7 attended Furman High School. I graduated from there. I was
8 employed with the Fire Department at one time. I left there
9 and came into law enforcement in '96. I went to the Criminal
10 Justice Academy where I was certified as a police officer.
11 Through there, I possessed -- progressed up through patrol on
12 up to investigation.

13 Q: And what -- what -- what's your job now? What ---

14 A: I'm a criminal investigator with the Sheriff's Office.

15 Q: So you've been in law enforcement how many years?

16 A: Sixteen years.

17 Q: And I know you've testified before. Just be sure and
18 speak into the microphone so the court reporter and these
19 ladies and gentlemen can hear you. On December 23rd of 2008,
20 were you working?

21 A: Yes, sir, I was.

22 Q: And did you have an occasion to serve some arrest
23 warrants at [REDACTED]

24 A: Yes, sir, I did.

25 Q: And were those arrest warrants for the defendant, Leroy

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Clifton Gibbs, III?

2 A: Yes, sir.

3 Q: Please tell the ladies and gentlemen, who went with you
4 to [REDACTED]

5 A: I went to the resident. Investigator Mays with the
6 Sheriff's Office, Captain Daley, Investigator Boland, a couple
7 agents from SLED, Sergeant Moore, and Sergeant Horton with the
8 Sheriff's Office went to assist us. They were going to
9 transport him when we arrested him at the house.

10 Q: Look at State's 3 please and please let me know if you
11 recognize it and does it relate to your testimony?

12 (Whereupon, a color photograph is presented to the
13 witness.)

14 A: This is [REDACTED]

15 MR. MEADORS: Your Honor, State's 3. We'd offer State's
16 3.

17 THE COURT: Any objection, Mr. Brooks?

18 MR. BROOKS: No objection.

19 THE COURT: Without objection, State's Exhibit Number 3
20 is admitted into evidence and may be published to the jury.

21 MR. MEADORS: Thank you, Your Honor.

22 Q: Tell these folks where -- where is this? Where is
23 [REDACTED] in relation to here in this courthouse?

24 A: [REDACTED], if you -- if you go up Liberty Street,
25 if you were to turn on Alice Drive, [REDACTED] is going

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 to run there to the left. It actually is between Alice Drive
2 and Second Hill Pond in that subdivision back in there.

3 Q: What time of day is it on December 23rd when you get
4 there?

5 A: We got there at lunch time, at twelve o'clock.

6 Q: All right. What do you do? What do you do,
7 Investigator, when you get to [REDACTED]

8 A: Myself and other officers, we pulled up at the residence.
9 We were all dressed and marked as law enforcement, and we had
10 gray vests or our uniforms. We went to the residence. Myself
11 and some other officers went to the front door; some other
12 officers went to the rear of the residence. Typically, just
13 in case someone would run from the residence we ---

14 Q: Slow down a little bit. Typically, for what reason?

15 A: In case someone would maybe run out of the back of the
16 residence.

17 Q: So you had the residence surrounded basically?

18 A: That's right. We kind of set up a perimeter around it.

19 At that time, I knocked on the front door of the residence.

20 Once I knocked on the front door ---

21 Q: Did you actually knock?

22 (Whereupon, counsel knocks three times on the wooden rail
23 of the court reporter stand.)

24 A: I knocked. Yes, sir.

25 Q: Okay.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: I knocked on the front door and announced Sheriff's
2 Office, and at that time I heard some skirmishing around in
3 the residence for about a couple of minutes. No one answered
4 the door.

5 Q: So you knocked and you didn't say it like you did. Did
6 you yell Sheriff's Department?

7 A: Yes, sir. We make it clear who it was.

8 Q: All right and you said there was a couple of minutes.
9 Was there really a period of time where you -- you waited?

10 A: Yes, sir.

11 Q: All right. What happened after that?

12 A: We could hear somebody moving around in the residence and
13 someone looked out of the blind in the bedroom, and then after
14 that Ms. Kimberly Gibbs answered the door of the residence.

15 Q: And were you able to determine in your invest -- in your
16 investigation what relationship Ms. Gibbs -- Kimberly Gibbs
17 had to the defendant, Clifton Gibbs?

18 A: That is the defendant's wife.

19 Q: Okay. She's now at the door? You're at the door?

20 A: Yes, sir.

21 Q: What happens?

22 A: She opened the door. At that time, we tell her we was
23 looking for Mr. Leroy Gibbs. We had arrest warrants for him.
24 She advised that he was in the bedroom. At that time, I could
25 see Mr. Gibbs back behind her in the hallway area between the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 bedroom and the living room. He was standing there in his
2 boxers.

3 Q: I'm going to show you what's marked State's 4. Do you --
4 just do you recognize that and does it relate to your
5 testimony, please, sir?

6 (Whereupon, a color photograph is presented to the
7 witness.)

8 A: This would be the bedroom, the master bedroom.

9 MR. MEADORS: State's 4, Your Honor.

10 THE COURT: Any objection, Mr. Brooks?

11 MR. BROOKS: No, sir.

12 THE COURT: State's Exhibit 4 is admitted without
13 objection and may be published to the jury.

14 MR. MEADORS: Thank you, Your Honor.

15 Q: You said you saw Mr. Gibbs where?

16 A: He was in the hallway which actually would have been
17 coming out of that bedroom.

18 Q: Coming out of State's 4?

19 A: Yes, sir.

20 Q: What did you do next?

21 A: At that time, I went ahead and placed Mr. Gibbs under
22 arrest. We had the arrest warrants. He was placed into the
23 living room area of the residence on the couch. At that time,
24 he asked about getting a pair of -- we advised him he was
25 under arrest for the warrant and he asked about getting a pair

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 of pants. He said his pants was in the bedroom laying on the
2 floor.

3 So I proceeded to the bedroom to get the pants. They
4 were on the floor. I located the pants and I went ahead and
5 searched the pants to make sure there was no weapons in them
6 before I gave them to him. At that time, I located in one of
7 the pockets a large sum of money, approximately \$1,355.

8 MR. MEADORS: I beg the Court's indulgence. Your Honor,
9 I believe Mr. Brown and Mr. Brooks have looked at all them and
10 it's marked. I'm still going to bring them over if that's ---

11 THE COURT: All right.

12 (Whereupon, three color photographs are presented to the
13 witness.)

14 Q: If you'd look at what's marked State's 8, 9, and 10,
15 without telling me what they are, just tell me if that relates
16 to your testimony?

17 A: It will. This -- this ---

18 Q: Just does it relate to your testimony?

19 A: Yes, sir.

20 Q: Do you recognize it?

21 A: Yes, sir.

22 MR. MEADORS: Your Honor, we'd offer State's 8, 9, and
23 10.

24 THE COURT: Any objections, Mr. Brooks?

25 MR. BROOKS: No objection.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 THE COURT: State's 8, 9, and 10 are admitted into
2 evidence without objection and may be published to the jury.

3 MR. MEADORS: Thank you, Your Honor.

4 Q: What is State's 8?

5 A: This would be a photo of the living room area. It would
6 be half of the living room area.

7 Q: You said you had placed Mr. Gibbs under arrest and placed
8 him where in the home?

9 A: On the couch. It would be in the other photo.

10 Q: Which is State's 9?

11 A: Yes, sir. This would be the other side of the residence.
12 This would be the couch we placed him on.

13 Q: And this is all in the living room; is that correct?

14 A: Yes, sir.

15 Q: State's 10, would you tell the ladies and gentlemen of
16 this jury what that is, Investigator?

17 A: This is a photo from the living room into the dining room
18 area, like that would be a kitchen table.

19 Q: What did you do next? What happened next in the
20 residence at [REDACTED]

21 A: While I was in there and we were placing Mr. Gibbs under
22 arrest, we noticed the odor of marijuana in the residence. At
23 that time, both ---

24 Q: Could you smell it?

25 A: We could smell it.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: With your own -- with your nose? I mean you smelled it?

2 A: That's correct.

3 Q: Okay. So what happened next?

4 A: At that time, since we smelt the marijuana, Mr. Gibbs had

5 been arrested on that warrant. At that time, we -- or

6 pertinently I advised Mr. Gibbs and Ms. Gibbs of their Miranda

7 rights.

8 Q: Okay. Could you do that now like you did on December

9 23rd? Do you have a regular way you do it? A habit?

10 A: Yes, sir. I usually carry a -- I carry a card in my

11 wallet or either in our vest.

12 Q: Okay.

13 A: I normally have a card with me.

14 Q: And could you for these ladies and gentlemen read the

15 rights as you did to Mr. Gibbs on December 23rd?

16 A: I could. I advised him that you have the right to remain

17 silent. Anything you say can and will be used against you in

18 court. You have a right to consult with an attorney and have

19 an attorney present during questioning. If you cannot afford

20 an attorney, one will be provided to you before questioning at

21 no cost. I asked them if they understood the rights and if

22 they wanted to talk to me.

23 Q: And had you had any -- this -- at this point in the

24 house, had you had any interaction with Mr. Gibbs beyond just

25 telling him he's under arrest and serving him with warrants?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: I think you testified earlier that he asked if he could
3 get his pants on; correct?

4 A: That's correct.

5 Q: All right. From strictly your -- your opinion on his
6 ability to understand and condition, could you understand him
7 when he asked you can I get my pants?

8 A: Yes, sir.

9 Q: Okay and could you understand his response or did he
10 appear to understand your response when you were talking back
11 and forth with him? Did you have any trouble communicating
12 with him?

13 A: He understood me. I understood him no problem.

14 Q: Okay. Did he appear to be -- you said you smelled
15 marijuana. Did he appear to be under the influence of
16 anything?

17 A: He didn't appear to be under the influence to me, but we
18 did -- like I said, we could smell the odor of marijuana in
19 the residence.

20 Q: But you had no difficulty communicating with him?

21 A: No, sir.

22 Q: Could you understand his words when he said something?

23 A: Yes, sir.

24 Q: And he appeared to understand when you asked him to do
25 something?

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1 A: Yes, sir.

2 Q: All right. Did he say I don't want to talk to you or I
3 want a lawyer?

4 A: Never.

5 Q: All right. Did he appear to you to understand the rights
6 as you read them to him?

7 A: Yes, sir.

8 Q: Now, at this point -- and what did he say to you?

9 A: At that time -- once we placed him under arrest and
10 advised him of his rights, at that time we asked for consent
11 or permission to bring a drug dog in the residence. We had a
12 drug dog on the scene and, at that time, he advised us or he
13 told me that he didn't live there. So, therefore, I turned my
14 attention to Ms. Gibbs and asked her if we could bring a dog
15 in the residence and she said, yeah, no problem. I went ahead
16 and had Moore and Horton, which were there to transport ---

17 Q: And you say Moore and Horton. These folks don't know who
18 Moore and Horton are. Who -- what -- what -- who are they?

19 A: Sergeant Moore and Sergeant Horton, they would have been
20 two officers. They were on the CAT team at the time.

21 Q: And what's -- what's the CAT team?

22 A: It's Community Action Team. They go into crime areas and
23 address problem situations. We had them to assist us there
24 and they were in a marked vehicle and we were going to use
25 them to transport Mr. Gibbs if we arrested him at the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 residence.

2 Q: And is that just general practice? I mean that you have
3 people there ready to transport someone -- someone if they're
4 arrested?

5 A: Yeah, that's typical.

6 Q: So the only thing that Mr. Gibbs said to you in the house
7 after you advised him of his rights is that I don't live here?

8 A: That's right. He told me -- once I asked for consent to
9 search the house, he told me he didn't live there.

10 Q: After the officers take Mr. Gibbs away, you said Ms.
11 Gibbs had consented to search?

12 A: She actually gave verbal consent to search the residence.
13 We went ahead and got a -- a written consent to the Sheriff's
14 Office and I -- and I asked her to sign it in writing giving
15 us written consent to search the residence, and she did.

16 Q: I'm showing you what's marked as State's 1 for -- I'm
17 sorry -- for ID only at this point. Do you recognize that?

18 A: This would be her Consent to Search and this would be the
19 one that Ms. Gibbs signed.

20 Q: Okay and is your signature on there?

21 A: It is.

22 Q: And is Ms. Gibbs' signature on there?

23 A: It is.

24 Q: And when you asked Ms. Gibbs if she could search -- if
25 you could search, was there any hesitation in her response or

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 did she -- how did she do it?

2 A: I asked her if we could search the residence and I told
3 her we smelt marijuana in there and asked could we search, and
4 she said yeah, go ahead, and that's when I went and got the
5 written consent for her to -- we could read the consent to her
6 and let her know that she didn't have to give consent. It was
7 all voluntary. I read that consent to her and she went ahead
8 and signed it.

9 Q: And did you search?

10 A: Yes, sir.

11 Q: And tell the ladies and gentlemen of the jury, how do you
12 go about -- I mean how did you go about the search in this
13 case?

14 A: What we do, whether it be a search warrant, consent to
15 search, whatever, we have an officer go through and photograph
16 the residence before what it looked like, and then as we're
17 finding evidence or finding anything of interest that we're
18 going to be taking, we photograph those items.

19 Q: And then do you go back and make a report of the
20 procedure and document it so it will aid you when you're
21 testifying like right now?

22 A: I do.

23 Q: So after Ms. Gibbs gave consent, verbal and written, to
24 search the residence, tell us -- tell the folks specifically
25 what -- what you or other law enforcement under your command

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 did?

2 A: At that time, Mr. Gibbs was already taken away from the
3 residence. I took Ms. Gibbs into the kitchen area or the
4 dining room area and we set at the kitchen table so I would
5 have somewhere to document the items as -- as they were
6 located. At that time, officers went -- split up in the
7 residence and they ---

8 Q: Split up into what?

9 A: Split up in the residence.

10 Q: Okay.

11 A: And they started searching. As they would find whatever
12 they found in the residence, they would notify me. Someone
13 would -- I believe Investigator Mays photographed -- took
14 photographs, and I would go collect the item and take it back
15 and write it down on the consent form and it would be later
16 placed into evidence.

17 MR. MEADORS: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 Q: Was the kitchen searched at [REDACTED] The
20 kitchen?

21 A: Yes, sir.

22 (Whereupon, a color photograph is presented to the
23 witness.)

24 Q: I'm going to show you what's marked State's 15. Do you
25 recognize that?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: That is the kitchen area of [REDACTED]
- 2 MR. MEADORS: Your Honor, State's 15.
- 3 THE COURT: Any objection, Mr. Brooks?
- 4 MR. BROOKS: No objection.
- 5 THE COURT: Without objection, State's Exhibit 15 is
- 6 admitted and may be published to the jury.
- 7 MR. MEADORS: Thank you, Your Honor.
- 8 Q: Now, Investigator, if you go and look at or search
- 9 something, what's your procedure? Do you search it, take a
- 10 picture or take a picture first and then search? How do you
- 11 do it?
- 12 A: Like I said, usually what we try to do is have one person
- 13 designated to take photographs and they'll try to get overall
- 14 shots of the house before we start searching, and then as we
- 15 start searching, if we find a certain item, then they'll go
- 16 photograph that item and then we may take additional photos.
- 17 Say if it's bagged up in bags, a lot of times we'll take them
- 18 out and photograph them that way.
- 19 Q: You'll take them out and you'll what? I missed that last
- 20 part.
- 21 A: Photograph them.
- 22 Q: Photograph them, all right. Now, is this the kitchen
- 23 cabinet up under -- above the microwave in State's 15?
- 24 A: Yes, sir.
- 25 Q: Did you open that cabinet?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: One of the other officers did.

2 Q: Did you go see -- did somebody call to your attention
3 that there might be something in that cabinet?

4 A: That's correct. They did.

5 (Whereupon, four color photographs are presented to the
6 witness.)

7 Q: All right and looking at State's 16, State's 17, State's
8 18, State's 19, do you recognize those?

9 A: Yes, sir. These are the inside of the cabinet and the
10 items that were found inside.

11 Q: And that's inside the cabinet that's depicted on State's
12 15; correct?

13 A: Yes, sir.

14 MR. MEADORS: Your Honor, State's 15, 16, 17, 18, and 19,
15 we'd offer into evidence.

16 THE COURT: All right. Mr. Brooks, any objection?

17 MR. BROOKS: No objection.

18 THE COURT: These will be -- 16, 17, 18, and 19 are
19 admitted without objection and may be published to the jury.

20 MR. MEADORS: Thank you, Your Honor.

21 Q: What is State's 16, Investigator Dubose?

22 A: This is items inside. It's a baggie with ---

23 Q: Can you hold that up so they can see as you're talking?

24 A: There's a plastic bag and inside that plastic bag is a
25 quantity of white powder substance. You have baking soda.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 You have a measuring jar, Pyrex dishes, and there you have a
2 fork. You have some additional baggies back there. You have
3 a razor blade. Those items were found in there.

4 Q: There appear to be other items in there. Baking soda?

5 A: Yes, sir.

6 Q: Based on your training and -- how many years have you had
7 in narcotics?

8 A: Six years.

9 Q: In the -- in the drug field, what is baking soda --
10 baking soda used for?

11 A: Baking soda is a -- is an ingredient used where they mix
12 the cocaine with the -- the baking soda and I believe they add
13 water and then they actually put it in the microwave and cook
14 it.

15 Q: Cook it into what?

16 A: In the microwave.

17 Q: I understand that, but you cook it into ---

18 A: Cook it into crack cocaine.

19 Q: Crack cocaine?

20 A: That's correct.

21 Q: All right. Now, there appear to be some -- are there
22 razor blades in there?

23 A: Yes, sir.

24 Q: Can you based on your experience and training and
25 knowledge tell the ladies and gentlemen of the jury what, if

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 anything, razor blades are used for in the -- in the
2 production ---

3 A: Razor blades are used to cut the -- the crack up into
4 smaller pieces where it would be sold individually.

5 Q: Now, States 17, Investigator. Once you open the cabinet
6 and take a picture of that, do you further then look at some
7 of the items to see what they are?

8 A: Yes, sir.

9 Q: All right. And State's 17, what is that? If you could,
10 hold that up so the ladies and gentlemen can see it.

11 A: In that bag, it's just one bag with the items. You can't
12 see what the items are. This photo is the items taken out of
13 the bag. You have three bags of a white powder substance
14 there.

15 Q: So you photograph the cabinet, open the cabinet,
16 photograph it, take it out, and then photograph it inside;
17 correct?

18 A: Yes, sir.

19 Q: Now, State's 18, can you tell the ladies and gentlemen of
20 the jury what that is?

21 A: That would have been other razor blades we located in
22 that cabinet. There's a total of four razor blades there.
23 This little sheet here with the blue mark on it, that is what
24 we call a cocaine -- cocaine test swipe, and it's just
25 something used in the field for officers if they find a

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 substance. If they don't know if it's baking soda or baby
2 powder or what it might be, you can use that swipe, and if it
3 turns blue, that tells you that it field tests positive for
4 cocaine.

5 Q: And the field in your business would be the house where
6 you were when you're out in the field. In this case, when
7 you're in the residence you're searching for; correct?

8 A: That's correct. I'm not a chemist so I can't tell you
9 what it is, but that is just a tool we use to say that, hey,
10 this item tests positive.

11 Q: And that tests positive for?

12 A: It did.

13 Q: For?

14 A: For cocaine.

15 Q: And is there a chemist coming in later today or tomorrow
16 to testify about the results of these? Correct?

17 A: Yes, sir.

18 Q: And let me -- you said -- that was State's 18. Let me go
19 back on State's 17. Is State's 18 the bottom shelf of State's
20 17?

21 A: Yes, sir.

22 Q: So it's not the same shelf where the baking soda is.
23 It's below the other shelf; correct?

24 A: Right. I believe there might have been two or three
25 shelves inside of that cabinet.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And then State's 19, is that just another picture of the
2 bottom shelf?

3 A: That's correct.

4 MR. MEADORS: I beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 Q: Referring back to State's 16, there appears to be a clear
7 glass object here with a fork coming out of it?

8 A: Yes, sir.

9 Q: Do you see what I'm talking about? What is that?

10 A: It's a measuring dish or a Pyrex dish.

11 Q: And is it right next to the baking soda?

12 A: Yes, sir, it is.

13 Q: Now, did you do anything with that measuring bowl or
14 container?

15 A: We pulled the jar or the dish out of the cabinet and it
16 was also swiped. You can also see in the -- in the bottom of
17 it the blue wipe.

18 Q: Okay, let me stop you. This is State's 20?

19 (Whereupon, a color photo is presented to the witness.)

20 A: Yes, sir.

21 Q: What is that?

22 A: That is the Pyrex dish or actually two Pyrex bowls with a
23 fork.

24 Q: And did they come out of State's 16?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: Your Honor, State's 20.

2 THE COURT: Any objection, Mr. Brooks?

3 MR. BROOKS: No objection.

4 THE COURT: Without objection, State's Exhibit 20 is
5 admitted into evidence and may be published to the jury.

6 MR. MEADORS: Thank you, Your Honor.

7 Q: So why did you pull -- you said Pyrex dish. Why did you
8 pull the measuring bowl, as I would call it, out of the
9 cabinet and look at it further?

10 A: We pulled it out to look and we saw the items that were
11 there consistent with someone that may have been manufacturing
12 crack cocaine. We pulled it out to look at it and it did have
13 some -- some residue down in the -- the dishes.

14 Q: So the measuring bowl and the fork are consistent with?

15 A: With manufacturing crack cocaine.

16 Q: And you field tested it?

17 A: Yes, sir. We swiped the dish.

18 Q: And what was the result of that?

19 A: It also tested -- field tested positive.

20 Q: For?

21 A: For crack cocaine.

22 Q: Okay.

23 A: Or cocaine.

24 Q: Cocaine?

25 A: Cocaine.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 (Whereupon, a color photograph is presented to the
2 witness.)

3 Q: State's 21, what -- do you recognize this?

4 A: That was a cup with a -- just a empty plastic bag in it
5 that was located on the bottom shelf also.

6 MR. MEADORS: Your Honor, State's 21.

7 THE COURT: Any objection, Mr. Brooks?

8 MR. BROOKS: No objection.

9 THE COURT: State's Exhibit 21 is admitted without
10 objection and may be published to the jury.

11 Q: Okay and you located this where? State's 21?

12 A: I believe that would have been on the second shelf of the
13 cabinet.

14 Q: And it's a bowl; right?

15 A: In the kitchen cabinet.

16 Q: The bowl?

17 A: Yes, sir.

18 Q: All right. What, if anything, did you do to this bowl to
19 see if it might be potential evidence to -- to show a jury
20 like we have?

21 A: It was just -- I believe that one was just photographed.

22 Q: And field tested for anything?

23 A: No, sir. I don't -- I don't believe so.

24 Q: So out of the kitchen, what potential evidence had you
25 gathered?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Well, we've got the -- the baggies, three baggies with
2 white powder substance. We've got Pyrex dishes, the fork, the
3 razor blades, which field tested positive for cocaine, in the
4 kitchen area.

5 Q: Now, I noticed you had testified earlier I believe about
6 a microwave and I know it's a regular old microwave, but is
7 that something that's in your experience used in the
8 manufacturing of -- the making of crack?

9 A: Microwaves are commonly used. You can use others.

10 Q: Did you look in the microwave?

11 A: We did.

12 (Whereupon, a color photograph is presented to the
13 witness.)

14 Q: All right. State's 23, what is that?

15 A: That is the turntable, the glass plate inside the
16 microwave, and then I swiped the -- that plate.

17 Q: One second, I'm sorry.

18 MR. MEADORS: Your Honor, State's 23.

19 THE COURT: Any objection, Mr. Brooks?

20 MR. BROOKS: No objection.

21 THE COURT: Without objection, State's Exhibit 23 is
22 admitted.

23 MR. MEADORS: Thank you, sir.

24 Q: Tell the ladies and gentlemen of this jury, Investigator
25 Wayne Dubose, what did you do with the bottom plate in the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 microwave?

2 A: I got another cocaine test swipe and swiped the -- the
3 tray inside, and it also field tested positive for cocaine.

4 Q: What do you -- what did you do with these items?

5 A: All these items were placed into evidence. They were
6 placed into -- all the drug items were placed into a BEST kit
7 and submitted into evidence.

8 MR. MEADORS: I beg the Court's indulgence. I'm sorry.

9 Q: The items that you found in the kitchen cabinet ---

10 A: Yes, sir.

11 (Whereupon, the witness is presented with a bag.)

12 Q: Can you pull those out?

13 (Whereupon, the witness complies.)

14 A: These are the items that was found in the kitchen
15 cabinet.

16 MR. MEADORS: For identification at this point, State's
17 27, Your Honor.

18 Q: These are the drugs you got from the kitchen cabinet?

19 A: Yes, sir.

20 MR. MEADORS: Well, we'll go ahead and offer them into
21 evidence, Judge, State's 27.

22 THE COURT: Any objection, Mr. Brooks?

23 MR. BROOKS: No objection.

24 THE COURT: Without objection, these are -- which is
25 this?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: Your Honor, this is State's 27.

2 THE COURT: Twenty-seven is admitted.

3 Q: And these are the drugs that are in the pictures depicted
4 from the kitchen?

5 A: They are. Yeah, the photos in the kitchen shows the bags
6 and all and let me explain to you what was there. The baggies
7 that they were in ---

8 Q: That was my next question.

9 A: Those baggies, the chemist would actually remove the
10 item. Those Ziploc bags that you see them in there, the
11 chemist actually removes them from the original bag, tests the
12 stuff, and places it back in his own bag with it marked.
13 These are the baggies that everything came out of. They're
14 just common sandwich bags.

15 MR. MEADORS: Your Honor, State's 28.

16 THE COURT: Any objection, Mr. Brooks?

17 MR. BROOKS: No objection.

18 THE COURT: Without objection, State's Exhibit 28 is
19 admitted.

20 Q: And are these drugs kept protected or in a -- in a
21 secured facility until SLED can come -- they can be sent to
22 SLED and tested?

23 A: They are. When I took the drug evidence that day, I
24 placed them into a BEST kit. I placed all the items -- all
25 the drug items into a ---

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And, Investigator, what's a BEST kit?

2 A: It's a Best Evidence Sampler Kit, which is a kit that we
3 used to send them to SLED, but at the time we had our own
4 chemist and we do now, and then our own chemist analyzes the
5 drugs here in Sumter so we don't have to send them to SLED.
6 What I would have taken the cocaine and the crack cocaine,
7 they had to have been -- at the time, they had to be placed
8 into a BEST kit. This would be the kit and along with the
9 other baggies that were placed inside. The control number on
10 this was S-C-0-0-0-9-2-9. I would have placed all the drug
11 evidence, the crack cocaine and cocaine in here, signed it,
12 and sealed it, and I placed it into the drug evidence locker
13 and that locker has an alarm on it. Then the evidence
14 technician would have got it out, turned it over to the
15 chemist, and it would have been analyzed.

16 Q: And your chemist at that time was -- who was that?

17 A: The chemist at that time was Mitch Hansen.

18 MR. MEADORS: Your Honor, the BEST kits that contain the
19 drugs which are now identified as State's 29 we'd offer into
20 evidence.

21 THE COURT: Any objection, Mr. Brooks?

22 MR. BROOKS: No objection.

23 THE COURT: Without objection, State's Exhibit 29 is
24 admitted.

25 Q: Did you locate any other potential evidence of drug

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 activity in the residence at [REDACTED]

2 A: We did. Just as we were fixing to leave out the

3 residence, we were sitting at the kitchen table ---

4 Q: And you say we. Who's sitting at the kitchen table?

5 A: Myself and Ms. Gibbs. We were sitting at the kitchen

6 table. I was documenting evidence and she was seeing what we

7 were bringing out, and we looked in her purse that was sitting

8 on the kitchen table. It was somewhat closed. It was not

9 zipped, but it was fairly closed. We opened up the -- I asked

10 to look in her purse, opened up the purse, and in the top of

11 the purse there was a bag of baby wipes and they were -- they

12 were open. You could tell they had been used, but we could

13 see as soon as you opened the purse up that there was a bag of

14 -- or there was marijuana and we took that out and found there

15 was marijuana and also what was believed to be crack cocaine

16 and cocaine in those bags.

17 Q: Did you ask Ms. Gibbs if you could look in there?

18 A: I did and then when I opened it up, that's what we saw.

19 Q: And did she say you could look in there?

20 A: Yes, sir.

21 (Whereupon, two color photographs are presented to the

22 witness.)

23 Q: State's 24 and State's 25, do these depict the purse that

24 you just discussed? You can just say yes or no.

25 A: That does, yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: State's 24 and State's 25, Your Honor, we
2 now offer into evidence.

3 THE COURT: Any objection, Mr. Brooks?

4 MR. BROOKS: No objection.

5 THE COURT: State's 24 and 25 are admitted into evidence

6 ---

7 MR. MEADORS: And ---

8 THE COURT: --- without objection.

9 Q: Is 25 kind of a farther shot back than State's 24, if I
10 said that right? Is this closer than State's 24?

11 A: Yes, sir.

12 Q: And can you show the jury what you just testified to?

13 A: This would have been the purse. We just opened it up and
14 this yellow bag is the bag of baby wipes. Then if you'll see
15 down here at the bottom, you can see it looks like two small
16 bags of marijuana, and the flash has got it where you really
17 can't tell, but there's a bag of white powder in there also.

18 Q: Okay and did you retrieve this -- what did this appear to
19 you to be?

20 A: As soon as I seen the -- the bag -- the green leafy
21 stuff, I knew that to be marijuana, and I believed the other
22 one to be crack cocaine and cocaine, and I immediately asked
23 Ms. Gibbs what is this and she was shocked. She said I don't
24 know.

25 Q: So it was -- was it on the top of the purse or buried at

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 the bottom?

2 A: It was on the very top. As soon as you opened it up,
3 that's how it set.

4 Q: Okay and did you retrieve these items from here?

5 A: I did.

6 Q: Okay and do you have that with you today?

7 A: I do.

8 MR. MEADORS: Your Honor, the State would now offer
9 State's 30.

10 THE COURT: Any objection, Mr. Brooks?

11 MR. BROOKS: No objection.

12 THE COURT: State's Exhibit 30 is admitted without
13 objection.

14 Q: And -- and based on your training, experience, and just
15 your good old eyes, what did this appear to be when you looked
16 at it?

17 A: It appeared to be marijuana and it appeared to be crack
18 cocaine. Also, if you hand me that bag, also in this bag here
19 is a ---

20 Q: And again refer to it for the record. When you say this
21 is -- we're looking at State's 30?

22 A: Thirty. That little blunt, that was the blunt that was
23 located. I believe that was -- I didn't bring that in, but
24 that small blunt was located in the ashtray in the -- in the
25 bedroom.

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1 Q: Is that perhaps what you had smelled?

2 A: Yes, sir, I believe it was.

3 (Whereupon, a color photograph is presented to the

4 witness.)

5 Q: Do you recognize State's 7?

6 A: That would be a small marijuana blunt in the ashtray and

7 that was located in the bedroom where the pants were -- where

8 I retrieved the pants from.

9 Q: Okay.

10 MR. MEADORS: State's 7, Your Honor.

11 THE COURT: Any objection, Mr. Brooks?

12 MR. BROOKS: No objection.

13 THE COURT: Without objection, State's Exhibit 7 is

14 admitted.

15 Q: And the other item came from State's 30; correct?

16 A: That's correct.

17 Q: The other -- the blunt and what you believe to be crack?

18 A: That's correct.

19 Q: When I say State's 30, that's the picture of the purse;

20 correct?

21 A: Thirty?

22 Q: Excuse me. Thirty which came from the purse?

23 A: That's correct.

24 Q: Were you finished with your search?

25 A: Yes, sir. At that time, we finished with the search.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Did you also locate any cash in Ms. Kimberly Gibbs'
2 purse?

3 A: Locate any what?

4 Q: Cash in Ms. Gibbs' ---

5 A: I believe we located like \$40 in her purse.

6 Q: Now, did you locate any firearms?

7 A: Yes. We located two firearms in the residence.

8 Q: Tell me about those? Can you tell me where you located
9 them?

10 A: One, we located a .38 caliber revolver we located in the
11 hallway closet by the bedroom and it was kind of adjacent to
12 the living room. We located it in the closet along with a .45
13 caliber ammunition clip and some bullets, and then directly
14 below that or in the little hallway area, there is a return
15 vent for the air conditioner, I don't know, probably two foot
16 by four foot. It's a vent. That's a common place that we
17 find drugs in houses. That's a common place that people hide
18 their drugs and guns. An officer picked up that grate and we
19 found a .45 caliber handgun down in that return.

20 MR. MEADORS: And I beg the Court's indulgence for one
21 second.

22 (Whereupon, a box is presented to the witness.)

23 Q: This is State's 31. Would you just tell me is this --
24 please tell the Court -- the judge and the jury, is that what
25 you just testified about?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: It is.

2 (Whereupon, the box containing two firearms and an
3 ammunition clip is marked as State's Exhibit Number 31.)

4 MR. MEADORS: Your Honor, State's 31.

5 THE COURT: Any objection, Mr. Brooks?

6 MR. BROOKS: No objection.

7 THE COURT: Without objection, State's Exhibit 31 is
8 admitted.

9 Q: Now, are these firearms -- are they -- as I think
10 required by Your Honor, there's no way these could fire; is
11 there?

12 A: No, sir. They have ---

13 Q: Why is that?

14 A: --- locks on them. They have locks through the -- the
15 barrels of them. There's no way to load them and fire them.

16 (Whereupon, a color photograph is presented to the
17 witness.)

18 Q: First, do you recognize State's 12?

19 A: That is a photo of the revolver and that was located in
20 the hall closet.

21 MR. MEADORS: State's 12, Your Honor. I don't believe
22 I've offered it officially for the record.

23 THE COURT: Any objection, Mr. Brooks?

24 MR. BROOKS: No objection.

25 THE COURT: State's Exhibit 12 is admitted without

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 objection, the photos of the firearms.

2 (Whereupon, a color photograph is presented to the
3 witness.)

4 Q: If you look at State's 11, do you recognize this?

5 A: That would be the closet where the -- the revolver was
6 located.

7 MR. MEADORS: Your Honor, State's 11.

8 THE COURT: Any objection?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, State's Exhibit 11 is
11 admitted.

12 A: That's just the hallway closet, not in the bedroom.

13 Q: The hallway closet? And you located State's 12 in this
14 closet?

15 A: One of the other officers located it and they told me and
16 I actually came and took it into evidence.

17 Q: And what is State's 12?

18 A: Sir?

19 Q: What is this? State's 12?

20 A: It is a .38 caliber revolver. It's a Taurus.

21 Q: A Taurus?

22 A: Yes, sir.

23 Q: Now, I believe you testified before this you located the
24 other firearm, which is a what?

25 A: It was a .45 caliber handgun.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 (Whereupon, a color photograph is presented to the
2 witness.)

3 Q: Do you recognize State's 14?

4 A: That's a photo of the -- the gun that was located by the
5 return or in the return.

6 MR. MEADORS: State's 14, Your Honor.

7 THE COURT: Any objection to State's Exhibit 14, Mr.
8 Brooks?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, State's Exhibit 14 is
11 admitted.

12 Q: State's 14, after you had consent to search, something is
13 over this hole; right?

14 A: There is -- there is a -- a grate, a cover.

15 Q: So that was removed?

16 A: Yes, sir.

17 Q: And this was found as depicted in the picture?

18 A: Yes, sir.

19 Q: And again, what is this?

20 A: It's a .45 caliber handgun, automatic.

21 Q: Now, you testified earlier I believe about a clip you
22 found; correct?

23 A: Yes, sir.

24 Q: And where did you find the clip?

25 A: That clip was in the hallway closet also where the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 revolver was located.

2 (Whereupon, a color photograph is presented to the
3 witness.)

4 Q: Is that depicted in State's 13?

5 A: It is.

6 MR. MEADORS: Your Honor, the State would now offer
7 State's Exhibit Number 13 into evidence.

8 THE COURT: Any objection, Mr. Brooks?

9 MR. BROOKS: No objection.

10 THE COURT: Without objection, 13 is in evidence.

11 Q: So State's 13 -- depicted in State's 13 is what?

12 A: That is a small blue box with an ammunition clip, and
13 there was also a box of bullets for I believe a 9mm, bullets
14 that was located. We did not locate a 9mm.

15 Q: And you took those bullets into evidence; correct?

16 A: That's correct.

17 Q: And again, this tray -- it's your testimony that that
18 clip was found in State's 11?

19 A: Yes, sir.

20 Q: And that's the hall closet?

21 A: Yes, sir.

22 (Whereupon, a color photograph is presented to the
23 witness.)

24 Q: Now, State's 6. I'm just trying to go through here. So
25 do you also recognize that as the bedroom in the residence?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Or, excuse me, a room in the residence?

2 A: That was another room in the residence.

3 (Whereupon, a color photograph is presented to the

4 witness.)

5 Q: And State's 5, is that also another room in the

6 residence?

7 A: It is, yes, sir.

8 Q: Is this a three bedroom house?

9 A: Yes, sir.

10 MR. MEADORS: Your Honor, State's 5 and 6 we'd offer into

11 evidence.

12 THE COURT: Any objection, Mr. Brooks?

13 MR. BROOKS: No objection.

14 THE COURT: State's Exhibit 5 and 6 are admitted into

15 evidence.

16 Q: Where's this box? I just thought of it. Where's this

17 box this gun came in?

18 A: I don't know. If it's not in here, we may not have taken

19 the box. We may have just taken the gun out of it.

20 Q: But that is the same gun?

21 A: That is the same gun.

22 Q: That came out of the hall closet?

23 A: Yes, sir. We documented the serial numbers.

24 Q: So you document the serial number you took down and

25 that's the same serial number there?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yes. The automatic is U-S-5-0-1-6-9-0 and that matches
2 the serial number on that gun. The serial number on the
3 Taurus is 7-8-1-7-8-5 and it also matches the serial number.

4 Q: Thank you.

5 MR. MEADORS: Thank you for Your Honor's patience.

6 (Whereupon, a color photograph is presented to the
7 witness.)

8 Q: Investigator, I'm going to ask you if you'd look at
9 State's 22 and tell me if you recognize that?

10 A: Yes, sir.

11 Q: And does it relate to the search of [REDACTED]

12 A: Yes, sir.

13 MR. MEADORS: State's 22, Your Honor.

14 THE COURT: Do you have any objections, Mr. Brooks?

15 MR. BROOKS: No objection.

16 THE COURT: Without objection, State's Exhibit 22 is
17 admitted and may be published to the jury.

18 Q: Tell the ladies and gentlemen of the jury what is
19 depicted in State's 22, Investigator?

20 A: Three boxes of sandwich bags that were located in the
21 kitchen cabinet and those have -- those bags are similar to
22 the bags that were located that held the cocaine and the crack
23 cocaine, and they are also typical for people who possess
24 drugs or whatever to store the drugs in.

25 Q: What -- where were these located? Was this in the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 kitchen cabinet ---

2 A: They were located ---

3 Q: --- or was it in some ---

4 A: I believe they were located in the kitchen cabinet or one

5 of the cabinets in the kitchen.

6 Q: Now, at some point after Mr. Gibbs had left with the

7 officers, did those officers return back to [REDACTED]

8 [REDACTED] before you left?

9 A: Yes, sir, they did.

10 Q: And without saying what they said, did you document what

11 they told you the defendant had said on the way to the jail?

12 A: Yes, sir.

13 Q: Without saying what it is, did you document it?

14 A: I did.

15 Q: Okay and did they tell you that as soon as they came back

16 to [REDACTED]

17 A: They did.

18 Q: Now, you also found or somebody found some mail there;

19 correct?

20 A: Yes, sir.

21 Q: It appeared to be undelivered mail?

22 A: There was.

23 Q: All right. Had the -- was it -- did you eventually learn

24 that Ms. Kimberly Gibbs was a rural postal carrier for the

25 post office and she'd missed a delivery or two?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: That's correct.

2 Q: And that -- those items were -- did you call in the
3 postal service about those?

4 A: That's correct. We found the undelivered mail and we
5 contacted the postal service, and the postal inspector came to
6 the residence and he took possession of all the mail -- all
7 the undelivered mail that was in the residence.

8 Q: And let me go back to State's 1 for ID at this point. As
9 you're searching the residence, did you document on State's 1
10 what you got?

11 A: Yes, sir, on the bottom of the Consent to Search
12 document. There's actually two pages to this, the top copy
13 and a carbon copy. We document what we take from the
14 residence and we keep a copy and then we -- I gave Ms. Gibbs
15 the other copy of it of what we took from the house.

16 Q: But it's the same thing. You're not saying there's
17 another page to it; there's just a carbon copy, two pages of
18 the same thing?

19 A: That's correct.

20 Q: But you documented on here what you took from the house?

21 A: That's correct.

22 Q: And gave it to her?

23 A: That's correct.

24 Q: As a result of the items that you found at [REDACTED]
25 did you have an occasion to see Mr. Gibbs the next day?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: I did.

2 Q: All right and where was that?

3 A: It was at the Sumter Lee Regional Detention Center where
4 I went to serve the warrant on him for the stuff that we found
5 that day also.

6 Q: And tell the ladies and gentlemen your procedure
7 specifically on Christmas Eve 2008. Did you have an occasion
8 as you were serving warrants for these new -- this evidence
9 you found; correct? Did you read Mr. Leroy Clifton Gibbs --
10 Clifton -- Leroy Gibbs his Miranda rights?

11 A: I did.

12 Q: And how did you do it?

13 A: I went out to the jail. I had the warrants and as I
14 always do before I serve warrants, I read the person their
15 rights again.

16 Q: And is that like you do it? Is that what you do? You --
17 literally, is that your habit? You just go get your card out?

18 A: I just took it out and put it in my pocket today, but I
19 usually keep one in my wallet or my briefcase or my folder,
20 whatever I carry with me. I usually have it in my wallet or
21 some type of sheath with me.

22 Q: But you always use the card to go -- to go by?

23 A: Yes, sir.

24 Q: Would you read the rights to the ladies and gentlemen of
25 this jury like you did to Mr. Gibbs on December 24th?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: You have the right to remain silent. Anything you say
2 can and will be used against you in court. You have a right
3 to consult with an attorney and have an attorney present
4 during questioning. If you cannot afford an attorney, one
5 will be provided before questioning at no cost. And I ask if
6 they understand the rights and if they want to talk to me.

7 Q: And did he understand?

8 A: Yes, sir, he understood.

9 Q: And in the process of reading the warrants to him, what
10 we're here about today, this case, did you have interaction
11 with him as far as here's what you're charged with and -- and
12 my point being as you were talking to him, did -- did Mr.
13 Gibbs appear to be under the influence of any alcohol, drugs,
14 or any other intoxicant on December 24th? He was in jail;
15 right?

16 A: That's correct. He was not.

17 Q: And did he appear to understand these rights as you read
18 them to him?

19 A: Yes, sir, he did.

20 Q: And as -- as you were talking to him that day, I mean
21 serving the warrants and talking to him, did you -- could you
22 understand the words he said to you?

23 A: Yes, sir.

24 Q: I mean were you able to understand him?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: All right and then whatever y'all talked about in the
2 serving the warrant process, were -- were responses timely?
3 If you asked him something, would it be a timely response?

4 A: Yes, sir.

5 Q: And would it be subject appropriate? I mean what -- he
6 seemed to understand what's going on?

7 A: Yes, sir.

8 Q: All right and did you at any point the day before at his
9 house -- I don't know if I asked you that before, but if not,
10 then and now specifically on December 24th hold out any hope of
11 reward or promise of any kind to Mr. Gibbs in exchange for a
12 statement he might give you?

13 A: No, sir, I didn't.

14 Q: Either on the 23rd or the 24th?

15 A: No.

16 Q: Did you threaten? Coerce? Were you mean to him to try
17 to get him to give you a statement?

18 A: No, sir.

19 Q: After you served the warrant on him -- these charges on
20 him, did you confront him with the statement that he had told
21 the police officers on the day you had documented the day
22 before about what he had told them?

23 A: I did ask him about that.

24 MR. MEADORS: And, Your Honor, they -- the officer will
25 be testifying so at this point just I'm not trying to get the

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 truth of the matter asserted, but his response to it. I'd ask
2 at this point that his interaction with the defendant when he
3 said did you make this statement, what his response was.

4 THE COURT: Any objection, Mr. Brooks?

5 MR. BROOKS: I would object until they bring that
6 particular officer to testify. I understand what he's saying,
7 but I want to put my objection on the record to that.

8 MR. MEADORS: I don't know if there's any other way to do
9 it except sit him down, but I'm not offering it now for the
10 truth. I'm offering for his response. These officers are
11 going to come in next witness and give this what he said, but
12 ---

13 THE COURT: I overrule your objection.

14 Q: Did you confront him with what the officer said he had --
15 he, the defendant Mr. Gibbs, had told them on the way to the
16 jail the day before?

17 A: I asked him about what the officers told me that he said
18 in the vehicle while they were transporting him to the jail.

19 Q: And that statement was?

20 A: The statement that ---

21 Q: That he told the officer.

22 A: --- he made in the car?

23 Q: Yes, sir.

24 A: Sergeant Horton and Sergeant Moore ---

25 Q: Can you just say the statement?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 A: Selling drugs was a lifestyle for him.

2 Q: Selling drugs was a lifestyle for him. Did you confront
3 him with that statement when you were there at the jail,
4 Sumter Lee Regional Detention Center, the next day on December
5 24th?

6 A: I did. I asked him about that statement.

7 Q: All right and what was his response?

8 A: His response to that is he had to support his family.

9 Q: And in addition to that, did you also -- did you tell him
10 what the new charges were? I mean isn't that what you do?
11 Did you say here's what was found at your residence and here's
12 what the warrants you've got?

13 A: I read him all the warrants we obtained the day before,
14 the trafficking, the manufacturing, and the possession of the
15 cocaine. I read him all those warrants and then he told me at
16 that time ---

17 Q: Specifically, what did he tell you word for word?

18 A: Then he was Mirandized. He advised that none of the
19 items was his because he did not live at the residence. He
20 said it must have been his wife's -- or no. He said that his
21 wife must have had someone else there because it wasn't his
22 and it had to be hers.

23 Q: They weren't his. He didn't live there. His wife must
24 have had somebody else there because it was not his and it had
25 to be hers?

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: That's correct.
- 2 Q: And that's all the conversation at the jail; right?
- 3 A: Yes, sir.
- 4 Q: Is [REDACTED] in Sumter County?
- 5 A: Yes, sir, it is.
- 6 Q: And the individual that you served the warrants on on
- 7 December 24th of '08 and who gave you the -- well, the
- 8 individual who on December 23rd told you I don't live here and
- 9 the individual on December 24th who said I made that statement
- 10 because I have to support my family and the statement that
- 11 Kimberly must have had somebody else there and that it must be
- 12 hers, is that person in this courtroom?
- 13 A: That's the defendant, Mr. Gibbs.
- 14 Q: Sitting next to Mr. Brooks?
- 15 A: Yes, sir.
- 16 MR. MEADORS: And we'd ask the record so reflect.
- 17 THE COURT: The record so reflects that the witness has
- 18 pointed out the defendant.
- 19 MR. MEADORS: And can I beg Your Honor's patience for one
- 20 second?
- 21 THE COURT: You may.
- 22 Q: There weren't any scales in this case; were there?
- 23 A: No, sir. I don't recall any scales.
- 24 Q: You had razors?
- 25 A: We had razors, Pyrex dishes, a fork, baking soda, and

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 then the microwave.

2 Q: Okay.

3 MR. MEADORS: Your Honor, I think that's all we have at
4 this time. Thank you, sir.

5 THE COURT: All right, thank you. Now seems to be an
6 appropriate time to take a break. So, ladies and gentlemen,
7 I'm going to send you back to the jury room for about fifteen
8 minutes. Get you a coffee or a Coca-Cola or something like
9 that. If you need to smoke, one of the bailiffs will escort
10 you outside where you can smoke. Ladies and gentlemen, please
11 do not discuss anything about the case while you're back
12 there. Thank you.

13 (Whereupon, the jury exits the courtroom at 11:11 a.m.)

14 THE COURT: All right. We'll be in recess for fifteen
15 minutes. Mr. -- Officer Dubose, I remind you you're on the
16 stand so you can't discuss anything with your attorneys at
17 this point. You may get off the stand to go to the rest room.

18 THE WITNESS: Okay.

19 THE COURT: Court's in recess.

20 MR. MEADORS: Thank you, Your Honor.

21 (Whereupon, there is a break in the proceedings from
22 11:12 a.m. until 11:28 a.m.)

23 THE COURT: Anything we need to bring up before we bring
24 our jury back in?

25 MR. MEADORS: Not from the State, Your Honor.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 THE COURT: All right.

2 MR. BROOKS: Nothing.

3 THE COURT: All right. Let's bring our jury back in.

4 (Whereupon, the jury enters the courtroom at 11:29 a.m.)

5 THE CLERK: Your Honor, we have all the jurors present in
6 the courtroom.

7 THE COURT: Thank you, Mr. Bradley. All right, Mr.
8 Brooks, you may cross examine the witness.

9 CROSS EXAMINATION

10 BY MR. BROOKS:

11 Q: Investigator Dubose?

12 A: Yes, sir.

13 Q: How are you doing?

14 A: Pretty good.

15 Q: Now, I heard you when Mr. Meadors was asking you
16 questions. You've been in law enforcement for about sixteen
17 years?

18 A: Sixteen, that's right.

19 Q: And you've been an investigator for how long?

20 A: Three years. No, six years, about six and a half years.

21 Q: Okay and this case you acknowledge is about -- it's been
22 about four and half years since you went to this residence; is
23 that correct? December of 2008 and we're in June 2013,
24 roughly four and a half years? And I'm sure in that time span
25 you have had numerous other cases that you've been

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 investigating on; is that correct?

2 A: Yes, sir.

3 Q: And you've talked to numerous witnesses during that time
4 span and you've filled out numerous reports; isn't that
5 correct?

6 A: Yes, sir.

7 Q: Okay. So a great deal of what you are probably recalling
8 in this particular incident, you're relying on your notes; is
9 that correct?

10 A: Yes, sir.

11 Q: Your notes and reports and things that you have submitted
12 to the Solicitor's Office; isn't that correct?

13 A: Yes, sir.

14 Q: Okay and what you have testified to earlier is you said
15 that my client said he didn't live there and that these items,
16 whatever was found, had to belong to Kimberly or that she had
17 other people staying there; isn't that correct?

18 A: Yes, sir.

19 Q: Okay and that that's what he had indicated initially when
20 you questioned him; is that correct?

21 A: Yes, sir.

22 Q: Okay and that was after -- as you said, after you pulled
23 out of your vest your card with those Miranda warnings as Mr.
24 Meadors has questioned -- asked you about earlier; is that
25 correct?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

- 1 A: Yes, sir.
- 2 Q: Okay. Now, in your sixteen year span of being in law
3 enforcement, you always -- you also did patrol; is that
4 correct?
- 5 A: Yes, sir.
- 6 Q: Okay and when you were on patrol you had your own patrol
7 car?
- 8 A: Yes, sir.
- 9 Q: And in that patrol car, it has a radio; isn't that
10 correct?
- 11 A: Yes, sir.
- 12 Q: And on that radio is all types of things coming across
13 the radio, basically all -- at all times while you're driving
14 that car. Some of it may pertain to you personally as
15 something for you to do or they may be talking about something
16 else, but you are hearing that all the time; isn't that
17 correct?
- 18 A: As far as like dispatchers and other officers?
- 19 Q: Exactly.
- 20 A: Yes, sir.
- 21 Q: That's going on all the time; isn't that correct?
- 22 A: Yes, sir.
- 23 Q: There's always some chatter on the radio?
- 24 A: We always use 10 codes on the radio.
- 25 Q: Right and that's -- that's going on?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: Yes, sir.

2 Q: So it's -- it's -- it's more often than not, there's
3 chatter going on as opposed to know chatter going on; isn't
4 that correct?

5 A: That kind of depends. Sometimes the radio is quiet,
6 sometimes it's not.

7 Q: Okay, but more often than not, it's not quiet; isn't that
8 correct? When you were on patrol?

9 A: It depends. Sometimes you would go and it would be
10 quiet. You don't never say quiet because when you say quiet,
11 bad things happen.

12 Q: Okay.

13 A: But sometimes you have radio traffic, sometimes you
14 don't.

15 Q: Okay, but more often -- but is it fair to say that more
16 often when you were -- you were on patrol you did have radio
17 traffic?

18 A: Yes, sir.

19 Q: Okay. Now, also in this case, Kimberly Gibbs was also
20 charged with these offenses; isn't that correct?

21 A: Yes, sir.

22 Q: From the search at this particular location?

23 A: Yes, sir.

24 Q: Okay and she's not sitting at this table over here today;
25 is she?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

- 1 A: No, sir.
- 2 Q: Okay and when you showed up at the residence, my client
3 was cooperative when y'all detained him; is that right?
- 4 A: Yes, sir.
- 5 Q: The only thing he did was he asked for his pants?
- 6 A: That's right.
- 7 Q: Because he was in his boxers?
- 8 A: That's right.
- 9 Q: Okay and it was about end of the morning, early
10 afternoon, about middle of the day when you guys showed up at
11 the residence; is that correct?
- 12 A: I documented on my report it was twelve o'clock. It was
13 lunchtime when we got there.
- 14 Q: Okay. No better way to describe the middle of the day
15 other than noontime; is that right?
- 16 A: Yes, sir.
- 17 Q: You also indicated that you guys found undelivered mail
18 at the residence; right?
- 19 A: Yes, sir.
- 20 Q: And Ms. -- Ms. Kimberly Gibbs was a postal carrier; is
21 that right?
- 22 A: That's right.
- 23 Q: And this was mail that belonged to various residents in
24 the community, and she was charged with delivering that were
25 -- that was at her residence?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: That's correct.

2 Q: Okay, all right and you guys obviously felt compelled to

3 call the post office about this; is that correct?

4 A: We called them to take possession of the mail.

5 Q: And the -- they sent the inspector out to get that; is

6 that correct?

7 A: They did.

8 Q: Okay.

9 MR. BROOKS: No other questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. MEADORS: Can we approach?

12 THE COURT: You may.

13 (Whereupon, a bench conference is held off the record.)

14 REDIRECT EXAMINATION

15 BY MR. MEADORS:

16 Q: I'm going to show you what's marked 32. Just tell me if

17 you recognize it and does it -- does it relate to your

18 previous evidence -- previous testimony without saying what it

19 is?

20 (Whereupon, a paper bag is presented to the witness.)

21 A: I can't tell what it is yet. It's wrapped up pretty

22 tight. Can I go ahead and open it to see what's inside?

23 (Whereupon, the witness opens the bag.)

24 A: Yes, sir, it does.

25 Q: Okay.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 MR. MEADORS: Your Honor, we'd offer State's 27 [sic.]
2 for identification at this point.

3 THE COURT: For identification only at this time.

4 Q: Just a couple of brief questions. Mr. Brooks asked you
5 about the time span. Do you document what happened at or near
6 the time it happened?

7 A: Yes, sir.

8 Q: And is that referred to as the incident report?

9 A: Yes, sir. We do an incident report and we also do a --
10 just kind of summarize on a case summary.

11 Q: Okay and is that provided to me and we provide it to the
12 defense; correct?

13 A: Yes, sir.

14 Q: All right and -- and -- and you prepared that in this
15 case?

16 A: Yes, sir, I did.

17 Q: And document what happens when it happens; correct?

18 A: Yes, sir.

19 Q: All right and that does aid you when you come back to
20 testify; correct?

21 A: It does. It refreshes your memory.

22 Q: But that was prepared at or near the time when that stuff
23 happened; right?

24 A: Yes. That probably would have been done at least the day
25 or the next day.

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 Q: Now -- and it was twelve o'clock; right?

2 A: Yes, sir.

3 Q: When you did the search warrant.

4 MR. MEADORS: That's all. Thank you.

5 THE COURT: Any recross ---

6 MR. BROOKS: No.

7 THE COURT: --- to his redirect?

8 MR. BROOKS: No, sir.

9 THE COURT: All right. Thank you. You may step down.

10 (Whereupon, the witness leaves the stand at 11:41 a.m.)

11 MR. BROWN: Your Honor, we're bringing the officer in,

12 but it's going to be Lieutenant Dale Horton.

13 THE COURT: All right.

14 (Whereupon, there is a pause in the proceedings until the

15 witness enters the courtroom.)

16 THE COURT: Let me see the attorneys up here for just a

17 moment.

18 MR. BROWN: Yes, Your Honor.

19 (Whereupon, a bench conference is held off the record.)

20 THE COURT: Come forward, please, and be sworn.

21 THE CLERK: Place your left hand on the Bible and raise

22 your right hand. State your name, please.

23 THE WITNESS: Dale Horton.

24 THE CLERK: Do you solemnly swear or affirm your

25 testimony to the Court shall be the truth, the whole truth,

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Have a seat up here, please.

4 Watch your step. State your full name. Spell your last name
5 for the record.

6 THE WITNESS: Dale Horton, H-O-R-T-O-N.

7 LIEUTENANT DALE HORTON, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q: For the ladies and gentlemen of the jury, will you please
12 tell us what your rank is?

13 A: I'm a lieutenant for Sumter County Sheriff's Office.

14 Q: Just by way of background, can you please just let the
15 jury know who you are, where you're from, where you grew up?

16 A: I've been with the Sheriff's Office for sixteen years.
17 I'm the supervisor of the traffic team, I-95 team. I've been
18 in Sumter pretty much since 1989.

19 Q: Where did you go to high school?

20 A: Sumter.

21 Q: So you're a native from this area pretty much?

22 A: My dad retired here.

23 Q: Okay and so what do your duties include with the Sumter
24 County Sheriff's Department?

25 A: Like I said, I was -- I'm the I-95 supervisor, the

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 interdiction supervisor. I'm the patrol administration
2 lieutenant. I'm also the SRO supervisor, school resource
3 officer. And I'm also the civilian administration supervisor.
4 Q: In 2008, were you employed or did you work in the
5 capacity of the CAT team?
6 A: Yes. I was on the Community Action Team at that time.
7 Q: Okay and did you get brought along sometimes when -- when
8 warrants were being served?
9 A: Yes. That's a support role.
10 Q: I'm going to take you to the day of December 23rd, 2008.
11 Do you remember that day?
12 A: Yes, sir.
13 Q: And that's the day we're here today about?
14 A: Yes.
15 Q: Were you a part of the team that went to Leroy Clifton
16 Gibbs' house that day?
17 A: Yes. I was part of the -- we secured the -- the
18 residence, the yard area, to make sure when we go to serve a
19 warrant that the yard is secure.
20 Q: Okay. You set up a perimeter?
21 A: Perimeter.
22 Q: Were you there when -- when Mr. Gibbs was placed under
23 arrest that day?
24 A: I was. I was there. I was -- like I said, I was the
25 outside unit. He was placed under arrest, and myself and

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

- 1 Lieutenant Chris Moore transported him to the jail.
- 2 Q: Okay. Now, he was in y'all's patrol car? Y'all
- 3 transported him?
- 4 A: Right. It was Chris Moore's patrol car. He was the
- 5 driver and I was the passenger.
- 6 Q: Okay and -- and where was Mr. Gibbs in proximity to
- 7 y'all?
- 8 A: He was in the back seat.
- 9 Q: When y'all received him, was it to your understanding
- 10 that he was already under arrest?
- 11 A: Yes. He was under arrest and we were transporting him.
- 12 We had the tickets to go book him into the jail.
- 13 Q: Okay and so where did y'all start this transport? Was it
- 14 at his house?
- 15 A: From his residence.
- 16 Q: On [REDACTED]?
- 17 A: Yes.
- 18 Q: Is that in Sumter, South Carolina?
- 19 A: Yes.
- 20 Q: And where were y'all taking him?
- 21 A: To the jail over off of Winkles Road.
- 22 Q: Approximately how far of a drive is that, Officer?
- 23 A: With traffic, probably about fifteen minutes at the most.
- 24 Q: Okay. Is that about how long it took that day?
- 25 A: Yes.

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 Q: And take me into that car. I kind of want to get a feel
2 for what was going on. Were y'all having conversations with
3 Mr. Gibbs?

4 A: We weren't personally engaging in conversation with him,
5 but Mr. Gibbs was steadily talking and telling -- there was
6 just a lot of rambling going -- going on and then that's
7 whenever he -- he mentioned to us that selling drugs was a
8 lifestyle to him.

9 Q: Okay. Now, what was your reaction when that happened?

10 A: Whenever he made that comment saying that -- when he said
11 selling drugs was -- selling drugs is a lifestyle to me, as
12 soon as he said that, I looked over at -- at Chris Moore, not
13 really saying anything to Chris, but we looked at each other
14 saying I can't believe he just said that.

15 Q: Okay.

16 A: Because I was almost like in shock that he said that.

17 Q: Before he said that, were y'all asking him any questions
18 about what happened?

19 A: No. We didn't ask him any questions. It was just a
20 transport.

21 Q: All right. Tell me about what other noise was going on
22 in the car. Did y'all have your radio playing?

23 A: There was no -- as in music radio? That was not on.

24 Q: What about dispatch?

25 A: Well, because it was a -- a warrant sweep that we were on

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 a special channel, so the dispatch and all the regular traffic
2 that you would hear on a patrol radio was not going on.

3 Q: Okay. Following Mr. Gibbs' statement that selling drugs
4 is a lifestyle for me, did y'all ask him anything further?

5 A: No.

6 Q: Okay. Was anything else said by Mr. Gibbs on the car
7 ride there to your recollection?

8 A: Not -- not really that I can remember offhand. Like I
9 said, that -- that statement stuck out to me because we
10 normally don't hear something like that and someone doesn't
11 admit something like that.

12 Q: Okay. Did y'all complete the transport to Summer Lee
13 Regional?

14 A: We did. We booked him in and then ---

15 Q: What did you do after that?

16 A: We went back to on scene to help them gather evidence and
17 also to inform Investigator Dubose on what he said to us.

18 Q: And that was my next question. Did you go speak with
19 Investigator Dubose about this?

20 A: I went with Chris ---

21 Q: Mm-hmm.

22 A: --- Moore to -- and we both said it, but Chris is the one
23 that told him verbally what he said to us, and Investigator
24 Dubose ---

25 Q: Did you validate that also?

LIEUTENANT DALE HORTON - DIRECT EXAMINATION BY MR. BROWN

1 A: Right. He asked me and I said yes, and Investigator
2 Dubose documented it at that time.

3 Q: Okay. The man that you transported from [REDACTED] to
4 the jail and the man who made the statement selling drugs is a
5 lifestyle to me, is he here in this courtroom today?

6 A: Yes.

7 Q: Can you please point him out?

8 (Whereupon, the witness indicates the defendant.)

9 MR. BROWN: And I would ask the record reflect he's
10 identified the defendant.

11 THE COURT: The record will so reflect.

12 MR. BROWN: All right. The Court's indulgence?

13 (Whereupon, there is a pause in the proceedings.)

14 MR. BROWN: Please answer any questions that Mr. Brooks
15 has for you.

16 THE COURT: Mr. Brooks.

17 CROSS EXAMINATION

18 BY MR. BROOKS:

19 Q: Officer Horton?

20 A: Yes, sir.

21 Q: How are you doing today?

22 A: Pretty good, sir.

23 Q: How -- how long you been on the force?

24 A: Sixteen years.

25 Q: Okay and how long you been on patrol?

26

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 A: Almost all of that.

2 Q: Almost -- almost all of that?

3 A: Right.

4 Q: So I'm sure in that sixteen-year time span you've been on
5 patrol, you have put quite a few people in the back seat of
6 your car?

7 A: Yes.

8 Q: Okay and generally, patrol cars they have like a
9 plexiglass or -- between the front seat and the back seat?-

10 A: Yes.

11 Q: And this car had that?

12 A: Yes.

13 Q: Okay, all right. So there's always -- there's something
14 there and obviously that's there for security purposes; isn't
15 that correct?

16 A: Yes.

17 Q: Okay. Now -- and you acknowledge this matter is about
18 four and a half years ago?

19 A: Yes.

20 Q: Okay. You didn't make any notes to reflect that; do --
21 do -- did you? Do you have any notes to reflect ---

22 A: No.

23 Q: --- you're transporting my client from this particular
24 residence to the jail?

25 A: No, sir.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: Okay. You've strictly gone on what you recall; is that
2 correct?

3 A: Yes, sir.

4 Q: And you have indicated to the ladies -- these ladies and
5 gentlemen of the jury that according to you my client was
6 doing a lot of rambling?

7 A: Yes, sir.

8 Q: A lot of rambling in that fifteen minute period of time
9 from this house to the jail?

10 A: Yes, sir.

11 Q: Which you acknowledge is about fifteen minutes?

12 A: Yes, sir.

13 Q: Okay. Now, in that rambling, you don't remember anything
14 else that was said during that rambling; isn't that correct?

15 A: Yes, that's correct, sir.

16 Q: He could have said, man, I don't live there. That stuff
17 belonged to Kimberly Gibbs. She had somebody else there. You
18 don't recall that; do you?

19 A: No, sir.

20 Q: Okay. He could have said -- that could have been part of
21 the rambling, but you simply don't recall?

22 A: I don't recall any -- hearing anything like that.

23 Q: The only thing you remember was the statement of selling
24 drugs is a lifestyle. Is it lifestyle to me? For me?

25 A: To me.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: To me. Selling drugs is a lifestyle to me. That's the
2 only thing you recall?

3 A: Like -- yes, sir. Like I said, whenever someone admits
4 something like that, that sticks out to you.

5 Q: Okay. Selling drugs is the lifestyle to me.

6 A: Yes, sir.

7 Q: We got seven words?

8 A: Yes, sir.

9 Q: And in that fifteen minute period of time he was
10 rambling, he was obviously saying a way lot more words than
11 just seven?

12 A: Yes, sir.

13 Q: But the only thing you happen to recall was these seven
14 words?

15 A: Yes, sir.

16 Q: And you do acknowledge that he could have said some other
17 things, such as I don't live there, that stuff didn't belong
18 to me; right?

19 A: Like I said, I don't remember him saying anything like
20 that.

21 Q: Okay, but he could -- but you do acknowledge he could
22 have said it, you just don't recall?

23 A: I don't recall him saying anything like that.

24 Q: And you don't have any notes to reflect your transporting
25 him from the residence to the jail?

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 A: No.

2 Q: Okay and that's not normally something you would do;
3 isn't that correct?

4 A: No.

5 Q: Okay, all right.

6 MR. BROOKS: No other questions.

7 THE COURT: Any redirect?

8 MR. BROWN: Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BROWN:

11 Q: Upon dropping off Mr. Gibbs to Sumter Lee Regional
12 Detention Center upon getting him booked, you immediately went
13 back and documented this; didn't you?

14 A: Sir?

15 Q: You immediately went back and reported to your supervisor
16 what was said; isn't that correct?

17 A: And the investigator that was in charge of the scene, we
18 immediately told him and he documented that at that time.

19 Q: Now, you say that you don't remember anything else that
20 he said. Do you remember the gist of what he was saying?

21 A: He was basically apologetic.

22 MR. BROOKS: Objection, Your Honor.

23 A: He was talking about his family.

24 MR. BROOKS: Objection.

25 THE COURT: Sustained.

LIEUTENANT DALE HORTON - CROSS EXAMINATION BY MR. BROOKS

1 Q: As pertains to not recalling him -- hearing him say
2 anything that it would be somebody else's drugs, I want to
3 just make sure I understand exactly what you mean by that.
4 You were -- you mean that you specifically don't remember
5 anything like that being said or that it could have been said?

6 A: I don't remember him saying anything like that. Like --
7 like I said, whenever someone admits to selling drugs, that's
8 what sticks out to you, and that's what I reported back to the
9 investigator in charge.

10 MR. BROWN: Thank you. No further questions.

11 THE COURT: Any redirect?

12 MR. BROOKS: Sure.

13 THE COURT: Any recross based upon that?

14 RE CROSS EXAMINATION

15 BY MR. BROOKS:

16 Q: Officer Horton?

17 A: Yes, sir.

18 Q: He didn't admit to selling to drugs; he just said those
19 seven words, selling drugs is a lifestyle to me?

20 A: That's correct.

21 Q: Okay.

22 MR. BROOKS: No other questions.

23 THE COURT: All right. Thank you. You may step down.

24 Any objections to this witness being released?

25 MR. BROOKS: No, sir.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROOKS: No questions.

2 THE COURT: No questions. Thank you, ma'am.

3 MR. BROWN: I would ask that she be excused, Your Honor.

4 THE COURT: Certainly. Go back and get those dogs
5 looking good.

6 (Whereupon, the witness leaves the stand at 2:15 p.m.)

7 MR. BROWN: May it please the Court. At this time, the
8 State would call Mitch Hansen.

9 THE COURT: All right.

10 THE CLERK: Place your left hand on the Bible and raise
11 your right hand. State your name, please.

12 THE WITNESS: Mitchell Hansen.

13 THE CLERK: Do you solemnly swear or affirm your
14 testimony to the Court shall be the truth, the whole truth,
15 and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Have a seat up here, please.
18 Watch your step. State your full name and spell your last
19 name for the record.

20 THE WITNESS: Mitchell Hansen, H-A-N-S-E-N.

21 MITCHELL HANSEN, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. BROWN:

25 Q: Mr. Hansen, how are you this afternoon?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: I'm fine. How are you doing?
- 2 Q: I'm doing fine. Now, who do you work with now?
- 3 A: Florence County Sheriff's Office.
- 4 Q: And what is your role at the Florence County Sheriff's
- 5 Department?
- 6 A: I run the forensic drug lab in Florence County.
- 7 Q: So I can make sure I call you by the proper name, is it
- 8 investigator or detective or what do you go by officially?
- 9 A: Lieutenant slash chemist.
- 10 Q: All right. Now, by way of background just to let the
- 11 jury know who is in front of them, why don't you tell us a
- 12 little bit about yourself? Tell us where you were born, where
- 13 you were raised, where you went to school, things of that
- 14 nature. Let us know who you are.
- 15 A: I was born in Mississippi. My parents moved to South
- 16 Carolina when I was about five years old. I was raised in
- 17 Florence. Later on in life after I was married, we moved to
- 18 North Carolina where I worked in private industry for about
- 19 five or six years. I then came to Sumter to start the drug
- 20 lab up in Sumter and then to Florence to start the drug lab up
- 21 there.
- 22 Q: Now, as it pertains to Sumter and the drug lab, did you
- 23 have to get any special training or education before you
- 24 started doing something like that? Tell me about your
- 25 educational background I guess.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 A: I have an associates of science, associates in arts.

2 Q: Where from?

3 A: Associates of science and associates in arts from
4 Florence Darlington Tech. I have a bachelors in chemistry
5 from Francis Marion University. I have forensic drug training
6 from SLED and basic ---

7 Q: That's South Carolina Law Enforcement Division?

8 A: Yes.

9 Q: Okay. Thank you. I'm sorry.

10 A: And basic law enforcement training from the academy.

11 Q: Have you been certified in a court of law for South
12 Carolina ever in your history as a -- as a trained expert in
13 analyzing drugs?

14 A: Yes.

15 Q: What specific field were you certified in?

16 A: Drug -- drug ID, drug identification.

17 MR. BROWN: Your Honor, at this time I would offer Mitch
18 Hansen as an expert in drug identification.

19 THE COURT: Any objection?

20 MR. BROOKS: No objection.

21 THE COURT: All right. Ladies and gentlemen of the jury,
22 the State has asked and the defense has not objected to Mr.
23 Hansen being certified as an expert in drug identification.
24 Now, what that basically means, normally a witness who
25 testifies can only testify as to what they saw, heard, tasted,

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 smelled, or felt. However, when somebody has a certain amount
2 of education and experience, we allow them to give an opinion
3 that may not be what they saw, heard, tasted, smelled or felt.

4 Now, whether or not you want to accept that opinion is
5 totally up to you. As the jury, you're the finders of fact,
6 and just because he's an expert doesn't mean his testimony has
7 greater weight than anyone else. It just should be taken as
8 evidence and you decide what weight to put on it in your
9 evaluations of the evidence. All right. Thank you. You may
10 proceed.

11 MR. BROWN: Thank you, Your Honor.

12 Q: Now, Lieutenant Hansen, when you -- from what time period
13 were you working at Sumter County Sheriff's Office?

14 A: Roughly 2006 to 2011 I believe.

15 Q: So you were their drug analyst in the year of 2008 going
16 into 2009?

17 A: Yes.

18 Q: And tell me what all drugs were you analyzing at that
19 time?

20 A: We analyzed any controlled substance that come in from
21 Schedule I through Schedule V.

22 Q: Now, would this be just when evidence was put in a BEST
23 kit, you would -- you would just go and test it yourself? You
24 knew how to do all this stuff?

25 A: Yes, if it was submitted for testing.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 Q: And I'm going to bring up to you and show you what is ---
2 MR. BROWN: If I have permission to approach, Your Honor?
3 THE COURT: Certainly.
4 Q: --- State's 27, 28, 29, and 30. Can you please look
5 through these items and tell us whether or not there's
6 indications that those items were submitted as it pertains to
7 the case that we have here today?
8 A: Yes. These were -- were submitted for testing.
9 Q: And did you test those items?
10 A: Yes, I did.
11 Q: I'm going to approach and I'm going to take those back
12 from you now, and did you prepare a report about the testing
13 that you performed on State's 27 through 30?
14 A: Yes, I did.
15 Q: Did you -- and do you have it here with you today?
16 A: Yes, I do.
17 MR. BROWN: And, Your Honor, I have one already
18 previously marked as State's Exhibit Number 26.
19 THE COURT: All right.
20 MR. BROWN: At this time I would just offer this for ID
21 or I would offer this in as evidence.
22 THE COURT: All right. Any objection, Mr. Brooks?
23 MR. BROOKS: No objection.
24 THE COURT: Without objection, State's Exhibit 26 is
25 admitted.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 MR. BROWN: Thank you and permission to approach?

2 THE COURT: You may.

3 Q: Is this an accurate copy of the report that you prepared

4 on that day?

5 A: Yes, it is.

6 Q: And that lines up with the Sheriff's Office lab number

7 that was on this case?

8 A: Yes, it does.

9 Q: And that lines up with the case number that was on this

10 particular case?

11 A: Yes, it does.

12 Q: And the incident date?

13 A: Yes, it does.

14 Q: And who was the subject listed on this case?

15 A: Leroy C. Gibbs.

16 Q: Now, if I may ask, how many items were submitted to you

17 to be analyzed as pertains to this particular case?

18 A: Seven.

19 Q: And did you analyze each one of those items?

20 A: Yes, I did.

21 Q: And I'm just going to start at the top and we're just

22 going to go one through seven. So if we could start with item

23 number one, what was it identified as the item of evidence as

24 to what you were going to test?

25 A: Item number one was an evidence bag marked number one

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 containing a powder substance.

2 Q: Okay and did you test this item that day?

3 A: Yes, I did.

4 Q: And what were the results of that test?

5 A: The results come back it was positive for benzocaine.

6 Q: Okay and what is benzocaine?

7 A: Benzocaine is a numbing agent. It's also used as a
8 cutting agent for different types of drugs.

9 Q: In your experience in testing narcotics, have you come in
10 contact with benzocaine a good bit?

11 A: Yes.

12 Q: And you used the term cutting agent. Will you please
13 tell the ladies and gentlemen of the jury what exactly a
14 cutting agent is and why -- and what its relationship to drugs
15 are?

16 A: A cutting agent is something someone would use to add to
17 drugs to -- to actually increase the volume of the -- of the
18 -- of their substances. Benzocaine is used a lot because it's
19 -- it's a numbing agent so, therefore, it numbs. It numbs.
20 Basically, it numbs the skin so if they actually do a taste
21 test or something to like cocaine, it will actually numb their
22 tongue and they'll think that it's -- it's real.

23 Q: Now, is this usually something that's done by mixing it
24 with the cocaine or is it sold just separately just as
25 benzocaine?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: It's normally done by mixing it with cocaine.
- 2 Q: And it creates a larger quantity?
- 3 A: A large -- a larger quantity.
- 4 Q: Okay. What about item number two? Did you make -- do a
- 5 test on that?
- 6 A: Yes, I did.
- 7 Q: And what was item number two identified as before you
- 8 began testing it?
- 9 A: Item number two was an evidence bag marked number two
- 10 containing three plastic bags containing powder substance.
- 11 Q: And did you test these three plastic bags?
- 12 A: Yes, I did.
- 13 Q: And what did they test for?
- 14 A: They tested positive for cocaine.
- 15 Q: And did you have a quantity or weight of what those three
- 16 plastic bags weighed out as?
- 17 A: It was a combined weight of 3.55 grams. I'm sorry, 3.35
- 18 grams.
- 19 Q: Okay and this was tested positive for cocaine?
- 20 A: Yes.
- 21 Q: Did you test an item number three?
- 22 A: Item number three was an evidence bag marked number three
- 23 containing a Ziploc bag containing a powder substance.
- 24 Q: And did you test item number three?
- 25 A: Yes, I did.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: What did it test for?
- 2 A: It tested -- there was no controlled substance found, but
3 it tested for benzocaine and caffeine.
- 4 Q: Benzocaine and caffeine. Now, you mentioned benzocaine
5 when you talked about item number one as a cutting agent?
- 6 A: Yes.
- 7 Q: Explain to me, if you can based on your experience and
8 training, the caffeine part of that?
- 9 A: Caffeine can produce sort of a rush just like drinking a
10 soft drink real fast or something like that. Caffeine is also
11 used as -- you know, in some drugs as a cutting agent, too.
- 12 Q: What kind of drugs is it used as a cutting agent for?
- 13 A: Mainly your stimulants, your uppers, like cocaine.
- 14 Q: Would cocaine be a stimulant?
- 15 A: Yes.
- 16 Q: Okay and so is this, in your experience and training as a
17 -- as a drug analyst, a common substance that you would find
18 as a cutting agent for cocaine?
- 19 A: Yes.
- 20 Q: And benzocaine is as well?
- 21 A: Yes.
- 22 Q: And that is what item number three tested for?
- 23 A: Yes.
- 24 Q: What was the quantity of that one?
- 25 A: The quantity was 5.21 grams.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: Thank you. Did you receive an item number four?
- 2 A: Yes, I did.
- 3 Q: Tell me about what item number four was?
- 4 A: Item number four was an evidence bag marked number four
- 5 containing a plastic bag containing powder substance.
- 6 Q: Did you test this? Did you test this plastic bag to see
- 7 if it tested as a controlled substance?
- 8 A: Yes, I did.
- 9 Q: And did it test positive as a controlled substance?
- 10 A: Yes, it did.
- 11 Q: What substance?
- 12 A: It tested positive for crack cocaine.
- 13 Q: Okay. Is that also known as cocaine base?
- 14 A: Yes.
- 15 Q: Is that kind of the professional name for it?
- 16 A: Cocaine base, crack. Crack is the -- I guess the street
- 17 name.
- 18 Q: Interchangeable terms for it?
- 19 A: Yes.
- 20 Q: And this did test positive for cocaine base?
- 21 A: Yes, it did.
- 22 Q: What quantity?
- 23 A: 4.38 -- I'm sorry, 4.83 grams.
- 24 Q: All right. Thank you. Did you receive an item number
- 25 five to test?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: Yes, I did.
- 2 Q: And did you -- and what was item number five identified
3 to you as or what did you identify it as before you tested it?
- 4 A: Number -- item number five was identified just having
5 benzocaine and caffeine.
- 6 Q: Well -- and I want you to read first the items of
7 evidence. What did it come in as?
- 8 A: Oh, I'm sorry.
- 9 Q: Sure.
- 10 A: Item number five came in as an evidence bag marked number
11 five containing a plastic bag containing a powder substance.
- 12 Q: And you've indicated that it did not test as controlled
13 substance?
- 14 A: No, it did not.
- 15 Q: What did it test as again?
- 16 A: Benzocaine and caffeine.
- 17 Q: Okay. So this is once again the same as what we had in
18 item number three?
- 19 A: Yes.
- 20 Q: Okay and what quantity? What quantity of benzocaine
21 slash caffeine did you have on that?
- 22 A: 0.48 grams.
- 23 Q: 0.48?
- 24 A: Yes.
- 25 Q: Did you receive an item number six to test?

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 A: Yes, I did.
- 2 Q: And what was it identified before you began testing as
3 what you were looking at?
- 4 A: An evidence bag marked number six containing a rock
5 substance.
- 6 Q: And did you test item number six?
- 7 A: Yes, I did.
- 8 Q: And did it positive for a controlled substance?
- 9 A: Yes. It tested positive for cocaine base.
- 10 Q: Crack?
- 11 A: Crack.
- 12 Q: And what quantity of crack cocaine did it test positive
13 for?
- 14 A: 6.72 grams.
- 15 Q: Okay and, finally, did you receive an item number seven
16 in this case?
- 17 A: Yes, I did.
- 18 Q: And what was it identified as before you began testing
19 it?
- 20 A: It was an evidence bag marked number seven containing a
21 plastic bag containing a rock substance.
- 22 Q: And did you test this?
- 23 A: Yes, I did.
- 24 Q: Did it test positive for a controlled substance?
- 25 A: Yes, it did.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: And what controlled substance did it test positive for?
- 2 A: Cocaine base.
- 3 Q: How much?
- 4 A: 2.48 grams.
- 5 Q: 2.48? So going back from items one to seven, what you
- 6 have indicated as items one, three, and five were all a no-
- 7 controlled substance. They were benzocaine or benzocaine
- 8 caffeine mixes; is that correct?
- 9 A: Correct.
- 10 Q: And the quantities you gave me on that was 6.56 for item
- 11 number one, 5.21 for item number three, and .48 for item
- 12 number five. Those were all in grams; correct?
- 13 A: Correct.
- 14 Q: All right. Would you refute if I told you that that
- 15 added up to 12.25 grams?
- 16 A: No, I would not.
- 17 Q: Okay and looking at item number two, was that the only
- 18 one that tested positive for cocaine?
- 19 A: Item number two?
- 20 Q: Mm-hmm.
- 21 A: Was the only one that tested positive for cocaine.
- 22 Q: And to be specific, cocaine powder?
- 23 A: Cocaine powder.
- 24 Q: And that one weighed out at 3.35 grams?
- 25 A: 3.35 grams.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

- 1 Q: And finally, items number four, six, and seven, is it my
2 understanding that all three of those came out as cocaine
3 base? Crack cocaine?
- 4 A: Correct.
- 5 Q: And those came out with weights of 4.83 grams, 6.72
6 grams, and 2.48 grams; is that correct?
- 7 A: Correct.
- 8 Q: And would you refute my -- my math if I said that weighed
9 -- added up to 14.03 grams of crack cocaine?
- 10 A: No. That -- that looks about right.
- 11 Q: Okay. You tested all these items?
- 12 A: Yes, I did.
- 13 Q: You submitted this report to the Solicitor's Office?
- 14 A: Yes, I did.
- 15 Q: And you turned those -- that evidence back in to the --
16 to the evidence custodian here at the Sumter County Sheriff's
17 Department?
- 18 A: Yes, I did.
- 19 Q: Okay.
- 20 MR. BROWN: The Court's indulgence?
- 21 THE COURT: Yes, sir.
- 22 Q: I need to ask you a couple more questions about your
23 experience and training as a drug analyst. What are the
24 common components used to make crack cocaine?
- 25 A: Baking soda and cocaine, just regular cocaine or cocaine

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 salt.

2 Q: Okay. What's the difference between cocaine and cocaine
3 salt? I don't know.

4 A: Cocaine or cocaine salt or HCL, it's in a -- it's what
5 form it's in. It's in a salt form.

6 Q: Okay.

7 A: When it's -- when -- when you convert cocaine from salt
8 form or regular cocaine in the base form, it's more along
9 lines for smoking. It increases the physical properties
10 allowing someone to actually smoke it versus I guess inhaling
11 it.

12 Q: So it involves baking soda, some various form of cocaine,
13 and how do they mix that together?

14 A: For the most part, they mix it together using some water
15 and heat.

16 Q: How do they cook it? How about cooking it? How do they
17 cook it?

18 A: Sometimes they use microwaves, heating -- just heating
19 rounds. It depends on what they have.

20 Q: So if -- so baking soda would be a common agent of crack
21 cocaine?

22 A: Yes.

23 Q: And powder cocaine would be a common agent of crack
24 cocaine?

25 A: Correct.

MITCHELL HANSEN - DIRECT EXAMINATION BY MR. BROWN

1 Q: And a microwave being used for that would be frequently
2 seen in terms of making crack cocaine?

3 A: Yes.

4 MR. BROWN: Thank you. No further questions.

5 THE COURT: Mr. Brooks?

6 CROSS EXAMINATION

7 BY MR. BROOKS:

8 Q: Lieutenant Hansen?

9 A: Yes.

10 Q: Is that your report?

11 A: Yes.

12 Q: Can I see that? On this report, it has subject Leroy
13 Gibbs; is that correct?

14 A: Yes.

15 Q: You didn't have anything to do with putting the
16 information as far as the subject is concerned; is that
17 correct?

18 A: Correct.

19 Q: This is what was just given to you from the Sumter County
20 Sheriff's Office; is that right?

21 A: That's right.

22 Q: That would not have any impact on your analysis. You
23 would analyze whatever you got; is that correct?

24 A: That's correct.

25 Q: The subject could be Kimberly Gibbs. You would still go

MITCHELL HANSEN - CROSS EXAMINATION BY MR. BROOKS

1 through the steps that you talked about as a part of your
2 training in testing things to determine whether or not they
3 are drugs or not; is that correct?

4 A: That's correct.

5 Q: So you don't -- you don't have anything to know about
6 whose drugs it belongs to; do you?

7 A: No, I don't.

8 Q: Okay.

9 MR. BROOKS: No other questions.

10 THE COURT: Thank you. Any redirect?

11 MR. BROWN: No, Your Honor.

12 THE COURT: Thank you. You may step down.

13 MR. BROWN: And, Your Honor, he -- he's welcome to stay
14 if he wishes or if he wishes to be excused, we would ask that.

15 THE COURT: Any objections to him being excused?

16 MR. BROOKS: No objection.

17 THE COURT: He can do whichever he chooses.

18 (Whereupon, the witness leaves the stand at 2:33 p.m.)

19 THE COURT: The State may call its next witness.

20 MR. MEADORS: If it please the Court, the State of South
21 Carolina calls Kimberly Gibbs.

22 THE CLERK: Place your left hand on the Bible and raise
23 your right hand. State your name, please.

24 THE WITNESS: Kimberly Gibbs.

25 THE CLERK: Do you solemnly swear or affirm your

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 testimony to the Court shall be the truth, the whole truth,
2 and nothing but the truth, so help you God?

3 THE WITNESS: Yes.

4 THE CLERK: Thank you. Have a seat up here, please.
5 Watch your step coming up. Please state your full name and
6 spell your last name for the record.

7 THE WITNESS: Kimberly Gibbs, G-I-B-B-S.

8 KIMBERLY GIBBS, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. MEADORS:

12 Q: Good afternoon, Ms. Gibbs.

13 A: Good afternoon.

14 Q: If you would, please -- please, ma'am, speak up just in
15 here so this court reporter can hear you and these ladies and
16 gentlemen of this jury; okay?

17 A: Okay.

18 Q: Ms. Gibbs, tell -- tell these folks about you. Start off
19 with where were you born?

20 A: I was born in Manning, South Carolina.

21 Q: And where were you raised?

22 A: Sumter, South Carolina.

23 Q: Where did you go to school?

24 A: Sumter High School.

25 Q: Where did you go to elementary school?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Wilder Elementary.
- 2 Q: If you'd slow down just a little bit. It was Wilder?
- 3 A: Wilder.
- 4 Q: And after Wilder you went to Sumter?
- 5 A: Well, Bates Middle School.
- 6 Q: Okay. You went to Bates and then where did you go after
- 7 Bates?
- 8 A: Sumter High School.
- 9 Q: And what year did you graduate?
- 10 A: 2005.
- 11 Q: And after 2005, what did you do, Ms. Gibbs?
- 12 A: I joined the military.
- 13 Q: Okay and specifically where did you do your basic
- 14 training?
- 15 A: Chicago.
- 16 Q: Okay and what did -- how long did that last?
- 17 A: Basic training?
- 18 Q: Yes, ma'am.
- 19 A: Eight weeks.
- 20 Q: Where did you go after that?
- 21 A: I went to Texas.
- 22 Q: To Texas?
- 23 A: Yes.
- 24 Q: Okay. What type of training did you receive in Texas,
- 25 Ms. Gibbs?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Construction electrician.
- 2 Q: Construction electrician?
- 3 A: Yes.
- 4 Q: Specifically, what were you trained to do?
- 5 A: Climb poles, overhead wiring.
- 6 Q: Climb poles, overhead wiring?
- 7 A: Yes.
- 8 Q: So in addition to climbing poles, would you use the
- 9 bucket to go up, too?
- 10 A: Yes.
- 11 Q: And how long were you in Texas doing that?
- 12 A: Six months.
- 13 Q: And you were in the Army?
- 14 A: Navy.
- 15 Q: Navy. If I said -- I apologize. So this was Navy.
- 16 While you were still in the Navy, where did you go after
- 17 Texas?
- 18 A: San Diego.
- 19 Q: Okay and what were you doing for the Navy in San Diego?
- 20 A: It was the same job.
- 21 Q: And how long were you in San Diego?
- 22 A: I worked there a year and a half.
- 23 Q: Okay and you were climbing poles or going in the bucket;
- 24 correct?
- 25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: I mean that's a bucket truck where you go up and work on
2 wires; correct?

3 A: Right.

4 Q: All right. Now, at some point -- or -- or let the ladies
5 and gentlemen of the jury know when did you meet the
6 defendant, Cliff Gibbs?

7 A: Probably around 2004.

8 Q: Okay. Please tell them how you met him?

9 A: Through a relative.

10 Q: All right. Through your sister?

11 A: Yes.

12 Q: Okay and she had known him for a number of years?

13 A: Yes.

14 Q: And as a result of that, you started a relationship with
15 him?

16 A: Yes.

17 Q: Started talking?

18 A: Yes.

19 Q: And ultimately, you get married?

20 A: Yes.

21 Q: And -- and when -- when was that when you got married?
22 What year, Ms. Gibbs?

23 A: 2006.

24 Q: 2006, and in 2006, were you in San Diego?

25 A: I was in the middle going between San Diego and Texas.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: Okay. I apologize. So between Texas and San Diego, it
2 was during that time period you married Mr. Gibbs?
3 A: Yes.
4 Q: And in San Diego, where did you live?
5 A: You mean the city?
6 Q: Yes, ma'am. I mean just I'm not saying the exact street,
7 but did you live kind of near the base? Were you on the base?
8 Where did you live in San Diego?
9 A: I lived off base.
10 Q: Off base? All right and Mr. Gibbs was living with you
11 then?
12 A: Yes.
13 Q: So in San Diego, you were there. He came out there
14 because that's where your job was; correct?
15 A: Yes.
16 Q: And he was living with you there?
17 A: Yes.
18 Q: Did y'all have a child?
19 A: Yes.
20 Q: Okay and when was that child born?
21 A: 2007.
22 Q: 2007?
23 A: Yes.
24 Q: Okay. At some point, you come back to Sumter?
25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Okay and when was that, Ms. Gibbs?
- 2 A: It was June 2007.
- 3 Q: Okay. So in June 2007, you left San Diego and came back
- 4 here home?
- 5 A: Yes.
- 6 Q: And did Mr. Gibbs come back with you from San Diego to
- 7 Sumter?
- 8 A: Yes.
- 9 Q: Okay. Please tell these folks, these ladies and
- 10 gentlemen of this jury, when you came back to Sumter I think
- 11 you said 2007, where did you live?
- 12 A: With my mother.
- 13 Q: Okay and how long did you stay with your mama?
- 14 A: It was a couple of months.
- 15 Q: All right and then after that, you and Mr. Gibbs stayed
- 16 with his father?
- 17 A: Yes.
- 18 Q: Okay and at this point, you had your child, too?
- 19 A: Yes.
- 20 Q: And at some point after that, did you move to [REDACTED]
- 21 [REDACTED]?
- 22 A: Yes.
- 23 Q: And when you say you moved there, did you move there?
- 24 A: Yes.
- 25 Q: Mr. Gibbs moved there?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: Yes, he did.
- 2 Q: And your child lived there?
- 3 A: Right.
- 4 Q: All right. Tell the folks, when you got back to Sumter,
- 5 you had been in the Navy, did you go into another job after
- 6 that you got out of the Navy?
- 7 A: Yes.
- 8 Q: Okay. That's what I'm trying to -- what did you do work-
- 9 wise when you came back to Sumter?
- 10 A: I was a postal worker.
- 11 Q: A postal worker?
- 12 A: Yes.
- 13 Q: When did you start approximately?
- 14 A: Approximately -- I want to say November of 2008.
- 15 Q: Okay.
- 16 A: I mean '07.
- 17 Q: '07?
- 18 A: Yes.
- 19 Q: And why did you go into that work?
- 20 A: Why did I choose it?
- 21 Q: Yes, ma'am.
- 22 A: Money.
- 23 Q: Okay and benefits I presume?
- 24 A: Yes.
- 25 Q: And were you assigned a route near where you live? Is

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 that how they do it?

2 A: No. It's not according to where you live. It's whatever

3 route is available.

4 Q: Okay. So in November of 2007 you said?

5 A: Yes.

6 Q: You started working where? Like I come here in the

7 morning to the courthouse to my job. Where would you go in

8 the morning when you report to work?

9 A: I would go to the post office at North Main.

10 Q: The post office at North Main? And once you got there,

11 at some point did you get a regular route?

12 A: No. Well, it was regular, but, you know, it wasn't

13 actually my route. It was -- I was a back-up.

14 Q: Okay. So you didn't do it all the time?

15 A: Right.

16 Q: But you had a route that was primarily yours?

17 A: Yes.

18 Q: And somebody else's maybe?

19 A: Yes.

20 Q: Okay, all right. So how would you -- you'd report to the

21 post office. Is that where you'd see how many letters you

22 got?

23 A: Yes.

24 Q: Okay and that's what you'd deliver that day when it was

25 your day?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yes.

2 Q: Okay. Now, tell these folks about any other training you
3 may have -- have had since then or background. After this
4 incident I'll get into in a minute, you weren't working at the
5 post office anymore; correct?

6 A: Correct.

7 Q: What did you do after that?

8 A: Well, I went to school.

9 Q: What -- what school?

10 A: I went to Colorado Tech.

11 Q: Okay and what degree did you get there?

12 A: Associates in accounting.

13 Q: Associates in accounting?

14 A: Yes.

15 Q: And when did you get that?

16 A: In December 2010.

17 Q: Okay. So you had your associate accounting. You've
18 already got your training and education in the Navy. What did
19 you do with that degree?

20 A: Well, I went back to school.

21 Q: Okay.

22 A: To get my bachelors.

23 Q: In what?

24 A: Accounting.

25 Q: All right and when did you get that?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: I just recently got that.

2 Q: Okay. Was that in April of this year?

3 A: Yes.

4 Q: Okay. So you've now got your bachelors in accounting?

5 A: Yes.

6 Q: What was the next job you had after the post office?

7 A: McDonald's.

8 Q: Okay and which one?

9 A: Highway 15.

10 Q: All right and what different positions have you held

11 there, Ms. Kimberly Gibbs?

12 A: I went from crew to hourly manager and now I'm currently

13 salaried.

14 Q: Crew to hourly manager to salaried manager?

15 A: Yes.

16 Q: And when did you get that promotion to salaried manager?

17 A: About a month and a half ago.

18 MR. MEADORS: May I approach?

19 THE COURT: You may.

20 Q: Ms. Gibbs, I'm going to show you what's marked State's 2.

21 You had testified previously that -- or did you enter a lease

22 at [REDACTED]

23 A: Yes.

24 Q: And the date was on or about April the 9th of 2008; is

25 that correct?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yes.

2 Q: Okay and when was this lease supposed to end?

3 A: The next year.

4 Q: So this was a year's lease?

5 A: Yes.

6 Q: Does it have on here specified who the occupants --
7 strike that. I apologize. Did it request on this lease -- or
8 give me that. I'm sorry. Looking on the last page of the
9 lease, is that your signature?

10 A: Yes.

11 Q: You wrote that?

12 A: Yes.

13 MR. MEADORS: State's 2, Your Honor.

14 THE COURT: Any objection?

15 MR. BROOKS: No objection.

16 THE COURT: Without objection, State's Exhibit Number 2
17 is entered into evidence.

18 MR. MEADORS: Permission to continue with approach?

19 THE COURT: Certainly.

20 Q: I believe you testified earlier -- on number seven of
21 State's 2, do you list as the only persons who are named in
22 the agreement to stay there are Kimberly and Leroy Gibbs and
23 son?

24 A: Yes.

25 Q: Ms. Gibbs, let's go to December 23rd of 2008. You were

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 employed at the post office; correct?
- 2 A: Correct.
- 3 Q: Now, on that day were you supposed to work?
- 4 A: No.
- 5 Q: Or were you working?
- 6 A: No.
- 7 Q: If you had been working, would you have been there?
- 8 A: Yes.
- 9 Q: Would you have been at the job if you were working?
- 10 A: Yes.
- 11 Q: Okay. You wouldn't have been at home?
- 12 A: Right.
- 13 Q: All right and can you tell -- tell the ladies and
- 14 gentlemen of this jury prior to the police officers there, was
- 15 Mr. Gibbs there with you?
- 16 A: Yes.
- 17 Q: And was your -- it's your son?
- 18 A: Yes.
- 19 Q: And is -- okay and was it just the three of you?
- 20 A: Yes.
- 21 Q: How many bedrooms are in [REDACTED]?
- 22 A: Three.
- 23 Q: Was one of them your bedroom and Mr. Gibbs' bedroom?
- 24 A: Yes.
- 25 Q: Did your daughter have a bedroom?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: Yeah, my son did.

2 Q: I didn't mean to say that. I apologize. Did your son
3 have a -- I apologize to everybody. And what was the other
4 bedroom used for?

5 A: It was a computer room.

6 (Whereupon, counsel knocks on the wood railing four
7 times.)

8 Q: Do you remember that around noon on December 23rd, 2008?

9 A: It was about the morning time.

10 Q: Okay, but you remember a knock at the door?

11 A: Yes.

12 Q: All right and were the police there?

13 A: Yes.

14 Q: All right. Tell the ladies and gentlemen of the jury
15 what happened when you came to the door. Did you open the
16 door?

17 A: Yes.

18 Q: Tell them what happened next?

19 A: Well, they came in and Mr. Gibbs -- he must have been
20 behind me and they grabbed him and arrested him and take him.
21 And then they put me and my son in a room.

22 Q: Okay and slow down a minute if you will. When you came
23 to the door, were you by yourself?

24 A: Yes.

25 Q: Okay and where was -- where had you been?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: In the bedroom.
- 2 Q: Okay and when you came to the door to answer the door,
3 where was Mr. Gibbs?
- 4 A: He was coming behind me I'm assuming.
- 5 Q: Okay. Had he been in the bedroom with you?
- 6 A: Yes.
- 7 Q: Okay and you say you're assuming so you're not sure what
8 he was doing when you were coming to the door?
- 9 A: Right.
- 10 Q: Because he was behind you?
- 11 A: Right.
- 12 Q: Do you remember this investigator coming? Investigator
13 Wayne Dubose?
- 14 A: Yes.
- 15 Q: For these purposes, is it fair to say they had warrants
16 for Mr. Gibbs? Correct?
- 17 A: Correct.
- 18 Q: Okay and they served those warrants on Mr. Gibbs?
- 19 A: Correct.
- 20 Q: And took him into custody?
- 21 A: Right.
- 22 Q: Okay and I'm going to show you what's marked State's 1
23 and ask you if you recognize your signature on it?
- 24 MR. MEADORS: Can I -- can I approach again? I'm sorry.
- 25 THE COURT: You may.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Is that your signature down there, Ms. Gibbs?
- 2 A: Yes.
- 3 Q: Okay and printed above it does it say Kimberly Gibbs up
- 4 there?
- 5 A: Yes.
- 6 Q: And this is a Consent to Search you gave? Did you give
- 7 the officers of the Sheriff's Department consent to search the
- 8 house?
- 9 A: It wasn't on that paper. It was a verbal consent for the
- 10 dogs.
- 11 Q: You gave them verbal consent to start with?
- 12 A: Right.
- 13 Q: And then you gave them a written Consent to Search later?
- 14 A: Yeah, that was later.
- 15 Q: Okay. So at first when they said can we search with the
- 16 dogs, you said yes?
- 17 A: Yes.
- 18 Q: You didn't mind them searching; did you?
- 19 A: No.
- 20 Q: And then later you gave them consent to search the
- 21 residence; correct?
- 22 A: Correct.
- 23 Q: And did they actually come back and show you what was
- 24 taken there?
- 25 A: Yes. That's when I signed that paper.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: So they showed you what was taken from the house and you
2 signed it?

3 A: Yes.

4 MR. MEADORS: Your Honor, at this point I think State's 1
5 we'd offer.

6 THE COURT: Any objection, Mr. Brooks?

7 MR. BROOKS: No objection.

8 THE COURT: Without objection, State's Exhibit Number 1
9 is admitted and may be published to the jury.

10 MR. MEADORS: Thank you.

11 Q: You -- you were present when they -- I say they -- law
12 enforcement found what they believed to be drugs in the house;
13 correct?

14 A: Correct.

15 Q: And that's when you signed off on this sheet showing that
16 this is what they took from your house; right?

17 A: Correct.

18 Q: And did they also ask to search your purse? Do you
19 remember when they said can we search ---

20 A: Yeah. That was later.

21 Q: Okay and tell me when that was later? I'm just -- maybe
22 I'm confused.

23 A: That was right before they left.

24 Q: Okay, all right. So the dog came and searched?

25 A: Right.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And then they did a search; right?

2 A: Right.

3 Q: And then after that, did they ask you if they could
4 search your purse?

5 A: Yes.

6 Q: Okay and you said what?

7 A: Go ahead.

8 Q: You said go ahead and you didn't have a problem with them
9 searching your purse; did you?

10 A: Right.

11 Q: And -- and were you worried about anything being in your
12 purse?

13 A: No.

14 Q: Had you put anything in your purse?

15 A: No.

16 Q: So when Investigator Dubose told you that there was
17 something in the purse, what did you say?

18 A: It wasn't mine.

19 Q: It wasn't yours?

20 A: No.

21 Q: In State's 25, is that your purse, Ms. Kimberly Gibbs?

22 A: Yes.

23 Q: And there's what's been testified appears to be a form of
24 cocaine or crack cocaine. Did you put that in your purse?

25 A: No.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: All right. Did you tell the officer Leroy must have done
2 that?

3 MR. BROOKS: Objection, Your Honor, speculation. Does
4 she know firsthand?

5 MR. MEADORS: No, sir. I didn't ask her if she knew.

6 Q: Did you tell ---

7 THE COURT: She said -- he asked did she tell the
8 officer.

9 MR. BROOKS: Okay.

10 THE COURT: Overruled.

11 Q: Did you tell the officer at the time Leroy must have put
12 it there?

13 A: The officer told me.

14 Q: But you didn't put it there?

15 A: No.

16 Q: Your baby at the time was how old?

17 A: He was four.

18 Q: Okay.

19 A: I believe he was four.

20 Q: Okay. Obviously, he didn't put -- couldn't have put it
21 there. He couldn't. I'm going to show you a few pictures
22 with the Court's permission and then I'll try to speak up so
23 you won't have to move. Just to go through the house, if you
24 don't mind. State's Number 9, Ms. Gibbs, that's a -- can you
25 tell the ladies and gentlemen of the jury what part of your

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 house that is?
- 2 A: That's the living room.
- 3 Q: And State's Number 10?
- 4 A: That's the kitchen and dining area.
- 5 Q: And do you recognize State's 11?
- 6 A: That's the hall closet.
- 7 MR. MEADORS: I beg -- beg the Court's indulgence.
- 8 Q: If I asked you before, I just forgot. How many bedrooms
- 9 in this house?
- 10 A: Three.
- 11 Q: Looking at State's 5, whose bedroom is that?
- 12 A: That's my son's bedroom.
- 13 Q: That's your son's bedroom. State's 6?
- 14 A: That's the computer room.
- 15 Q: Computer room. Whose computer is that in there?
- 16 A: Mine.
- 17 Q: Is that where you did your homework or work for whatever
- 18 work or studying you were doing?
- 19 A: Yes.
- 20 Q: And State's Number 4, whose room is that?
- 21 A: That's the master bedroom.
- 22 Q: The master bedroom at [REDACTED] and who stayed there?
- 23 A: Me and the defendant.
- 24 Q: You and Mr. Gibbs stayed there?
- 25 A: Right.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: And that was y'all's room. Let me ask you this much. Is
2 that right?

3 A: Right.

4 Q: There's a -- there's a hat on top of the bed there. Was
5 that Mr. Gibbs' hat?

6 A: Yes, that was his hat.

7 Q: And is that where he puts his hat when he goes to sleep?

8 A: Yes.

9 Q: Just a few more pictures, Ms. Gibbs. State's 15?

10 A: That's the kitchen.

11 Q: Kitchen on [REDACTED] What was inside this cabinet?

12 A: Canned goods.

13 Q: Was there anything else in there that you knew of
14 pertaining to illegal drugs?

15 A: No.

16 Q: State's 16 is the inside of that cabinet. Do you
17 recognize those?

18 A: No.

19 Q: Did you know those drugs were in State's 15 and State's
20 16 in that cabinet?

21 A: No.

22 Q: You knew that's where the officers found them; right?
23 And you signed on the search form?

24 A: Right.

25 Q: State's 17, was that your baking powder?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: You didn't use that baking powder; did you?
- 3 A: No.
- 4 Q: State's 18, there appear to be some razors and other --
- 5 were those your razors?
- 6 A: No.
- 7 Q: These weren't your razors you used for your legs I mean?
- 8 A: No, no.
- 9 Q: So these weren't your razors?
- 10 A: No.
- 11 Q: Do you know what they were used for?
- 12 A: No.
- 13 Q: Now, I'm going to show you State's 14. What about this
- 14 gun that was found underneath the heating vent? Did you know
- 15 that was there?
- 16 A: No.
- 17 Q: What about State's 13? Are you familiar with this? It
- 18 appears like it's a blue -- some type of blue tray. Are you
- 19 familiar with that?
- 20 A: I have seen the box over there. I don't know what was in
- 21 it.
- 22 Q: Why don't you know what was in it?
- 23 A: I never opened it.
- 24 Q: Were you told not to look in certain places?
- 25 A: Basically, what was his was his. I didn't look in it.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: This right here would have been his and you were told not
2 to look in it?

3 A: Right.

4 Q: You didn't look in it; did you?

5 A: No, I didn't look in it.

6 Q: And State's 12, the firearm. Are you familiar with that?

7 A: It looks familiar, but ---

8 Q: Was it yours?

9 A: No.

10 Q: There's been some testimony about an odor of marijuana in
11 the house and a picture of a -- a blunt in the ashtray. Was
12 that yours?

13 A: No.

14 Q: Did you smoke marijuana?

15 A: No.

16 Q: Did you smoke marijuana?

17 A: No.

18 Q: And in your pocketbook, there's testimony that in
19 addition to the controlled substance of crack, there was also
20 a piece of marijuana in there. Was that yours?

21 A: In my pocketbook?

22 Q: Yes, ma'am.

23 A: No.

24 Q: It wasn't; was it?

25 A: No.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 MR. MEADORS: I beg the Court's patience. I have one
2 other picture.

3 Q: I'm going to show you what's been entered as a picture,
4 State's 32.

5 MR. MEADORS: Approaching again with your permission,
6 Judge?

7 THE COURT: Yes, sir.

8 Q: Were these your sandwich bags?

9 A: I don't remember seeing them.

10 Q: Did you make sandwiches and put them in bags?

11 A: No.

12 Q: So you don't -- you didn't use these; did you?

13 A: No.

14 Q: Were these your drugs?

15 A: No.

16 Q: The drugs in your purse?

17 A: No.

18 Q: The drugs in the kitchen?

19 A: No.

20 Q: The baking soda and the little razors to cut up, was that
21 yours?

22 A: No.

23 Q: Had -- have you -- had you seen the defendant cook crack
24 cocaine at [REDACTED] Ms. Gibbs?

25 A: I can't say I have.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Were you aware he was doing it?
- 2 A: I was at work so I couldn't tell you his activities.
- 3 Q: Were you aware there were drugs there?
- 4 A: No.
- 5 Q: Who all stayed at your house?
- 6 A: Me and the defendant and my son.
- 7 Q: You, the defendant, and your son?
- 8 A: Right.
- 9 Q: Did anybody else stay there?
- 10 A: No.
- 11 Q: Did another man come stay with you?
- 12 A: No.
- 13 Q: I don't mean that disrespectful, you know I don't, but
- 14 was there another man coming there living with you?
- 15 A: No.
- 16 Q: That wouldn't happen; right?
- 17 A: No.
- 18 Q: So the only folks that had access to that house were you,
- 19 Mr. Gibbs, and your son; correct?
- 20 A: Correct.
- 21 Q: Correct?
- 22 A: Correct.
- 23 Q: Did you cook the cocaine into crack?
- 24 A: No.
- 25 Q: Have you ever cooked cocaine into crack?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: Mr. Gibbs did at your house though?
- 3 A: He could. I don't know.
- 4 Q: When's the last time -- you know I'm just doing my job.
- 5 You're here under subpoena; aren't you?
- 6 A: Yes.
- 7 Q: You're under subpoena and you understand I'm just doing
- 8 my job?
- 9 A: Right.
- 10 Q: When's the last time that you talked to Mr. Gibbs?
- 11 A: I talked to him Sunday.
- 12 Q: Did you talk to him last night?
- 13 A: Yes, I did. Yes.
- 14 Q: Did he call you?
- 15 A: Yes.
- 16 Q: Did he ask you not to testify today?
- 17 A: No.
- 18 Q: He didn't ask you not to testify to start with?
- 19 A: No. He told me to do what I have to do.
- 20 Q: And prior to that, did he say don't testify, I don't want
- 21 you to?
- 22 A: Not -- no, not really.
- 23 Q: It's not easy to be here; is it?
- 24 A: No.
- 25 Q: You don't want to be here; do you?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 A: No.
- 2 Q: But you know you got to be here; don't you?
- 3 A: Yes.
- 4 Q: Is that your child in State's 5?
- 5 A: Yes.
- 6 Q: And when you weren't there -- when you weren't working --
- 7 well, during this time period back in specifically 2008, you
- 8 were at the post office. Where was Mr. Gibbs working?
- 9 A: Nowhere.
- 10 Q: And where was your child when you were working?
- 11 A: With the defendant.
- 12 Q: At the house?
- 13 A: Yes.
- 14 Q: Tell -- tell these folks about this mail. Were you
- 15 intending to deliver that mail?
- 16 A: Yes.
- 17 Q: Explain it?
- 18 A: What do you want me to tell you?
- 19 Q: I want you to tell the truth. Just why didn't you take
- 20 it and you were going to do it -- just explain it. I don't
- 21 know. Explain why you didn't deliver it and were you planning
- 22 on it?
- 23 A: It was going to get delivered.
- 24 Q: You had your regular customers?
- 25 A: Yes.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

- 1 Q: Okay. Was it ever getting late in the day and you didn't
2 have time to finish your thing -- your route?
- 3 A: Right.
- 4 Q: And were you planning on taking these?
- 5 A: What do you mean taking them?
- 6 Q: Were you planning on delivering them? I'm ---
- 7 A: Yes.
- 8 Q: That's what I meant. Were you planning on taking them to
9 the -- to the -- to the customers?
- 10 A: Yes.
- 11 Q: And you lost your job because of that; didn't you?
- 12 A: Yes.
- 13 Q: A good paying job; correct?
- 14 A: Correct.
- 15 Q: You had never been in trouble before this; had you?
- 16 A: Right.
- 17 Q: And after that, you went back to school?
- 18 A: Right.
- 19 Q: Continued school; correct?
- 20 A: Right.
- 21 Q: Were you engaged in the manufacturing of and possession
22 of large quantities -- these quantities of drugs? I mean was
23 that your job?
- 24 A: No.
- 25 Q: Making drugs?

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 A: No.

2 Q: But you knew the defendant was in possession of them even
3 if you're saying you may not have been there when they were
4 manufactured? You knew he was in possession of them; didn't
5 you?

6 MR. BROOKS: Objection, Your Honor, leading.

7 Q: Did you know he was in possession of them?

8 A: Which was on him?

9 Q: In the house there. They weren't yours; were they?

10 A: No, they weren't mine.

11 Q: And they weren't anybody else's who didn't live there;
12 were they?

13 A: Right.

14 Q: Right. Now, your attorney ---

15 MR. MEADORS: I beg the Court's indulgence.

16 Q: I forgot where we were. Your attorney is Mr. John
17 Britton?

18 A: Correct.

19 Q: You've talked to Mr. Britton? Obviously, you've talked
20 to your lawyer?

21 A: Yes.

22 Q: Your lawyer and I -- and I have talked as far as you
23 know; correct?

24 A: Yes.

25 Q: All right and you are hoping that -- obviously, you've

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 got these same charges the defendant does; correct?

2 A: Yes.

3 Q: And you're hoping that your testimony will be taken into
4 consideration; correct?

5 A: Correct.

6 Q: And that we asked you to tell the truth?

7 A: Right.

8 Q: Did you know the drugs were in your house?

9 A: No.

10 Q: Were you aware the defendant had made crack cocaine in
11 that house before?

12 A: I wasn't aware of it, no.

13 Q: Had you seen it?

14 A: No.

15 Q: Been around when it was being made?

16 A: No.

17 Q: You know it was made there though; don't you?

18 A: I can only assume.

19 MR. BROOKS: Objection, Your Honor, speculation.

20 THE COURT: Rephrase your question.

21 Q: Now, were y'all asleep when the officers arrived?

22 A: Yes.

23 Q: Okay and as part of your job at the post office when you
24 had to be drug tested; correct?

25 A: Correct.

KIMBERLY GIBBS - DIRECT EXAMINATION BY MR. MEADORS

1 Q: So you weren't using drugs?

2 A: Correct.

3 Q: I mean that's -- you'd have lost your job that way;

4 right?

5 A: Right.

6 MR. MEADORS: Judge, I'm almost through. One second.

7 Q: This was your house at [REDACTED] right?

8 A: Yes.

9 Q: It was the defendant's house?

10 A: Yes.

11 Q: And your child's house?

12 A: Yes.

13 Q: You all lived there?

14 A: Yes.

15 Q: I mean that was your home?

16 A: Yes.

17 MR. MEADORS: Thank you, Ms. Gibbs. That's all.

18 THE COURT: All right. Why don't we take a short recess

19 before we have cross examination? All right, ladies and

20 gentlemen -- stay right there. Ladies and gentlemen, we'll

21 take a fifteen minute recess. If you want a Coca-Cola or

22 something like that, all right. Please do not discuss

23 anything about the case while you're back there.

24 (Whereupon, the jury exits the courtroom at 3:07 p.m.)

25 THE COURT: All right, ma'am, you're still on the stand.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 You may step off to go to the rest room or get something to
2 drink, but you cannot discuss anything with anyone at this
3 point in time. All right? All right, court will be in recess
4 for the next fifteen minutes.

5 (Whereupon, there is a break in the proceedings from 3:07
6 p.m. until 3:27 p.m.)

7 THE COURT: Ma'am, if you would, resume the stand. For
8 the sake of planning, you have one more witness after this one
9 or is she going to be your last witness?

10 MR. MEADORS: Maybe not. There may not be another one.

11 THE COURT: Okay. If they're ready, you can bring them
12 in.

13 (Whereupon, the jury enters the courtroom at 3:28 p.m.)

14 THE CLERK: Your Honor, all the jurors are back in the
15 courtroom.

16 THE COURT: All right. All right, Mr. Brooks, cross
17 examination.

18 MR. BROOKS: Thank you, Judge.

19 CROSS EXAMINATION

20 BY MR. BROOKS:

21 Q: Ms. Gibbs, you worked at the post office; is that right?

22 A: Correct.

23 Q: And you had mail at your house that you were supposed to
24 deliver on that day; is that correct?

25 A: Correct.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 Q: And you didn't do that?

2 A: Correct.

3 Q: But you had your superiors believe that you did; is that

4 correct?

5 A: Correct.

6 Q: And you recognize that's not being -- that would perhaps

7 be categorized as not being truthful?

8 A: Correct.

9 Q: Okay and you acknowledge that?

10 A: Correct.

11 Q: Now, you also acknowledged that you were charged with

12 some very serious drug charges; isn't that correct?

13 A: Correct.

14 Q: Okay and as Mr. Meadors asked you, you're here looking

15 for some consideration?

16 A: Correct.

17 Q: You acknowledge that, too?

18 A: Correct.

19 Q: You -- and you understand what they mean by consideration

20 is that you get some type of reward ---

21 A: Right.

22 Q: --- for being up on the stand and testifying against

23 Clifton?

24 A: Right.

25 Q: You acknowledge that?

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

- 1 A: Yes.
- 2 Q: That you hope to gain something?
- 3 A: Right.
- 4 Q: Okay and you -- you've had discussions with the
- 5 Solicitor's Office about that; isn't that correct?
- 6 A: Correct.
- 7 Q: Okay. In preparation for your testimony?
- 8 A: Correct.
- 9 Q: Against your husband?
- 10 A: Correct.
- 11 Q: Okay. Now, at this moment in time, you and your husband
- 12 are not living together; isn't that correct?
- 13 A: Correct.
- 14 Q: Okay and that would be classified as being separated?
- 15 A: Correct.
- 16 Q: And as such, you don't know what's going on in his house
- 17 and he doesn't know what's going on in yours; isn't that
- 18 correct?
- 19 A: Correct.
- 20 Q: Okay. Now, you have indicated that on December the 23rd,
- 21 2008, law enforcement came to the house, knocked on the door,
- 22 you let them in, they -- they asked to search; correct?
- 23 A: Correct.
- 24 Q: And you gave them permission to search?
- 25 A: Yes, with the dogs.

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

- 1 Q: What was that?
- 2 A: Yes, with the dogs.
- 3 Q: Yes, with the dogs? And then when they found all this
- 4 stuff, you said it ain't yours; right?
- 5 A: Correct.
- 6 Q: Okay. Now, earlier Mr. Meadors had presented a lease
- 7 that you acknowledged that that's the lease between you --
- 8 that was in existence between yourself and the landlord; isn't
- 9 that correct?
- 10 A: Correct.
- 11 Q: Mr. Gibbs never signed that lease; isn't that correct?
- 12 A: Correct.
- 13 Q: It's only your signature on there?
- 14 A: Correct.
- 15 Q: Okay and again, this would have been at [REDACTED]?
- 16 A: Correct.
- 17 Q: Okay. Now, you do acknowledge that sometimes he stayed
- 18 at his mom's house?
- 19 A: Yes.
- 20 Q: Okay. A lot of times he stayed at his mom's house?
- 21 A: Yes.
- 22 Q: But more often than not, without any question you were at
- 23 [REDACTED]
- 24 A: Yes.
- 25 Q: Okay. So let's go back through this. What we know for

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 sure is more often than not you were there, sometimes Mr.

2 Gibbs was there; right?

3 A: Yes.

4 Q: You signed the lease; he did not?

5 A: Correct.

6 Q: You're testifying in hopes of consideration on what you
7 acknowledge to be some serious drug charges; correct?

8 A: Correct.

9 Q: And you discussed this with the Solicitor's Office?

10 A: Correct.

11 Q: Looking for some type of gain or reward; is that correct?

12 A: Correct.

13 Q: And you do acknowledge being untruthful with the post
14 office in the past?

15 A: Correct.

16 Q: Your superiors?

17 A: Correct.

18 Q: Okay.

19 MR. BROOKS: I beg the Court's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 Q: You do recall when they -- they being the officers --
22 detained your husband, he said he doesn't live here; isn't
23 that correct?

24 A: That's what he said.

25 Q: That's what he said. Now, you do acknowledge he told

KIMBERLY GIBBS - CROSS EXAMINATION BY MR. BROOKS

1 them that?

2 A: Yes.

3 Q: Okay. In your presence?

4 A: Yes.

5 Q: Okay.

6 MR. BROOKS: No other questions.

7 THE COURT: Any redirect?

8 MR. MEADORS: May I approach?

9 THE COURT: You may.

10 REDIRECT EXAMINATION

11 BY MR. MEADORS:

12 Q: But he did live there; didn't he?

13 A: Yes.

14 MR. MEADORS: Thank you.

15 THE COURT: Thank you. You may step down.

16 (Whereupon, the witness leaves the stand at 3:35 p.m.)

17 MR. MEADORS: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. BROWN: Your Honor, at this time the State of South
20 Carolina rests.

21 THE COURT: All right, thank you. Let me see the
22 attorneys for just a minute.

23 (Whereupon, a bench conference is held off the record.)

24 THE COURT: All right, ladies and gentlemen, we've got
25 some matters of law I'll need to take up with the attorneys so

1 If you would, have your client come up and be sworn. I
2 need to ask him some questions regarding his right to testify.

3 THE CLERK: Place your left hand on the Bible and raise
4 your right hand. State your name, please.

5 THE DEFENDANT: Leroy Gibbs.

6 THE CLERK: Do you solemnly swear or affirm your
7 testimony to the Court shall be the truth, the whole truth,
8 and nothing but the truth, so help you God?

9 THE DEFENDANT: Yes, sir.

10 THE CLERK: Thank you.

11 THE COURT: You are Leroy Clifton Gibbs?

12 THE DEFENDANT: Yes, yes, sir.

13 THE COURT: Please speak into the microphone.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, Mr. Gibbs, at this time I am
16 going to explain to you certain of your rights. If you do not
17 understand anything that I say, please let me know. If you
18 want me to explain in more detail, let me know. Do you
19 understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, we've reached the stage of
22 the trial where you may present your defense. You have the
23 right to claim the protections given to you by the Fifth
24 Amendment of the Constitution of the United States, and this
25 amendment says in part that no person shall be compelled in

1 any criminal case to be a witness against himself.

2 Now, this means that you cannot be required to testify in
3 this case. You have the right to testify on your own behalf.
4 However, no one can make you testify. This is a personal
5 right and no one can waive this except for you.

6 Now, if you decide to testify, you will be subjected to
7 the same rules that govern other witnesses and you may be
8 examined and cross examined on any relevant issue in this
9 case. In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable by more
11 than a year's imprisonment and this Court determines that the
12 probative value of admitting this evidence outweighs the
13 prejudicial effect on you, the Solicitor will be able to
14 introduce your record to attack your credibility.

15 Is there any record that the State would use against Mr.
16 Gibbs if he testified?

17 MR. BROWN: Your Honor, we -- the only -- the main one we
18 would raise, there was an accessory after the fact to a
19 felony, that felony being armed robbery that came out of -- it
20 looks like it was a conviction in '96. I believe that's a
21 crime of dishonesty. We understand it's outside of the ten
22 year time frame, but we would ask the Court for permission to
23 enter that -- to enter that as evidence.

24 THE COURT: Mr. Brooks?

25 MR. BROOKS: Judge, obviously, I don't know what my

1 client is going to decide, but it would be our position that
2 that does -- that should not be allowed to be used for
3 impeachment purposes. We think it would be prejudicial and
4 extremely prejudicial and it would outweigh its probative
5 value in this case.

6 THE COURT: For the sake of -- and I'm not ruling on
7 that, but assume that if you do take the stand, that would
8 come in. You can consider that. I don't know how I would
9 rule on that at this point in time, but, you know, that is
10 something -- that's the only thing that y'all have that y'all
11 would possibly use to attack his credibility on his record?

12 MR. BROWN: Yes, Your Honor.

13 THE COURT: All right. Now, if you decide to testify,
14 the decision on your part must be freely, voluntarily, and
15 intelligently made with knowledge of the protections given to
16 you by the Fifth Amendment and the consequences of your
17 decision to testify. If you decide not to testify, I will
18 instruct the jurors that they cannot give the fact that you
19 did not testify any consideration whatsoever and that there is
20 to be absolutely no prejudice to you because you did not
21 testify.

22 It is left entirely up to you whether or not you want to
23 testify. You may talk with your attorney, your family, your
24 friends, or anyone else, but the final decision will be left
25 entirely up to you. Now, do you understand what I've explained

1 to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you have any questions about what I've
4 explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. Have you discussed with your lawyer
7 whether or not you should testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Would you like some more time to speak with
10 him and your ---

11 THE DEFENDANT: Yes, sir.

12 THE COURT: --- some of your family members?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'm going to -- let's take a ten
15 minute recess. I'm going to give him time to speak with his
16 attorney.

17 (Whereupon, there is a break in the proceedings from 3:45
18 p.m. until 3:59 p.m.)

19 THE COURT: All right, Mr. Brooks, are you -- I gave you
20 some time. Are y'all about ready? Is he about ready to
21 decide what he wants to do? I'll ask Mr. Gibbs. Mr. Gibbs,
22 have you had an opportunity to speak with your family and your
23 attorney about whether or not you want to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you want to testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, very well. Thank you. Bring the
3 jury back in.

4 MR. BROOKS: Judge, before we do that, can I put
5 something on the record about that?

6 THE COURT: Yes, sir. Yeah. Please go ahead.

7 MR. BROOKS: Judge, I just wanted to put on the record
8 I've advised my client against testifying and the reason is,
9 Judge, is because if we end up getting into whether or not he
10 was a resident there, it's my position, particularly in light
11 of the motion *in limine* that I presented prior to us taking
12 testimony, that that would open the door for the State to
13 start talking about all these other drug buys that they made
14 at this residence involving my client.

15 At the present time, the jury doesn't know that he has
16 drug charges pending from buys or alleged buys, and if he
17 takes the stand on the drug evidence to talk about whether
18 he's a resident or not to basically say he's not a resident,
19 then that would allow Mr. Meadors and Mr. Brown to talk about,
20 yeah, he is a resident there. We showed up as the police on
21 this day, this day, and this day, and this is what happened,
22 and that's what scares me in regards to my client, but right
23 now, nobody knows that he has any other drug charges pending
24 except for, obviously, the people in the courtroom. None of
25 the jury knows that and that's why we put that motion on the

1 Court before we started and that's, you know, our position.
2 I'm just adamant about it. I think that is suicide for my
3 client, but I wanted to put that on the record.

4 THE COURT: All right. Thank you. All right, let's
5 bring our jury back in.

6 (Whereupon, the jury enters the courtroom at 4:01 p.m.)

7 THE CLERK: Your Honor, all the jurors are present in the
8 courtroom.

9 THE COURT: Thank you, Mr. Bradley. All right, Mr.
10 Brooks?

11 MR. BROOKS: We would call Mr. Gibbs to the stand, Judge.

12 THE COURT: Mr. Gibbs, come forward and be sworn.

13 THE CLERK: Place your left hand on the Bible and raise
14 your right hand. State your name, please.

15 THE DEFENDANT: Leroy Gibbs.

16 THE CLERK: Do you solemnly swear or affirm your
17 testimony to the Court shall be the truth, the whole truth,
18 and nothing but the truth, so help you God?

19 THE DEFENDANT: Yes, sir.

20 THE CLERK: Thank you. Have a seat up here, please.
21 Watch your step going up. Please state your full name and
22 spell your last name for the record.

23 THE DEFENDANT: Leroy Gibbs, G-I-B-B-S.

24 LEROY CLIFTON GIBBS, being first duly
25 sworn, testifies as follows:

LEROY C. GIBBS, III - DIRECT EXAMINATION BY MR. BROOKSDIRECT EXAMINATION

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BY MR. BROOKS:

Q: Mr. Gibbs, you see these packets here?

A: Yes, sir.

Q: That's got -- got drugs in it. Are these your drugs?

A: No, sir.

Q: I can't hear you.

A: No, sir.

Q: That box down there the State has shown that has a gun --
guns in it, are those your guns?

A: No, sir.

Q: Okay. You've seen these pictures where they found a
blunt in an ashtray; correct?

A: Yes, sir.

Q: Was that yours?

A: No, sir.

Q: The drugs that was in Kimberly Gibbs' purse, was that
yours?

A: No, sir.

Q: Did you put it there?

A: No, sir.

Q: You've seen the pictures of where they talked about the
drugs in the microwave and in the kitchen at this residence.
Did you put that there?

A: No, sir.

LEROY C. GIBBS, III - DIRECT EXAMINATION BY MR. BROOKS

1 Q: Was that your drugs?

2 A: No, sir.

3 Q: Are these your razors?

4 A: No, sir.

5 Q: Do you remember being taken to the jail by Officer

6 Horton?

7 A: Yes, sir.

8 Q: Did you ever blurt out selling drugs is a lifestyle to

9 me?

10 A: No, sir.

11 Q: Do you remember when Officer ---

12 MR. MEADORS: Your Honor, at this point I'm going to

13 object to leading.

14 THE COURT: Sustained.

15 Q: Did you make a statement while you were being transported

16 to the jail?

17 A: No, sir.

18 Q: Do you remember Officer Dubose coming to see you the next

19 day?

20 A: Yes, sir.

21 Q: Did you give him any type of statement?

22 A: The only statement I made to Mr. Dubose was that I had no

23 knowledge of any drugs that was found at the residence.

24 MR. BROOKS: No other questions, Judge.

25 THE COURT: Does the State wish to cross examine him?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 MR. MEADORS: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. MEADORS:

5 Q: When Kimberly was living in San Diego, you were living
6 there with her; weren't you?

7 A: Yes, sir.

8 Q: And you went out to San Diego and stayed with her because
9 that's where she was?

10 A: Yes, sir.

11 Q: And y'all were married; right?

12 A: Yes, sir.

13 Q: And she's your wife?

14 A: Yes, sir.

15 Q: And you live with your wife?

16 A: At the time, yes.

17 Q: In San Diego?

18 A: Yes, sir.

19 Q: And Kimberly Gibbs had nothing to do with these drugs;
20 did she?

21 A: No, sir.

22 Q: And say it again louder. Kimberly Gibbs had nothing to
23 do with these drugs; did she?

24 A: No, sir.

25 Q: And you know that. I mean you know she had nothing to do

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 with these drugs?

2 A: Yes, sir.

3 Q: I mean no disrespect to this, but you were not working at
4 the time and getting employment -- income from employment;
5 were you?

6 A: Not at that time. I was taking care of my son.

7 Q: At [REDACTED]

8 A: Yes, sir.

9 Q: And that's where you would take care of him every day
10 because that's where he'd be when Kimberly went to work;
11 right?

12 A: Yeah, if her parents didn't -- didn't taken care of him,
13 I would.

14 Q: But when you'd take care of him, you'd be at [REDACTED]
15 [REDACTED] taking care of him?

16 A: Or at [REDACTED], [REDACTED], which is my
17 residence where I was staying with my mother.

18 Q: And the amount of money in your pocket didn't come from a
19 job. Did that come from selling drugs?

20 A: No. It came from an accident that we both was in. It
21 came from that.

22 Q: But you can't even remember where that accident happened
23 or where it was; right?

24 A: I know where it happened. I just can't remember what
25 year when it was.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay. Well, at a previous hearing under oath, you
2 couldn't even remember where the accident happened because you
3 had -- I believe your answer was that you had had so many, you
4 couldn't even remember where the accident was; right?

5 A: Yeah. I had like two or three accidents that took place
6 where I can't exactly remember which accident it was that the
7 money I had on me at that time was from which accident, but I
8 submitted it to -- the receipt that I had from the insurance
9 company to -- to the courts at the civil suit concerning my
10 money so I could get it back.

11 Q: I done been in different accidents. I don't recall which
12 one was at the time. I got 1,300. Do you remember saying
13 that?

14 A: Yes, sir.

15 Q: And -- and you don't have any evidence of that receipt
16 from a settlement or anything?

17 A: It should be in the Clerk of Court somewhere because I
18 submitted it through a civil suit to obtain my money back.

19 Q: And nobody else stayed at [REDACTED] except you,
20 Kimberly, and your son; correct? I mean Kimberly is your
21 wife; right?

22 A: Yes, she's my wife.

23 Q: You didn't share your wife with anybody else?

24 A: I can't -- what do you mean by sharing? She had ---

25 Q: What do you think I mean? I mean ---

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: Me -- me and Kimberly had, you know, altercations, and
2 eighty-five percent of the time, I would be staying at my
3 mom's, and there was plenty of times that, you know, she would
4 have friends and, you know, people that she deal with at that
5 -- at the residence.

6 Q: Like -- like what do you mean by that?

7 A: She'll have friends over at [REDACTED]

8 Q: What kind of friends?

9 A: Associates, people she dealt with.

10 Q: Like who?

11 A: Her boyfriends or people that she'll social -- socialize
12 with.

13 Q: Who are her boyfriends, Mr. Gibbs?

14 A: Who were they?

15 Q: Who are they? Who are they? Yeah, who are you talking
16 about? Who are Kimberly Gibbs' boyfriends?

17 A: I can't recall their names.

18 Q: So you let other men come over into your house?

19 A: It -- it was basically her house because she paid the
20 bills there. She just added my name back in April to the
21 lease because at that time we was married.

22 Q: You were on the lease, you and your son, when she entered
23 the lease?

24 A: Well, she -- she did the signing. I never signed
25 anything. I never seen -- I never even seen the lease. I

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 never signed the lease. I never seen the lease.

2 Q: You're doing everything you can to distance yourself from
3 [REDACTED] aren't you?

4 A: Because I -- I can.

5 Q: Who does that say that she put down at the time she
6 entered the lease as living in [REDACTED]

7 A: At -- at April I guess when this lease was -- was made,
8 she added my name to the lease because at then we was married.

9 Q: That's when the lease was entered and it puts on there
10 who were the occupants and ---

11 A: Like I said ---

12 Q: --- it said you and your son.

13 A: Yeah.

14 Q: That's the same lady that you went out and lived with in
15 California; right?

16 A: Yes.

17 Q: And -- and in December you were living there of '08;
18 weren't you?

19 A: No, sir.

20 Q: You were not?

21 A: Not every day, no. There's been parts of time that I
22 come over when she, you know, called and asked can I come.
23 That time December the 23rd when I went there that morning, she
24 called me the night before and said that she was off for
25 Christmas and asked me could I come over and spend time with

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 her and my son.

2 Q: You just testified earlier when I asked you, so in
3 December of 2008 were you not living there, and you said, no,
4 sir, just a minute ago. Do you remember that?

5 A: Yes, sir.

6 MR. MEADORS: Your Honor, I have a matter of law.

7 THE COURT: All right.

8 (Whereupon, a bench conference is held off the record.)

9 MR. MEADORS: I beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 MR. BROOKS: Your Honor, while he's doing that, I note my
12 objection for the record.

13 THE COURT: Yes, sir. You're protected.

14 Q: And I assume the answer is the same you said for December
15 would be true of October and November that you weren't living
16 there most of the time; correct?

17 A: Yes, sir.

18 Q: Was that a yes?

19 A: Yes, sir.

20 Q: Specifically, please, sir, on or about October 28th of
21 2008 at [REDACTED] did you or did you not distribute
22 a quantity of crack cocaine to an individual at approximately
23 1:29 on October 29th of 2008 ---

24 A: No, sir.

25 Q: --- at this address?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: And specifically on November 24th of 2008 at approximately
3 12:28 p.m., did you or did you not distribute a quantity of
4 crack cocaine to an individual from this same residence at [REDACTED]
5 [REDACTED] that you were living?

6 A: No, sir.

7 Q: And on December 1st, 2008, when you were saying you
8 weren't staying there eighty-five percent of the time; right?

9 A: Yes, sir.

10 Q: Did you distribute a quantity of crack cocaine at
11 approximately 4:43 p.m. to an individual at your residence in
12 exchange for money?

13 A: No, sir.

14 Q: You testified it's not Kimberly's drugs; correct?
15 Without question, she didn't know about them?

16 A: From my understanding.

17 Q: Well, previously you said no at a hearing prior under --
18 under oath at a hearing prior, you said she -- they weren't
19 here drugs. They weren't her drugs; right?

20 A: From my understanding, they wasn't.

21 Q: And she's your wife. I mean I'm not trying to trick you.
22 She's your wife?

23 A: Yeah, she's my wife.

24 Q: Okay.

25 A: We're separated, but she still is my wife.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay and you are now -- you weren't separated back then
2 though. Back in 2008, you weren't separated?

3 A: We was just having ---

4 Q: You just ---

5 A: We was going through problems. We're still married
6 today, but we're still living separate lives.

7 Q: Your problems ---

8 A: She live in her house and I stay with my mom.

9 Q: Your problems were the drug dealing with your child
10 there. That's the problems; wasn't it?

11 A: What drugs?

12 Q: You come back from California with her. She comes back
13 and then you're going to live -- you're living together in
14 [REDACTED] just like you were in San Diego, Mr. Gibbs?

15 A: When we got -- when we came back from San Diego, we
16 wasn't staying at [REDACTED] We moved into [REDACTED]
17 back in April of 2008.

18 Q: Do you know what you just said? You just said we -- we
19 moved back into [REDACTED]. We moved back into [REDACTED]. You
20 just said that.

21 A: Back in April.

22 Q: We is you and her?

23 A: Yes, sir.

24 Q: That was where you were living. Admit it.

25 A: In April it was, but not in December.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: She didn't know about it, according to your testimony,
2 and now at some point some boyfriends or somebody is coming
3 over to the house and visiting her. Is that who you're trying
4 to blame these drugs on?

5 A: Well, the only thing I stated was other individuals that
6 she was dealing with was at the residence.

7 Q: And you don't even know who they are?

8 A: It wasn't my, you know, duty to know about, you know, who
9 she was dealing with because I had my -- my friends as well.

10 Q: So you're okay letting other people, no matter who they
11 are or you don't know who they are, come into your house ---

12 A: We ---

13 Q: Will you please let me ---

14 A: She ---

15 Q: Please let me finish and I'll let you finish. You're
16 okay with other people coming into your house that you don't
17 know, other men coming into your house, and it's okay with
18 you?

19 A: It's not my house. It's her house.

20 Q: You called her Sunday night and said don't testify;
21 didn't you?

22 A: No, sir. I was over at her house Satur -- Sunday.

23 Q: You called her last night and said don't testify; didn't
24 you?

25 A: No. I called her and she stated that y'all asked her to

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

- 1 testify.
- 2 Q: And you told her don't; didn't you?
- 3 A: No, sir.
- 4 Q: And then you got mad and said do what you got to do;
- 5 didn't you?
- 6 A: No, sir.
- 7 Q: And you didn't want her to testify?
- 8 A: It was her duty to testify.
- 9 Q: She never made you sandwiches; did she?
- 10 A: State that again?
- 11 Q: She never made you sandwiches; did she?
- 12 A: She made sandwiches.
- 13 Q: Sandwiches?
- 14 A: Yeah. She made sandwiches. I made her sandwiches.
- 15 Q: What was this baking soda for in the kitchen?
- 16 A: What was the baking soda for?
- 17 Q: Do you know?
- 18 A: That's her cooking. She used baking soda to cook.
- 19 Q: You're telling me you never looked inside that cupboard?
- 20 A: Say that again?
- 21 Q: Have you ever looked inside that cupboard?
- 22 A: In that cupboard?
- 23 Q: Cupboard, yes, sir.
- 24 A: What do you mean by cupboard?
- 25 MR. MEADORS: Can I approach?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

- 1 THE COURT: You may.
- 2 Q: State's 15, that cupboard above the microwave.
- 3 A: Have I ever looked in it? Yes, sir, yes.
- 4 Q: And this was crack -- there's cocaine -- any crack
- 5 cocaine found in there?
- 6 A: I don't have no knowledge of that. I was arrested. I
- 7 was -- I was arrested and sent to the jail. I didn't know
- 8 about any drugs until the next day.
- 9 Q: All right. Let me ask you about that real quick. When
- 10 Investigator Dubose came in your house ---
- 11 A: Yes.
- 12 Q: --- you remember -- you know Dubose?
- 13 A: Yes.
- 14 Q: And when he came into your house, you remember he read
- 15 you your rights?
- 16 A: Yes, sir.
- 17 Q: He didn't give you a hard time. I mean he didn't give
- 18 you a hard time. I mean he didn't harass you. He read you
- 19 your rights; right?
- 20 A: Yeah, yes, sir.
- 21 Q: Okay and I'm not trying to trick you, but he didn't give
- 22 you a hard time. He didn't mess with you. He didn't try to
- 23 hold out any hope. He read you your Miranda rights; right?
- 24 A: Yes, sir.
- 25 Q: And that's when you told him at the house I don't live

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 here; right?

2 A: He asked to search the house and I told him I don't stay

3 there.

4 Q: Okay. You told him you don't stay there?

5 A: Yes.

6 Q: And that was his testimony; wasn't it?

7 A: Yes, sir.

8 Q: And then, you heard the testimony, this consent to search

9 the house; right?

10 A: Yes.

11 Q: You were then transported by these officers to the

12 detention center; right?

13 A: Yes, sir.

14 Q: It's not in dispute; right?

15 A: No.

16 Q: They treated you nice; didn't they?

17 A: They only sent me to -- they only took me from [REDACTED]

18 [REDACTED] and took me to Winkles Road.

19 Q: No question. We can agree on that?

20 A: Yes, sir.

21 Q: They took you to the Sumter Lee Detention Center; right?

22 A: Yes.

23 Q: They didn't give you a hard time?

24 A: I didn't give them a hard time either.

25 Q: I didn't say you did. That was my next question.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

- 1 Neither one of y'all gave you a hard time?
- 2 A: Yes, sir.
- 3 Q: Y'all -- neither one of y'all had a dog -- they didn't
- 4 have anything against you. Matter of fact, you knew one of
- 5 them's brother. You went to school with him.
- 6 A: No. My brother went to school with them.
- 7 Q: Okay. Well, I'm -- I'm close. Your brother went to
- 8 school with one of the police officers in the front; right?
- 9 A: Yes.
- 10 Q: So it's all interaction. They weren't asking you
- 11 questions. Y'all weren't harassing with each other; right?
- 12 A: Yes.
- 13 Q: And that's when you said selling drugs is a lifestyle for
- 14 you?
- 15 A: That's not true. Why would I say drugs was a lifestyle
- 16 whereas that I had no knowledge of the drugs.
- 17 Q: Because that is your lifestyle?
- 18 A: I ---
- 19 Q: \$1,355 in your pants, baking soda in your cupboard?
- 20 A: Okay. My -- my money was -- was -- was recovered for a
- 21 document and none of the money that I received out of my
- 22 pocket was any documented money, but ---
- 23 Q: What do -- what do you mean by documented money?
- 24 A: That's what Dubose stated. I asked him why was he taking
- 25 my money. He said he was taking my money for documented

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 money.

2 Q: You're talking about these other instances of these
3 distributions -- alleged distributions?

4 A: I don't know. He -- he -- I asked him why was he
5 confiscating my money. He stated that he was confiscating my
6 money because of documented money to see if any money was --
7 any documented money found, which it wasn't.

8 Q: Documented from these three prior instances I asked you
9 about where money was given to you in exchange for crack
10 cocaine, that's what he was asking you about; right?

11 A: But I never sold them any drugs.

12 Q: But that's what he was saying, to see if this ---

13 A: I don't know.

14 Q: I mean for this point, you knew he was saying we're
15 seeing if the money -- this had happened weeks prior, was some
16 of the same money you had here. That's what he was looking
17 for.

18 A: I don't know.

19 Q: Well, you do know. I mean that's what he was looking
20 for, the documented funds they'd used on these to see if you
21 still had it in your pants, but you'd already spent this
22 money; hadn't you?

23 A: Spent it? I never sold ---

24 Q: And you actually ---

25 A: I never seen no money from anyone.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: And you actually asked him about another incident when he
2 was talking to you, too, about a fellow that you traded for
3 some drugs; didn't you?

4 A: No.

5 Q: You don't remember that?

6 A: No.

7 Q: What was the guy's name?

8 MR. MEADORS: I beg the Court's indulgence. I beg the
9 Court's indulgence.

10 THE COURT: Yes, sir.

11 Q: A purchase at the Blockbuster to Sweeney -- sold Sweeney,
12 but you said Sweeney also traded you ten Loricet pills. You
13 don't remember talking to him about that?

14 A: No.

15 Q: And when Investigator Dubose was serving you with the
16 warrants, do you remember him asking you -- and again down at
17 the jail, Mr. Gibbs. Investigator Dubose, he read you your
18 rights; didn't he? That's not in dispute for when he was
19 serving the warrants on you. That's what he does like a
20 robot. He read you your rights again; right?

21 A: I can't recall.

22 Q: Okay. So you can't dispute that he read your rights to
23 you?

24 A: No, sir.

25 Q: All right. Do you recall when he confronted you or said

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 verbally -- asked you about what you told the officers that
2 selling drugs was a lifestyle for me?

3 A: Yes, sir.

4 Q: Do you remember that?

5 A: Yes.

6 Q: And that's when you told him I got to support my family?

7 A: I never said anything to Dubose concerning anything
8 dealing with lifestyle or me selling any drugs.

9 Q: Or -- or saying about supporting his family?

10 A: Not about supporting my family because my wife was
11 getting enough money to support the family.

12 Q: And did you remember when -- when he told you about all
13 the items? He said, well, here's what we found. Here are the
14 warrants, because the warrants they were serving on you were
15 for what they found at [REDACTED] correct? That's the
16 warrants he was serving on you at the jail the next day?

17 A: Yes, sir.

18 Q: Okay and -- and do you remember telling him -- you deny
19 you said you had to support your family; correct? You deny
20 that?

21 A: Sir?

22 Q: You say that didn't happen when you said in response to
23 why did you tell the officers this is my lifestyle because I
24 had to support my family? You deny you told him that?

25 A: Yes, sir.

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 Q: Okay and -- but you don't deny this, do you, that he --
2 you -- that you said that his wife -- your wife must have had
3 someone else there because it was not his and had to be hers?
4 Do you remember telling him that?

5 A: Yes, sir. I recall saying that statement.

6 Q: But that -- you remember that; right?

7 A: That next day or the third day.

8 Q: Okay, but -- but -- but that's not true. You told him
9 that day when he was serving it to you -- when he was giving
10 you the warrants that she must have had someone else there
11 because it wasn't yours, it had to be hers, but you've now
12 told us and said previously at another hearing it wasn't hers.
13 There wasn't any question about it; right?

14 A: I have no knowledge that it was hers or not.

15 Q: Well, you said before under oath that you did, that it
16 wasn't hers and she didn't know anything about it.

17 A: I said I had no knowledge of it.

18 Q: No, previously you said she knew nothing of it.

19 A: Well, I don't have no knowledge of it and so I can't say
20 if it was hers or not. I was ---

21 Q: But you have before.

22 A: I was -- I was arrested and sent to the jail. I was
23 never there when these drugs or guns or what items that was
24 found in this residence. I was at the jailhouse and the next
25 day, that's when these warrants arrived, which I had no

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 knowledge of any drugs or any guns that was in this residence.
2 Q: Do you deny that at a previous hearing when the questions
3 was: And you know she didn't have nothing to do with these
4 drugs, did you? Answer: No, sir.
5 A: If I had no knowledge of it, then no, sir. I don't have
6 no knowledge of it.
7 MR. MEADORS: And -- and, Your Honor, may I approach?
8 THE COURT: You may.
9 Q: Do you mind if I approach you, Mr. Gibbs?
10 A: No, sir.
11 Q: And following up to that "no, sir", a question. I mean,
12 you know, you just -- you just automatically said it.
13 Kimberly didn't mess with drugs. Kimberly didn't cook drugs.
14 Kimberly didn't even know how to do that, did she, and you
15 said, not to my knowledge. Then question: She didn't? So
16 these weren't Kimberly's drugs, were they? And you started to
17 say I, and the question: I mean they're -- you're not trying
18 to say that, are you? You're not trying to say that, are you?
19 And you said, no, I'm not.
20 A: Okay.
21 Q: So you're not saying those are her drugs?
22 A: Yes. I'm not saying that it's hers or not, that I don't
23 have no knowledge of it. I'm just saying, yes, sir.
24 Q: Selling drugs from a house with children is not
25 appropriate; is it?

LEROY C. GIBBS, III - CROSS EXAMINATION BY MR. MEADORS

1 A: No, sir.

2 Q: It's not a way to make a living and support a family; is

3 it?

4 A: No, sir.

5 Q: It's illegal; isn't it?

6 A: Yes, sir.

7 Q: It's wrong? It's wrong; isn't it?

8 A: Yes, sir.

9 Q: And Kimberly didn't know how to cook crack?

10 A: Me neither.

11 Q: I didn't ask you that. Kimberly didn't know how to; did

12 she?

13 A: Not to my knowledge.

14 MR. MEADORS: I beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. MEADORS: That's all I have, Mr. Gibbs. Thank you.

17 THE COURT: Any redirect, Mr. Brooks?

18 MR. BROOKS: No, sir.

19 THE COURT: You may step down.

20 (Whereupon, the witness leaves the stand at 4:30 p.m.)

21 MR. BROOKS: That's the defense case.

22 THE COURT: All right. Thank you.

23 MR. MEADORS: I'd ask for a short recess.

24 THE COURT: Yes. Ladies and gentlemen, I'm going to send

25 you back to the jury room for about ten minutes and then we'll

1 -- while we take up some matters here, and then I'll bring you
2 back. Thank you.

3 (Whereupon, the jury exits the courtroom at 4:31 p.m.)

4 MR. BROOKS: Judge, I -- I'll put on my objection and
5 motion for a mistrial on the record in light of we don't feel
6 that that was opening the door to allow the State to go into
7 prior incidents -- incidents and allegations about drugs that
8 are totally separate from the incident that is on trial. We
9 feel that the State should not have been allowed to do that
10 and ask -- we're asking the Court to grant a mistrial in this
11 matter.

12 THE COURT: All right. Thank you.

13 MR. MEADORS: Your Honor, respectfully, we think he
14 opened the door when he said he wasn't staying there eighty-
15 five percent of the time in November and then he went back
16 saying October and November. Really, the only time he said he
17 was staying there later on was in April when he came, but
18 after that he was kind of eighty-five percent. So I think,
19 respectfully, because Your Honor ruled he opened the door to
20 these specific instances where he was there at different times
21 throughout the day.

22 THE COURT: I -- I don't think there's any question in my
23 mind that he opened the door and allowed those questions.
24 Will there be any reply testimony?

25 MR. MEADORS: Yes, sir. If Your Honor will just give us

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 a few minutes, it will just be one officer and we can -- we'll
2 have it ready in your time limit.

3 THE COURT: Okay.

4 MR. MEADORS: Thank you.

5 THE COURT: It'll be ten minutes.

6 MR. MEADORS: Okay. Thank you, sir.

7 THE COURT: Court will be in recess for ten minutes.

8 (Whereupon, there is a break in the proceedings from 4:32
9 p.m. until 4:43 p.m.)

10 MR. MEADORS: The State is ready, Your Honor.

11 THE COURT: All right. Bring the defendant out.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: All right. Let's bring our jury out.

14 (Whereupon, the jury enters the courtroom at 4:44 p.m.)

15 THE CLERK: Your Honor, we have all the jurors back in
16 the courtroom.

17 THE COURT: Thank you, Mr. Bradley. Does the State have
18 any rebuttal testimony?

19 MR. MEADORS: May it please the Court. Investigator
20 Wayne Dubose.

21 THE COURT: All right. He's still under oath. He's
22 still under oath.

23 INVESTIGATOR WAYNE DUBOSE, being
24 first duly sworn, testifies as follows:

25 DIRECT EXAMINATION

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 BY MR. MEADORS:

2 Q: Investigator Dubose?

3 A: Yes, sir.

4 Q: On October 29th of 2008, did you have an occasion to take
5 -- did you have an occasion to take part in an undercover
6 purchase from [REDACTED]

7 A: Yes, sir.

8 Q: Could you please tell the ladies and gentlemen of this
9 jury how that led up ---

10 MR. BROOKS: Your Honor, I'll note my objection for the
11 record.

12 THE COURT: Your -- your objection is well noted.

13 Q: Could you please tell the ladies and gentlemen of this
14 jury about an undercover purchase on October 29, 2008, at [REDACTED]
15 [REDACTED] as it relates to one Leroy C. Gibbs, III?

16 A: Yes, sir. On October 29th, 2008, myself and Investigator
17 Boland, who is employed with the Sheriff's Office, we met with
18 a confidential informant at a secure location. The informant
19 was searched by me. I searched the informant and took any
20 money that informant may have had. Investigator Boland
21 searched the vehicle. Nothing was found. At that time, the
22 informant was given \$60 in documented funds.

23 At that time, at about 1:24, around that time the
24 informant called Mr. Gibbs. The informant knew Mr. Gibbs
25 personally and referred to him as Cliff. He called him about

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 1:24. He leaves en route to the location.

2 At 1:28 p.m., he arrives at [REDACTED] He goes
3 in and meets Mr. Gibbs and purchases a quantity of crack
4 cocaine at 1:29, and again at 1:29, he leaves the residence.
5 We follow the informant from the residence back to another
6 meeting location. The crack cocaine was turned over to
7 myself. I searched the CI. The CI's vehicle was searched by
8 Investigator Boland, again with negative results. The crack
9 cocaine was turned over to myself and it was placed into
10 evidence and for analysis.

11 Q: Now, you say that this CI and the vehicle were searched
12 prior to the attempted purchase and after the attempted
13 purchase, and you say with negative results. What does all
14 that mean and why are you doing that?

15 A: Before we make a purchase, we meet with the informant at
16 a location that they don't know where it's at so they don't
17 have an opportunity to go plant anything, if you will. We
18 meet with them. At that time, the informant is searched. We
19 make sure we take all the money from them and make sure they
20 don't have any drugs on them. The vehicles are searched the
21 same way.

22 The informant is then sent to a location. On this
23 occasion, we followed the informant, stayed right behind the
24 informant. There was no stops from the meeting location to
25 [REDACTED] So there was no way to stop somewhere

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 and pick something up. The informant goes there and makes the
2 purchase and they -- we tell them to go back to a specific
3 spot. Again, the drugs are turned over and we search them
4 again to make sure they don't have anything, and then we
5 search the vehicle again.

6 Q: After you retrieved the drugs in this case ---

7 A: Yes, sir.

8 Q: --- from the informant? And are you monitoring or are
9 you and your other officers in the area watching the informant
10 as he goes to the -- in this case, [REDACTED]?

11 A: Yes, we were. We followed the informant right behind
12 him. On this occasion -- well, on all three occasions that we
13 purchased, we parked probably just over a hundred yards or so
14 from the residence, just down the street from [REDACTED].
15 We parked right at a corner house where we could see the
16 informant pull up in the yard. We could see him go in. The
17 informant also had some equipment on him that we could
18 actually hear and monitor through our radios.

19 Q: And after you had received -- in this case the October
20 29th buy what was presented as crack cocaine, did the informant
21 identify the defendant?

22 A: The informant identified the defendant before we went
23 there.

24 Q: So he knew him by name and sight?

25 A: He also identified him afterwards and then he gave us a

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 witness statement.

2 Q: On October 24th, 2008, did you have an occasion to take
3 part in an attempted undercover purchase from one Leroy C.
4 Gibbs, III, at [REDACTED] here in Sumter County?

5 A: November 24th?

6 Q: Yes, sir.

7 A: Yes, sir, on November 24th, the same informant. We met
8 with the informant at a secure location about twelve o'clock
9 that afternoon. Again, I searched the informant. Again,
10 Investigator Boland searched the vehicle with negative
11 results. The CI was given \$100 in documented funds by me.
12 The informant called Mr. Gibbs on his cell phone at 968-6023.
13 The informant then left the location and was en route to [REDACTED]
14 [REDACTED] to meet with Mr. Gibbs at 12:15.

15 The informant arrives at the address at 12:27. The
16 purchase is made at 12:28 and that purchase was of crack
17 cocaine. The informant leaves the residence at 12:42. We
18 meet the informant back at a secure location at 12 -- 12:53.
19 Again, I searched the informant. Investigator Boland searched
20 the informant's vehicle. That crack cocaine was also placed
21 into evidence and analyzed.

22 Q: And when you say documented funds, are these funds that
23 you've written down the serial numbers? Did you use
24 documented funds in this case?

25 A: We actually take the funds and make a photocopy. That

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 way, when we do go back to make an arrest, if the person has a
2 quantity of money on them, we'll be able to look at that money
3 and compare serial numbers. Sometimes we find documented
4 funds; sometimes we don't.

5 Q: And would common sense dictate the closer an arrest is to
6 an undercover buy, the more likely you are to find documented
7 funds? If it's weeks later ---

8 A: Yes, sir. If it's within days, yeah, it's possible. If
9 it's over a week or so, odds are that the money has already
10 changed hands.

11 Q: And again, you said this was the same informant who
12 identified Mr. Gibbs as the one who gave him the crack
13 cocaine?

14 A: Yes, sir.

15 Q: In exchange for the money? And -- and finally, on
16 December 1st of 2008, again at [REDACTED] in Sumter
17 County, did you take part in an undercover purchase from Leroy
18 C. Gibbs, III?

19 A: Yes, sir.

20 Q: Please tell the ladies and gentlemen of the jury about
21 this?

22 A: On this date at approximately 4:18 p.m., myself and
23 Investigator Boland met with the same confidential informant
24 at a location. I searched the informant. Investigator Boland
25 searched the informant's vehicle with negative results. I

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 gave the informant \$100 -- \$140 in documented funds at 4:24.

2 At 4:27, the informant called Mr. Gibbs at 968-6023. He did

3 not get an answer. The informant called back at 4:39 p.m.

4 Mr. Gibbs answered and he asked about getting \$140 worth of

5 crack. Mr. Gibbs told him to come to the residence.

6 The informant leaves to go to the residence at 4:42 p.m.,

7 arrives -- or arrives at the residence at 4:42. The purchase

8 was made at 4:43. The informant leaves the residence at 4:43.

9 We meet the informant again at a secure location at 4:55. I

10 searched the CI and Investigator Boland searches the

11 informant's vehicle. Again, the crack cocaine was turned over

12 to myself and analyzed -- or it was placed into evidence to be

13 analyzed.

14 Q: And was again Mr. Gibbs identified as the individual who

15 ---

16 A: Yes, sir.

17 Q: --- made the purchase -- or I'm sorry, sold at that time?

18 A: Mr. Gibbs, Leroy Gibbs.

19 Q: All three of these purchases were at different times of

20 day so Mr. Gibbs was at this residence each one of these

21 times?

22 A: On the first two purchases at around lunchtime at twelve

23 o'clock. On this purchase, it was at -- after four o'clock in

24 the afternoon.

25 Q: And was a -- any particular car there during these

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 purchases?

2 A: There was a ---

3 Q: It may be on your ---

4 A: There was a -- on this occasion, there was a white Dodge
5 Neon that was in the yard, which was also in the yard the day
6 that we made the arrest.

7 Q: On December 23rd?

8 A: Correct.

9 Q: And ---

10 A: And there was a -- on November 24th, 2008, the -- the
11 white Neon was also in the yard and it was also in the yard on
12 the day when we made the arrest.

13 Q: On the 23rd?

14 A: That's correct and ---

15 Q: Oh, I'm sorry. You're going back on these. I apologize.
16 Go ahead.

17 A: And again on October 29th, 2008, that white Dodge Neon was
18 also in the yard.

19 Q: And now on the day of the arrest on December 23rd, was the
20 Dodge Neon also in the yard?

21 A: Yes, sir.

22 Q: Now, you've testified that these are -- is this --
23 State's 3, is this the same residence all these purchases were
24 made from?

25 A: Yes, sir.

INVESTIGATOR WAYNE DUBOSE - DIRECT EXAMINATION BY MR. MEADORS

1 Q: [REDACTED] And is the individual in the courtroom
2 that was identified as the person making those purchases? Is
3 that individual here?
4 A: Yes, sir. The informant identified Mr. Gibbs.
5 Q: Sitting at the table with Mr. Brooks?
6 A: Yes, sir.
7 Q: And these are the warrants you were serving on him;
8 right? Just -- just yes or --
9 A: Yes, sir. These are the warrants that we were serving on
10 him that day.
11 MR. MEADORS: I beg the Court's indulgence.
12 Q: Did -- did you specify the amount of documented funds on
13 the first buy that you gave him?
14 A: The first one? The first one is \$60, the second one was
15 \$100, and the third one was 140.
16 Q: And his previous testimony, were you trying to see if
17 some of those documented funds were the 1,350 when you ---
18 A: That was -- well, I was going to take the money to
19 compare to see if the funds were in there, but we were also
20 going to seize the money regardless because there was drugs
21 found in the residence and it could have been associated with
22 the drug activity. So we were going to attempt to seize that
23 money regardless.
24 Q: But were there any of these documented funds from these
25 previous buys in that 1,350?

INVESTIGATOR WAYNE DUBOSE - CROSS EXAMINATION BY MR. BROOKS

1 A: No, sir, there weren't. That was over two weeks before
2 that so there was none found.

3 MR. MEADORS: That's all. Thank you, Judge.

4 THE COURT: Thank you. Mr. Brooks, cross examination?

5 CROSS EXAMINATION

6 BY MR. BROOKS:

7 Q: Was there audio equipment used in these purchases?

8 A: There was audio equipment used.

9 Q: No video?

10 A: There was video on these purchases.

11 Q: And you testified that you were present on all these
12 occasions?

13 A: Yes, sir. I was present myself and Investigator Boland
14 was present on all three of them purchases.

15 Q: You didn't actually see Mr. Gibbs on these dates; did
16 you?

17 A: On the buy on December the 1st, Mr. Gibbs was in the yard.
18 When we arrived, we saw Mr. Gibbs in the yard and then they
19 went inside where the purchase was made. So actually seeing
20 it hand to hand from where we were, no, sir, we did not see a
21 hand to hand.

22 MR. BROOKS: I beg the Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 MR. BROOKS: No other questions, Your Honor.

25 THE COURT: All right. Any redirect?

26

1 MR. MEADORS: No, sir. Thank you.

2 THE COURT: All right. Thank you. You may step down.

3 THE WITNESS: Yes, sir.

4 (Whereupon, the witness leaves the stand at 4:59 p.m.)

5 MR. MEADORS: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. MEADORS: No, sir. Thank you.

8 THE COURT: Thank you. Are you resting?

9 MR. MEADORS: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen, that will
11 complete the testimony that we will have at this time. I'm
12 going to send you home for the evening with instructions that
13 you get a good night's sleep and that you not talk with
14 anybody about this case, and if you could be back here
15 tomorrow morning at 9:30, then we will continue with this.
16 All right. Thank you, ladies and gentlemen. Have a nice
17 evening and I hope you stay dry.

18 (Whereupon, the jury exits the courtroom at 5:00 p.m.)

19 THE COURT: All right, Mr. Brooks, any motions?

20 MR. BROOKS: Judge, we would renew our motion for a
21 mistrial. It's our position that this reply testimony or
22 rebuttal testimony was extremely prejudicial.

23 THE COURT: I agree with you on that.

24 MR. BROOKS: It is -- it is a plethora of hearsay. Not a
25 whole lot of proof to it and we would just ask the Court in

1 defense of my client that we renew our position. We don't
2 believe this opened the door and that obviously we feel that
3 this is hearsay and it's extremely prejudicial, and obviously
4 we'd ask the Court to declare a mistrial in this matter.

5 THE COURT: All right, Mr. Brooks. Thank you. Mr.
6 Brown?

7 MR. BROWN: Your Honor, while it is prejudicial, it is
8 probative. He opened the door when he said that he didn't
9 live there eight-five percent of the time. That was a
10 voluntary statement by him. He opened the door for us to go
11 into that testimony. We're not here to prove that for
12 distribution purposes, but to show that he was in fact
13 present, and we believe it's properly allowed in. We believe
14 Your Honor made the right decision allowing it and we
15 respectfully ask you to uphold that decision.

16 THE COURT: Thank you. Motion for a mistrial is hereby
17 denied. Anything -- any other motions? Have y'all had an
18 opportunity to look at the proposed charge? Y'all have been
19 busy in here.

20 MR. BROWN: Yeah. We'll look at it tonight, Your Honor.

21 THE COURT: No. We have some hard copies. Why don't
22 y'all come back to chambers after we finish here and then
23 we'll have those.

24 MR. BROWN: All right.

25 THE COURT: Y'all can be -- well, I'll see y'all in just

1 in this case has been heard by you. Now is the time where the
2 attorneys will give you their closing arguments, and after
3 that I will charge you with the law and then dismiss you to
4 begin your deliberations. So we will now have our closing
5 arguments. Is the State ready to proceed?

6 MR. BROWN: Yes, sir, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. BROOKS: Yes, sir.

9 THE COURT: All right.

10 MR. BROWN: May it please the Court.

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENTS

13 MR. BROWN: Good morning, ladies and gentlemen of the
14 jury. At the beginning of this trial yesterday morning, I
15 told you what we would be talking about during this case.
16 When this case was indicted for manufacturing crack cocaine,
17 of trafficking crack cocaine, and possession with intent to
18 distribute powder cocaine, I told you at the beginning of this
19 trial, what we would be talking about is a lifestyle. I told
20 you we would be talking about a lifestyle of possessing drugs,
21 a lifestyle of making drugs and manufacturing drugs,
22 manufacturing crack, and a lifestyle of trafficking in those
23 drugs. I told you at the beginning of this trial that what we
24 would be talking about is the lifestyle of the defendant,
25 Leroy Gibbs.

1 Now, my job in the closing portions of this trial is I'm
2 supposed to come up here and talk to you about the law. In a
3 couple minutes, you'll be hearing from Mr. Brooks, defense
4 counsel in this case, and you will be hearing from my
5 colleague, Mr. Meadors, to talk to you fully about the facts
6 of this case, about the lifestyle, but my job here is to talk
7 to you about what the law is and set up the framework, if you
8 will, on what we're going to -- and what we're talking about
9 so y'all can be thinking about these matters in the context of
10 the facts that have been presented to you.

11 As you are aware, Mr. Gibbs is charged with three
12 offenses here in South Carolina under the indictments that
13 have been presented to you. As I told you at the beginning,
14 all that is, is a piece of paper that gets you here today. It
15 is the State's job in this case to prove him guilty beyond a
16 reasonable doubt, and we as the State must present the
17 evidence to present that and actually get you to that charge.

18 Now, as you know, y'all didn't have a class before y'all
19 came here today. Y'all didn't get any training. There wasn't
20 a video. Our Clerk of Court didn't walk you through a seminar
21 on how to be a jury and that's because you're already well-
22 trained. You, ladies and gentlemen of the jury, have a
23 lifetime of experience of reading people, watching people,
24 thinking about that, and using good old common sense.

25 And that is what we're going to ask you to use throughout

1 this trial. We're going to ask you to use your common sense,
2 think about the facts, and think about what's been presented
3 on trial and decide. Do you think he's guilty beyond a
4 reasonable doubt? Are you firmly convinced? Do you believe
5 he did it?

6 As pertains to the trafficking in crack cocaine, you've
7 heard evidence in this trial. Let me back up. I'm sorry. As
8 pertains to trafficking crack cocaine, what you're looking for
9 in this trial is whether or not he possessed a quantity of
10 crack cocaine in excess of 10 grams. That is what you're
11 looking for and Mr. Meadors will talk to you about testimony
12 that was presented in this case, but the big question on this
13 is did he possess it.

14 In the law, there are two forms of possession. Both of
15 them are deeply important and both of them are possession.
16 There's actual possession, which I'll tell you right now we're
17 not pursuing. Actual possession means it's in your pocket,
18 it's in your hand. You're holding it right then, but then
19 there is this thing called constructive possession and, ladies
20 and gentlemen, that is what the State's argument is, is that
21 what we have here today is constructive possession.

22 To put that in reasonable terms, constructive possession
23 basically means that you still exhibit dominion and control.
24 In other words, you still have control over that item. As I
25 said earlier, the remote control sitting beside my bed at

1 home, I have constructive possession of it, it's mine. Just
2 to give you all an example, what it does is it stops the
3 defendant from walking away from some drugs right before --
4 right before the police get there and then saying, well, you
5 don't see them in my hands so it's not mine. This is
6 something you can use good common sense for and that's
7 something you're going to have to do is use that common sense.

8 Mr. Gibbs is also charged -- he's also having a case
9 against him for manufacturing. You've heard a lot of
10 testimony, but things that you would be looking for in
11 manufacturing would be did he possess it and did he exhibit
12 this? Can the State prove that he did what it took to make
13 crack cocaine? And that's when we're going to ask you to use
14 common sense.

15 You've heard the testimony about how the stuff is made.
16 You are going to be looking for those key elements. Was the
17 baking soda there? The microwave, what was going on with
18 that? Did he have the tools and the instruments to mix the
19 stuff together? The dishes, the forks, the razors, the
20 cutting agents that you heard talk about throughout this
21 trial? Did he have it? Do you believe he possessed it? Do
22 you believe he did it? You're going to be considering those
23 facts and that's what you're supposed to listen to and think
24 about.

25 Finally, he's charged with possession with intent to

1 distribute powder cocaine. Now, ladies and gentlemen, there
2 are a number of things you can look at underneath the law to
3 determine whether you believe he intended to distribute. The
4 first one is clearly in the statute that if it's anything over
5 a gram, you can consider that. That is not proof positive.
6 We're not asserting that it's proof positive that that means
7 he intended to distribute, but you can also look at other
8 things.

9 Does he have money that's really not very explainable as
10 to how he might have it other than possibly doing this? Is
11 that possible proof that he intended to do it? That's for you
12 to determine. That's for you to use your common sense to
13 determine if you believe he did it. Did he have baggies to
14 put it in? Were there some other items besides baggies?

15 Did he make any statements? Anything indicating that he
16 was a drug dealer and that he did sell? That it might be a
17 lifestyle? These sort of things you can consider. Did he say
18 maybe this was something to support his family? All of these
19 things are things that you as the jurors can consider in this
20 case.

21 Now, at the beginning of this case, I let you know that
22 we did not only acknowledge but welcomed the burden that the
23 State has in this case and that is that we must prove this
24 beyond a reasonable doubt. You've all heard the testimony
25 that's been involved, listened to this talk about beyond a

1 reasonable doubt and the law in South Carolina means that we
2 leave you firmly convinced.

3 As I said before, I'm a young prosecutor. I don't really
4 have any good analogy for you. I've never found one that
5 works for me and doesn't confuse me more than when I started,
6 but the law is so clear there's no reason for me to find one
7 because it means you're firmly convinced. You believe that
8 the defendant did it. If we don't meet that burden, then we
9 don't meet the burden. But if you believe he committed this
10 crime, then you as the ladies and gentlemen of the jury are
11 charged and you are sworn to convict him on that. That is
12 what your duty is and that is what you're sworn to do, and if
13 we meet that burden, that is what your role is.

14 Now, in a couple of minutes, you're going to hear closing
15 arguments from the defense and you're going to hear closing
16 arguments again from the State because he'll actually talk to
17 you more completely about the facts, and then after that,
18 you're going to hear from His Honor, Judge Young. He's going
19 to tell you what the official law is. What I'm giving you a
20 rundown of right now, he's going to give you exactly what it
21 is. It's the law that you are required to follow, and after
22 that point, you twelve people will become the twelve most
23 powerful people in this room. The twelve of you will go in
24 that jury room and have the sole -- the sole decision of
25 deciding whether or not you believe the defendant is guilty,

1 whether you believe beyond a reasonable doubt he committed
2 these crimes, whether you're firmly convinced, and whether you
3 believe he did it.

4 And at the end of the State's case and at the end of the
5 closing, I'll be joining my co-counsel and asking that you
6 convict him on all three charges. Thank you.

7 THE COURT: Thank you, Mr. Brown. Mr. Brooks?

8 MR. BROOKS: Good morning, ladies and gentlemen. I've
9 had the honor and privilege of representing Clifton in this
10 case and obviously I couldn't say what my colleague seems to
11 have to say on this case, but I'm going to have to say it.
12 I'll go through the witnesses individually and as a group and
13 explain to you what we think how this case looks and shapes up
14 to be.

15 Now, we had Officer Atkinson. We had Cindy Pierson. We
16 had Mitchell Hansen come up and testify. Those individuals
17 were just talking about the chain of custody. The evidence
18 came to them. They stored it, in and out, et cetera, et
19 cetera. They don't know anything about the gist of this case
20 and the details of this case and, of course, Mr. Hansen, he's
21 the only person that gets up and testifies he tested it.

22 That's all he does. He doesn't -- as he indicated in my
23 cross examination, no matter what the sheet says as far as
24 subject and if it has your name on it or anybody else's name
25 on it, he just tests it. He doesn't have anything else to do

1 with it. Okay? So those -- those are just what we call the
2 forensics, the scientific witnesses for the chain of custody
3 to the person that does the testing. There's not much that
4 they could share in this case.

5 Now, I was talking to Officer Dubose, the lead
6 investigator in this case, and if you remember, he indicated
7 my client told him when he first came to the prison that he
8 doesn't live there. He didn't spend that much time there.
9 Okay? He happened to be there on that particular day, but he
10 doesn't live there. That's what Officer Dubose had said,
11 unequivocally, on the stand.

12 He also answered my questions about the number of years
13 he had been on patrol and the fact that there's this glass
14 between the front seat and the back seat, there's chatter on
15 the radio. He answered that question as well, and he also
16 indicated that a lot of the questioning had gone on with Mrs.
17 Gibbs, but I'll come to her in just a minute. That's what he
18 said. That's what he said when he was on the stand. My
19 client said he didn't live there. Okay? That's what Officer
20 Dubose said.

21 Officer Horton, who transported my client from [REDACTED]
22 [REDACTED] to the jail, indicates that his car that's he riding in
23 here has the plexi-glass. He also indicated that he was not
24 paying much attention to what my client was saying. It was
25 just rambling, and if you recall, I asked him, he could have

1 been saying I don't live here, and he said I didn't recall
2 anything else he was saying, but he was rambling on for the
3 fifteen minute ride. He indicated it was a fifteen minute
4 ride, but the only thing he heard was at the very end drugs is
5 a lifestyle for me. Ironical that's the only thing he's going
6 to remember, but he doesn't remember anything else. He
7 doesn't recall anything else that my client allegedly said.

8 We submit to you that never was said. They had chatter
9 on the radio. Officer Horton, with good intentions, just
10 probably misinterpreted the rambling he was hearing. My
11 client may have been saying, hey man, why are you getting me
12 in this? I shouldn't be in this. The officer indicated to
13 the best of his knowledge that he did not recall what was
14 being said in the back.

15 The radio chatter that goes on on a police radio, the
16 dispatcher, and the fact that there is a glass partition,
17 plexi-glass if you want to call it that, between the front
18 seat and back seat that they acknowledge is for security, you
19 can't really place a whole lot of trust and faith in what
20 Officer Horton recalled four and a half years ago. And you
21 really can't place a whole lot of faith and trust in what
22 Officer Dubose recalls four and a half years ago, except he
23 did say my client indicated to him when he came to him, he
24 cooperated and he indicated he did not live there.

25 And the last witness called, which I think was the star

1 of the show, Kimberly Gibbs. This was the star witness for
2 the State. She indicated that sometimes -- a great deal of
3 times, my client lives with his mother. More often than not,
4 she stays there. She indicated that she had misled her
5 superiors at the post office and, in fact, she admits she
6 lied. She lied about delivering the mail and doing her job,
7 and it's not that all of a leap to go from she probably lied
8 about whose drugs these are or, more importantly, these ain't
9 my drugs.

10 If you also recall when she was on the stand that she
11 indicated that she was testifying in hopes of consideration.
12 What does that mean? If you recall, I asked do you hope to
13 gain something. Do you hope for some reward? You are facing
14 these same charges. She's not sitting over there at the
15 table. Ask yourself that. What do you think is going to
16 happen to her charges? I submit to you that this is the,
17 quote unquote, reason. Sacrifice your husband, who you told
18 sometimes lives there, sometimes don't, in exchange perhaps --
19 we don't know, but perhaps these charges for her will
20 disappear. So she has a great, great, great incentive to get
21 up here and say, oh yeah, these drugs don't belong to me.
22 They had to belong to him.

23 She's already acknowledged that she lied to the postal
24 service, who she was working for. She acknowledged that. She
25 said that sometimes he doesn't stay there. She says that on

1 the stand.

2 Now, you also heard some indications about some things
3 after my client testified, and he didn't have to testify. He
4 chose to testify. He didn't have to testify. He chose to
5 testify because he wanted to tell his side of the story.

6 Officer Dubose comes up afterwards and talks about these
7 wild accusations and there's been no proof of that. There was
8 no proof brought in here to support that. So what you have is
9 just whether or not on December 23rd, 2008, did these things --
10 these drugs that you're going to have, did these things belong
11 to Clifton or did they belong to Kimberly? And that's the
12 unwritten, unsaid, unspoken thing. These things belonged to
13 Kimberly and whoever else she may have been involved with.

14 Now, you heard me talk about this at the very beginning
15 that the State has the burden of proof. We don't have to
16 prove anything. They have to prove beyond a reasonable doubt.
17 They have to get the ball into the end zone, to use my
18 football analogy. They've got to show and prove and, ladies
19 and gentlemen, whenever I hear a prosecutor say use your
20 common sense, I always say that's a code word for help us out.
21 We've got a flaw in our case. We've got a hole in our case.
22 Help us out. Plug in the gap here.

23 That's not your job. Your job is to evaluate the
24 evidence that they present to you, and we submit to you in
25 your evaluation you prove they did not meet their burden and

1 that's the burden my client Clifton has by being a citizen in
2 this country. We submit the State of South Carolina through
3 all the people sitting at the table did not meet their burden
4 and that you only have one conclusion, not guilty. One
5 conclusion, not guilty. They can't prove that Clifton stayed
6 there. So, ladies and gentlemen, we ask and we strongly feel
7 that you will come back with one verdict, not guilty. Thank
8 you.

9 THE COURT: Thank you, Mr. Brooks. Mr. Meadors?

10 MR. MEADORS: May it please the Court.

11 THE COURT: Yes, sir.

12 MR. MEADORS: Mr. Brown, Mr. Brooks, Mr. Foreman, ladies
13 and gentlemen, good morning. Good morning.

14 THE JURY: Good morning.

15 MR. MEADORS: I, too, want to thank you for being here.
16 Thank you for the attention you've given to Mr. Brooks and
17 myself and Mr. Brown. Thank you. This may be one of the last
18 cases in this courtroom, as His Honor said. I don't know.

19 And I don't get to say this all the time and I love
20 saying it. You are pure. I like that. You're pure. That's
21 what's beautiful about this system. Y'all are pure. You're
22 pure because you're jurors. You're like Lady Justice with
23 that scales that you see that has the blindfold on and you're
24 holding it and you listen to the evidence and you decide what
25 the truth is and what's credible. You're pure. That's why

1 it's a great system. That's why other countries hate our
2 system because it is pure because y'all come in and decide
3 what the truth is.

4 His Honor is the law. He is the law in this courtroom.
5 He is the law. He tells us what the law is, but you're also a
6 judge. You're the judge of the facts. You're like Lady
7 Justice. Now, you'll pull that little blindfold down and
8 you'll look up here now and see the demeanor of the witnesses
9 and I think you saw it in this case and you'll make decisions
10 on what folks say and their demeanor and how they act. You
11 use that deciding what's credible and believable, but that's
12 all every case is about, credibility and believability. Every
13 case is about that and it was in this case. And I think we've
14 proved beyond a reasonable doubt. I think we've gone beyond
15 that. It's not our burden, but I think the evidence has
16 proven that. But thank you for being here. Thank you for
17 listening.

18 Selling drugs is a lifestyle to me. Selling drugs is a
19 lifestyle to me. I didn't say it. The officers didn't say
20 it. He said it and that's what this trial is about. Well,
21 what's a lifestyle? It's a -- it's actually a manner of
22 living, a routine of everyday life. That's his lifestyle.

23 And the issue here today for you is, is that his
24 lifestyle. Was he in constructive possession of the drugs?
25 Kimberly -- and I'm going to talk to you about her in a

1 minute. She took the stand under a lot of pressure, I'll tell
2 you. She gets a call the night before from her husband, the
3 defendant who is on trial. You tell me she's not under
4 pressure. Those weren't her drugs. He even said on the stand
5 those weren't her drugs, but if somehow you believe she -- she
6 knew about them, they can both be guilty. That's not an
7 issue. That's a smoke screen over there. Both of them can be
8 in constructive possession of it. Don't let that throw you
9 off.

10 I submit to you there's no credible evidence at all that
11 those are her drugs. I submit to you when officers came to
12 the door, that's when he put the drugs right on top of her
13 purse. Who puts their drugs lying right on top of their
14 purse? And a marijuana cigarette and she says she doesn't
15 even smoke, but it's right on top. Who does that? And she
16 said, yeah, search. I don't care if you search.

17 That's what you'll decide, but if somehow you believe she
18 might have known about it, too, she can be guilty, too.
19 That's doesn't mean he's not guilty. But I submit to you
20 they're his. Don't let that -- that's not a reasonable doubt.
21 Don't let it.

22 Ladies and gentlemen, Mr. -- Mr. Brown -- and I'm going
23 to briefly go over it. You know it's a possession,
24 constructive. This isn't a mere presence case, as His Honor
25 may charge you on that. A mere presence case where I'm just

1 here where drugs are and just the fact I'm here means you
2 can't convict me. Well, this isn't a mere presence case.
3 What we have to show is, okay, a person is here, the drugs are
4 here. Has he got any ties to this place where the drugs are?
5 Does he have dominion and control over the place? Yes, ma'am.
6 Yes, sir. It's his house.

7 Oh, he's going to try to distance himself from it. Right
8 off the bat, I don't live here. I don't live here. It's like
9 a young child. I didn't do that. I don't -- why is he saying
10 that I don't live here? It's his wife and kid. He knows the
11 drugs are there. I mean that's actually -- I thought about it
12 this morning -- a pretty good act. I don't live here. We got
13 your wife and kid here and you're immediately trying to put up
14 a defense, ultimately so y'all will try to think that's a
15 reasonable doubt. We submit it's not.

16 Yes, sir, you do live here. Number one, you're here.
17 Number two, you're on the lease. Your child is here. Your
18 hat is on the bed. This is where you sleep. You are here.
19 This is your house. You do have dominion and control. This
20 is where you stay and take care of your baby, and we submit
21 through inference deal drugs during the day where you're
22 taking care of your child. This is your house. You do live
23 here. You're going to try to distance yourself from it, but
24 you can't. Constructive possession, dominion and control.

25 Now, y'all think about this. I don't care what he says

1 about common sense. Common sense just is involved in life.
2 They go to San Diego and they're living in San Diego. He
3 follows his wife, which is good. He lives with her in San
4 Diego with his child when she's working out there in the Navy,
5 climbing these poles and in the bucket working. He's living
6 there and he goes with her and they come back. He's living
7 here with her. But then he's going to say when they find
8 drugs, I don't live here. Well, he went to San Diego with his
9 wife and child, but now he comes back here and they find
10 drugs, I don't live here. Credibility and believability.

11 Now, once you get past that hurdle, which we submit is
12 not a hurdle, it's a little step there, then possession with
13 intent to distribute cocaine. The law says and His Honor will
14 tell you over a gram there is an inference. See, we have to
15 prove intent, possession with intent to distribute. You can't
16 open somebody's mind and look in their brain and see what
17 their intent is. That's impossible. So you look at their
18 actions or inactions, what they do, and the law says if
19 there's a certain amount, over a gram, possession with intent
20 to distribute cocaine in this case, and I believe the
21 testimony would be 3.35 grams actually of cocaine, the law
22 says it's permissible for you to infer intent to distribute.

23 Clearly, it's in the house the evidence shows. Clearly,
24 he has dominion and control of it. Clearly, those are his
25 drugs. Clearly, that's his job, \$1,355 in his pocket and all

1 he can say is, well, I got in an accident, but I'm not sure
2 where it was. Infer it, respectfully. It's over a gram. You
3 can infer intent to distribute. That's what the law says.
4 Infer it. It's so much that it's intended to distribute.
5 That's what the law says. It's a lifestyle.

6 Now, trafficking. The difference between that and PWID,
7 there is still the inference. It's over a gram. At this
8 point, the total in crack cocaine was 14.03 grams. Again,
9 respectfully, infer it for the difference between trafficking
10 and intent to distribute is strictly based on the amount.
11 It's strictly on the amount. In this case, 10 to 28 grams of
12 crack cocaine, trafficking.

13 I think as Mr. Brown said in his opening, it doesn't have
14 to be actually trafficking and actually going somewhere and
15 taking the drugs. It's just the amount wherever it's found.
16 Possession, possession with intent to distribute, trafficking.

17 And finally, the manufacturing. I think common sense
18 might come into that. What's manufacturing? Producing,
19 making something. Manufacturing jobs, manufacturing clothes?
20 No, sir. In this case, the lifestyle of manufacturing drugs,
21 and I'm not trying to be mean in saying that, but it is what
22 it is. Manufacturing, making, producing there in that house,
23 his business at [REDACTED] That's what this case is
24 about, his business he ran from [REDACTED] less than two
25 and a half miles from where you're sitting right now.

1 Routine for everyday life. Baking soda, razors, \$1,355.
2 I'm older than most of y'all, but all of y'all may not
3 remember the Beverly Hillbillies, but Jed Clampett had some
4 walking around money and I'm telling you the only people that
5 have walking around money are Jed Clampett and drug dealers
6 and this isn't the Beverly Hillbillies. \$1,355 cash, where
7 did it come from? And he on the stand that they wanted to
8 check for some marked money. Where did it come from? It came
9 from his business. His words, it came from his lifestyle.

10 Benzocaine. You've heard the officer testify that's used
11 to cut to make cocaine crack and then you try to produce some
12 more to sell it. Manufacturing, benzocaine, baking soda, all
13 in the house. He's working out of his home. It's not a
14 daycare business. I wish the child hadn't been there.

15 I mean he'll distance himself from the house. I submit
16 to you he'll distance himself and try to put it on Kimberly,
17 although if you think she did it, that doesn't mean he's not
18 guilty. She's still got to face her day. She still has to
19 face her day, but he puts it in there I submit to you based on
20 her actions and the way she told the officers check it, and
21 he's going to try to blame his wife, try to call her the night
22 before to put pressure on her. Maybe that's what he wants us
23 to believe, ladies and gentlemen.

24 Did she not deliver some mail? She said I was going to
25 deliver it. It was a few days she didn't do it. You know, my

1 granddaddy was a mail man and I don't like that, but we
2 brought it out. Does that mean that she's a drug dealer?
3 That she's the one who is running this? No. She's out
4 working. She was in the Navy and then worked at the post
5 office. She said I was going to bring this mail back. I just
6 didn't. I was going to do it. But you see her demeanor up
7 here and watch her. Did you see her? Was she under pressure?

8 And then what's important about her testimony? Well,
9 who's got access to this house? Who lives here? I do, the
10 child does, and he does. Anybody else living in your house?
11 No, sir. You let other men come in your house? You let other
12 men come in your house? You're married and got your child.
13 No, sir. Are those your drugs? No, sir. Are they your
14 child's? Is he cooking? No, sir.

15 See, sometimes all circumstantial evidence is just as
16 strong and the judge will tell you it's just as strong as
17 direct evidence. It's just as powerful. Proof of a fact
18 indicating a fact and a fact indicating the existence of
19 another fact. Direct evidence is what you see, you feel, you
20 hear, and you touch with one of your senses and you come in
21 here and testify to it. Circumstantial evidence is proof of a
22 fact and another fact that indicates the existence of a fact.

23 Nobody else was in that house and he gets up here on his
24 credibility and believability and what it all boils down to
25 and I'll say this, but I'm mixing it all up, well, Mr. Gibbs,

1 who else was in that house? Well, she had some boyfriends and
2 friends that would just come over. You let them into your
3 house? Well, they'll just be over there. Who are they?
4 They're ghosts. There aren't other people. He couldn't name
5 anybody. He, again, distanced himself from the drugs -- from
6 his drugs. Kimberly's? He kept saying it was Kimberly's,
7 right here to the end, all the way to the end distanced
8 himself. It's time to take responsibility today. Time to
9 take responsibility today.

10 I've talked to you about PWID, the inference, the razors,
11 the baggies. He's got money. I don't think it's a bad thing
12 he doesn't have a job, but he does have a job. It's not a
13 legal job. The benzocaine, the baking soda, the
14 manufacturing. I don't know how much more we could offer on
15 manufacturing. There's a measuring bowl that's got residue on
16 it, cocaine residue. There's a picture of the bottom of a
17 microwave that's got residue. There's razors. There's baking
18 soda that's used. I mean there's crack. There's cocaine and
19 crack. Everything is there. That's what manufacturing is.
20 It's right there. Manufacturing, that's what it is. There's
21 no other way to prove it.

22 Go back there and touch it. Look at it. Feel it. Pass
23 it around. This is what he used to make cocaine into crack
24 and then distribute it on the streets less than two and a half
25 miles from right here. Go back and look at this.

1 Kimberly said she didn't make him sandwiches. We've got
2 these sandwich bags. You know, you might say is that a small
3 thing. Well, you know, if that's all you had, it might be.
4 You know, if that's all you had was just some baggies, okay,
5 but you got baggies, she doesn't make sandwiches. What were
6 those baggies used for? Intent to distribute. He puts the
7 crack in there to sell. That's good evidence. Take that with
8 the baking soda. Take that with the benzocaine. Take that
9 with the razors. Take it with the microwave. A little old
10 microwave, but you know what? That's also circumstantial
11 evidence. You start putting it all together, you can't make
12 it up. That's what they're cooking it in. That's what he
13 cooked it in. 11.55 -- 11.55 grams of crack in the kitchen
14 and the purse.

15 I want to talk about the -- I don't want to talk longer.
16 I'm about through. Credibility and believability, I want to
17 end it here on that because in every trial like I told you --
18 and let me tell you a bit about beyond a reasonable doubt.
19 Just because there's not a confession, because there rarely
20 is, that's not a reasonable doubt. If everything -- if it
21 required everything, the confession, then we could never -- if
22 that was the burden, beyond all doubt, the judge -- as the
23 judge said about next door, we don't need to go next door. We
24 could close this courthouse down because we wouldn't need a
25 courthouse, but that's not the law and the judge will tell you

1 that.

2 Some fine attorneys try to use reasonable doubt because
3 they ain't got anything else, especially on a strong case.
4 Well, they didn't prove the case. We're talking about common
5 sense. Use some common sense. When you don't have strong --
6 oh, it's just a reasonable doubt case trying to get y'all
7 confused. There's no doubt in this case, no reasonable doubt,
8 and the judge will tell you we, the State, do not have to
9 prove something beyond all doubt. That's not the law. Don't
10 get back there and say, well, he didn't say it. He didn't do
11 this. That's not a reasonable doubt. You look at all the
12 facts and if you do, are you firmly convinced that those were
13 his drugs and there was possession with intent to distribute
14 and trafficking and manufacturing? That's enough, I'm
15 convinced. That's the law.

16 Credibility and believability, and Mr. Brooks, who is a
17 fine lawyer and person, talked about -- spent a good bit of
18 time talking about the officer who transported him, Officer
19 Horton, because that is significant, and you saw his demeanor
20 and what I don't -- I guess he's trying to imply these
21 officers are trying to frame Mr. Gibbs. I don't know. They
22 didn't put the drugs there.

23 But it -- but it hit me if they were trying to frame him,
24 don't you think that he would have said, you know, those are
25 my drugs. Those are my drugs and just go -- if you're going

1 to do it, just -- just frame him. Just say it. Say, you
2 know, yeah, those are my drugs. I'm cooking it. If you're
3 going to do something wrong, do it right I guess is one way to
4 say it. If you're going to frame him, I guess that's what he
5 said, but that's what makes it credible and what makes it
6 pure.

7 They're going along and he says they're talking and Mr.
8 -- Mr. Gibbs states on the stand, well, my brother knew one of
9 the folks up there, and then he says selling drugs is a
10 lifestyle for me. This guy's lifestyle reeks of that. And he
11 looked and he said did he say that, and what does he do? Mr.
12 Brooks tried to say how could you remember that four years
13 ago. Well, he goes back to Wayne Dubose right -- right after
14 he takes him to jail and he says this is what he said. Pretty
15 significant? Yes.

16 In his line of business as a police officer, is he going
17 to remember something like that? Yeah. So he goes and tells
18 him and what does Wayne Dubose do? He documents it. Remember
19 I asked him that at the time or near the time he did it and he
20 documented it. That's what he said. Not that those are my
21 drugs, I did all that. No. This is clearly what he said.

22 And you know what else is credible? When I asked Mr.
23 Gibbs do you remember when Mr. Dubose came and asked you that,
24 yeah, I remember when he asked me that. He said that, ladies
25 and gentlemen. He says he denied it to Mr. Dubose, but he

1 remembers Dubose asking him. I mean can you make that up?
2 And he says then what about this and his initial response was
3 I got to take care of my family. Not that way. I got kids.
4 You support kids. You don't support them with illegal
5 activity. That's wrong. That's not good for the kids or
6 anybody.

7 And then what did he say? Credibility, believability.
8 He's talking to him and these things -- they're not trying to
9 say, oh yeah, these are my drugs. He says, well, she must be
10 sleeping -- it must be somebody else and they must be hers.
11 So he's there. Again, this is natural, me, me protecting me,
12 me. Well, it must be my wife's. But he didn't know whose.
13 Well, yeah, he said there were other people. I did tell him
14 that. There must have been other people staying there. There
15 weren't other people staying there. Self-preservation, self-
16 protection so he can continue his lifestyle. And I don't mean
17 that mean. That's the facts here. That's the defendant.
18 That's the defendant speaking. That's not me. So he can
19 continue his lifestyle.

20 Ladies and gentlemen, I forgot one other thing with the
21 lifestyle of selling drugs and in those instances where he
22 said I don't live in the house, trying to convince us of that,
23 oh, I'm not even there eighty-five percent of the time. I'm
24 not there. Well, you were there on October. You were there
25 on November. You were there on December. And that goes to

1 refute and show, yes, you were there. You can't distance
2 yourself. You opened the door to that. You sure were there
3 two times or whatever before then, weren't you, when
4 Investigator Dubose came by? Yes, sir. You can't distance
5 yourself.

6 Possession with intent to distribute, intent. Ladies and
7 gentlemen, the lifestyle, that's my lifestyle.

8 (Whereupon, counsel displays State's Exhibit Number 31,
9 the box containing two guns.)

10 MR. MEADORS: Well, I don't know about these. I don't
11 know about these. And what did Kimberly say? I'm sorry, I
12 just remembered this. Where is that picture? Were y'all
13 looking there when these pictures of bullets and this and the
14 little blue tray? I said where was that? Well, that was in a
15 closet. What do you know about it? Well, there's certain
16 places I wasn't supposed to look. Those were his things.
17 That's one of them. That's one of them.

18 And finally, go look at the lease. He's on there with
19 his son. Dominion and control. The consent she signed, read
20 it and look at it at what they recovered. She didn't have to.
21 Consent to Search, look at it.

22 Thank you for being here. Thank you for your attention.
23 We respectfully -- respectfully -- respectfully ask you to
24 consider all the evidence and when you do to come back with a
25 verdict that speaks the truth because that's what Lady Justice

1 is supposed to do. That's what she's supposed to do. That's
2 what you're supposed to do and you will. You took that oath
3 Mr. Bradley gave you to tell the truth, and the truth in this
4 case -- the truth in this case is that the defendant, Clifton
5 Gibbs, possessed with intent to distribute cocaine,
6 manufactured cocaine, and trafficked cocaine, and that was his
7 lifestyle and he told you he had dominion and control over it.

8 And folks, and I asked him this. I said this is illegal,
9 isn't it? It's wrong, isn't it? It is. It leads -- it leads
10 to destructions of lives. His lifestyle leads to destructions
11 of lives. Putting that product on the street leads to
12 destructions of lives. That's the lifestyle and, ladies and
13 gentlemen, we respectfully submit that lifestyle should stop
14 here today now in this courtroom. Thank you.

15 THE COURT: Thank you. Please secure the courtroom.
16 Thank you.

17 CHARGE ON THE LAW BY THE COURT

18 THE COURT: All right, ladies and gentlemen, all of the
19 testimony and the evidence to be presented to you in this case
20 has now been presented. The attorneys have given you their
21 closing arguments. Now, it's the time of the trial when I
22 will charge you with the law that is to be applied in this
23 case.

24 Ladies and gentlemen, I remind you that during this trial
25 you and I have certain duties to perform. As the trial judge,

1 it is my responsibility to preside over the trial of this case
2 and I also have the duty to rule on the admissibility of the
3 evidence that's been offered during this trial. You are to
4 consider only the competent evidence before you. If there was
5 any testimony ordered stricken from the record in this case
6 during this trial, you must disregard that testimony. You're
7 to consider only the testimony which has been presented from
8 this witness stand and any exhibits which have been made a
9 part of the record in this case any -- and any stipulations of
10 counsel.

11 I have the additional duty to charge you the law that is
12 applicable to this case. As the presiding judge, I am the
13 sole judge of the law and it is your duty as jurors to accept
14 and apply the law exactly as I state it to you. If you have
15 an idea as to what the law is or what the law ought to be and
16 it does not agree with what I tell you now that the law is,
17 you must abandon that idea because you're sworn to uphold and
18 accept the law and apply the law exactly as I state it to you.

19 In every case tried in this court before a jury, you the
20 jury become the sole and exclusive judges of the facts, and as
21 the trial judge, I cannot intimate, state, comment, or make
22 any statement to a trial jury about the facts of the case
23 because you are the jury. You are the sole judges of the
24 facts and you are not to infer upon what I have said during
25 the progress of the trial and ruling upon the admissibility of

1 evidence or otherwise or anything that I say now during the
2 course of these instructions that I have any opinion about the
3 facts in this case. The law simply does not allow me to have
4 an opinion about the facts in this case. This is a matter
5 solely for you the jury to determine, and as jurors it is your
6 duty to determine the effect, the value, the weight of the
7 evidence as presented during this trial.

8 Now, ladies and gentlemen, the indictment in this case
9 alleges three offenses against the defendant, Leroy Clifton
10 Gibbs, III. Indictment 2011-GS-43-1125, trafficking cocaine
11 base more than 10 grams but less than 28 grams, manufacturing
12 cocaine base, and possession with intent to distribute
13 cocaine.

14 As I said before, I remind you the fact that the
15 defendant was arrested, charged, and indicted is not evidence
16 in this case and cannot be considered by you as evidence of
17 guilt, nor does it create any presumption or inference of
18 guilt. The indictment is simply the formal written instrument
19 by which -- it contains the charges made against the defendant
20 and it is the formal document by which this case is brought
21 into court.

22 Now, ladies and gentlemen, the defendant has pled not
23 guilty to these charges in the indictment and that plea puts
24 the burden on the State to prove the defendant guilty. A
25 person charged with committing a criminal offense in South

1 Carolina is never required to prove his innocence. I charge
2 you that this is an important rule of law that the defendant
3 in a criminal trial, no matter how serious the charge is, will
4 always be presumed to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 This presumption of innocence does not end when you begin
8 your deliberations, but it accompanies the defendant
9 throughout this trial until you reach a verdict of guilt based
10 on evidence satisfying you of that guilt beyond a reasonable
11 doubt. The presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the defendant
13 which remains with the defendant until it has been stripped
14 from the defendant by evidence satisfying you of the
15 defendant's guilt beyond a reasonable doubt.

16 The presumption of innocence is not a mere legal theory.
17 It is not just a legal phrase that we use, but it's a
18 substantial right to which every defendant is entitled to
19 unless you the jury are satisfied by the evidence of the
20 defendant's guilt beyond a reasonable doubt.

21 Now, ladies and gentlemen, that brings up a question.
22 What is reasonable doubt in the law? A reasonable doubt is
23 the kind of doubt that would cause a reasonable person to
24 hesitate to act. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt.

1 Some of you may have served as jurors in civil cases
2 where you're told that it is only necessary to prove a fact
3 more likely true than not true, such as by the greater weight
4 or the preponderance of the evidence. In criminal cases,
5 however, the State's proof must be more powerful than that.
6 It must be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that leaves you
8 firmly convinced of the defendant's guilt. Ladies and
9 gentlemen, there are very few things in this world that we
10 know with absolute certainty, and in criminal cases the law
11 does not require proof that overcomes every possible doubt.

12 If based upon your consideration of the evidence you are
13 firmly convinced that the defendant is guilty of the crimes
14 charged, you must find the defendant guilty. If, on the other
15 hand, you think there's a real possibility that the defendant
16 is not guilty, you must give the defendant the benefit of the
17 doubt and find him not guilty.

18 Now, ladies and gentlemen, there are two types of
19 evidence which are generally presented during a trial.
20 There's direct evidence and there's circumstantial evidence.

21 Direct evidence is the testimony of a person who claims
22 to have actual knowledge of a fact, such as an eyewitness. It
23 is evidence that immediately establishes the main fact to be
24 proven.

25 Circumstantial evidence is proof of a chain of facts and

1 circumstances indicating the existence of a fact. It is
2 evidence that immediately establishes collateral facts from
3 which the main fact may be inferred, and circumstantial
4 evidence is based on inference and not on personal knowledge
5 or observation.

6 The law makes no absolutely no distinction between the
7 weight or value to be given to either direct or circumstantial
8 evidence, nor is a greater degree of certainty required for
9 circumstantial evidence than of direct evidence. Ladies and
10 gentlemen, you should weigh all the evidence in this case and
11 after weighing all the evidence if you are not convinced of
12 the guilt of the defendant beyond a reasonable doubt, then you
13 must find the defendant not guilty.

14 Now, ladies and gentlemen, necessarily you must determine
15 the credibility of witnesses who have testified in this case.
16 Credibility simply means believability, and it becomes your
17 duty as jurors to analyze and to evaluate the evidence and
18 determine which evidence convinces you of its truth.

19 In determining the believability of witnesses who have
20 testified in this case, you may believe one witness over
21 several witnesses or several witnesses over one witness. You
22 may believe a part of the testimony of a witness and reject
23 the remaining parts of the testimony of that same witness.
24 You may believe the testimony of a witness in its entirety or
25 reject the testimony of a witness in its entirety. You may

1 consider whether any witness has exhibited to you any
2 interest, bias, prejudice or other motive in this case. You
3 may also consider the appearance and the manner of a witness
4 while on this witness stand.

5 Ladies and gentlemen, the rules of evidence ordinarily do
6 not permit a witness to testify to opinions or conclusions.
7 There's an exception to this -- to the rule that exists to the
8 witnesses we call expert witnesses. A witness who by
9 education and experience has become expert in some art,
10 science, profession or calling may state an opinion as to
11 relevant and material matters in which the witness claims to
12 be an expert, and they can also state the reasons for the
13 opinion.

14 You should consider any expert opinion -- opinion
15 received in evidence in this case like any other evidence.
16 Give it the weight that you think it deserves, and if you
17 decide that the opinion of an expert is not based on
18 sufficient education and experience, or if you conclude that
19 the reasons given in support of the opinion are not sound, or
20 that the opinion is outweighed by other evidence, you may
21 disregard the opinion entirely, and an expert witness'
22 testimony is to be given no greater weight than that of any
23 other witness simply because the witness is an expert.
24 Further, you are not required to accept an expert's opinion
25 even though it is not contradicted.

1 Now, ladies and gentlemen, the defendant is charged with
2 trafficking cocaine base. The State must prove beyond a
3 reasonable doubt that the defendant knowingly sold, delivered,
4 purchased, brought into this State, provided financial
5 assistance, or otherwise aided, abetted, attempted, or
6 conspired to sell, deliver, purchase, or bring into this
7 State, or was knowingly in actual or constructive possession,
8 or knowingly attempted to become in actual or constructive
9 possession of cocaine base. In order to meet their burden
10 with regard to the charge of trafficking, the State must also
11 prove beyond a reasonable doubt that the amount of the cocaine
12 base or any mixture containing cocaine base was 10 grams or
13 more, but less than 28 grams.

14 The defendant is charged with manufacturing cocaine base.
15 The State must prove beyond a reasonable doubt that the
16 defendant knowingly manufactured or cultivated or otherwise
17 aided, abetted, attempted, or conspired to manufacture or
18 cultivate cocaine base. And manufacture means to produce,
19 prepare, convert, process, plant, cultivate, grow, or harvest
20 a drug naturally or chemically. Manufacturing includes any
21 packing, packaging or repackaging of the drug, or labelling or
22 relabeling of the drugs' container.

23 The defendant is also charged with possession with intent
24 to distribute cocaine. The State must prove beyond a
25 reasonable doubt that the defendant possessed cocaine with the

1 intent to distribute. The State must also prove beyond a
2 reasonable doubt that the defendant intended to distribute the
3 cocaine. Distribute means to deliver other -- to deliver
4 other than by administering or dispensing a drug. Intent may
5 be shown by acts and conduct of the defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent. And in determining whether the defendant had
8 the intent to distribute the cocaine, you may consider
9 circumstances surrounding the defendant's alleged possession.
10 You may consider the amount of the substance alleged to have
11 been possessed, the manner in which the alleged -- allegedly
12 possessed, the place where it was allegedly possessed, and
13 other factors which you consider to be important.

14 You must find that the defendant did not intend to have
15 the cocaine solely for his own use. Possession of more than
16 10 grams of cocaine creates an inference that the defendant --
17 10 grains of cocaine creates an inference that the defendant
18 possessed the cocaine with the intent to distribute. This
19 inference does not relieve the State from proving beyond a
20 reasonable doubt that the defendant had the intent to
21 distribute. It is simply an evidentiary fact to be taken in
22 consideration by you along with the other evidence in this
23 case and to be given the weight you decide it should have.

24 Now, ladies and gentlemen, to prove possession the State
25 must prove beyond a reasonable doubt that the defendant had

1 both power and the intent to control the disposition or use of
2 the drugs. Possession may either -- may either be actual or
3 constructive. Actual possession means that the drugs were in
4 the actual physical custody of the defendant. Constructive
5 possession means that the defendant had dominion and control
6 or the right to exercise dominion or control over either the
7 drugs themselves or the property on which the drugs were
8 found.

9 Mere presence at the scene where the drugs were found is
10 not enough to prove possession, and the defendant's knowledge
11 and possession may be inferred when a substance is found on
12 property under the defendant's control. However, this
13 inference is simply an evidentiary fact to be taken into
14 consideration by you along with the other evidence in this
15 case and may be given the weight that you decide that it
16 should have.

17 Now, ladies and gentlemen, two or more persons may have
18 joint possession of the drugs. In order to establish criminal
19 liability, criminal intent is required. For example, a mental
20 state is required to be proven by the State of a particular
21 crime might be purpose, intent, knowledge, recklessness, or
22 criminal negligence. Criminal intent must be proven by the
23 State beyond a reasonable doubt.

24 Criminal intent is always a matter that must be
25 determined by you the jury from the circumstances surrounding

1 the situation. There is no way to prove intent to a
2 mathematical certainty and there is no way medical science can
3 dissect a person's brain and determine what the person had in
4 mind. So the law says that criminal intent may be inferred
5 from the circumstances shown to have existed. This is how you
6 make a determination of whether or not the element required --
7 requiring intent was present.

8 It is not necessary to establish intent by direct and
9 positive evidence, but intent may be established by inference
10 in the same way as any other facts by taking into
11 consideration the acts of parties and all the facts and
12 circumstances of the case. And criminal intent is a mental
13 state, a conscious wrong -- a conscious wrongdoing. It is up
14 to you the jury to determine what the defendant intended to do
15 based on the circumstances shown to have existed. And
16 criminal intent can arise from the actions or a failure to
17 act. It may arise from negligence, recklessness, or an
18 indifference to duty or to consequences that is considered by
19 the law to be the equivalent of criminal intent.

20 Ladies and gentlemen, there are two possible verdicts
21 which you may find in this case on each of the three charges
22 of the indictment under 2011-GS-1125, trafficking cocaine base
23 over 10 grams but under 28 grams, manufacturing cocaine base,
24 and possession with intent to distribute. On each one of
25 those, it would be not guilty or guilty and, ladies and

1 gentlemen, there is no significance whatsoever in the order in
2 which I state the possible verdict. It's simply that one must
3 be stated first.

4 Each charge is a separate and distinct offense. You must
5 decide each count of the indictment separately on the evidence
6 and the law applicable to it, uninfluenced by your decision as
7 to any other count in the indictment. The defendant may be
8 convicted or acquitted on any or all of the offenses charged.
9 You will be asked to write on your verdict form on each one
10 guilty or not guilty to trafficking cocaine base, as to
11 manufacturing, and as to possession with intent to distribute.

12 Ladies and gentlemen, your verdict must be unanimous. In
13 other words, all twelve of you must agree on the verdict, and
14 your decision must not be based on sympathy, compassion,
15 prejudice, emotion, or any other consideration not in evidence
16 in this case.

17 Mr. Foreperson, when the jury agrees on the verdict, you
18 will write the verdict on this verdict form, sign your name,
19 and then knock on the jury room door and inform the bailiff
20 that y'all have reached a verdict, guilty or not guilty, and
21 at that time we will see you back into this courtroom for
22 publication of your verdict.

23 Ladies and gentlemen, I'm going to ask that you go to
24 your jury room, but please do not begin your deliberations
25 until you have been instructed to do so. There are some

1 matters which we still have to take up here in court. So
2 thank you very much, ladies and gentlemen.

3 (Whereupon, the jury exits the courtroom at 10:40 a.m.
4 with the exception of the alternate juror.)

5 THE COURT: Are there any objections to the charge that
6 was given from the State?

7 MR. BROWN: No additions or exceptions, Your Honor.

8 THE COURT: Any exceptions for the defense?

9 MR. BROOKS: None from us, Judge.

10 THE COURT: All right. Thank you. Here's the verdict
11 form. If you could, gather all the evidence. Y'all want to
12 make sure everything gets in. I'm going to go ahead and
13 release the alternate. Court will be at ease pending the call
14 of the jury.

15 (Whereupon, the verdict form and evidence are checked and
16 then delivered to the jury room.)

17 (Whereupon, the jury deliberations begin at 10:43 a.m.)

18 (Whereupon, there is a break in the proceedings from
19 10:43 a.m. until 11:08 a.m.)

20 THE COURT: We've got a couple questions. All right.
21 The jury has come back with three questions from Mr. Roberts,
22 the foreman.

23 Number one: Was the audio and video of the sale of drugs
24 valid evidence?

25 MR. MEADORS: Repeat that again, sir? I'm sorry.

1 THE COURT: Was the audio and video of the sale of drugs
2 valid evidence? I think they're talking about Mr. Dubose's
3 sale.

4 MR. MEADORS: I ---

5 THE COURT: I think the answer to that is not in
6 evidence.

7 MR. MEADORS: Well, I think Mr. Brooks asked him about a
8 video, not -- we didn't even mention it, and that was his
9 response to his question and he said, yes, there was.

10 MR. BROOKS: I think, Judge, the appropriate answer is
11 just what you said. It's not in evidence.

12 THE COURT: It's not in evidence.

13 MR. MEADORS: But I'm saying I guess the answer to the
14 question is it valid evidence, well, it is. I mean he said
15 it's on video. He didn't follow up on that like, you know,
16 where is it, anything.

17 THE COURT: I guess it would be, but it's not in
18 evidence.

19 MR. BROOKS: It's not in evidence.

20 THE COURT: It's not in evidence. Audio and video might
21 be valid evidence, but it's not in evidence for them to view,
22 or this is not for your consideration. I mean it's not.

23 MR. BROOKS: It's not. It was only -- obviously ---

24 THE COURT: No, it is to the extent that it bolsters his
25 testimony that it was audio and videotaped, but that -- that's

1 all he talked about.

2 MR. BROOKS: Yeah. It would have only gone to impeach my
3 client.

4 THE COURT: Or to bolster his testimony.

5 MR. BROOKS: Right, but -- but it's -- but I mean ---

6 THE COURT: I mean Officer Dubose's testimony.

7 MR. BROOKS: I think the appropriate answer to it is just
8 what you said, it's not in evidence. It's not in evidence for
9 their consideration.

10 THE COURT: I think that's the only ---

11 MR. MEADORS: Or either you have all the evidence that
12 you can consider or whatever.

13 THE COURT: Well, let me -- let me go ahead and number
14 two is: Any forensics on any items in question? Fingerprints,
15 specifically on the drug bags, drugs, et cetera. Who drove
16 the Neon? And then number three: Who drove the Neon? So I
17 think the ---

18 MR. MEADORS: Judge, I think -- I think you can answer
19 all of them, you have all the evidence.

20 THE COURT: That's what -- I think one -- one answer is,
21 all the evidence has been presented to you in this case. You
22 must, you know, determine your ---

23 MR. MEADORS: I think that's the fair response.

24 MR. BROOKS: I think -- I think that that answers all
25 three questions.

1 THE COURT: Mm-hmm.

2 MR. BROOKS: Are you going to send a note back to them?

3 THE COURT: I'm going to -- I'll write it on here.

4 MR. BROOKS: Okay.

5 THE COURT: And I'll let you look at it before I send it.

6 MR. BROOKS: Okay. So you're not going to bring them
7 back out?

8 THE COURT: No.

9 MR. BROOKS: Okay.

10 THE COURT: All right. The answer is going to be all of
11 the evidence has been presented. You must make your decision
12 on the evidence as provided. I think that's the whole ---

13 MR. MEADORS: I think that's perfect. Thank you, sir.

14 THE COURT: And W. Jeffrey Young, 5 June 2013 at 11:12
15 a.m.

16 MR. BROOKS: Still at ease, Judge?

17 THE COURT: What?

18 MR. BROOKS: Still at ease?

19 THE COURT: Still at ease.

20 MR. MEADORS: Judge, can I -- can I look at the first
21 one?

22 THE COURT: You can certainly look at it.

23 MR. MEADORS: Not your response. I just want to look at
24 the questions.

25 THE COURT: Yeah.

1 MR. MEADORS: You know -- you know, as I'm thinking about
2 this, you can read number one as saying was it valid evidence
3 the testimony that there was an audio and video. If you find
4 it credible, yes. You see what I'm saying? I mean I think
5 you could read it that way.

6 MR. BROOKS: You could read it all kinds of ways.

7 THE COURT: You could read it a lot of different ways,
8 like should it have come in in the first place is one way.

9 MR. MEADORS: Right.

10 THE COURT: I think the best thing to do is just to say
11 you have all the evidence. You never get all the evidence,
12 you know. You never get it all, you know.

13 MR. MEADORS: I don't worry about it.

14 (Whereupon, the jury note is marked as Court's Exhibit
15 Number 1.)

16 (Whereupon, the response is delivered to the jury room
17 and there is a break in the proceedings from 11:13 a.m.
18 until 11:31 a.m.)

19 THE COURT: All right. The jury has reached a verdict
20 and we're going to bring them back in here for publication of
21 that verdict. Let me remind everybody in the courtroom that
22 there will be no emotional outbreak either way -- either way
23 that the verdict comes back. If you don't think you can do
24 that, I'd advise anyone to leave now because I will hold them
25 in contempt if there is emotional outbreak, cheering or

1 crying. All right, let's bring our jury in.

2 (Whereupon, the jury enters the courtroom at 11:33 a.m.)

3 THE CLERK: We've got all the jurors present in the
4 courtroom, Your Honor.

5 THE COURT: Thank you, Mr. Bradley. Mr. Foreman, I
6 understand the jury has reached a verdict. Is that correct?

7 THE FOREMAN: Yes, sir.

8 THE COURT: Is it unanimous?

9 THE FOREMAN: Yes, it is.

10 THE COURT: Thank you. Would you please pass it to Mr.
11 Bradley?

12 (Whereupon, the verdict is passed to the clerk and then
13 to the Court.)

14 THE COURT: All right. Please publish the verdict.

15 VERDICT OF THE JURY

16 THE CLERK: For the State of South Carolina, County of
17 Sumter, in the Court of General Sessions, Docket Number 2011-
18 GS-43-1125, State of South Carolina versus Leroy Clifton
19 Gibbs, III, defendant.

20 Question number one. As to the charge of trafficking
21 cocaine base more than 10 grams but less than 28 grams, we the
22 jury unanimously find the defendant guilty.

23 As to the charge of manufacturing cocaine base, we the
24 jury unanimously find the defendant guilty.

25 As to the charge of possession with intent to distribute

1 cocaine, we the jury find -- unanimously find the defendant
2 guilty.

3 Signed David Roberts, Foreperson, dated June the 5th,
4 2013. Ladies and gentlemen, is this your verdict? So sayeth
5 y'all by raising your right hand, please.

6 (Whereupon, all jurors raise right hands.)

7 THE CLERK: Thank you very much.

8 THE COURT: Thank you. Does the defense request polling
9 of the jury?

10 MR. BROOKS: Yes, sir.

11 THE COURT: Please poll the jury.

12 THE CLERK: Ladies and gentlemen, when I call your name,
13 please stand and answer two questions for me. Christina
14 Strickland. Is this your verdict and still your verdict?

15 THE JUROR: Yes, sir.

16 THE CLERK: Thank you. You may be seated. Deborah
17 Brunson. Is this your verdict and still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Thank you. Brian Gurlstrom. Is this your
20 verdict and still your verdict?

21 THE JUROR: Yes, sir.

22 THE CLERK: Thank you. Kendrick Lamb. Is this your
23 verdict and still your verdict?

24 THE JUROR: Yes, sir.

25 THE CLERK: Thank you. Paul Shaw, II. Is this your

1 Ladies and gentlemen, they're always coming up with
2 things to try to say what makes America great. Well, it's
3 people like y'all who come in here and are willing to insert
4 themselves into the lives of someone else that make this a
5 great country, and I'd just like to take the opportunity to
6 shake your hands as you leave.

7 Now, we will probably be having another jury trial later
8 on this afternoon, but I'm going to release y'all for the
9 week. So y'all are done for the week. So again, thank you
10 very much and I hope to see you at some point in time over at
11 the new courthouse. Thank you, ladies and gentlemen. If any
12 of you need a work excuse, please let one of the bailiffs know
13 and they'll give you that. All right, thank you.

14 (Whereupon, the jury is released and exits the courtroom
15 at 11:40 a.m.)

16 THE COURT: All right. Any post-trial motions?

17 MR. BROOKS: Yes, sir. Judge, we -- at the close of the
18 State's case and the close of the evidence, we had asked for a
19 mistrial. We already explicitly stated those reasons. We
20 would basically renew that motion, in addition to a motion to
21 set aside the verdict in this case. We just feel that there
22 is not enough evidence to constructively put my client with
23 these drugs and we still stand by that. We respectfully ask
24 the Court to grant those two motions.

25 THE COURT: All right, thank you. Mr. Brown?

1 MR. BROWN: May it please the Court, Your Honor. As it
2 pertains to the mistrial, we've already addressed this matter
3 and we still stand by the position we've argued. The door was
4 opened by Mr. Gibbs getting up on the stand and saying that he
5 did not stay at that residence eighty-five percent of the
6 time. He opened the door for us to go into the issues upon
7 which I'm assuming a mistrial is being requested. And we do
8 agree with your ruling. We would ask you to uphold that
9 ruling as it pertains to the mistrial.

10 As to the setting aside of the verdict, Your Honor,
11 you've heard the testimony. You've heard that there was
12 evidence presented that he made statements acknowledging that
13 he sold drugs. You've heard testimony that -- that put him in
14 the house as living there. He was on the lease. I think
15 there is plenty of evidence available for the jury to make the
16 determination, which they did, that he did constructively
17 possess these substances and that he did intend to distribute
18 them and that he did traffic them and he did manufacture them.

19 Your Honor, I would ask that you uphold the jury's
20 verdict and us move to sentencing.

21 THE COURT: All right. I find that the jury is -- my
22 ruling on that stands. I will not grant a mistrial and I will
23 not overturn the jury's verdict. I think they analyzed the
24 evidence. They asked questions. They went through the
25 process.

1 (Whereupon, there is a pause in the proceedings.)

2 SENTENCE BY THE COURT

3 THE COURT: All right. I listened to the evidence. I
4 think Mr. Gibbs is an unrepentant drug dealer. I think if he
5 were to get out in a few years, he'd go right back to dealing
6 drugs. Mr. Brooks, again, you did all that you could to save
7 him, but you couldn't save him from himself. He had a way of
8 life. Drug dealing was his way of life. He is getting ready
9 to have a new way of life.

10 The sentence of this Court is under Indictment 2011-GS-
11 43-1125 on the charge of trafficking in cocaine base, 10 grams
12 to 28 grams -- and I'm also considering his extensive criminal
13 history. The sentence of this Court is that he be committed
14 to the State Department of Corrections for a period of ten
15 years.

16 On the charge of possession with intent to distribute
17 cocaine, first offense, the sentence is that he be committed
18 to the State Department of Corrections for a period of fifteen
19 years.

20 On the charge of manufacturing cocaine base, first
21 offense, the sentence is that he be committed to the State
22 Department of Corrections for a period of fifteen years.

23 These sentences, because they all happened from one date
24 of December 23rd, 2008, I will run them concurrent. That is
25 the sentence of the Court.

WITNESSES

W. Dubose Sumter County Sheriff Office

DOCKET NO. 2011-GS-43-1125

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July TERM 2011

THE STATE

vs.

LEROY CLIFTON GIBBS, III

KIMBERLY GIBBS

ARREST WARRANT NUMBER

M191922 M191931 M191923 M191932 M191924

M191933 M191925 M191934 M191920 M191929

M191921 M191930 M192337 M192339 M192338

M192340 M191926

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

7/21/2011

VERDICT

Indictment for

Trafficking Cocaine Base, Possession With Intent to Distribute Cocaine Base Within ½ Miles of a School or Park (2 counts), Manufacturing Cocaine Base, Possession With Intent to Distribute Cocaine, Possession With Intent to Distribute Cocaine Within ½ Mile of a School or Park, Possession of Firearm or Knife During Commission of a Violent Crime (2 counts), Possession of Marijuana, Breach of Trust

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Trafficking Cocaine Base, Possession With Intent to Distribute
Cocaine Base Within ½ Miles of a School or Park (2 counts),
Manufacturing Cocaine Base, Possession With Intent to
Distribute Cocaine, Possession With Intent to Distribute Cocaine
Within ½ Mile of a School or Park, Possession of Firearm or
Knife During Commission of a Violent Crime (2 counts),
Possession of Marijuana, Breach of Trust

At a Court of General Sessions, convened on July 21, 2011 the Grand Jurors of

SUMTER County present upon their oath:

✓ COUNT ONE - TRAFFICKING COCAINE (10-28 GRAMS) *Base (Approved by consent) H*

That Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did in Sumter on or about December 23, 2008, knowingly sell, deliver, purchase or bring into this State, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession, or attempted to become in actual or constructive possession of a quantity of Cocaine in an amount of more than ten (10) grams, but less than twenty-eight (28) grams, the same being a controlled substance, all within the meaning of Section 44-53-370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized, and being in violation of Section 44-53-370(e)(2)(a), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking. *Base (H)*

COUNT TWO - POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE
WITHIN ½ MILE OF A SCHOOL OR PARK

That Kimberly K. Gibbs and Leroy Clifton Gibbs, III, did in Sumter County, on or about December 23, 2008, unlawfully possess with intent to distribute a quantity of cocaine base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, middle or secondary school, college, or university, public playground or park, or a public vocational or trade school or technical education center, to wit: Aldersgate Methodist Preschool and Parker Street Park, in violation of Section 44-53-445(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT THREE - MANUFACTURING COCAINE BASE

That in Sumter County, South Carolina, on or about December 23, 2008, the Defendant, Leroy Clifton Gibbs, III and Kimberly K. Gibbs, did manufacture or did aid, abet, attempt or conspire to manufacture a quantity of cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such not having been authorized by law, all in violation of Section 44-53-375, Code of Laws of South Carolina (1976), as amended. *Base (Approved by consent) H*

TRAFCC *(BA)*

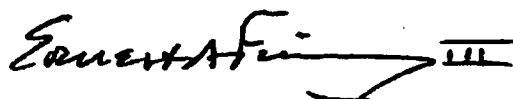
commission of a violent crime, to-wit: a .38 caliber Taurus handgun, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

COUNT NINE- POSSESSION OF MARIJUANA

That Leroy Clifton Gibbs, III did in Sumter County on or about December 23, 2009, knowingly and intentionally possess a quantity of marijuana, a controlled substance under the provision so Act No. 45, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law; this being more than a first offense.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

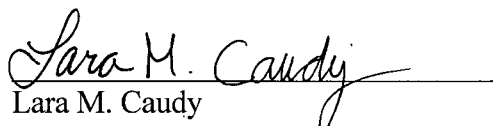
Solicitor

A handwritten signature in black ink, appearing to read "Ernest A. Finney III". The signature is written in a cursive style with a long horizontal stroke extending to the right.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 20, 2015


Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

RECEIVED

FEB 20 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEROY CLIFTON GIBBS,

APPELLANT

APPELLATE CASE NO. 2013-0001297

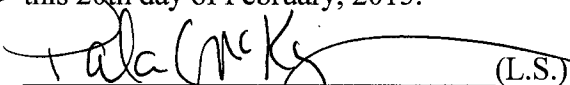
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.