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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

MARK A. WATSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000620

APPENDIX

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ORIGINAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
) 2007-GS-40-12278

The State

vs.

Mark A. Watson,

Defendant.

)
)
) TRANSCRIPT OF RECORD
) (Trial)
)
)

July 9, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a
jury

APPEARANCES:

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Attorneys for the State

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Thursday, July 9, 2009

1 **THE COURT:** All right, Solicitor. Call your
2
3 case.

4 **MR. CARSON:** The State calls the matter of State
5 vs. Mark Watson.

6 **THE COURT:** On what? Indictment what?

7 **MR. CARSON:** This will be indictment
8 . 07-GS-40-12278, Your Honor.

9 **THE COURT:** Charge?

10 **MR. CARSON:** Distribution of crack cocaine
11 third.

12 **THE COURT:** The State ready to proceed?

13 **MR. CARSON:** The State is ready to move forward,
14 Your Honor.

15 **THE COURT:** Defense ready to proceed?

16 **MR. LITTLEJOHN:** We are, Your Honor. They
17 haven't brought my client up yet.

18 **THE COURT:** I understand that. It's my
19 understanding that the defense has a Biggers motion.
20 Is that correct?

21 **MR. LITTLEJOHN:** Yes, Your Honor.

22 **THE COURT:** Can we proceed with that without
23 your client present, or would you rather have your
24 client present?

25 **MR. LITTLEJOHN:** Your Honor, I think I probably

1 need him here.

2 **THE COURT:** What's the status? Where is he?

3 **MR. LITTLEJOHN:** He's in custody. They should
4 be bringing him up.

5 **MR. CARSON:** He is on the way up, Your Honor.

6 **THE COURT:** Is he dressed?

7 **MR. CARSON:** He has been dressed out.

8 **THE COURT:** Have you got your witnesses here for
9 a Biggers hearing?

10 **MR. CARSON:** That's correct. Officer Sheard and
11 Officer Gilliam.

12 **THE COURT:** Just tell me, what's the issue? I
13 mean, tell me factually what happened.

14 **MR. LITTLEJOHN:** Your Honor, basically the
15 government's case -- excuse me; the State's case --
16 is predicated upon an undercover buy that purportedly
17 was made by my client. The undercover officer,
18 Officer Gilliam, saw my client for a brief period of
19 time during the course of the buy.

20 Afterwards it's my understanding he was shown a
21 photographic line-up and picked my client out of the
22 photographic line-up. Your Honor, based on the
23 limited observation time, and I am not sure what the
24 circumstances of the presentation of the photographic
25 line-up was, I felt compelled to make a motion --

1 **THE COURT:** You're correct.

2 **MR. LITTLEJOHN:** -- under Neil v. Biggers.

3 **THE COURT:** You're correct.

4 **MR. CARSON:** Your Honor, if the State may speak
5 to that?

6 **THE COURT:** Sure.

7 **MR. CARSON:** It's the State's position that this
8 buy was conducted audio and video. And to go further
9 back, Your Honor, as far as the officers having the
10 opportunity to see the defendant or his client,
11 Officer Gilliam and Investigator Sheard had an
12 ongoing investigation on Norman Street. Actually a
13 controlled buy was done at 4842 Norman Street. Well,
14 on the 8th, on June the 8th they had gone to the area
15 to conduct a controlled purchase to where this
16 defendant wasn't targeted on that date.

17 **THE COURT:** Was the target --

18 **MR. CARSON:** He was not the target on that date.
19 However, he --

20 **THE COURT:** June the what?

21 **MR. CARSON:** June the 8th, 2006. That's when
22 they went there to conduct the controlled purchase.
23 The officers were indeed able to buy crack cocaine
24 from that location. However, he wasn't the target on
25 such date and he was there. So they had

1 opportunities to view him. They had an opportunity
2 to learn his name at that point.

3 **THE COURT:** To learn his name?

4 **MR. CARSON:** His name, and to view him.

5 **THE COURT:** This is Gilliam?

6 **MR. CARSON:** Officer Gilliam. He was an
7 undercover officer on that date as well.

8 **THE COURT:** What's the date of the event; the
9 arrest?

10 **MR. CARSON:** The actual controlled purchase to
11 where this defendant sold drugs to Undercover Officer
12 Gilliam was June the 12th, 2006.

13 **THE COURT:** Well, I still think we ought to take
14 testimony from him. But if it appears that Officer
15 Gilliam knew or was acquainted with the defendant,
16 then the facts of the line-up are less significant
17 and may not even be significant at all if he
18 testifies that he knew who he was.

19 I mean, you don't have to do a Biggers hearing
20 if the witness knows the defendant or the person
21 that's being identified. It's only in the case
22 where, you know, there is some suggestion that the
23 identification procedure is unfair that a Biggers
24 hearing is required.

25 But, nevertheless, just in an abundance of

1 caution, let's call that officer.

2 Now, Mr. Littlejohn, are you ready to proceed.
3 now that your client is here?

4 **MR. LITTLEJOHN:** Yes, Your Honor. My client is
5 in the courtroom. Could I have just a moment to
6 speak with him?

7 **THE COURT:** Sure.

8 (Pause - conferring)

9 **MR. LITTLEJOHN:** We're ready to proceed, Your
10 Honor.

11 **THE COURT:** All right, Mr. Carson.

12 **MR. CARSON:** The State calls Officer Emmitt
13 Gilliam.

14 **EMMITT GILLIAM,** after being duly sworn,
15 testifies as follows:

16 **THE CLERK:** Please have a seat. State your full
17 name for the record.

18 **THE WITNESS:** Officer Emmitt Gilliam, the City
19 of Columbia Police Department.

20 **DIRECT EXAMINATION**

21 **BY MR. CARSON**

22 **Q** Officer Gilliam, where are you employed?

23 **A** City of Columbia Police Department.

24 **Q** Before being employed with the City of Columbia
25 Police Department, where were you employed?

1 **A** I was employed by Batesburg-Leesville Police
2 Department, but I was assigned to the Lexington
3 County Multiagency Narcotics Enforcement Team.

4 **Q** And being a part of the Lexington County Multiagency
5 Narcotics Team, what were you doing?

6 **A** Do drug buys, undercover work, basically major crime
7 stuff.

8 **Q** Were you working June of 2006?

9 **A** Yes, I was.

10 **Q** What was your assignment on June the 8th, 2006?

11 **A** June 2008 -- I'm sorry June 2006 -- I was assigned to
12 do undercover work with the City of Columbia in the
13 north region or Norman Street area.

14 **Q** Did you go and make a controlled buy or make a drug
15 purchase on June the 8th, 2006 off Norman Street?

16 **A** Yes, I did.

17 **Q** What was the address that you reported to to make
18 such buy?

19 **A** If I'm correct, [REDACTED]

20 **Q** On June the 8th, 2006, did you an opportunity to view
21 the defendant in this matter?

22 **A** Yes, I did.

23 **Q** Would you explain to the Court how you were able to
24 identify or your confrontation with the defendant?

25 **A** Yes, Your Honor. What it is, my previous experience

1 is to scan the whole area knowing who, what and where
2 around for basically my safety reasons as well as
3 seeing who is selling drugs, selling narcotics on
4 this area. I scanned the area and I saw at that time
5 called Junior, I think Junior Black or Black Junior,
6 Junior Black I believe, standing on the front porch
7 area while I proceeded to do a deal with another
8 individual inside the location.

9 Q Now, on June the 8th, 2006, was this defendant a
10 target?

11 A No, he wasn't.

12 Q So you were there to buy crack cocaine from another
13 individual?

14 A That's correct.

15 Q And when you were there, you had the opportunity to
16 view this defendant?

17 A Yes.

18 Q On that date did you have an opportunity to view him;
19 that is, the lighting? That is, I'm asking how long
20 were you able to view him? How close were you able
21 to get to this defendant, if you can explain to the
22 Court?

23 A Probably, probably between about two feet from him.

24 Q Would you say this close?

25 A A little bit closer than that.

- 1 Q This close?
- 2 A Just a little bit closer.
- 3 Q This close?
- 4 A Correct. Yes.
- 5 Q How long were you able to view him when you were
- 6 there making such controlled buy?
- 7 A Probably I stood outside for about a minute that
- 8 first time. Probably about a minute.
- 9 Q And how much detail or your degree of attention that
- 10 was paid to this defendant?
- 11 A On June the 8th?
- 12 Q On June the 8th.
- 13 A Not really as much. But, like I say; again, I scan
- 14 and look at who is there or whatever.
- 15 Q And you scan it for safety reasons?
- 16 A Yes.
- 17 Q So you were paying attention to this individual as he
- 18 stood on the porch?
- 19 A Yes.
- 20 Q I want to bring your attention to June the 12th.
- 21 Were you working on June 12th?
- 22 A That's correct.
- 23 Q What were your duties on June the 12th, 2006?
- 24 A Working undercover for the City of Columbia.
- 25 Q Where were you working undercover for the City of

1 Columbia on June 12th?

2 A [REDACTED]

3 Q [REDACTED] or [REDACTED]

4 A 48 -- I think it's [REDACTED]. I'm not exactly sure. I
5 think it's [REDACTED].

6 Q Beg the Court's indulgence, Your Honor. Based on the
7 incident report, Officer Gilliam, such address was

8 [REDACTED]

9 A Yes.

10 Q On June the 12th, 2006 at [REDACTED] did you
11 have the opportunity an view this defendant?

12 A Yes, I did.

13 Q Could you explain to the Court your opportunity to
14 view such Defendant?

15 A On June the 12th I was there to make a controlled
16 purchase from another individual. After a certain
17 period of time an unknown person says, I know this
18 person you saw the other day that he can come down
19 and serve you what you want.

20 Q Now, when you say the other day, you're talking about
21 your opportunity to view him from the June 8th --

22 A That's correct.

23 Q -- buy?

24 A That's correct.

25 Q Could you continue?

1 **A** At that time he proceeded to get him to come over.
2 He came in, into the house. And like I say, I'd seen
3 him before. We walked to another area which was a
4 lit area, and he sold me --

5 **THE COURT:** Was a what area?

6 **A** Excuse me?

7 **THE COURT:** A what area?

8 **A** A lit area.

9 **THE COURT:** A lit area?

10 **A** I'm sorry. A lit area. And at that time we
11 proceeded on with the transaction.

12 **Q** On June 12th, how long did you confront the
13 individual? How long were you guys interacting on
14 that controlled buy?

15 **A** I'd say roughly a minute.

16 **Q** When you confronted him, was the area lit? You said
17 it was lit?

18 **A** Yes. It was lit.

19 **Q** Where did such buy take place?

20 **A** In the hallway close to one of the bedrooms.

21 **Q** Was there a light in that hallway?

22 **A** Yes, there was.

23 **Q** Was there a light on in the house when he walked into
24 the house?

25 **A** That's correct.

1 Q How close were you when you made such buy? On June
2 the 12th, how close were you when you made such
3 transaction?

4 A Probably before, a little less.

5 Q Here?

6 A A little closer than that.

7 Q Were you able to see him?

8 A Yes.

9 Q Was his face, did he have on a mask or did he have on
10 a hat?

11 A He didn't have on nothing other than a hoodie.

12 Q He had on a hoodie?

13 A Yes.

14 Q Did that hoodie block his face to you?

15 A None whatsoever.

16 Q As far as attention to detail, could you explain to
17 the Court your attention to detail on that day? How
18 close did you pay attention?

19 A Very close. Like again, I go back to training
20 experience working undercover. My thing is, is who
21 I'm dealing with, whatever, I like to get as much
22 information as possible, from his hairstyle, the
23 height, weight to the best of my ability, age group,
24 what he's wearing, the complexion of his skin. If's
25 a black male, light-skinned black male, dark-skinned

1 black male; dreads in his hair, plaits in his hair,
2 short hair, bald-headed. Even if he have different
3 colored eyes; say, for instance, you know, light
4 brown eyes compared to dark brown eyes.

5 Q Why do you pay such close attention?

6 A Because having to come testify, you need to make sure
7 you have your facts in order.

8 Q Does it have anything to do with your safety that you
9 make a controlled purchase?

10 A That's correct.

11 Q That you want to know who is involved in such
12 purchase?

13 A Yes.

14 Q Due to your safety to where if anything were to go
15 wrong?

16 A Yes. Yes, sir.

17 Q During such buy, did you -- or at a later point, were
18 you able to describe the defendant to any other
19 members of your team?

20 A Yes, I did. Actually after the buy when I got back
21 to the vehicle, I made a description of him over
22 there, recorded.

23 Q Now, when you say over there --

24 A I mean over surveillance, recordings and all that,
25 the hairstyle, the height and weight to the best of

1 my ability; and skin complexion, weight.

2 Q So there was video?

3 A Yes.

4 Q Was there audio?

5 A Yes.

6 Q So when you say you made a description, you made a
7 description, did anyone else get that description?

8 A Yes. Everybody surveilling it. Investigator Sheard
9 surveilled this transaction.

10 Q And such description, what was the description? What
11 did you tell other members of your team via audio?

12 A Black male about five-six, 150 pounds, braids or
13 dreads in his hair, dark skinned black male, hoodie
14 on, what color it was, what kind of pants he had on
15 basically.

16 Q Let's go back to the transaction on June the 6th
17 (sic). You told us that such transaction was made.
18 So during that transaction, you told the Court that
19 you were approximately this close?

20 A Yes.

21 Q Approximately a minute or two?

22 A About a minute.

23 Q And it was well lit?

24 A Yes.

25 Q So when you made such transaction, did you ask the

defendant anything? Did you guys have any

interactions? Tell the Court what happened at such

buy?

A I asked for a yard, I need \$100, \$100 of crack. At

that time --

MR. LITTLEJOHN: Your Honor, for the record, I

believe the solicitor stated June 6th instead of --

A June 12th.

MR. LITTLEJOHN: -- June 12th. I don't know if

he's talking about --

MR. CARSON: I'm sorry. I'm sorry. We're

talking about the June 12th controlled purchase, Your

Honor.

A Correct.

MR. CARSON: And he is explaining his

interaction with the defendant, for identification

purposes.

THE COURT: Okay. Go ahead.

Q And you were saying that you asked for a yard?

A A yard, which is a double-up for a yard. In other

words, I gave him \$100; I wanted to double-up my

money to come back and rebuy more.

Q Did he do that?

A No, he didn't.

Q What happened?

- 1 **A** He gave me five pieces of crack, an off rock-like
2 substance which at that time appears to be crack
3 cocaine. At that time I kind of negotiated back,
4 giving it back to him because at that time I wanted
5 more for my money. And actually I was building my
6 case a little stronger.
- 7 **Q** So you are in the hallway?
- 8 **A** Yes.
- 9 **Q** There's a light on. You are right before him, less
10 than a foot, and you asked for \$100 worth of crack
11 cocaine?
- 12 **A** A double-up.
- 13 **Q** Are you facing him? Are you guys head on?
- 14 **A** Face-to-face.
- 15 **Q** And did he hand you \$100 worth of crack cocaine?
- 16 **A** Five pieces of crack cocaine.
- 17 **Q** What happened after he handed you the --
- 18 **A** I handed it back to him because I wanted a double-up.
- 19 **Q** So you gave it back to him. Are you still facing him
20 --
- 21 **A** Yes.
- 22 **Q** While you gave it back to him?
- 23 **A** Yes.
- 24 **Q** After he took the crack cocaine back, what happened
25 then?

- 1 **A** Then, after that, the unknown female in the house
2 told me, you know, it's good stuff; go ahead and get
3 it. So at that time I just went ahead and purchased
4 those five pieces.
- 5 **Q** So he gave it back to you?
- 6 **A** That's correct.
- 7 **Q** You're facing him the entire time?
- 8 **A** That's correct.
- 9 **Q** You told the Court that he had on a hoodie. But were
10 you able to see his face?
- 11 **A** Yes.
- 12 **Q** The entire time?
- 13 **A** The entire time.
- 14 **Q** After you made such purchase, what did you do?
- 15 **A** After I made the purchase I left the residence. I
16 went back to my vehicle. At that time I started
17 giving descriptions of what the individual looked
18 like, a description of the individual I just
19 purchased from, and backed up out of the yard and
20 went back to another meeting location where I turned
21 it over to Investigator Sheard.
- 22 **Q** So you left the home and you went back to what we can
23 call the rally point?
- 24 **A** Correct.
- 25 **Q** At that rallying point, were you ever shown a

1 line-up?

2 A Yes.

3 MR. CARSON: Your Honor, I'd like to have this
4 marked as State's Exhibit 1.

5 (WHEREUPON, State's Exhibit No. 1 is marked for
6 identification.)

7 Q Officer Gilliam, I'd like to show you what's been
8 marked as State's Exhibit 1. Will you explain to the
9 Court what that is?

10 A It's a photo line-up of the individual that fit and
11 matched the description of the individual.

12 Q As pertaining to the photo line-up, when were you
13 shown such photo line-up?

14 A 6-12-2006.

15 Q Who showed such line-up to you?

16 A Agent Sheard.

17 Q And Agent Sheard is with the City of Columbia Police
18 Department?

19 A That's correct.

20 Q When such line-up was given to you, did Agent Sheard
21 suggest the photo that you should pick?

22 A None whatsoever.

23 Q Did he coerce you or lead you to tell you that a
24 Junior Black or such photo that you should lean to?

25 A No, sir. No, sir.

- 1 **Q** How were you able to come to your decision when
2 seeing such photo line-up?
- 3 **A** Because I remember specifically how he looked and
4 everything, and they showed the line-up like probably
5 20 minutes after the deal took place.
- 6 **Q** So you're telling the Court you remember specifically
7 how he looked. Was that specifically based on your
8 June 8th interaction when you saw the defendant on
9 the porch?
- 10 **A** June 12th.
- 11 **Q** Well, you saw him on June 8th as well?
- 12 **A** Yes. Yeah. I saw him then.
- 13 **Q** When you made a controlled buy where he wasn't the
14 target?
- 15 **A** That's correct.
- 16 **Q** And you also were able to identify him because on
17 June 12th, your close interaction with him?
- 18 **MR. LITTLEJOHN:** Your Honor, I know we don't
19 have a jury, but I would object to the leading.
- 20 **THE COURT:** All right. Just go ahead and wrap
21 it up.
- 22 **Q** So you're saying that you were not coerced or that --
- 23 **A** No. No, sir.
- 24 **Q** -- nothing was suggested?
- 25 **A** None whatsoever.

1 Q Who did you choose in such photo? Once you were
2 shown the photo line-up, who do you choose?

3 A Number 2.

4 Q And how is it signified that you chose number 2?

5 A I circle it, date it, and my initials.

6 Q Are those your initials there?

7 A That's correct.

8 Q And you chose that voluntarily?

9 A Yes.

10 Q Officer Gilliam, tell me this. How long and how much
11 time elapsed between your interaction with the
12 defendant and your choice or you picking out the
13 defendant in that photo line-up?

14 A I'd say roughly about 20 minutes.

15 Q Twenty minutes?

16 A Roughly.

17 MR. CARSON: Nothing further from the State,
18 Your Honor.

19 THE COURT: Mr. Littlejohn.

20 MR. LITTLEJOHN: Thank you, Your Honor.

21 CROSS EXAMINATION

22 BY MR. LITTLEJOHN

23 Q Officer Gilliam, let me refer you back to June 8th.

24 A Yes, sir.

25 Q The first time you went to [REDACTED]

- 1 **A** Yes, sir.
- 2 **Q** You indicated that you were looking around trying to
- 3 see who all was at that residence?
- 4 **A** Actually I was scanning it to see who was all there.
- 5 Because, like I say, officer safety, you know.
- 6 That's one thing.
- 7 **Q** So you were there looking around to see who was at
- 8 the residence?
- 9 **A** Doing another controlled drug buy from another
- 10 individual. Yes, sir.
- 11 **Q** So you were there looking around to see who was at
- 12 the residence. Isn't that right?
- 13 **A** Basically, yes. But can I explain it? What I'm
- 14 saying, when I'm getting out the vehicle, I'm walking
- 15 up to the house. I'm scanning the whole area to see
- 16 what's going on. If it looks kind of spooky, I'm
- 17 backing out, getting out of there. So that's when I
- 18 say I'm scanning the whole area, I'm scanning to go
- 19 do a controlled drug buy, seeing who is out and
- 20 around.
- 21 **Q** Okay. How many people were at [REDACTED]
- 22 that day?
- 23 **A** Probably about eight or nine I believe.
- 24 **Q** On the 8th?
- 25 **A** Four or five sitting on the porch. On the 8th?

1 Q Mm-hmm (affirmative).

2 A I think about four or five sitting on the porch. And
3 there was some people -- it was like a boarding house
4 I believe.

5 Q Four or five on the porch?

6 A Yes.

7 Q And then were there another four or five inside the
8 house?

9 A Inside, I think a couple was in the kitchen and some
10 was in the bedroom back and forth.

11 Q Okay. Now, when you got there, you said you scanned
12 everybody. Did you go on in the house?

13 A Yes, sir.

14 Q You walked on in the house?

15 A Excuse me.

16 Q I say you got there, looked around the front porch,
17 walked on in the house?

18 A Well, actually, I was scanning while walking towards
19 the house; yes, sir.

20 Q Okay. You said you saw who you contend is Junior
21 Black for about a minute?

22 A Walking up there, I'd say about a minute; yes, sir.
23 I scanned everybody. What I'm saying, once you scan
24 and you look and see who is about, and I remember him
25 being there.

- 1 Q Okay.
- 2 A Yes, sir.
- 3 Q Do you remember what he had on?
- 4 A Not on that day. I just remember the face.
- 5 Q Do you remember whether he had on a hoodie?
- 6 A On the 8th?
- 7 Q Yes, sir.
- 8 A No, sir. I couldn't tell you if he had it on. I
- 9 don't remember him having a hoodie on on the 8th.
- 10 Q You don't remember what he was wearing?
- 11 A No, sir.
- 12 Q So did you stop on the front porch?
- 13 A Stopped for a second, yes.
- 14 Q For a second, and then went on in the house?
- 15 A Yes, sir.
- 16 Q So you scanned four or five people on the front porch
- 17 as you are walking into the house?
- 18 A Yes, sir.
- 19 Q When you came out, did you scan the same individuals
- 20 who were on the front porch?
- 21 A No. Not really.
- 22 Q So the only time you saw Junior Black was as you were
- 23 walking onto the front porch and scanning the four or
- 24 five individuals that were there?
- 25 A That's correct.

1 Q And you can't tell us what he had on at that time?

2 A This is three years old. No, sir.

3 Q You can't tell us what his hairstyle was at that
4 time?

5 A Yes, sir. He had braids in his hair then.

6 Q You recall that, but you don't recall what he had on?

7 A No, sir.

8 Q What time of day was this?

9 A I'm not exactly sure. It was in the evening time. I
10 know that much.

11 Q Was it nighttime?

12 A It was evening time. It was still light out.

13 Q Still light?

14 A Yes, sir.

15 Q Do you remember whether the front porch was
16 illuminated?

17 A The front porch, it was light. It was daylight
18 hours. I know that much.

19 Q Do you recall whether the front porch was
20 illuminated?

21 A By the sun; yes, sir. Not by any other lights.

22 Q So there weren't any lights on on the front porch
23 that you recall?

24 A No, sir.

25 Q All right. Now, on June 12th you told us how you

- 1 went over to make a purchase. And you said you
2 talked to an individual and then the person that you
3 say is Junior Black showed up at the house?
- 4 **A** Yes, sir.
- 5 **Q** Okay. And you said on that occasion you were in his
6 presence for about a minute?
- 7 **A** Yes, sir.
- 8 **Q** Okay. You described his outfit as being a hoodie?
- 9 **A** Yes, sir.
- 10 **Q** Did he have anything else on his head besides the
11 hoodie?
- 12 **A** Hoodie and the braids. That's what I could see.
- 13 **Q** Braids?
- 14 **A** Yes, sir.
- 15 **Q** The hoodie came all the way over his head?
- 16 **A** About to his forehead part. And you could see the
17 braids hanging out.
- 18 **Q** So the only thing you could see were the braids on
19 his forehead?
- 20 **A** And his face; yes, sir.
- 21 **Q** You couldn't see the braids down his back?
- 22 **A** No, sir.
- 23 **Q** And otherwise how was he dressed other than the
24 hoodie?
- 25 **A** On June 12th?

- 1 Q Yes, sir.
- 2 A Jeans on, the hoodie. I'm not exactly sure what
3 color shoes or sneakers he had on.
- 4 Q Did you notice whether he had any jewelry?
- 5 A No, I did not. I didn't pay attention to the jewelry
6 part.
- 7 Q Did you notice if he had a ball cap on?
- 8 A Yes, I did notice he did not have a ball cap. He
9 just had like a regular hoodie on his head. And you
10 could see like a -- you could see the braids hanging
11 down in the front part. And if he had a hat on
12 underneath it, it would have stuck out a little.
- 13 Q Okay. Now, after you finished the transaction on
14 June 12th --
- 15 A Yes, sir.
- 16 Q -- the tape indicates that you gave a description as
17 you were leaving going down Norman Street?
- 18 A Yes, sir.
- 19 Q You cut the tape off at some point?
- 20 A Yes, sir.
- 21 Q Where did you go from there?
- 22 A To the meeting, the rally point, to meet Agent Sheard
23 and the rest of them and turn over --
- 24 Q Where was the rally point?
- 25 A The police department, their substation.

- 1 Q Substation?
- 2 A Yes, sir.
- 3 Q Now, when you got there, did you explain to them what
- 4 happened?
- 5 A Again, yes, sir.
- 6 Q And you told them Junior Black?
- 7 A Yes, sir.
- 8 Q Did you tell Investigator Sheard that?
- 9 A Yes. I told him about it.
- 10 Q That it was Junior Black?
- 11 A I told them that's the name that was given to me, was
- 12 Junior Black. Yes.
- 13 Q And did he indicate, well, I know that guy?
- 14 A Not to my knowledge.
- 15 Q He didn't say that?
- 16 A All I remember was he says he's getting a full photo
- 17 line-up. And I said he walked from down the street
- 18 and came over. That's all I remember.
- 19 Q You don't recall Agent Sheard indicating anything
- 20 about his prior knowledge of the identity of Junior
- 21 Black?
- 22 A Not to my knowledge.
- 23 Q Now, after you reported what happened, you say Agent
- 24 Sheard went and put a photo line-up together?
- 25 A That's correct.

1 Q And had you all talked about who Junior Black was?

2 A I don't think he gave a description. But I gave him
3 what I gave him.

4 Q Pardon me?

5 A The only thing we were talking about was the name
6 that I gave him, what he said, what I said, and he
7 just walked down the street from there.

8 Q And then he brought you a line-up?

9 A That's correct.

10 Q Okay. And you said you picked out number 2?

11 A That's correct.

12 Q Officer Gilliam, just a couple of things.

13 A Yes, sir.

14 Q So your total observations of the person you've
15 identified as Junior Black was on June 8th as you
16 were coming up the sidewalk and scanning the people
17 on the front porch?

18 A Yes, sir.

19 Q And the one minute or less transaction that you say
20 occurred on June 12th?

21 A That's correct.

22 Q And that's it?

23 A Basically, yes, sir.

24 Q You never saw that individual other than that time?

25 A Then the only two times that I actually seen him over

1 at that location.

2 **MR. LITTLEJOHN:** Your Honor, those are all the
3 questions I have.

4 **THE COURT:** Anything further?

5 **MR. CARSON:** Real quickly, Your Honor.

6 **REDIRECT EXAMINATION**

7 **BY MR. CARSON:**

8 **Q** I want to bring your attention, Officer Gilliam, to
9 June 12th, 2009 (sic).

10 **A** Yes, sir.

11 **Q** And you stated when you had the opportunity to see
12 him that he did have on a hoodie?

13 **A** Yes, sir.

14 **Q** And under that hoodie you saw braids?

15 **A** Yes, sir.

16 **Q** When you confronted him, was that on video?

17 **A** Yes, it was.

18 **Q** Was that also on audio?

19 **A** Yes, sir.

20 **MR. CARSON:** Nothing further from the State,
21 Your Honor.

22 **THE COURT:** Anything further?

23 **MR. LITTLEJOHN:** No, Your Honor.

24 **THE COURT:** All right. You may come down, sir.
25 Is that it, Solicitor?

1 **MR. CARSON:** The State calls Investigator
2 Sheard.

3 JACKSON SHEARD, after being duly sworn,
4 testifies as follows:

5 **THE CLERK:** Please have a seat. State your full
6 name.

7 **THE WITNESS:** It's Investigator Jackson Sheard,
8 S-H-E-A-R-D.

9 DIRECT EXAMINATION

10 **BY MR. CARSON**

11 **Q** Investigator Sheard, where are you employed?

12 **A** The City of Columbia Police Department.

13 **Q** Where were you employed on June the 12th, 2006?

14 **A** The City of Columbia Police Department.

15 **Q** And what were your duties on June 12th of '06?

16 **A** I am the investigator of the unit. I'm in charge of
17 the tech equipment and making -- investigating drug
18 crimes and helping lead investigations.

19 **Q** Were you a part of the investigation of [REDACTED]

20 [REDACTED] here in Richland County?

21 **A** Yes, I was.

22 **Q** What was your duties or your role on that day?

23 **A** I was the case agent and also the supervisor, the
24 controlling officer for the undercover officer.

25 **Q** So you were -- on that investigation, you were not

- 1 investigating this matter by yourself?
- 2 **A** No. I had other people, but I was leading the
- 3 investigation.
- 4 **Q** And you had an undercover officer?
- 5 **A** That's right.
- 6 **Q** Did you outfit your undercover officer with any
- 7 surveillance or video?
- 8 **A** I did. I equipped him with the audio/video
- 9 equipment. The audio/video equipment was something
- 10 that we could digitally record and also with a audio
- 11 transmitter. So as the undercover officer was inside
- 12 the location I could also listen to what was going
- 13 on.
- 14 **Q** On June 12th did you conduct a line-up pursuant t
- 15 this investigation?
- 16 **A** I did.
- 17 **Q** A photo line-up?
- 18 **A** Yes, I did.
- 19 **Q** Could you explain to the Court your pro
- 20 producing such line-up?
- 21 **A** Yes. What happened is right after r
- 22 Gilliam was leaving the location;
- 23 the audio that I could hear, he
- 24 description and giving a heigh
- 25 part of it he had mentioned

1 Junior Black.

2 Then he came back, met with me. And immediately
3 I retrieved the evidence from him, but at the same
4 time I had him go write a statement for me. Then I
5 read statement. I also downloaded the evidence,
6 watched the video. And once I watched the video,
7 matched the description given me by the undercover
8 officer, that's when I made a line-up.

9 Q You presented such line-up to Officer Gilliam?

10 A I did.

11 Q Where did you give him such line-up?

12 A In the office, in my office.

13 Q At what time approximately after?

14 A I guess the time it took me to download. So
15 probably, it was probably about an hour.

16 Q Going back to your procedures, you conducted or
17 created such photo line-up. Could you explain to the
18 Court, how are you able to come to this defendant in
19 such line-up?

20 A Well, yes. First I relied on the description given.
21 And then when he gave the nickname, I immediately
22 recognized the nickname. But then when I watched the
23 video while Undercover Officer Gilliam was writing
24 his statement, then I immediately recognized the face
25 because I've encountered this defendant for years.

1 And I also was familiar with his nickname being who
2 he was and exactly where he lived.

3 Q Going back to the photo line-up, after you gave such
4 photo line-up to Officer Gilliam, while handing or
5 after giving it to him, did you suggest any photo?

6 A No. What I did was, as soon as I produced, completed
7 the line-up, my procedure is just to hand them the
8 line-up and just kind of step away so there is no
9 suggestion on my part and just ask if he can identify
10 anybody in this line-up.

11 Q I want to show you what's been marked as State's
12 Exhibit No. 1. Tell the Court what that is?

13 A This is the line-up that I produced on June the 12th,
14 2006.

15 Q And it's also the line-up that you gave to Officer
16 Gilliam?

17 A That's right.

18 Q And when you handed him the line-up, you didn't
19 suggest or tell Officer Gilliam who you thought the
20 perpetrator was --

21 A No, I did not.

22 Q -- in any form? Did Officer Gilliam make a choice of
23 your photo line-up?

24 A Yeah. He -- as soon as I set it down on the table,
25 he immediately pointed to the defendant's picture.

1 He scanned over, looked again just to make sure. But
2 he said, no, that's definitely him.

3 Q He didn't hesitate?

4 A No.

5 Q How did he signify that that was him?

6 A He circled the photo of the defendant, put his
7 initials and the date.

8 Q Nothing further from the State. Officer, please
9 answer any questions that Mr. Littlejohn may have.

10 CROSS EXAMINATION

11 **BY MR. LITTLEJOHN**

12 Q Investigator Sheard, what conversation did you have
13 with Officer Gilliam immediately after he had made
14 the buy on June 12th?

15 A Pretty much the same statement that he gave as he was
16 leaving. Who did you encounter when you were inside
17 the house? And then I retrieved the drugs from him.
18 And just taking off the equipment. And then I said,
19 can you go over there. I sent him to another
20 computer. And I said, can you please write me a
21 statement?

22 Q Okay. Did you tell him that you knew this guy?

23 A No. Because I was too busy taking the stuff apart
24 and going into my office.

25 Q So you all didn't discuss who Junior Black was --

1 A Well, no.

2 Q -- or Blackburn.

3 A Once he gave me the equipment and the evidence, I
4 said, please go write a statement. And I sent him to
5 another work station. Then I went in my office.

6 Q Did Gilliam tell you this was the same guy he had
7 seen on June 8th?

8 A I believe it may have been mentioned, but I don't
9 recall that.

10 Q Okay. So you all didn't any further discuss the
11 identity of this person?

12 A No. I was too busy because, you know, I was
13 responsible for downloading the evidence and I was
14 also responsible for writing or making a line-up. He
15 was also responsible for doing a statement. So there
16 wasn't as much time to go into great detail like
17 that.

18 Q Okay. Do you have the line-up there in front of you?

19 A I do.

20 Q Let me see it if I may.

21 (Witness hands document to Mr. Littlejohn)

22 Q Referring to what's been marked State's Exhibit 1, is
23 this the original line-up that was prepared?

24 A That's the original.

25 Q You prepared this by computer?

1 **A** That's correct.

2 **Q** When you say you presented this line-up to Officer
3 Gilliam, about an hour after the buy was made?

4 **A** It would have to have been. And the reason I know
5 that, it takes about an hour to download the
6 evidence. So until I completed the download of the
7 digital evidence, and then where I physically watched
8 the encounter myself, then that would have been the
9 time that I would have made the line-up.

10 **MR. LITTLEJOHN:** I believe that's all I have,
11 Your Honor, other than the top of my pen which I
12 dropped under Jackie's desk.

13 **THE COURT:** You may come down. Thank you.

14 **Q** All right. Anything further from the State?

15 **MR. CARSON:** Nothing further from the State,
16 Your Honor.

17 **THE COURT:** Mr. Littlejohn, do you have any --

18 **MR. LITTLEJOHN:** Your Honor, I don't have any
19 evidence to present.

20 **THE COURT:** All right. Any argument?

21 **MR. LITTLEJOHN:** No, Your Honor.

22 **THE COURT:** All right. I find that the
23 witness's opportunity to view the -- he had ample
24 opportunity to view the accused. I'm still of the
25 mind that his prior identification of the defendant;

that is, prior to the photo line-up, makes an even more positive identification. I don't find anything unduly suggestive about the line-up process. There is probably very -- well, not a great likelihood of misidentification of the defendant based on the two encounters both on June 8th and June 12th, and that I think his degree of attention, he's there for a focused purpose which adds to the credibility and reliability of the identification. And I find that his in-court identification will be allowed in this case.

Anything else of a pre-trial nature?

MR. LITTLEJOHN: Yes, Your Honor; one thing. Your Honor, I showed copies of the indictment to my client, and he has two questions he would like to ask the Court concerning the indictment.

THE COURT: All right. I have the indictment.

MR. LITTLEJOHN: Your Honor, the first relates to the date on the body of the indictment which indicates that the Grand Jury convened on December 12th, 2007.

THE COURT: Right. That's the day they came together.

MR. LITTLEJOHN: Yes, Your Honor. It's indicated that the foreman or the foreperson signed

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1 the true bill on December 13, 2007, and he has a
2 question as to the disparity between the two dates.

3 **THE COURT:** My assumption is -- and I don't
4 think it needs to be proven -- but my assumption is
5 that was the next day and that's when they considered
6 his indictment. Just they came together on the 12th.
7 They probably -- in my estimation, there may have
8 been 500 or at least several hundred indictments to
9 be considered that week. I don't have that figure in
10 front of me, but that's pretty normal for Richland
11 County.

12 They take these indictments and they come to
13 them and they sign them as they are acted upon. So
14 what I'm assuming is that they got to Mr. Watson's
15 evidence and issued the indictment or true billed the
16 indictment on the next day when they got to his case.
17 The Grand Jury didn't come and meet just for his
18 case. So that's my explanation.

19 **MR. LITTLEJOHN:** Your Honor, he just wanted to
20 know if there was anything that appeared improper on
21 the indictment, wanted the Court to confirm that.

22 **THE COURT:** No.

23 **MR. LITTLEJOHN:** Your Honor, the second issue he
24 has is, there is handwriting on the witness section
25 of the indictment.

1 **THE COURT:** L. C. Reeves.

2 **MR. LITTLEJOHN:** L. C. Reeves, CPD. And it's
3 circled.

4 **THE COURT:** Right.

5 **MR. LITTLEJOHN:** And he had a concern that that
6 handwriting was not supposed to be on the indictment.

7 **THE COURT:** Well, Sharon Wilson, I'm assuming
8 that is the foreperson of the Grand Jury, Ms. Wilson
9 wrote that on there because that's the witness that
10 appeared before the Grand Jury. There's nothing --
11 that block is for a list of witnesses. Somebody
12 wrote -- I'm assuming it was the foreperson or the
13 clerk of the Grand Jury that wrote the name of the
14 witness that appeared. I wasn't there in 2007. So
15 that would be my explanation.

16 **MR. LITTLEJOHN:** Your Honor, he just wanted the
17 Court to confirm or not confirm that there was
18 something improper about the indictment.

19 **THE COURT:** I do not think that either of those
20 facts would be sufficient to quash the indictment.

21 **MR. LITTLEJOHN:** Thank you, Your Honor.

22 **THE COURT:** I would not quash an indictment
23 based on that information.

24 You ready for the jury?

25 **MR. CARSON:** That's correct, Your Honor.

1 Nothing further from the State.

2 **MR. LITTLEJOHN:** We're ready, Your Honor.

3 **THE COURT:** All right. Bring the jury.

4 (Pause)

5 **THE COURT:** Approach the bench, counsel, please.

6 (Whereupon, a bench conference is had)

7 (WHEREUPON, State's Exhibit No. 2 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 3 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 4 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 5 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 6 is marked for
16 identification.)

17 **THE COURT:** All right, ladies and gentlemen.

18 I'm just going to find out who is missing or if we've
19 miscounted. So what I'm going to do -- this is like
20 being in the third grade -- I'm going to ask you to
21 answer "present" when I call your name. Let me do
22 this. Everybody know your number? I'll call your
23 name, your number out. Let's do it that way.

24 (Whereupon, the roll of the jury is had).

25 **THE BAILIFF:** The jury is all present now, Your

1 Honor.

2 **THE COURT:** Thank you. Good morning, ladies and
3 gentlemen. Welcome. Some of you, welcome to the
4 Court of General Sessions. Some of you, welcome back
5 to the Court of General Sessions, because I see some
6 familiar faces that I talked to on, I believe it was
7 Monday or Tuesday. The week kind of runs together
8 when you're having trials.

9 But this is a criminal case we are going to go
10 into today, and I'm going to tell you a little bit
11 about it in a few minutes. I'm going to introduce
12 the parties to you because we need to know if you
13 know anybody that's involved in the case or if you
14 have any knowledge of the facts of this case.

15 And those of you who were here earlier in the
16 week are familiar with this process. And as I told
17 the jury panel earlier in the week, I just like to do
18 this by numbers; that is, by your juror numbers
19 instead of names because I've found over the years
20 that jurors, particularly in the criminal court, are
21 more happy or feel better if they're identified only
22 by their numbers. So I'm going to ask you to
23 identify yourself by number if you have any reason to
24 answer any of the questions that I'm about to ask
25 you.

1 Now, as you probably already know, all cases
2 prosecuted in the criminal courts or in the Court of
3 General Sessions are done so by the Fifth Judicial
4 Circuit Solicitor's Office. That is the office of
5 Mr. Barney Giese, your elected Fifth Judicial Circuit
6 solicitor.

7 Now, Mr. Giese will not be actually prosecuting
8 the case today or will not be involved in the trial
9 of the case, but two assistant solicitors will be
10 doing so. I need to know if you know either of these
11 gentlemen. Mr. Drelton Carson and Mr. Seth Rose. I
12 need to know if any member of the jury panel is
13 related by blood, connected by marriage or employment,
14 or a close personal acquaintance of either of these
15 two attorneys that work in the Fifth Judicial Circuit
16 Solicitor's Office. Anybody? All right. Thank you
17 very much, counsel.

18 Anybody, any member of the jury panel have any
19 connection with the actual solicitor, Mr. Barney
20 Giese? Any member of the jury panel related by
21 blood, connected by marriage or employment or a close
22 personal acquaintance of Mr. Giese? If so, please
23 stand.

24 Anybody know any member of the staff of the
25 Fifth Judicial Solicitor's Office? If so, please

1 stand. Yes, sir. And your number, please?

2 **JUROR:** 19.

3 **THE COURT:** Mr. 19. And --

4 **JUROR:** For what it's worth, my sister-in-law is
5 Heather Weiss who is a prosecutor.

6 **THE COURT:** All right. Mr. 19, would that fact
7 in any way interfere with your ability to give both
8 the State and the defendant a fair and impartial
9 trial?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much. Anybody else
12 All right. Let me carry that a little bit further
13 because the Solicitor's Office works very closely
14 with law enforcement and law enforcement is generally
15 involved in the trial of criminal cases. I need to
16 ask if any member of the jury panel is related to any
17 member of your family involved in law enforcement
18 either with the Richland County Sheriff's Department,
19 the City of Columbia Police Department, SLED, FBI,
20 any law enforcement agency. It could even be
21 military law enforcement agency. If so, please
22 stand.

23 Now, the lady on the front row with the green
24 dress on, your number, please?

25 **JUROR:** Juror number 16.

1 **THE COURT:** Yes, ma'am.

2 **JUROR:** My spouse works for the Richland County
3 Sheriff's Department.

4 **THE COURT:** He does now?

5 **JUROR:** Yes, sir.

6 **THE COURT:** All right. Could you identify him?

7 **JUROR:** Yes, sir. Ransom Baxter.

8 **THE COURT:** Mr. Baxter?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Solicitor, is Mr. Baxter involved in
11 the trial of this case in any way?

12 **MR. CARSON:** No, Your Honor.

13 **THE COURT:** Is this a City case or a County?

14 **MR. CARSON:** This is a City of Columbia case,
15 Your Honor.

16 **THE COURT:** Thank you very much. Ms. 16, let me
17 just ask you the question I'm going to ask everybody.
18 Would that fact in any way interfere with your
19 ability to give both the State and the defendant a
20 fair and impartial trial?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you very much, Ms. 16. Yes,
23 sir. With the blue, I mean the white shirt on, the
24 striped shirt.

25 **JUROR:** 257.

1 **THE COURT:** 215?

2 **JUROR:** 257.

3 **THE COURT:** 257. Yes, sir.

4 **JUROR:** My father is a retired SLED agent.

5 **THE COURT:** All right. Would that fact in any
6 way interfere with your ability to give both the
7 State and the defendant a fair and impartial trial?

8 **JUROR:** No.

9 **THE COURT:** Thank you very much. The plaid
10 shirt.

11 **JUROR:** 290.

12 **THE COURT:** 2-9-0.

13 **JUROR:** I have a cousin who is current active
14 duty for Horry County Highway Patrol.

15 **THE COURT:** Okay. Would that fact in any way
16 interfere with your ability to give both the State
17 and the defendant a fair and impartial trial?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you very much. The lady with
20 the blue shirt.

21 **JUROR:** 167. I have a cousin employed by the
22 Richland County Sheriff's Department.

23 **THE COURT:** All right, ma'am. Would that fact
24 in any way interfere your ability to give both the
25 State and the defendant a fair and impartial trial?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you very much. Yes, sir, with
3 the blue shirt.

4 **JUROR:** Number 50. I have a niece that's
5 employed with the Richland County Sheriff's
6 Department.

7 **THE COURT:** All right. Would that fact in any
8 way interfere with your ability to give both the
9 State and the defendant a fair and impartial trial?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much. Anybody else?

12 Any member of the jury panel a regular
13 contributor to or supporter of groups which have as
14 their primary function the support of law
15 enforcement, groups such as the Sheriff's Association
16 or the Troopers Association or groups that are
17 involved with victim's rights or victims of crime;
18 Sister Care, things like that; Austin Wilkes Society,
19 people who work with people who are either prisoners
20 or coming out of prison.

21 Any member of the jury panel either volunteer
22 for these groups or contribute on an occasional, not
23 necessarily a regular basis, but just add your
24 support to such groups? Any member of the jury
25 panel? Yes, sir, with the blue shirt.

1 **JUROR:** 238.

2 **THE COURT:** Yes, sir.

3 **JUROR:** Lexington County Troopers Association.

4 **THE COURT:** Is there a Lexington County Troopers
5 Association? Yes, sir.

6 **JUROR:** They break it out by county.

7 **THE COURT:** Oh, really?

8 **JUROR:** They have separate Christmas parties and
9 all that kind of stuff.

10 **THE COURT:** I didn't realize that. But it's the
11 same State Troopers Association?

12 **JUROR:** It's all -- yeah. They just break it
13 up. They collect money separately.

14 **THE COURT:** Well, I always ask this question. I
15 know some people get tired of hearing me ask it. But
16 did you get a sticker to put on the back of your car?

17 **JUROR:** No. I don't worry about that. It
18 doesn't help.

19 **THE COURT:** You just destroyed one of my
20 delusions there. I thought it would help. All
21 right. Thank you very much, Mr. 238. Anybody else a
22 supporter of such groups?

23 All right. Now, the defendant in this matter
24 today is Mr. Mark Anthony Watson. Mr. Watson, would
25 you stand and face the jury.

1 (Mr. Watson complies)

2 **THE COURT:** Anybody member of the jury panel
3 related by blood, connected by marriage or employment
4 or a close personal acquaintance of Mr. Mark Anthony
5 Watson? Anybody know Mr. Watson? All right. Thank
6 you very much.

7 Mr. Watson is represented in this matter by
8 Mr. Cameron Littlejohn, an attorney who practices law
9 here in Columbia. Anybody connected by blood or have
10 any relationship with Mr. Littlejohn or perhaps have
11 been represented by him or a member of your family
12 been represented by him either presently or in the
13 past? Your number, please, ma'am?

14 **JUROR:** 276.

15 **THE COURT:** 276. How do you know Mr.
16 Littlejohn?

17 **JUROR:** Representation of one of my family
18 members.

19 **THE COURT:** Okay. How long ago?

20 **JUROR:** Oh, a couple of years ago. Maybe five
21 at the most I think.

22 **THE COURT:** Okay. Would that fact in any way
23 interfere with your ability to give both the State
24 and the defendant a fair and impartial trial in this
25 case?

1 **JUROR:** No, sir.

2 **THE COURT:** Thank you very much, Ms. 276. All
3 right. Be seated.

4 Now, ladies and gentlemen, what I hold in my
5 hand is what's known as an indictment. This is the
6 formal legal document by which a case is brought into
7 court. It's not evidence of anything. It's merely
8 the charging document that the State uses to bring a
9 case into court. But it does charge the defendant
10 with the violation of our criminal law and with a
11 crime. And that crime, Mr. Watson is charged with
12 distribution of crack cocaine. That's his charge, in
13 that on or about June 12th, 2006, three years ago, he
14 did manufacture, distribute, dispense or deliver some
15 quantity of crack cocaine in violation of the Code of
16 Laws of South Carolina, Section 44-53-375. So that's
17 it.

18 Where did this take place, allegedly take place,
19 Mr. Carson?

20 **MR. CARSON:** [REDACTED] here in Richland
21 County.

22 **THE COURT:** Norman Street?

23 **MR. CARSON:** That's correct, Your Honor.

24 **THE COURT:** All right. Ladies and gentlemen, I
25 need to ask if any member of the jury panel knows

1 anything about this case, lives in that vicinity that
2 might know something about it, heard something about
3 it. I doubt it was on the news, but it could have
4 been for all I know. And it's three years ago. I
5 know it's tough to remember sometimes what you did
6 yesterday.

7 But does any member of the jury panel know
8 anything about this case, heard anything, seen
9 anything on television or perhaps live in the
10 neighborhood where you might have heard something
11 about it? All right.

12 All right, ladies and gentlemen. I'm going to
13 read out a list of potential witnesses in this case.
14 And if the witnesses are present, I'm going to ask
15 you to stand and be identified by the jury. J. A.
16 Sheard with the Columbia Police Department. Anybody
17 know Mr. Sheard? Thank you, sir.

18 L. C. Reeves with the Columbia Police
19 Department, apparently is not here right now.
20 Melissa Hendricks, Columbia Police Department.
21 Emmitt Gilliam with the Columbia Police Department.
22 And whoever they added, somebody that I don't believe
23 is identified, but the evidence custodian that
24 works --

25 **MR. CARSON:** Your Honor, that would be a

1 Ms. Donna White.

2 **THE COURT:** Donna White.

3 **MR. CARSON:** With the City of Columbia Police
4 Department.

5 **THE COURT:** Anybody know Ms. White? All right.

6 Ladies and gentlemen, any member of the jury
7 panel who may have had any experience in your
8 lifetime, either you or a member of your family ever
9 been charged with distribution of drugs? I said
10 distribution of drugs. I'm not going to ask you
11 about possession. But at this point I just want to
12 know if any member of the jury panel or any member of
13 your family has ever been charged similar to the case
14 that we have in front of us today.

15 All right. Does any member of the jury panel
16 have any feelings or opinions that would make it
17 difficult for you to be fair and impartial in a case
18 like this? Any member of the jury panel have strong
19 feelings that would make you uncomfortable in sitting
20 in judgment in a case like this, listening to the
21 evidence, listening to the attorneys, listening to my
22 instructions to you as to the law of the State of
23 South Carolina? Any member of the jury panel who
24 feel they could not sit on such a case and be fair
25 and impartial?

1 Any member of the jury panel know of any reason
2 that they feel that they could not sit and
3 impartially listen to the evidence and be fair and
4 impartial in your deliberations and make a decision?

5 Anything further from the State?

6 **MR. CARSON:** It is, Your Honor. The State has
7 an additional potential witness, a Ms. Joanne Lewis
8 of the City of Columbia Police Department.

9 **THE COURT:** Joanne Lewis?

10 **MR. CARSON:** That's correct, Your Honor.

11 **THE COURT:** Does anybody know Ms. Lewis, Joanne
12 Lewis? I'm not in sure what capacity she is, but she
13 works for the City of Columbia Police Department.

14 Anything further from the defense?

15 **MR. LITTLEJOHN:** No, Your Honor. Thank you.

16 **THE COURT:** All right. Madam Clerk, give us a
17 jury, please.

18 **THE CLERK:** Ladies and gentlemen of the jury
19 panel, as I call your number, please come to the
20 microphone located here at the center of the
21 courtroom. At the microphone please restate your
22 number and your place of occupation. Juror number
23 307. Please bring any personal items that you have
24 with you.

25 (White female)

1 **JUROR:** Number 307. I'm an Ala-non physical
2 educator.

3 **THE CLERK:** What says the State?

4 **MR. CARSON:** Please seat Ms. Slavich for the
5 trial of this matter.

6 **THE CLERK:** What says defense?

7 **MR. LITTLEJOHN:** Please seat Ms. 307.

8 **THE CLERK:** Please have a seat in the jury box.
9 Juror number 147.

10 (White male)

11 **JUROR:** Juror 147. I'm a law student and a law
12 clerk at the center.

13 **THE CLERK:** What says the State?

14 **MR. CARSON:** Please excuse Mr. Lacy from the
15 trial of this matter.

16 **THE CLERK:** Please return to the back of the
17 courtroom.

18 Juror number 128.

19 (White male)

20 **JUROR:** Juror number 28, a self-employed
21 student.

22 **THE CLERK:** What says the State?

23 **MR. CARSON:** Please seat Mr. Jacobus for the
24 trial of this matter.

25 **THE CLERK:** Hold on.

1 **THE COURT:** By numbers, please, Mr. Carson.

2 **THE CLERK:** What says the defense?

3 **MR. LITTLEJOHN:** Please seat Mr. 128.

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

5 Juror number 290.

6 (White male)

7 **JUROR:** Juror 290, clerk.

8 **THE CLERK:** What says the State?

9 **MR. CARSON:** Please seat juror number 290 for
10 the trial of this matter.

11 **THE CLERK:** What says defense?

12 **MR. LITTLEJOHN:** Please present Mr. 290.

13 **THE CLERK:** Please have a seat in the jury box.

14 Juror number 219.

15 (Black female)

16 **THE CLERK:** Your number and your place of
17 occupation?

18 **JUROR:** 219. I'm retired state worker working
19 part-time in wholesale foods.

20 **THE CLERK:** What says the State?

21 **MR. CARSON:** Please seat juror number 219 for
22 the trial of this matter.

23 **THE CLERK:** What says the defense?

24 **MR. LITTLEJOHN:** Please excuse Ms. 219.

25 **THE CLERK:** Please return to the back of the

1 courtroom.

2 Juror number 57.

3 (White female)

4 **JUROR:** Juror number 57. I work in the
5 wholesale distribution of alcoholic beverages.

6 **THE CLERK:** What says the State?

7 **MR. CARSON:** Please seat juror 57.

8 **THE CLERK:** What says the defense?

9 **MR. LITTLEJOHN:** Please present Ms. 57.

10 **THE CLERK:** Please have a seat in the jury box.

11 Juror number 167.

12 (White female)

13 **JUROR:** Juror 167. Commercial property owner
14 and manager.

15 **MR. CARSON:** Please seat juror 167.

16 **THE CLERK:** What says the defense?

17 **MR. LITTLEJOHN:** Please excuse Ms. 157.

18 **THE CLERK:** Please return to the back of the
19 courtroom.

20 Juror number 43.

21 (Black male)

22 **JUROR:** Juror number 43. Process tech.

23 **THE CLERK:** What says the State?

24 **MR. CARSON:** Please excuse juror number 43.

25 **THE CLERK:** I'm sorry?

1 **MR. CARSON:** Excuse.

2 **THE CLERK:** Oh.. Please return to the back of
3 the courtroom.

4 Juror number 29.

5 (Black male)

6 **JUROR:** I'm juror 29, sanitation worker.

7 **THE CLERK:** What says the State?

8 **MR. CARSON:** Please excuse juror 29.

9 **THE CLERK:** Please return to the back of the
10 courtroom.

11 Juror number 269.

12 (Black female)

13 **JUROR:** 269, insurance manager.

14 **THE CLERK:** What says the State?

15 **MR. CARSON:** Please seat juror 269.

16 **THE CLERK:** What says defense?

17 **MR. LITTLEJOHN:** Please present Ms. 269.

18 **THE CLERK:** Please have a seat in the jury box.

19 Juror number 55.

20 (White female)

21 **JUROR:** Juror number 55, registered nurse
22 working for McKesson as a clinical information
23 consultant.

24 **THE CLERK:** What says the State?

25 **MR. CARSON:** Please seat juror 55.

1 **THE CLERK:** What says the defense?

2 **MR. LITTLEJOHN:** Please present Ms. 55.

3 **THE CLERK:** Please have a seat in the jury box.

4 Juror number 157.

5 (White male)

6 **JUROR:** Juror number 157. I'm an owner of a

7 marine dealership.

8 **THE CLERK:** What says the State?

9 **MR. CARSON:** Please seat juror 157.

10 **THE CLERK:** What says defense?

11 **MR. LITTLEJOHN:** Please excuse Mr. 157.

12 **THE CLERK:** Please return to the back of the

13 courtroom.

14 Juror number 16.

15 (Black female)

16 **JUROR:** Juror number 16. A developer/lead

17 consultant, CSC.

18 **THE CLERK:** What says the State?

19 **MR. CARSON:** Please seat juror 16.

20 **THE CLERK:** What says the defense?

21 **MR. LITTLEJOHN:** Please excuse Ms. 16.

22 **THE CLERK:** Please return to the back of the

23 courtroom.

24 Juror number 294.

25 (White male)

1 **JUROR:** Juror 294, third grade teacher.

2 **THE CLERK:** What says the State?

3 **MR. CARSON:** Please seat juror 294.

4 **THE CLERK:** What says defense?

5 **MR. LITTLEJOHN:** Please present Mr. 294:

6 **THE CLERK:** Please have a seat in the jury box.

7 Juror number 69.

8 (White male)

9 **JUROR:** Number 69. I work with Inter-tech

10 Polymer Group.

11 **THE CLERK:** What says the State?

12 **MR. CARSON:** Please excuse juror 69.

13 **THE CLERK:** Please return to the back of the

14 courtroom.

15 Juror number 228.

16 (Black male)

17 **JUROR:** 228, Richland One school bus driver.

18 **THE CLERK:** What says the State?

19 **MR. CARSON:** Please seat juror number 228.

20 **THE CLERK:** What says defense?

21 **MR. LITTLEJOHN:** Please seat Mr. 228.

22 **THE CLERK:** Please have a seat in the jury box.

23 Juror number 237.

24 (White female)

25 **JUROR:** Juror number 237, self-employed nanny.

1 **THE CLERK:** What says the State?

2 **MR. CARSON:** Please seat juror number 237.

3 **THE CLERK:** What says defense?

4 **MR. LITTLEJOHN:** Please seat Ms. 237.

5 **THE CLERK:** Please have a seat in the jury box.

6 Juror number 19.

7 (White male)

8 **JUROR:** Juror number 19. I work for Furman

9 University.

10 **THE CLERK:** What says the State?

11 **MR. CARSON:** Please seat juror 19.

12 **THE CLERK:** What says the defense?

13 **MR. LITTLEJOHN:** Please excuse Mr. 19.

14 **THE CLERK:** Please return to the back of the

15 courtroom.

16 Juror number 266.

17 (White male)

18 **JUROR:** 266, retired from Winn Dixie.

19 **THE CLERK:** What says the State?

20 **MR. CARSON:** Please seat juror 266.

21 **THE CLERK:** Does the defense challenge for

22 cause?

23 **MR. LITTLEJOHN:** No.

24 **THE CLERK:** Please have a seat in the jury box.

25 Juror number 202.

1 (White male)

2 JUROR: Juror 202. I'm a policy rep technician
3 for Medical Services of America.

4 THE CLERK: What says the State?

5 MR. CARSON: Please seat juror 202.

6 THE CLERK: Does the defense challenge for
7 cause?

8 MR. LITTLEJOHN: No.

9 THE CLERK: Please have a seat in the jury box.
10 Juror number 28.

11 (Black female)

12 JUROR: Juror number 28, parent educator,
13 Richland County School District Two.

14 THE CLERK: What says the State?

15 MR. CARSON: Please seat juror 28.

16 THE CLERK: Does defense challenge for cause?

17 MR. LITTLEJOHN: No.

18 THE CLERK: Please have a seat in the jury box.

19 THE COURT: One alternate.

20 THE CLERK: Juror number 254.

21 (White male)

22 JUROR: Juror 254, retired from SCE&G.

23 THE CLERK: What says the State?

24 MR. CARSON: Please seat juror 254.

25 THE CLERK: What says defense?

1 **MR. LITTLEJOHN:** Please excuse Mr. 254.

2 **THE CLERK:** Please return to the back of the
3 courtroom.

4 Juror number 71.

5 (White female)

6 **JUROR:** Juror number 71, repair and retention at
7 McEntire.

8 **THE CLERK:** What says the State?

9 **MR. CARSON:** Please seat juror 71.

10 **THE CLERK:** What says defense?

11 **MR. LITTLEJOHN:** Please seat Ms. 71.

12 **THE CLERK:** Please have a seat in the jury box.

13 **THE COURT:** Any objection to the jury selection
14 process from the State?

15 **MR. CARSON:** None from the State, Your Honor.

16 **THE COURT:** From the defense?

17 **MR. LITTLEJOHN:** No, Your Honor.

18 **THE COURT:** Thank you very much. All right.

19 Ladies and gentlemen of the jury panel who were not
20 selected on this jury, I'm going to again ask you to
21 return to the jury assembly room. But it's my
22 information that this will be the last case that will
23 be tried this week. So you're going to get a pass.

24 But I do want to take this opportunity before
25 you leave to thank you very much for coming and being

1 with us here this week. We've had a pretty good
2 week. We've been busy, as we always are here in
3 Richland County. I tell jurors all the time, this
4 system can do without me, it can do without these
5 attorneys, but it can't do without you. You're such
6 an important part of the judicial system of this
7 county and this state and this nation that the
8 framers of our constitution wrote your role in our
9 system into the Constitution of the United States.
10 It's that important a role.

11 So we certainly appreciate, and we want you to
12 know we appreciate your service and your willingness
13 to come and serve and help us resolve these matters.
14 If we don't see you again, good luck to all of you,
15 and thank you very much again.

16 (Pause)

17 **THE COURT:** All right, ladies and gentlemen of
18 the jury. We're going to take about a ten-minute
19 break. I do that because we actually started at
20 about 9:00 this morning going through some pre-trial
21 matters so that the trial would run smoothly as we
22 get started. So I'm going to ask you just to go to
23 the jury room for a few minutes. The bailiffs are
24 going to show you where your jury room is. Just
25 relax. We'll call you in a few minute.

1 I'm going ask you to do just a couple of things
2 for me. First off, don't discuss the case. I'm
3 going to ask you not to discuss the case while you're
4 in the jury room. You know very little about it. I
5 don't know any more about it than you do at this
6 point. But it would be improper to start talking
7 about the case at this early stage.

8 The second thing I'm going to ask you to do is
9 just select one of your members to be the foreperson
10 of the jury. That person will take the seat where
11 the lady is seated on the front row with the black
12 jersey on and will maintain that seat throughout the
13 trial.

14 The foreman ultimately will actually write the
15 verdict when and if that becomes necessary, will
16 beside in the jury room as deliberations take place.
17 So if you'll do that for me. And the rest of the
18 seats don't have any names on them. Just, we want
19 you to sit where you're comfortable, where you're
20 able to hear what goes on.

21 All the witnesses will testify from this witness
22 stand. Most of the activity will take place right
23 there in front of you. So if you'll do that for me
24 and let the bailiff know who your foreman is or
25 foreperson; obviously it can be anybody. I tell

1 jurors you're not going to get paid any more than
2 anybody else for being the foreperson. But if you'll
3 do that for me, I would appreciate it. All right.
4 You're excused. We'll call you in about five or ten
5 minutes. Just relax. We'll get started.

6 (Jury out at 10:39 a.m.)

7 **THE COURT:** We'll stand at ease for about ten
8 minutes.

9 **MR. CARSON:** Thank you, Your Honor.

10 (Whereupon, a break is taken)

11 (WHEREUPON, State's Exhibit No. 7 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 8 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 9 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 10 is marked for
18 identification.)

19 **THE COURT:** The State ready to proceed?

20 **MR. CARSON:** That's correct, Your Honor. The
21 State's ready.

22 **THE COURT:** Defense ready to proceed?

23 **MR. LITTLEJOHN:** Yes, Your Honor.

24 **THE COURT:** Bring the jury, please. Counsel,
25 number 128 is your foreperson. He is dressed for the

1 occasion.

2 (Jury in at 10:55 a.m.)

3 **THE COURT:** We do have a juror that needs to
4 pick up a child at 6:00 this evening. So I give you
5 fair warning.

6 **THE BAILIFF:** All the jury is present, Your
7 Honor.

8 **THE COURT:** Thank you very much. Clerk, swear
9 the jury, please.

10 (Whereupon, the jury is sworn)

11 **THE CLERK:** You may be seated.

12 **THE COURT:** All right, ladies and gentlemen.
13 You've now received your oath as jurors in this case
14 and we're ready to begin the trial. But let me just
15 take a few minutes to explain the process of the
16 trial for those of you who are not familiar with the
17 process so you know up front what's expected of you,
18 what your role is, what my role is and what the roll
19 of these attorneys is. My purpose in doing so is to
20 set you at ease in what may be an unfamiliar setting
21 to most if not all of you.

22 In this court a criminal law violation is
23 presented in a legal document known as an indictment
24 which I showed to you earlier in my discussions.
25 There is only one indictment in this case. And I

1 want you to remember again -- I'll repeat it -- that
2 the indictment is not evidence. The indictment is
3 merely a document containing a specific charge
4 against the particular individual.

5 Now, the defendant, Mr. Watson, has pled not
6 guilty to this indictment; and the State, therefore,
7 has the burden of proving each of the elements of the
8 indictment beyond a reasonable doubt. And it will be
9 your duty to decide whether the State has met that
10 burden.

11 Now, I don't want you to infer from anything
12 that I might say or do during the course of this
13 trial as to what your verdict should be. You are to
14 determine the innocence or guilt of the defendant
15 based on the evidence that will be introduced during
16 the course of the trial.

17 I have no opinion about the facts in this case
18 which I may share with you. In fact, the
19 Constitution of the state of South Carolina provides
20 that a trial judge shall make no comment or statement
21 to a jury about the facts of the case. Consequently,
22 do not infer from anything that I might say to you
23 during this instruction or during anything I might
24 say during the course of the trial in ruling upon the
25 admissibility of evidence or anything else that I

1 have any opinion about the facts of the case.

2 You and you alone are to determine what the
3 facts are in this case. You are the sole and
4 exclusive finders of fact in this case. While you
5 will determine the facts in this case from the
6 evidence, I am the judge of the law in this case, and
7 you are required to accept and apply the law as I
8 explain it to you.

9 Now, let me remind you of what we call two legal
10 principles. First is the legal yardstick you will
11 use in judging or measuring the evidence in this
12 case. That legal yardstick is known as the burden of
13 proof. And in this case the burden of proof is on
14 the State of South Carolina to prove guilt beyond a
15 reasonable doubt. Should the State fail to meet that
16 burden, it would be your duty to find the defendant
17 not guilty.

18 There is absolutely no burden whatsoever on the
19 defendant to testify or to present any evidence in
20 this case because the burden of proof is and remains
21 on the State to prove guilt beyond a reasonable
22 doubt.

23 And, secondly, I ask you to recall my earlier
24 comment to the entire jury panel concerning the
25 presumption of innocence. This is a cardinal and

1 fundamental rule of law that a defendant will always
2 be presumed innocent of the charge or crimes for
3 which he is indicted. The presumption of innocence,
4 in other words, is not just a simple legal theory or
5 a simple legal phrase. It is a substantial right to
6 which any accused, including this defendant, is
7 entitled.

8 Your role lies essentially in the oath you took,
9 part of which requires you to well and truly try this
10 case. Your oath requires you to find facts, to find
11 the truth from the evidence presented to you during
12 the course of the trial.

13 You are not to consider anything that you may
14 read or have heard about this case or any similar
15 case either before or during the trial. You may make
16 your decision based on the facts in this case that
17 you hear in this courtroom.

18 Now, what is evidence in South Carolina?
19 Evidence comes from basically three sources. The
20 most common example of evidence is testimony of a
21 witness. The witness will testify from this witness
22 stand. You will see, you will hear and observe the
23 witnesses, including the demeanor of the witnesses as
24 you determine the credibility of each witness.

25 The second source of evidence is what is known

1 to the law as an exhibit. An Exhibit may be a
2 photograph or a film or a chart or a diagram. An
3 exhibit may be a tangible document with an exhibit
4 label attached to it. And at the end of the case
5 when you retire to the jury room to begin your
6 deliberations all of the exhibits received during the
7 trial will go with you to the jury room.

8 And the third source of evidence is what the law
9 calls a stipulation. A stipulation is basically an
10 agreement between the parties as to the existence of
11 some certain fact. If there is such a stipulation --
12 I don't know if there will be or not -- you'd be
13 required to accept that stipulation as conclusively
14 determined for purposes of this trial. So, ladies
15 and gentlemen, that's what evidence is. It's
16 testimony and exhibits and any stipulation.

17 Now, as the trial judge I will preside over the
18 trial, rule on the admissibility of evidence and at
19 the end of the case explain to you the law applicable
20 to this case. Please understand that what I tell you
21 is not evidence. By the same token, what the
22 attorneys tell you is not evidence. The attorneys
23 may make opening statements and closing statements,
24 but those statements are not evidence. The attorneys
25 ask questions of the witnesses, but the questions are

1 not even evidence. It is the responses of the
2 witnesses to those questions which constitute
3 evidence.

4 Now, you and I do not ask questions of the
5 witnesses. We do not offer any exhibits. Your duty
6 is to listen openly and honestly to the evidence,
7 keep an open mind and do not form any conclusions or
8 judgments until you have received and considered all
9 of the evidence, the arguments of the attorneys and
10 my final instructions to you on the law.

11 And consistent with your oath, I'm going to ask
12 you every time you leave the room actually not to
13 discuss this case with your fellow jurors or with
14 anyone else. The first opportunity you will have to
15 discuss the case is at the end of the trial when I
16 authorize you to begin your deliberations. I trust
17 you will honor my instructions in your oath in that
18 regard.

19 Now, briefly, the trial process is as follows.
20 Each side may make an opening statement to you.
21 After the opening statements we'll begin with the
22 receipt of evidence. The state goes first and
23 presents evidence because the State has brought these
24 charges and has the burden of proof.

25 After we've heard and received evidence from the

1 State, the same opportunity is given to the
2 defendant; bearing in mind, however, there is
3 absolutely no burden on the defendant to present any
4 evidence at all.

5 Once we have received all the evidence in the
6 case, each side is permitted to make a final argument
7 or summation to you, after which I will instruct you
8 on law as it applies to this case. It will be at
9 that point at the end of the trial when you will be
10 permitted to begin your deliberations.

11 Now, I will close with just a few housekeeping
12 matters. We generally run court for about an hour,
13 an hour and a half between breaks. Sometimes we have
14 to take breaks that are not anticipated. We will
15 take a break whenever you need to take a break. If
16 you need to take a break, just raise your hand and
17 get my attention or the bailiff's attention and we'll
18 do so.

19 Also from time to time legal questions come up
20 which may require me to send you back to the jury
21 room more frequently than I would like to. The
22 reason for that is I may have to discuss points of
23 law with the attorneys and I may have to make some
24 comment on the facts; and as I said earlier, you are
25 not to take anything that I say with regard to the

1 facts into consideration.

2 From time to time you may also hear one of the
3 attorneys say, I object, for some reason or another.
4 The attorneys are not trying to hide anything from
5 you. They are merely following what are known as the
6 rules of evidence. These are basically the rules of
7 the road that govern all trials and they're asking
8 the Court to rule on whether or not one side or the
9 other has violated one of these rules.

10 Now, ladies and gentlemen, if you can't hear a
11 particular witness, please let me know so we can
12 speak up more clearly or they can speak up more
13 clearly. Or if you can't see an exhibit, let us know
14 and we'll also make sure that you're able to see.

15 If you need to bring something to my attention
16 during the course of the trial, please notify one of
17 the bailiffs. If you do need to contact me, it may
18 be necessary for you to put your concern in writing
19 so we will have a record of it. And I'll respond as
20 quickly as I can to the extent the law permits me to
21 do so.

22 All right, ladies and gentlemen. I want to
23 thank you for your kind attention. I trust you will
24 give the same kind and undivided attention to the
25 attorneys and the parties in this case. We'll now

1 begin with the opening statements.

2 MR. ROSE: May it please the Court?

3 THE COURT: Yes, sir. You may proceed.

4 MR. ROSE: Mr. Carson, Mr. Littlejohn. Back in
5 2006 law enforcement was receiving community
6 complaints about drug activity at a residence located
7 at [REDACTED] here in Richland County. In
8 response to these complaints from concerned and
9 agitated citizens, law enforcement on June 12th, 2006
10 had an undercover officer equipped with a video
11 camera go to this residence in an effort to
12 investigate the drug activity.

13 Once he made contact at the residence he was
14 invited inside and ultimately offered and sold a
15 quantity of crack cocaine on video by this man, the
16 defendant, a man by the name of Mark Watson.

17 Now, you are going to hear from these officers
18 and you are going to see the video. And one of the
19 things these officers is going to tell you is the
20 defendant wasn't arrested until a year and a half
21 later. The reasons for that is two-fold. One, they
22 didn't want to compromise the safety of this
23 undercover officer; and, two, they did not want to
24 compromise his work in this area.

25 Now, as you've been told by The Honorable Judge

1 Cooper, the defendant is charged with one count of
2 distributing crack cocaine. Distributing means
3 selling. And, ladies and gentlemen, that is
4 precisely what he is guilty of.

5 Now, the State has got to prove its case beyond
6 a reasonable doubt. What does that mean? That's not
7 beyond all doubt. It doesn't require you to be
8 certain. It requires you to be firmly convinced.
9 And, ladies and gentlemen, make no mistake about it:
10 With this video and these officers, the State
11 welcomes, welcomes that burden.

12 Now, at the close of this case my colleague, Mr.
13 Carson, is going to come before you and ask you to
14 return a verdict, a verdict that sends a message to
15 this defendant that we will not tolerate this type of
16 conduct in our communities, a verdict of guilty to
17 the crime of distributing crack cocaine. Thank you.

18 **THE COURT:** Mr. Littlejohn.

19 **MR. LITTLEJOHN:** May it please the Court?

20 **THE COURT:** Yes, sir.

21 **MR. LITTLEJOHN:** Mr. Foreman, ladies and
22 gentlemen of the jury, again, my name is Cam
23 Littlejohn. I'm an attorney. I practice here in
24 Columbia. I've been practicing for too long, 34
25 years. I represent Mark Watson who is the defendant

1 in this case and has previously been identified to
2 you.

3 First off, I want to thank you for your service
4 here today. I know jury service is a burden. It
5 takes you away from your jobs, from your families,
6 from your normal routine. But it is of utmost
7 importance. Winston Churchill once said that the
8 most important duty a citizen can render during peace
9 time is that of jury service. As Judge Cooper
10 indicated to you, jurors are vital to our system of
11 justice. And we have not a perfect system of justice
12 in the United States but the best system of justice.

13 And our system of justice in criminal cases is
14 based on several premises and several rules that we
15 all must follow. And Judge Cooper touched on some of
16 those rules and he'll touch on them again when he
17 gives you the instructions at the conclusion of the
18 case.

19 As indicated to you by Judge Cooper, the State
20 has the burden of proof in this case. They must
21 prove the defendant's guilt beyond a reasonable
22 doubt. That's their burden in every criminal case.
23 His Honor will define reasonable doubt for you. But
24 it is a serious doubt. You have to be firmly
25 convinced by the evidence that a defendant is guilty

1 before you can find him guilty.

2 And as we stand here today -- or at this moment,
3 excuse me -- the defendant, Mark Watson, is presumed
4 to be innocent. That's how our system works. It's
5 up to the State to present evidence to take that
6 presumption away from him. I ask you to keep your
7 mind open as the case unfolds because you need to
8 hear all the evidence before you can render a
9 decision.

10 Now, Mr. Watson is charged with distribution of
11 crack cocaine and he is charged by this indictment.
12 And as His Honor indicated, this is a charging paper
13 by which we come to court. This is not evidence in
14 the case. All the evidence will come from the
15 witness stand and from what exhibits are introduced.
16 And so I ask you and I implore you to listen to that
17 evidence very closely and remember who has the burden
18 of proof in this case.

19 Now, a crucial element of any criminal case is
20 the proof of identity, the identity of the defendant
21 as being the person who committed the crime. And
22 that will be the issue in this case. There is a
23 videotape. And the State will show you that
24 videotape. I ask you to look at it very closely.
25 But you will see that the videotape has an individual

1 who they purport was the dealer in this case who has
2 got a hoodie around his face. It's also got a
3 lighting situation that makes everything look much
4 brighter than it was and I would submit to you much
5 brighter than what would have been recognizable by
6 the human eye.

7 This was a very short encounter. And the
8 question will be whether Officer Gilliam was able to
9 see the face of the person who he says sold him the
10 crack cocaine and whether that face is that of Mark
11 Watson.

12 And as Mr. Rose indicated to you, Mr. Watson
13 wasn't arrested for some 17 months later. And I find
14 that unusual myself. And maybe there's an
15 explanation for it. Maybe there's not. Maybe that's
16 something important that you ought to consider.
17 Maybe that is an issue that goes to identity.

18 Ladies and gentlemen, I'm about to sit down, but
19 I ask you to listen to the evidence very carefully.
20 Listen to His Honor's instructions because those are
21 crucial. Those are the legal premises that's your
22 framework to work from. But bear in mind these are
23 very serious charges Mark Watson has against him.
24 And I ask you to make sure that the State meets its
25 burden of proof and proves identity beyond a

1 reasonable doubt. Thank you.

2 **THE COURT:** All right, Solicitor. Call your
3 first witness.

4 **MR. CARSON:** The State calls Officer Emmitt
5 Gilliam.

6 EMMITT GILLIAM, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name for the record.

10 **THE WITNESS:** Officer Emmitt Gilliam, City of
11 Columbia Police Department.

12 DIRECT EXAMINATION

13 **BY MR. CARSON**

14 **Q** Officer Gilliam, you stated that you are employed
15 with the City of Columbia. Is that correct?

16 **A** Yes, sir.

17 **Q** And that's where you're currently employed?

18 **A** Yes, sir.

19 **Q** How long have you been employed with the City of
20 Columbia?

21 **A** Two years, a little over two years.

22 **Q** And what are your current duties with the City of
23 Columbia Police Department?

24 **A** Excuse me?

25 **Q** What are your current duties?

- 1 **A** A police officer assigned to the street unit, Metro
2 District.
- 3 **Q** Officer Gilliam, tell this jury where you were
4 employed before the City of Columbia Police
5 Department?
- 6 **A** Before I was employed I was hired by the
7 Batesburg/Leesville Police Department, assigned to
8 the Lexington County Multi-jurisdictional Narcotic
9 Enforcement Team.
- 10 **Q** And while you were on that narcotics enforcement
11 team, what were your duties?
- 12 **A** Major crimes, surveillance. I'm sorry. Excuse me.
13 Undercover work as dealing with drugs, either, and
14 case agent doing any violent crimes.
- 15 **Q** So were you doing undercover work in June of 2006?
- 16 **A** Yes, I was.
- 17 **Q** Officer Gilliam, could you explain to the ladies and
18 gentlemen of the jury what happened to get you in
19 this case?
- 20 **A** Yes, sir. June 8th, my first encounter with Mr.
21 Watson, I was doing undercover controlled buys for
22 the City of Columbia on Norman Street which is [REDACTED]
23 [REDACTED] inside the city limits of Columbia.
24 And when I was at the residence I did notice the
25 individual because part of my training is to scan the

1 area while you're going to the location to make sure
2 nothing looks funny or whatever because you are
3 working as an undercover officer. And at that time I
4 did notice the defendant over here on the front porch
5 as I entered that house and made a controlled buy
6 from another individual and came back out.

7 Q So it's your testimony that on June 8th, 2006 you
8 went to [REDACTED]

9 A That's correct.

10 Q And you were there to do what?

11 A Make a controlled drug buy.

12 Q And you wasn't there to make a controlled drug buy
13 from this defendant on that day, were you?

14 A No, sir.

15 Q Again, explain to them what you were there to do?

16 A Make a controlled buy drug buy from another
17 individual.

18 Q And while there you were able to confront this
19 defendant?

20 A Yes, sir.

21 Q On June 8th what time of day were you there making
22 such a controlled buy?

23 A It was in the evening time.

24 Q So there was lighting?

25 A Yes, sir.

- 1 Q You had an opportunity to see him?
- 2 A Yes, sir.
- 3 Q On that date did the defendant have on any type of
- 4 hat or clothing on that would --
- 5 A No, sir.
- 6 Q -- make you unable to see his face?
- 7 A He did not at that time.
- 8 Q Did you make such a controlled buy on June 8th, 2006?
- 9 A Yes, I did.
- 10 Q And what did you do after you made such buy?
- 11 A After I made that controlled buy on June 8th?
- 12 Q Yes, sir.
- 13 A After I made the controlled buy I headed back to the
- 14 meeting place where I turned the drugs over to Agent
- 15 Sheard.
- 16 Q You gave the drugs to Agent Sheard that day?
- 17 A Yes, sir.
- 18 Q I want to bring your attention to June the 12th,
- 19 2006.
- 20 A Yes, sir.
- 21 Q Were you working undercover on that date?
- 22 A Yes, I was.
- 23 Q Could you explain to the ladies and gentlemen of the
- 24 jury happened to bring you into this case on
- 25 June 12th of 2006?

1 **A** Okay. On June 12th, 2006 I was again going to [REDACTED]
2 [REDACTED] to make a controlled drug purchase
3 there. When I was at the location waiting for the
4 individual, which is not the current defendant right
5 now, to come to bring me the drugs, to sell me the
6 drugs, he never showed up. And I was there for a
7 period of time. At that time an unidentified female
8 said, I know another individual that you saw the
9 other day that's coming to sell you something, some
10 crack cocaine. At that time she called for him and
11 he came down to the residence, [REDACTED]
12 Correction [REDACTED] Norman. And we went back into the
13 hallway area which he sold me a quantity of crack
14 cocaine.

15 **Q** Let me slow you down a little bit.

16 **A** Yes, sir.

17 **Q** So on June 12th, 2006 you were back at [REDACTED]
18 [REDACTED]

19 **A** That's correct.

20 **Q** Is that in Richland County?

21 **A** Yes, it is, sir.

22 **Q** Once you arrived at [REDACTED] you stated
23 that you waited for some time. Tell the jury "some
24 time", what does "some time" mean?

25 **A** It's close to a little over an hour, maybe a little

1 bit longer than that, waiting on another individual
2 showed up to sell me the crack cocaine.

3 Q Now, when you were waiting, where were you waiting?

4 A Inside the house.

5 Q Were there any other individuals inside the house?

6 A Yes, there was.

7 Q Once inside the house, tell the jury what you
8 observed?

9 A I observed other individuals sitting down playing
10 cards, smoking crack, basically just going in and out
11 the house. I just stayed inside.

12 Q I still bring your attention to June 12th, 2006.
13 What happened while you were sitting in the house?

14 A While I was sitting in the house?

15 Q While you were there, did you have an opportunity to
16 confront this defendant?

17 A On June 12th?

18 Q On June 12th, 2006.

19 A Yes, sir.

20 Q Explain to the jury how you were able to confront the
21 defendant on June 12th?

22 A On June 12th while I was in the residence, like I say
23 again, I was waiting for a long period of time, an
24 hour or so, when an unidentified female which called
25 him up and said, you remember him from the other day

1 being called up, he came down. Once he steps inside
2 the residence; and, like I say, at the front door I
3 noticed who he was. We walked back into a hallway
4 away from the kitchen door, which he at that time
5 told me -- I told him I wanted a yard but I wanted it
6 double-up. Double-up meaning that I wanted twice the
7 amount so I can make my money for the \$100. I want
8 to double my amount so I can make money off these
9 pieces of crack.

10 At that time he handed me five pieces of crack
11 cocaine. And I was kind of like, no, I don't want
12 that. No. I want a double-up. So at the time I
13 gave it back to him. And then in the meantime the
14 unidentified female came back and just said, his
15 stuff is good; it's good. So at that time I went
16 ahead on again. This time I went ahead and purchased
17 the crack cocaine.

18 Q Officer Gilliam, you went through that a little fast.
19 I want to slow you down so the jury can understand --

20 A Yes.

21 Q -- what happened on June 12th, 2006?

22 A Mm-hmm (affirmative).

23 Q You told the jury that you were sitting in the house
24 and an unidentified lady told or called him?

25 A Yes, sir.

- 1 Q Who is him?
- 2 A Junior Black, aka Junior Black.
- 3 Q And that's the defendant?
- 4 A Yes, sir.
- 5 Q Mark Watson?
- 6 A Yes, sir.
- 7 Q The individual that approached you at that house?
- 8 A Yes, sir.
- 9 Q When he walked in the door what happened next?
- 10 A When he walked in the door he walked back towards the
- 11 back room in the hallway past the kitchen in a
- 12 lighted area. And I told him what I wanted. And,
- 13 you know, he started handing me the five pieces and I
- 14 told him I wanted a double-up.
- 15 Q I'm going to stop you there. You guys walked in the
- 16 house, a well lit area?
- 17 A Yes, sir.
- 18 Q And where did you go inside the house to conduct such
- 19 transaction?
- 20 A It's in the hallway but it's back past the kitchen.
- 21 When you come in you've got the kitchen to your left.
- 22 You walk down the hallway just a little bit. It's
- 23 more rooms there, but we're standing right -- I'm
- 24 basically underneath a light.
- 25 Q So there was lighting in this --

1 **A** Yes, sir.

2 **Q** -- hallway?

3 **A** Yes, sir.

4 **Q** You also told the jury that you asked this defendant
5 for something. What did you ask him for?

6 **A** A double-up.

7 **Q** What does that mean? Explain to the jury, what is a
8 double-up?

9 **A** Double-up in street terms means I want to double my
10 money. In other words, if I'm giving him \$100, I
11 want \$200 worth of crack, you know. That way I can
12 make some more money off it, and later if I want
13 to come back and buy more from him I have more money.

14 **Q** So when you asked for the double-up, what did this
15 defendant do?

16 **A** He said he didn't have it. All's he had is these
17 pieces.

18 **Q** And then after he told you that, what did you do?

19 **A** He handed them to me. Then I handed them back to him
20 because I wanted a double-up. And, like I said, at
21 that time, that's when the young, unidentified young
22 lady said, hey, this stuff is good. At that time I
23 went ahead and purchased the crack cocaine from him.

24 **Q** Let's remain here in the hallway, the well lit
25 hallway.

- 1 **A** Yes, sir.
- 2 **Q** When you guys walked into the hallway, it's your
3 testimony that there was a light?
- 4 **A** Yes, sir.
- 5 **Q** How close was the defendant from you during this
6 transaction?
- 7 **A** About a foot.
- 8 **Q** When you say a foot, was it this close?
- 9 **A** A little bit closer than that.
- 10 **Q** So it was here?
- 11 **A** Yes.
- 12 **Q** And at this point he is before you?
- 13 **A** Yes, sir.
- 14 **Q** Describe what the defendant had on?
- 15 **A** He had on a hoodie type, a jacket with a hoodie on it
16 over his head. But you could see the braids, the
17 dreads or braids hanging out from underneath his
18 head. But you got a clear view of his face.
- 19 **Q** Okay. A clear view of his face. Now, while you're
20 sitting there in the hallway, how long did this
21 transaction take place?
- 22 **A** Probably about a minute.
- 23 **Q** Within that minute did you pay attention to the
24 defendant?
- 25 **A** Yes, sir.

1 Q Why?

2 A My training, previous training of doing undercover
3 work, I know to scan the area and look, watch
4 everything around. And the most important thing is
5 when you're dealing with a buyer, you want to know --
6 you want to get the best -- you want to take the best
7 information on them. For instance, skin color,
8 height, weight, anything that sticks out, short hair,
9 braids, what he's wearing. Let me see. Even if he's
10 got different color eyes; for instance, light brown,
11 dark brown. His skin complexion can be a light
12 skinned black male, a dark skinned black male or
13 what.

14 Q So explain to the jury or describe to the jury what
15 Mark Watson wore and how he appeared on June 12th,
16 2006?

17 A A pair of jeans, some type of hoodie type jacket on
18 his head pulled over about to the edge of his
19 forehead around. You could see his face clearly, but
20 you could also see his dreads or either braids
21 hanging among it.

22 Q So it's your testimony that his face wasn't
23 concealed?

24 A No.

25 Q Or his head wasn't concealed to where you couldn't

1 determine who this defendant was?

2 A No.

3 Q On June 12th, 2006?

4 A No, sir.

5 Q And as far as your ability to identify this
6 defendant, you stated that he was approximately this
7 close to you. And you would say that would be less
8 than a foot?

9 A Yes, sir.

10 Q During the transaction did you ever turn your back on
11 the defendant?

12 A No, sir. I'm trained not to.

13 Q So you are telling the jury that this transaction
14 took approximately one minute, two minutes, three
15 minutes? That's a question.

16 A Well, it was approximately about a minute.

17 Q So about a minute. For one minute did you have an
18 opportunity to look this defendant in his face?

19 A Yes, sir.

20 Q Were you guys face-to-face?

21 A Yes, sir.

22 Q It was also your testimony that you asked for a
23 double-up. And you explained to the jury what a
24 double-up meant?

25 A Yes, sir.

1 Q And during this opportunity for him to give you a
2 double-up, it's for him to sell you crack?

3 A Right.

4 Q Did he sell you the double-up?

5 A No, he didn't.

6 Q I want you to explain to the jury what happened; that
7 is, this goes to when you initially asked -- I want
8 you to explain again when you initially asked for
9 crack cocaine from this defendant, what happened?

10 A Actually when I asked for a yard which is \$100, he
11 handed me five pieces. And, like I said, I want a
12 double-up. Again, a double-up meant I wanted to
13 double my money, you know. He didn't have the dope
14 to -- he didn't have enough crack or no crack on him
15 to give me a double-up. So he couldn't do it. So I
16 handed the pieces back to him. And at that time,
17 again, the unidentified female said his stuff is
18 good. So at that time I went back. And we were
19 standing right in front of there. I said, Okay. And
20 I went ahead and purchased the crack from him, the
21 five pieces from him.

22 Q After you purchased this crack cocaine from the
23 defendant, what happened next?

24 A After that I left the residence, got to my vehicle.
25 As I proceeded out of it, I gave a description of

- 1 what he looked like, what he was wearing; I think
2 basically the nickname, the name they gave him. And
3 I also noted that he came from right up the street to
4 serve us.
- 5 Q I want to take you back a little bit.
- 6 A Yes, sir.
- 7 Q At the beginning of this investigation on June 12th,
8 2006, were you investigating this matter alone?
- 9 A No, sir.
- 10 Q Who was investigating this matter with you?
- 11 A The City of Columbia. The case agent was Mr. Sheard,
12 Investigator Sheard.
- 13 Q And throughout this investigation or during this
14 investigation, did you have any -- did you wear a
15 wire?
- 16 A Yes, sir.
- 17 Q Explain to the ladies and gentlemen the system of the
18 wire?
- 19 A Basically it's a Hawk system which is video and audio
20 that shows, you know, who you're dealing with
21 basically.
- 22 Q Can any other case agents hear what's going on --
- 23 A Yes, sir.
- 24 Q -- pursuant to the Hawk? That's what we call the
25 wire? We call it the Hawk?

- 1 **A** Yes, sir. They can hear it.
- 2 **Q** So from an alternate site --
- 3 **A** Yes, sir.
- 4 **Q** -- officers can hear the transactions going on?
- 5 **A** Yes, sir.
- 6 **Q** While the Hawk is also video recording the entire
- 7 event?
- 8 **A** Yes, sir.
- 9 **Q** Officer Gilliam, after you asked for your double-up
- 10 from this defendant, after he sold you such
- 11 double-up, what happened next?
- 12 **A** After he sold me the dope?
- 13 **Q** After he sold to you and you've now left the house --
- 14 **A** Yes, sir.
- 15 **Q** -- tell the ladies and gentlemen of the jury what
- 16 happened next?
- 17 **A** I went to a meeting place with Officer Sheard, the
- 18 investigator. At that time I turned the pieces of
- 19 crack cocaine that I had purchased from the defendant
- 20 over here to Agent Sheard. And at that time I
- 21 started doing my statement and everything like that.
- 22 **Q** So you wrote a statement --
- 23 **A** Yes, sir.
- 24 **Q** -- of the events of what happened that day?
- 25 **A** Yes, sir.

1 Q And were you able to identify this defendant on that
2 day?

3 A Yes, sir.

4 Q How were you able to identify him?

5 A A photo line-up.

6 Q Photo line-up. I would like to show you what's been
7 marked as State's Exhibit 1. Could you explain to
8 the jury what State's Exhibit 1 is?

9 A State's Exhibit 1 is six shots of six individuals
10 fitting pretty much the same complexion and hairstyle
11 or to the same things he's wearing, other
12 individuals. So that way it won't be sticking out
13 like one guy with short hair, the other guy with
14 braids, you know. So that way you would be more
15 closer saying this person or that person.

16 Q Is this photo line-up an accurate depiction of the
17 photo line-up that you were shown on June 12th, 2006
18 by Officer Sheard?

19 A Yes, sir.

20 Q Pertaining to such photo line-up, were you able to
21 identify the defendant or identify the person who
22 sold you crack cocaine, the double-up, on June 12th,
23 2006?

24 A Yes, sir.

25 Q And how were you able to determine, or how did you

1 signify that that's the individual that sold you such
2 crack cocaine?

3 **A** By circling it and putting my initials and also
4 dating it.

5 **Q** Has that photo line-up been changed or altered in any
6 way --

7 **A** No.

8 **Q** -- from June 12th, 2006?

9 **A** No, sir.

10 **MR. CARSON:** Your Honor, the State would now
11 move the photo line-up into evidence as State's
12 Exhibit 1.

13 **MR. LITTLEJOHN:** Subject to any earlier
14 objections.

15 **THE COURT:** Subject to the defendant's earlier
16 objection, it will be admitted.

17 (WHEREUPON, State's Exhibit No. 1 is admitted
18 into evidence.)

19 **MR. CARSON:** Permission to publish that photo
20 line-up to the jury.

21 **THE COURT:** Yes, sir.

22 **Q** Now, Officer Gilliam, as I show the photo line-up to
23 the jury, how did you indicate that this defendant
24 was the young man that sold you your double-up on
25 June 12th, 2006?

- 1 A Circled it, initialed it, my initials and dated it.
- 2 Q Are these your initials on the line-up?
- 3 A Yes, sir.
- 4 Q These photo line-ups, are your initials?
- 5 A Yes, sir.
- 6 Q What are your initials?
- 7 A E. G.
- 8 Q Did you do anything else to signify that this was the
9 young man that sold your your double-up on crack
10 cocaine at [REDACTED] on June 12th, 2006, in
11 Richland County?
- 12 A I put the date down.
- 13 Q And is there anything else that you've used to
14 signify that this is the young man?
- 15 A I circled it.
- 16 Q You circled it, you initialed it, and you put the
17 date. Officer Gilliam, you also said that you wore
18 the Hawk. And you explained that the Hawk is an
19 audio/video system. I would like to show you what's
20 been previously marked as State's Exhibits 4, 5 and
21 6. Do you know what these are, Officer Gilliam?
- 22 A These are copies of the tape from 4240 -- excuse
23 me -- [REDACTED] of my drug transaction.
- 24 Q Have you had an opportunity to view those videos?
- 25 A Yes, sir.

1 Q And after viewing those videos, do they accurately
2 and fairly depict the events as they happened on
3 June 12th, 2006?

4 A Yes, sir.

5 MR. CARSON: The State would now move to admit
6 State's Exhibits that have been previously marked as
7 4, 5 and 6 in evidence, Your Honor.

8 MR. LITTLEJOHN: No objection, Your Honor.

9 THE COURT: Without objection.

10 MR. CARSON: And for brevity, the State would
11 also move to only publish State's Exhibit 4 for
12 timing purposes, Your Honor.

13 (WHEREUPON, State's Exhibit No. 4 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 5 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 6 is admitted
18 into evidence.)

19 THE COURT: Without objection?

20 MR. LITTLEJOHN: Without objection.

21 (Pause)

22 Q And, Officer Gilliam, while this is playing, could
23 you explain to the jury what's going on now? What's
24 happening?

25 A Okay. Right now I'm just standing in the hallway

- 1 between the kitchen and the front door. The ones in
2 the kitchen are playing cards and smoking crack.
- 3 Q So when you say, I am just standing there, this is
4 you standing with the audio and video surveillance --
- 5 A That's correct.
- 6 Q -- on your person?
- 7 A Yes, sir.
- 8 Q And to further help the jury understand, as you see
9 the camera pan, if you look this way, that would mean
10 the camera would pan right?
- 11 A Yes, sir.
- 12 Q If you turn left, the camera would pan left?
- 13 A Yes, sir.
- 14 Q Okay.
- 15 (Pause)
- 16 Q Would you pause right there. And, Officer Gilliam.
- 17 A Yes, sir.
- 18 Q Could you explain to the ladies and gentlemen of the
19 jury what's going on at this point?
- 20 A At this time we were making a transaction for the
21 crack cocaine. We were going to make the
22 transaction. He actually is getting crack out.
- 23 Q Now, where are you guys located in the house at this
24 time?
- 25 A In the hallway.

1 Q And you testified earlier that there was a light or
2 it was well lit?

3 A Yes, sir.

4 Q Okay. Would you continue. Could you stop there.
5 Again, explain to the ladies and gentlemen of the
6 jury what's going on in this video at this point?

7 A Okay. I asked him for a double-up. He said, huh-uh,
8 I don't have it. At that time he got his crack back.

9 Q Would you continue.

10 (Pause)

11 Q Just a few more questions, Officer Gilliam.

12 A Yes, sir.

13 Q During this controlled buy, was there any money
14 involved?

15 A Yes, sir. \$100.

16 Q What type of money was involved?

17 A \$100, \$20 increments.

18 Q So \$100 in \$20 increments?

19 A Yes, sir.

20 Q Did you use such money to make such controlled buy
21 from the defendant?

22 A Yes, sir.

23 Q Was any money ever recovered from the defendant?

24 A Not to my knowledge.

25 Q Explain to the jury why no money was ever recovered

1 that was marked money?

2 A Yes, sir. This was an undercover investigation. At
3 this time when we were going in and out, we were
4 buying from several different people at this location
5 and other places, we were not ready to arrest people
6 because, like I say again, this is one the areas that
7 we had a lot of complaints on it. So we was trying
8 to get as many people as possible that were selling
9 drugs out of this place or at this residence.

10 Q I also want to bring your attention to such photo
11 line-up. When was this line-up given? When was it
12 done?

13 A It was the same day, '6-12-2006.

14 Q So this was done after you left the house?

15 A Yes, sir.

16 Q Who administered such photo line-up?

17 A Agent Sheard.

18 Q And when was such line-up given as far as timing,
19 time ways? An approximation?

20 A I would say between 20 minutes to an hour. I really
21 couldn't say the exact time. First, I would say
22 about 20 minutes, but it could have been longer.

23 Q So at it's longest, we're going to say one hour?

24 A Approximately. Yes, sir.

25 Q And when such ID was, photo line-up was administered

1 to you, did Officer Sheard suggest whom you should
2 pick?

3 A No, sir.

4 Q Did he coerce you?

5 A No, sir.

6 Q Did he lean toward any individual that might have
7 sold?

8 A No, sir.

9 Q So you were able to choose or ID the defendant based
10 on your interactions with him?

11 A Yes, sir.

12 Q Your interactions in the hallway?

13 A Yes, sir.

14 Q I'm also show you what's been previously marked as
15 State's Exhibits 7, 8, 9 and 10. Could you explain
16 to the jury what State's Exhibits --

17 A Which one do you want first?

18 Q -- 7 through 10 are?

19 A 7 through 10 is a picture of the defendant in the
20 hallway. I'm getting ready to -- I'm talking to him
21 getting ready to make a purchase. And 8, 9 and 10 is
22 basically him selling me the crack cocaine.

23 Q These are photos?

24 A Yes, sir.

25 Q Do these photos fairly and accurately depict the

1 defendant when he sold you crack cocaine on
2 June 12th, 2006?

3 A Yes, sir.

4 MR. CARSON: The State would now like to move
5 what's been previously marked as State's Exhibits 7
6 through 10 into evidence, Your Honor.

7 MR. LITTLEJOHN: No objection.

8 (WHEREUPON, State's Exhibit No. 7 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 8 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 9 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 10 is admitted
15 into evidence.)

16 MR. CARSON: Permission to publish, Your Honor?

17 THE COURT: Yes, sir.

18 Q And, Officer Gilliam, you did testify that this
19 individual did have braids?

20 A Yes, sir.

21 Q Were you able to determine -- or how were you able to
22 determine that he had braids?

23 A Because his braids was coming down from underneath
24 his hoodie.

25 Q Officer Gilliam, you also further told us that you

1 bought five pieces of crack cocaine?

2 **A** Yes, sir.

3 **Q** I'm going to show you what's been marked as State's
4 Exhibit 2. Could you explain to the ladies and
5 gentlemen of the jury what State's Exhibit 2 is?

6 **A** It's five off-white --

7 **MR. LITTLEJOHN:** Your Honor, I believe for the
8 record, that would be State's Exhibit 2 for
9 identification.

10 **MR. CARSON:** That's correct, Your Honor. That's
11 correct.

12 **THE COURT:** Fine. The record will so reflect.

13 **A** Five pieces of off-white rock substance which appears
14 to be crack cocaine.

15 **Q** And these are the five pieces that you were handed to
16 by the defendant, Mark Watson, on June 12th, 2006?

17 **A** Yes, sir. To the best of my knowledge.

18 **Q** Were these pieces of crack cocaine altered in any way
19 by you when they were in your custody?

20 **A** No, sir.

21 **Q** Were they tampered with in any way while they were in
22 your custody?

23 **A** No, sir, they wasn't.

24 **Q** And after you received such crack cocaine, what did
25 you do with the crack?

1 **A** We did a chain of custody. I gave it to Agent
2 Sheard.

3 **MR. CARSON:** Your Honor, the state would like to
4 move what's been identified as State's Exhibit 2 into
5 evidence at this point.

6 **MR. LITTLEJOHN:** Your Honor, I don't think the
7 chain has been completed.

8 **THE COURT:** We'll leave it for identification.

9 **MR. CARSON:** That's fine, Your Honor.

10 **Q** Officer Gilliam, is the gentleman that sold you the
11 crack cocaine, your double-up on June 12th, 2006, in
12 the courtroom today?

13 **A** Yes, sir.

14 **Q** Would you point out the defendant that sold you such?

15 **A** The defendant over here, sir.

16 **Q** The defendant. Could you describe the defendant to
17 the jury?

18 **A** Black male. Excuse me? I'm sorry, sir?

19 **Q** Could you describe the defendant as he sits in court
20 today to the jury?

21 **A** Yes, sir. Black male with dreads in his hair, beard,
22 black shirt with yellow markings on it.

23 **Q** Let the record reflect that Officer Gilliam has
24 identified --

25 **THE COURT:** The record will so reflect the

1 witness identified the defendant.

2 Q Officer Gilliam, would you please answer any
3 questions that Mr. Littlejohn may have for you.

4 A Yes, sir.

5 THE COURT: Mr. Littlejohn.

6 CROSS EXAMINATION

7 BY MR. LITTLEJOHN

8 Q Officer Gilliam, let me straighten out one thing.
9 You didn't buy a double-up that day?

10 A No, sir.

11 Q The individual who sold you that just sold you a
12 yard?

13 A Yes, sir.

14 Q Okay. All right. Now, you told us that you had been
15 to this same house on June 8th?

16 A That's correct.

17 Q Okay. And I believe you indicated that as you came
18 into the house you were scanning people?

19 A Yes, sir.

20 Q You were just trying to look at faces to see who was
21 there?

22 A The best of my understanding, sir, I've been school
23 trained about doing undercover work. And you always
24 like to check your surroundings before you go in. If
25 anything looks suspicious or whatever, regardless of

- 1 the investigation, back out and say, you know, you're
2 not going to do it. And basically what I did was
3 just scan to see who is around, you know, anything
4 that looks out of the ordinary to myself.
- 5 Q Okay. So you got out of your car?
- 6 A Yes, sir.
- 7 Q Walked up the sidewalk to [REDACTED]
- 8 A Yes, sir.
- 9 Q Okay. And an individual you said that later sold you
10 the crack cocaine, you said you saw him on the front
11 porch?
- 12 A Yes, sir.
- 13 Q Okay. Did you walk on in the house?
- 14 A Yes, sir.
- 15 Q Okay. Did you pause on the front porch?
- 16 A For a few seconds.
- 17 Q A few seconds. Okay. Then you went on in the house?
- 18 A Yes, sir.
- 19 Q Did you see this individual that you said sold you
20 the crack cocaine, did you see him any other time on
21 that day?
- 22 A Other than June the 8th and June 12th, that was it.
- 23 Q Now, on June 8th --
- 24 A Did I see him?
- 25 Q -- other than walking in and seeing him on the front

1 porch, did you see him at any other time on that
2 date?

3 A No, sir.

4 Q Okay. So your view of him would have been limited to
5 the time walking up the sidewalk, the few seconds you
6 were on the porch and that would be it. Is that
7 right?

8 A On June 8th, yes, sir.

9 Q On June 8th. Yeah. That's the day I'm talking
10 about.

11 A Yes, sir.

12 Q Did you talk to this individual?

13 A No, sir.

14 Q Were you introduced to this individual?

15 A No, sir. Not at that time.

16 Q Did you talk to anybody else who was on the front
17 porch?

18 A I spoke with people.

19 Q You just said hello and walked on in?

20 A I spoke with them, yes; and the individual, the
21 unidentified female, the one that let me in.

22 Q So you went on in the house, tried to make your
23 undercover buy there?

24 A Yes, sir.

25 Q And you didn't see this person again that day?

- 1 **A** Not that day. I actually wasn't even concentrating
2 on coming back out. I was more trying to get out of
3 there.
- 4 **Q** I understand. So you didn't pay him any attention as
5 you were exiting the house?
- 6 **A** Not as much.
- 7 **Q** Do you recall how he was dressed?
- 8 **A** No, sir.
- 9 **Q** Okay. Do you recall whether he had anything on his
10 head other than his hair?
- 11 **A** Yes, sir. He didn't have no hoodie on on the 8th.
- 12 **Q** Okay. Do you recall what he had on his hand?
- 13 **A** Not really, sir.
- 14 **Q** You don't recall it. You don't recall how he was
15 dressed?
- 16 **A** Not three years ago; not like that, sir.
- 17 **Q** And I believe you previously indicated that you don't
18 remember whether there were any lights on on that
19 front porch on June the 8th?
- 20 **A** I said no lights on. It was daylight hours.
- 21 **Q** Was it daylight or it was evening?
- 22 **A** Evening is what I'm saying, but it was still daylight
23 hours, sir.
- 24 **Q** Okay. So that was the extent of your observation of
25 the person you said sold you on the 12th on June 8th?

- 1 **A** Yes, sir.
- 2 **Q** That's it. All right. Can we say that was less than
- 3 a minute?
- 4 **A** Roughly a minute.
- 5 **Q** Can we say it was less than 30 seconds?
- 6 **A** No. Honestly I can't say how long. I'd say it was
- 7 roughly about a minute.
- 8 **Q** About a minute. How far did you have to walk up the
- 9 sidewalk?
- 10 **A** About 20 feet.
- 11 **Q** Actually the front porch is very close to the road,
- 12 is it not?
- 13 **A** No. Where I parked my car at, I had to walk around
- 14 my car to get on the sidewalk.
- 15 **Q** So about 20 feet?
- 16 **A** Give or take; yes, sir.
- 17 **Q** So the time it took you to get out of your car, walk
- 18 20 feet to the front porch, a few seconds to scan the
- 19 individuals on the front porch, you went on in?
- 20 **A** No, sir. When I get out of the car I scan from the
- 21 get-go. I scan right in there to see what it looked
- 22 like, who was out there and whatever. As I walk up I
- 23 still look around and see what's going on making
- 24 sure, you know, everything is safe.
- 25 **Q** All right. Well, you would agree with me that was

- 1 less than a minute?
- 2 A It's about a minute.
- 3 Q Okay. Now, on June 12th you indicated to us that you
- 4 came to [REDACTED] to make a buy from another individual?
- 5 A That's correct.
- 6 Q And this individual never showed up?
- 7 A That's correct.
- 8 Q And you said you remained there at that house for
- 9 some period of time --
- 10 A Yes, sir.
- 11 Q -- before the man with the hoodie came in?
- 12 A Yes, sir.
- 13 Q How long were you there?
- 14 A It was over an hour.
- 15 Q Over an hour.
- 16 A Yes, sir.
- 17 Q And you said after an hour, I guess you got a little
- 18 impatient?
- 19 A You can't be impatient. The drug game is like that.
- 20 It takes time. You know, sometimes they say it will
- 21 be in 15 minutes; it will be an hour; sometimes two.
- 22 Q But you indicated this unidentified female that was
- 23 at the house said something to you about getting
- 24 somebody else there?
- 25 A Yes, sir.

- 1 Q Okay. And I believe I quoted you as saying you
- 2 remembered him from the other day?
- 3 A Yes, sir.
- 4 Q Okay. Now, was this lady out on the porch?
- 5 A She was the one who let me in the house.
- 6 Q She let you in the house?
- 7 A Yes, sir.
- 8 Q Did she point out the individuals that were on the
- 9 porch?
- 10 A On the 12th?
- 11 Q On the 8th.
- 12 A On the 8th? No.
- 13 Q She didn't introduce you to him?
- 14 A No.
- 15 Q Okay. So somehow she figured you were going to
- 16 remember some guy that was sitting on the porch four
- 17 days before?
- 18 A Basically. I'll say yes to that.
- 19 Q Okay. Now, Officer Gilliam, the man that came in
- 20 with the hoodie had on a cap also, didn't he?
- 21 A By video. Yes, sir.
- 22 Q And the hoodie covered his head?
- 23 A Up to his forehead part, sir.
- 24 Q As indicated -- well, --
- 25 A Yes, sir.

- 1 Q -- the jury has the pictures.
- 2 A Yes, sir.
- 3 Q You've showed them. And you said he had dreads or
- 4 braids showing?
- 5 A Yes, sir.
- 6 Q Was it dreads or braids?
- 7 A You couldn't really tell. It's like dreads. I'd say
- 8 dreads or braids. Because when I looked at it, I
- 9 couldn't tell the texture of whether the braids were
- 10 down or whether it was dreads hanging out because of
- 11 the way the hoodie was sitting on top of his head.
- 12 Q Tell a middle aged guy with white hair what the
- 13 difference is?
- 14 A Dreads, dreads is hair rolled together by itself.
- 15 Braids is somebody plaiting it up.
- 16 Q So you couldn't tell which one it was?
- 17 A No. I could have seen the braids or whatever.
- 18 That's why I said braids or dreads hanging
- 19 underneath.
- 20 Q You couldn't see the back of his head?
- 21 A No, sir.
- 22 Q All right. And, Officer Gilliam, the camera that
- 23 you're using, it enhances the light that's available,
- 24 does it not?
- 25 A Sir, that's not my position to answer that because I

1 really don't know.

2 Q Okay.

3 A No. I wouldn't give you an answer or something that
4 may be wrong.

5 Q Well, just looking at this picture, wouldn't you
6 agree that shows a light skinned black man?

7 A That's in black and white.

8 Q Yes, sir.

9 A Not necessarily.

10 Q Not necessarily?

11 A No, sir.

12 Q Okay. Now, you said you gave this individual with
13 the hoodie five marked bills?

14 A Yes, sir.

15 Q Those are never recovered?

16 A No, sir. Not to my knowledge.

17 Q Okay. And did you participate in the arrest of Mr.
18 Watson some 17 months later?

19 A No, sir.

20 Q Now, after you received the crack cocaine from the
21 man in the hoodie, you left the house, right?

22 A That's correct.

23 Q You got in your car. You went back to the police
24 station?

25 A Yes, sir.

- 1 Q All right. And there were other officers who were
2 working in the area, right, that were kind of back up
3 to you?
- 4 A Yes, sir.
- 5 Q They were control officers?
- 6 A I think they were undercover officers. They would
7 have been -- I don't think there was nobody in a
8 marked unit. Maybe one marked unit.
- 9 Q But they were in the area?
- 10 A Yes, sir.
- 11 Q Okay. And Investigator Sheard was one of them?
- 12 A Yes, sir.
- 13 Q So you just left [REDACTED] went straight
14 back to police headquarters?
- 15 A Yes, sir.
- 16 Q And there are other officers. They were there
17 listening to what transpired?
- 18 A Yes, sir.
- 19 Q And so at least from the standpoint of audio they
20 knew what had happened?
- 21 A Yes, sir.
- 22 Q Okay. Now, do you know if any effort was made to
23 identify the individual in the hoodie?
- 24 A Do you mean --
- 25 Q After you left?

1 **A** Other than the information I gave out. And that's
2 basically my knowledge, is that the male, after I
3 gave a description of him, that he walked down the
4 street from another house.

5 **Q** But you didn't observe that?

6 **A** Observe him walk from the other house?

7 **Q** Yes, sir.

8 **A** All I know, he walked down the street. Because if
9 I'm correct, it's on the tape that's showing that he
10 lives up the road.

11 **Q** Correct me if I'm wrong. You got in your car and
12 left?

13 **A** After the deal? Yes, sir.

14 **Q** You didn't observe him walking down the street?

15 **A** No, sir. Him and the unidentified female in the
16 house had another conversation. I guess he took care
17 of her for her --

18 **Q** Now, --

19 **A** I'm sorry.

20 **Q** -- let's don't assume anything, Mr. Gilliam. This is
21 too important to assume things. Okay?

22 **A** Yes, sir. Yes, sir. Yes, sir.

23 **Q** You got in your car and left, right?

24 **A** Yes, sir.

25 **Q** So you don't know what the other officers observed of

1 your own personal knowledge?

2 A No. Not to my knowledge.

3 Q All right.

4 MR. LITTLEJOHN: Would you indulge me just a
5 moment, Your Honor?

6 THE COURT: Yes, sir.

7 Q Officer Gilliam, just a couple of final things. When
8 you got back to the police station, did you discuss
9 with the other officers who this might have been, the
10 guy in the hoodie?

11 A I have no knowledge other than what I could give
12 them. I had never seen him other than the 8th and
13 the 12th. That's the only time I seen this
14 individual.

15 Q My question is, did the other officers have a
16 conversation with you about who he was?

17 A No, sir. I was at the computer.

18 Q Nicknames or names or anything like that?

19 A No, sir. Because I was on the computer typing my
20 statement up, doing my statement.

21 Q All right. So you all didn't even discuss it?

22 A Other than, you know, meaning I'm giving the case
23 agent exactly who, what the nickname they gave me,
24 the description again and everything.

25 Q And that was it?

1 **A** That's basically it for me.

2 **Q** Nobody said, I know who that is?

3 **A** Not to my knowledge.

4 **Q** Nothing like that?

5 **A** No, sir.

6 **Q** All right, sir.

7 **THE COURT:** Any redirect?

8 **MR. LITTLEJOHN:** Your Honor, if I could have a
9 minute with my client.

10 **THE COURT:** I'm sorry. Beg your pardon.

11 **MR. LITTLEJOHN:** Those are all the questions I
12 have, Your Honor.

13 **THE COURT:** Redirect?

14 **MR. CARSON:** No further questions from the
15 State, Your Honor.

16 **THE COURT:** You may come down, sir. Thank you
17 very much.

18 **MR. ROSE:** Your Honor, at this time the State
19 would call Investigator Sheard.

20 JACKSON SHEARD, after being duly sworn,
21 testifies as follows:

22 **THE CLERK:** Please have a seat. State your full
23 name for the record.

24 **THE WITNESS:** My name is Investigator Jackson
25 Sheard. I work for the City of Columbia Police

1 Department.

2 DIRECT EXAMINATION

3 **BY MR. ROSE**

4 **Q** Investigator Sheard, how long have you been employed
5 by the City of Columbia Police Department?

6 **A** Twelve years. Since 1997.

7 **Q** And what is your position?

8 **A** Since 2003 I've been assigned to the City of
9 Columbia's narcotics unit. And since 2006 I have
10 been assigned to the United States Drug Enforcement
11 Administration as a task force officer working drug
12 crimes.

13 **Q** And are some of your duties that pertain to that
14 position with Columbia's Police Department?

15 **A** Initially, my first six years, I was a patrol officer
16 in this same neighborhood. And then I got promoted
17 into our narcotics unit. And initially I was just a
18 case agent. Then I've become promoted as an
19 investigator. As an investigator I was in charge of
20 the equipment of the unit and also initiating bigger
21 investigations.

22 **Q** Were you an investigator back in June of 2006?

23 **A** Yes, I was.

24 **Q** And specifically on June 12th of 2006, were you
25 involved with an investigation on Norman Street, a

- 1 drug investigation?
- 2 **A** Yes, sir, I was.
- 3 **Q** And can you please tell this jury what your
- 4 involvement with this investigation was?
- 5 **A** When we get citizen complaints or complaints from
- 6 even police officers about drug activity or a wide
- 7 range of criminal activity, they'll come into our
- 8 office and then the sergeant and myself will review
- 9 whatever the complaints are and then we make a
- 10 determination of some of the courses of action that
- 11 we'll take. And that was my responsibility for
- 12 Norman Street.
- 13 **Q** And specifically on June 12th, 2006, what was your
- 14 involvement with the further investigation of this
- 15 residence on Norman Street?
- 16 **A** The complaint for the [REDACTED] --
- 17 **MR. LITTLEJOHN:** Your Honor, I'm going to
- 18 object. This is hearsay if he's talking about a
- 19 specific client.
- 20 **THE COURT:** Sustained.
- 21 **Q** Investigator, your involvement as relates -- what was
- 22 your course of conduct on June 12th, 2006? What was
- 23 your involvement on that day? Without going into
- 24 anything you were told or any complaints, what was
- 25 your course of conduct in this investigation?

1 **A** My responsibility was the case agent. I was
2 responsible for finding an undercover police officer
3 and managing the case. I was able to go into -- I
4 know the officers over in Lexington County and I knew
5 that Officer Gilliam did undercover work over there.
6 He also assisted the Columbia Police Department with
7 undercover investigations. It's pretty difficult to
8 find undercover officers that are well versed in what
9 they do and it's a unique position. So I was able to
10 use Officer Gilliam to go into that location and buy
11 crack cocaine.

12 **Q** And did you have any involvement with the video
13 recording --

14 **A** I did.

15 **Q** -- of this incident? And what was that involvement?

16 **A** Again, since I was the case agent on this situation
17 and I am also in charge of the equipment, I would
18 have been the one, I wired Officer Gilliam with
19 digital, audio and video equipment. And that's what
20 was presented. But I also gave him an audio
21 transmitter which allowed us to hear as it was
22 happening what was going on inside of the residence.
23 And that's two-fold. Primarily drug dealing is a
24 violent crime.

25 **MR. LITTLEJOHN:** Your Honor, I'm going to object

1 to these characterizations. This is --

2 **THE COURT:** Overruled. Go ahead.

3 **A** We know that drug -- the act of drug dealing can pose
4 risks, specifically to an undercover police officer.
5 They never know who they're going to run into. So we
6 like to make sure that they're safe. So what we'll
7 do that's part of the protocol is we'll give them
8 something that so we can hear as it's taking place
9 and at the same time we get to hear the evidence
10 that's being presented real time. So primarily for
11 safety, to ensure that the undercover officer is
12 safe, and then secondly to hear actually what's going
13 on for evidence.

14 **Q** So you were able to listen in to this buy that
15 Officer Gilliam and the defendant participated in?

16 **A** Yes, sir.

17 **Q** And after the undercover officer, Gilliam, left that
18 residence at [REDACTED] Norman, what happened?

19 **A** Once I heard -- I could hear the door, house door
20 slam, I could hear him walking out; and once he got
21 into the vehicle he began giving us a description of
22 the person that was in the home that sold him the
23 crack. And we knew he was leaving that area. I was
24 very close to the area. As soon as he left onto
25 Norman Street, onto Columbia College, I got in right

1 behind him and followed him from the area. Again,
2 that's two-fold, to make sure that no one is
3 following him and to again keep an eye on the
4 undercover officer. So I followed him from the area.
5 We had a meeting location at one of -- at my office.
6 And at that --

7 Q I'm sorry. Excuse me. What took place at the office
8 specifically?

9 A Okay. Once we met at the office, we pulled into the
10 parking lot together, we went in. He gave me the
11 five pieces of crack cocaine that he had just
12 purchased. And at the same time I put it in a bag.
13 I field tested one of the items just to see, to
14 guarantee that what we had just purchased was really
15 crack. And there was a presumptive test positive
16 that it was crack cocaine.

17 I also conducted a field weight. I put it on a
18 digital scale and got a digital reading of
19 1.25 grams. Again, that was just a field weight,
20 just to get a feel for how much we'd purchased. I
21 sealed it up in our evidence bag, and later on I put
22 it into our evidence locker.

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 2 for identification purposes only. Do
25 you recognize this?

1 A Yes. This is the evidence, the five pieces of crack
2 and then the evidence bag that I would have sealed it
3 in.

4 Q And you received this from who?

5 A From Officer Gilliam.

6 Q Officer Gilliam. And what did you do with it? Once
7 you sealed it in this bag, what did you do with it?

8 A It's a self-sealing envelope. And so once I put it
9 inside the bag, I put the tamper proof, you know, the
10 tape, and then I put it into our evidence locker.
11 It's an actual locker. You put a lock on it. And
12 the only people that have keys to the lock would be
13 our evidence custodians. So once I put it in there,
14 it's -- I no longer have access.

15 Q Okay. And is that standard protocol?

16 A That is the protocol.

17 Q And did you have occasion after meeting with Officer
18 Gilliam to develop a photo line-up in this case?

19 A I did.

20 Q When I gathered the evidence from Officer Gilliam, at
21 the same time I took custody of that, I removed the
22 digital equipment from him and I took it to another
23 room, and I was also responsible for downloading the
24 evidence and putting it onto a disk. While I was
25 doing that I asked Officer Gilliam if he could go

1 write a statement for me. So he went to the other
2 side of the room, got on the computer and typed his
3 statement. While he was doing that I was downloading
4 the evidence, and once it downloaded I was able to
5 observe the video that was just presented. From that
6 and the physical description that was provided by
7 Officer Gilliam I made a photo line-up. And I'm
8 going to show you now what's been admitted into
9 evidence, State's Exhibit No. 1. Do you recognize
10 this?

11 A That is the line-up that I produced.

12 Q And where did you show this line-up to Officer
13 Gilliam?

14 A In that same office.

15 Q And who was present?

16 A Well, there was the two of us.

17 Q And can you please tell this jury, as far as your
18 protocol in showing this line-up to a witness, what
19 did you do? What is your protocol? What do you say?

20 A I keep it pretty standard because it is -- I walked
21 up to Officer Gilliam. I said, here is the line-up
22 I'm going to show you. And I just set it on the table
23 in front of him. I stepped back. I don't want to
24 touch the line-up as it's produced. It speaks for
25 itself. I said, can you identify anybody on this

1 line-up? He immediately indicated the number, the
2 second picture on there and said, this is Junior
3 Black, the guy I just bought from.

4 Q And to indicate who he is selecting, what did he do?

5 A He circled the photo. First he pointed to it. Then
6 he circled it, put his initials and then put that
7 date, the same date that we just purchased the
8 evidence.

9 Q Investigator, did you in any way coerce or suggest in
10 any way for Officer Gilliam who he should pick out of
11 this line-up?

12 A No. I didn't have to. I just set it on the table
13 and he immediately selected it.

14 Q And when looking at these pictures, what
15 characteristics did you try to put in you try to
16 match into all these pictures?

17 A Because it's a difficult photo to try to select, but
18 some of the characteristics were obviously that he
19 was an African-American male. I go for an age range
20 which was the age range provided by Officer Gilliam;
21 facial hair, the type of the hairstyle, and then
22 tried best, anybody that had an open mouth, I also
23 tried to add those into the photos, anything that
24 would look similar to the actual defendant.

25 Q And this incident occurred on June 12th, 2006,

1 correct? At what point was the defendant arrested?

2 A It was --

3 Q The exact date. Do you remember the exact date?

4 A I know it was in November of 2007. I don't have -- I
5 don't remember the exact date.

6 Q Beg the Court's indulgence, Your Honor. If I was to
7 show you a copy of your investigative report, would
8 that refresh your recollection as to the actual date?

9 A Yes, it would. It would have been November 21st,
10 2007.

11 Q And can you please explain to this jury the reason
12 for that timeframe delay?

13 A That's right. Again, when we do these investigations
14 it's difficult to find an undercover police officer.
15 It's difficult to find informants, but then you have
16 an undercover police officer. First of all, he's a
17 police officer that works in another jurisdiction.
18 He may be recognized by other citizens just in his
19 common course of duties as a police officer. Now
20 we're putting him into the mix into an unknown
21 environment of buying drugs.

22 It would be unwise the next day or that day or a
23 reasonably, you know, close date to what we call burn
24 the informant or the undercover officer. We have to
25 be able to continue to use this person. And we did.

1 We used him throughout the city and in that
2 neighborhood countless times.

3 And if we were to have made the arrest and stood
4 in trial or somewhere where his identity was known,
5 then that is a grave risk to that officer if we were
6 try to use him again. So many a times I have worked
7 investigations where we will wait a year or two years
8 to actually make arrests. And then we probably won't
9 use that officer any more in that area.

10 Q Investigator, one final question. As it relates to
11 the characteristics of the photos, the individuals
12 you put in the photo line-up, --

13 A Mm-hmm (affirmative).

14 Q -- what specifically about the mouth did you try to
15 incorporate into these pictures?

16 A I tried to have a mouth that was opened. Again,
17 because the defendant's mouth was opened, I tried my
18 best, went through hundreds of photos; and with the
19 hairstyle, with the skin tone, with the age group
20 depict someone with an open mouth. So I scanned
21 hundreds of photos in attempt to get the best match
22 of a group.

23 Q Thank you, Investigator. Please answer any questions
24 Mr. Littlejohn has for you.

25 THE COURT: Cross examination.

1 **MR. LITTLEJOHN:** Thank you, Your Honor.

2 CROSS EXAMINATION

3 **BY MR. LITTLEJOHN**

4 **Q** Investigator Sheard, on June 8th, 2006 you were I
5 guess the case agent for whatever was going on that
6 day also?

7 **A** Yes. Yes, I was.

8 **Q** Okay. And you sent Officer Gilliam into [REDACTED]
9 [REDACTED] on that day?

10 **A** Yes, sir. He went to [REDACTED]

11 **Q** And the same purpose; he was trying to find someone
12 he could buy crack cocaine from?

13 **A** Yes, sir, he was.

14 **Q** All right. Was he wired up that day?

15 **A** Yes, he was.

16 **Q** And on video?

17 **A** He had a video.

18 **Q** Now, on June 12th how many officers were out there
19 participating in this investigation in [REDACTED]

20 [REDACTED]
21 **A** It might have been four or five of us.

22 **Q** Four or five?

23 **A** Four or five.

24 **Q** How many cars were you in?

25 **A** Probably three or four.

- 1 Q Three or four cars. And you were in a unit I take
- 2 it?
- 3 A I was in my car.
- 4 Q This is an unmarked vehicle?
- 5 A That's correct.
- 6 Q I'm assuming all the vehicles out there were
- 7 unmarked?
- 8 A Yes, sir. They were all unmarked.
- 9 Q Everybody was in plain clothes?
- 10 A We were all in plain clothes.
- 11 Q Now, you're listening in on the conversation that
- 12 Officer Gilliam is having inside [REDACTED] are you not?
- 13 A That's correct.
- 14 Q So you realized when the transaction is taking place
- 15 and when Officer Gilliam leaves [REDACTED]
- 16 A That's correct.
- 17 Q I believe you indicated that as he got into his car
- 18 and went down Norman Street you fell in behind him?
- 19 A Once he got onto Columbia College Drive, I fell in
- 20 behind him.
- 21 Q You fell in behind him. Were you by yourself?
- 22 A I believe so.
- 23 Q There were other officers there?
- 24 A They were in the area. Yes, sir.
- 25 Q Did they leave the area at that time?

- 1 **A** Yes, sir.
- 2 **Q** Okay. Now, did anybody stay and track and see where
- 3 the man in the hoodie went to after he left 4842
- 4 Norman Street?
- 5 **A** No.
- 6 **Q** Nobody followed him?
- 7 **A** The way Norman Street is situated, it's like a
- 8 horseshoe --
- 9 **Q** Let me get you to answer my question first. Then you
- 10 can explain. Nobody followed him, right?
- 11 **A** Nobody followed him. And I'll explain why nobody
- 12 followed him. The street is a horseshoe. And if any
- 13 one of us were to come in there, it would compromise
- 14 what we just did. So we did not take the risk of
- 15 sending an unknown, a possibly unknown car to attract
- 16 attention once we went into the area. So again, it's
- 17 a small horseshoe type street that if cars come in
- 18 there that the citizens are not familiar with,
- 19 sometimes that could attract undue attention. And so
- 20 we did not even bother to try to go in there to
- 21 jeopardize the safety of that officer.
- 22 **Q** Could an officer have gone in there on foot?
- 23 **A** It was raining that day. So --
- 24 **Q** Officers don't get wet?
- 25 **A** The officers that we have would not have blended into

1 that neighborhood to go in on foot.

2 **Q** Did you have any officers that would have blended
3 into that that neighborhood that could have followed
4 the man in the hoodie to find out where he was going
5 or where he lived?

6 **A** Again, that would have been an unrealistic
7 expectation. With the officers that we had, they
8 would have -- many of them work that area frequently
9 making arrests, encountering individuals. So they
10 probably would have been identified as police
11 officers as soon as they stepped foot onto the
12 street.

13 **Q** Well, don't you think it would have been important to
14 identify where this man went or what car he got into
15 so you could get a license tag so you could figure
16 out what his name was?

17 **A** No. The defendant walked on foot.

18 **Q** Let me ask you, did you just say that wasn't
19 important?

20 **A** No. He walked on foot. He was not in a car.

21 **Q** How do you know? Nobody stayed there to see.

22 **A** Well, Officer Gilliam said he came in on foot and
23 it's apparent on the video he walked up on foot.

24 **Q** Well, obviously he couldn't drive his car into the
25 house. So do you know whether he came up in a car or

1 not?

2 A He came on foot.

3 Q Okay. But nobody followed him --

4 A Nobody followed him.

5 Q -- to see whether he went to another house or to a
6 car?

7 A I don't know where he left after the encounter.

8 Q Because you didn't think that was important?

9 A No. The more important thing was the risk of
10 compromising our undercover officer. And if we were
11 to place our officers in the area, they would have
12 been immediately identified by the nature of the way
13 that street is situated.

14 MR. LITTLEJOHN: Indulge me just a moment, Your
15 Honor.

16 THE COURT: Okay.

17 Q Investigator Sheard, just one final thing. You told
18 us why you all waited to make an arrest in this case.
19 And that was some 17 months later?

20 A That's right.

21 Q And, in fact, you didn't even get an arrest warrant
22 until 17 months later. Isn't that true?

23 A That's correct. Once -- the date that we were at the
24 defendant's home which was seven houses down from
25 where this took place, I drew the arrest warrant when

1 I saw him standing there.

2 Q But you didn't get a warrant for 17 months?

3 A That's right. Because again --

4 Q That would have been November the --

5 A -- like I said, it would have put at risk --

6 MR. CARSON: Your Honor.

7 Q Let me finish my question please, sir. You didn't
8 get an arrest warrant until November of 2007.

9 A That's right. Many of my cases take a year to two
10 years to fully utilize the resources that I have.
11 It's not uncommon for what I do to wait a long period
12 of time. I get the most defendants I can. I utilize
13 my resources to the best of their ability. If I were
14 to compromise this officer, it puts his life in
15 danger and/or it makes him useless to our
16 investigation. So it would make no sense to just use
17 him that time and within a short period of time --

18 MR. LITTLEJOHN: Your Honor, I think he's gone
19 beyond the answering of my question.

20 THE COURT: I think I'm going to allow him to
21 answer. Go ahead. Finish your answer.

22 A It just would not make sense to utilize a resource
23 such an undercover officer for a one-time deal or a
24 reasonably short deal. We used this officer in our
25 jurisdiction numerous times. Also he was the

1 responsibility for another jurisdiction, and I had a
2 responsibility as the case agent investigator to not
3 compromise his identity; because again, they were
4 doing us a favor allowing us to use his ability to
5 become an undercover officer. Just because he works
6 in another county doesn't mean people don't travel to
7 and from different counties of jurisdictions. So ...

8 **THE COURT:** Any redirect?

9 **MR. CARSON:** No further questions, Your Honor.

10 **THE COURT:** All right, sir. You may come down.
11 Thank you very much. The next witness.

12 **MR. CARSON:** The State would now call Donna
13 White.

14 DONNA MARTIN, after being duly sworn, testifies
15 as follows:

16 **THE CLERK:** Please have a seat. State your full
17 name for the record.

18 **THE WITNESS:** Donna Martin, City of Columbia
19 Police Department.

20 DIRECT EXAMINATION

21 **BY MR. CARSON**

22 **Q** Ms. Martin? Donna Martin?

23 **A** Yes.

24 **Q** You said you're employed with the City of Columbia
25 Police Department?

1 A Yes.

2 Q And how long have you been employed with the City of
3 Columbia?

4 A Twelve years.

5 Q And during those 12 years, what were your duties? Or
6 what are your duties?

7 A I'm currently the evidence technician there and I'm
8 involved in maintaining evidence, chain of custody on
9 the evidence and sign it out whenever it is needed at
10 trial.

11 Q Ms. Martin, what happened to bring you into the trial
12 of this matter? What happened to bring you into this
13 case?

14 A The reason why I came in this case is that the young
15 lady who received the evidence from the locker, she
16 has passed on. So I'm like in the chain of custody
17 to let me know that I did log it in the log book. So
18 when she got it out of the locker she gave it to me
19 to log in.

20 Q Let me stop you and slow you down a little bit. You
21 received some evidence in this case?

22 A (Nods head affirmatively).

23 Q But someone received it before you did?

24 A Yes.

25 Q Would you state that young lady's name?

- 1 **A** Joanne Lewis.
- 2 **Q** Could you explain to the jury, where is Joanne Lewis?
- 3 Why isn't she here testifying?
- 4 **A** Joanne has passed on. She passed in December -- I
- 5 mean September of last year.
- 6 **Q** So it's your testimony that once the evidence was
- 7 submitted to the City of Columbia locker room, Joanne
- 8 Lewis --
- 9 **A** Retrieved it from the lockers, yes.
- 10 **Q** When did you come into contact with such evidence?
- 11 **A** On the same date she retrieved it from the locker, on
- 12 the 13th of July. I log in all the drugs and
- 13 narcotics.
- 14 **Q** And when you say you log in all the drugs and
- 15 narcotics, explain to the jury what takes place.
- 16 When you say you log in, what's involved?
- 17 **A** As property comes in, each person gets a certain type
- 18 of property. Like I'll normally go ahead and get the
- 19 property itself. I was mainly doing narcotics. So I
- 20 logged narcotics in on a daily basis.
- 21 **Q** So when you logged narcotics in, that was July 13th,
- 22 2006 in this case?
- 23 **A** Yes. Mm-hmm (affirmative).
- 24 **Q** And when you received such narcotics, was it tampered
- 25 with?

1 **A** No. It already comes in already sealed.

2 **Q** And when you say sealed, how do you know it was
3 sealed? Or how is it packaged?

4 **A** It's packaged in an envelope, and inside that
5 envelope, a manila envelope, it's in a plastic bag
6 that is sealed. If that seal is broken, it will show
7 the tear marks or whatever.

8 **Q** What would you do if that seal was broken or if you
9 could determine whether such evidence is tampered
10 with?

11 **A** We would notify the officer if that would have
12 happened.

13 **Q** Did you have an opportunity to notify the officer?

14 **A** No. Because the seal was never broken.

15 **Q** So that means it was not tampered with?

16 **A** Not tampered with.

17 **Q** I want to show you what's been previously marked for
18 identification as State's Exhibit 2. Are you
19 familiar with this?

20 **A** Yes.

21 **Q** And, Ms. Martin, tell me; how are you familiar with
22 that?

23 **A** This is what I logged in our log books and we gave it
24 our own log number which is L number. And this is
25 how it's sealed. It comes in a plastic bag. And

1 once the chemist does her testing, she puts it into
2 another sealed bag. So it comes back to us again
3 sealed.

4 Q So you if you can explain to the jury, explain what
5 happened to that package once it was received in the
6 locker room; that is, once you received it from Agent
7 Sheard, what happens? Or what happened in this case
8 with that evidence?

9 A Like I say, after Joanne got it out the locker I log
10 it in. And once it's logged in, it gives us a lab
11 number. It stays there until the chemist comes by
12 and picks it up, which is Ms. Hendricks. And it's
13 already sealed. And she is the only one who opens
14 this once it's been tested.

15 Q So when you logged that in, did you tamper with it?

16 A No.

17 Q While you had it, logged it in, was it secured?

18 A Yes.

19 Q Was it in your custody that entire time?

20 A Yes.

21 Q Did anyone bother that?

22 A No.

23 Q Did you bother it?

24 A No.

25 Q After you log it in, what did you do with such

1 evidence?

2 **A** It was signed out a couple of days later by the
3 chemist, Ms. Hendricks. So Joanne signed it out to
4 her because she was the one originally who got it out
5 of the locker.

6 **Q** So once you logged it in, what did you do?

7 **A** We put it in a drug locker in a locked area where all
8 the drugs were being held at.

9 **Q** There's no further questions for Ms. Martin. Please
10 answer any questions that Mr. Littlejohn has.

11 **MR. LITTLEJOHN:** I have no questions for this
12 witness, Your Honor.

13 **THE COURT:** You may come down. Thank you very
14 much, ma'am.

15 **THE WITNESS:** You're welcome.

16 **THE COURT:** May this witness be excused?

17 **MR. CARSON:** Without objection, Your Honor.

18 **THE COURT:** Without objection.

19 **COURT REPORTER:** Oh. Please don't take the
20 evidence.

21 **THE WITNESS:** Oh, no. I don't want it.

22 **MR. CARSON:** Your Honor, may we approach?

23 **THE COURT:** Yes, sir.

24 (Whereupon, a bench conference is had)

25 **THE COURT:** All right, ladies and gentlemen. I

1 was just conferring with counsel about the scheduling
2 of witnesses. It appears that there is one remaining
3 witness for the State. I'm not going to hold them to
4 it, but that's what they're telling me at this point.
5 And that would be the chemist who analyzed the
6 evidence in this case. She unfortunately had a
7 doctor's appointment at 12:30. If we got to her
8 before 12:30, she would have been able to make her
9 doctor's appointment, but she went ahead to her
10 doctor's appointment.

11 So we're going to take our lunch break at this
12 time. I'm going to ask you to be back in your jury
13 room at 2:00. We will finish this case this
14 afternoon. Have a pleasant lunch. I'm going to ask
15 you again not to discuss the case with yourselves or
16 among yourselves when you return to the jury room at
17 2:00 or with anyone else over the lunch hour. Have a
18 pleasant lunch, and we'll see you at 2:00. Thank you
19 very much.

20 (Jury out at 12:28 p.m.)

21 **THE COURT:** We'll stand at ease until 2:00.

22 **MR. CARSON:** Thank you, Your Honor.

23 (Whereupon, a lunch break is taken)

24 **THE COURT:** Approach the bench, counsel.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** All right. During the break -- and
2 this is on the record -- a juror -- and I'm going to
3 make the note a part of the record -- indicated that
4 she'd overheard some conversation from some -- over
5 the lunch hour through people not involved in this
6 case that raised an issue in her mind about, I guess
7 to put it simply, about profiling.

8 And during the break, after she submitted the
9 note to the Court, she was interviewed or voir dired
10 in the presence of counsel for both the State and the
11 defendant. She indicated that she could be fair and
12 impartial and it would not affect -- that incident
13 would not affect her decision in this case; she would
14 base her decision on the evidence and the law. And I
15 see no reason to remove her from the jury.

16 Now, I certainly will accept the State's -- let
17 the State, if either of you wish to put anything on
18 the record with regard to this incident.

19 **MR. CARSON:** The State would, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. CARSON:** It's the State's position that in
22 any jury trial it's the duty of the fact finder, the
23 juror, to use only the facts that are presented in
24 this case. I believe if she is using anything else,
25 it's improper. And the State would move to have such

1 juror removed and we move forward with our alternate
2 juror, Your Honor.

3 **THE COURT:** Remove what?

4 **MR. CARSON:** To have such juror removed based on
5 her having such conversations outside the courtroom.

6 **THE COURT:** No. She didn't say she had any
7 conversation.

8 **MR. CARSON:** Well, it's the State's position
9 that she while she did not have any conversations,
10 she is still relying on facts that wasn't presented
11 in this trial.

12 **THE COURT:** She said she would rely on the facts
13 only as presented in this courtroom. But I
14 understand your position.

15 **MR. CARSON:** And we would ask or so ask that
16 such juror be removed and we move forward with the
17 alternate juror.

18 **THE COURT:** Mr. Littlejohn.

19 **MR. LITTLEJOHN:** Your Honor, we're satisfied
20 with the Court's voir dire of that juror. I think
21 she indicated unequivocally she could be fair, that
22 she would only consider the evidence and make her
23 decision accordingly. And the fact that she was
24 conscientious by bringing that matter to the
25 attention of the Court just reinforces how good a

1 juror she will be.

2 **THE COURT:** All right. Ready for the jury?

3 **MR. CARSON:** That's correct, Your Honor.

4 **THE COURT:** You got your witness?

5 **MR. CARSON:** That's correct, Your Honor.

6 **THE COURT:** All right. Is the defense ready?

7 Mr. Littlejohn, are you ready?

8 **MR. LITTLEJOHN:** Yes, Your Honor. I'm sorry.

9 **THE COURT:** Bring the jury.

10 (WHEREUPON, Court's Exhibit No. 1 is marked for
11 identification.)

12 (Jury in at 2:18 p.m.)

13 **THE BAILIFF:** The jury is present, Your Honor.

14 **THE COURT:** All right. Thank you very much.

15 All right, Solicitor. Call your next witness.

16 **MR. CARSON:** The State calls Melissa Hendricks.

17 MELISSA B. HENDRICKS, after being duly sworn,
18 testifies as follows:

19 **THE CLERK:** Please have a seat. State your full
20 name for the record.

21 **THE WITNESS:** Melissa Bennett Hendricks.

22 DIRECT EXAMINATION

23 **BY MR. CARSON**

24 **Q** Ms. Hendricks, will you tell the jury where you're
25 employed?

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1 A I'm employed by the Columbia Police Department.

2 Q And how long have you been employed with the City of
3 Columbia Police Department?

4 A A little over five years.

5 Q Now, what's your job at the City of Columbia?

6 A I'm the forensic chemist. It's my responsibility to
7 test items submitted to me for the possible presence
8 of prescription, over-the-counter or illicit drugs.

9 Q And if you would, would you explain your educational
10 background to this jury?

11 A Yes, sir. I have a Bachelor of Science degree from
12 the University of South Carolina with a major in
13 chemistry. I have graduate study in the field of
14 medicinal chemistry which includes pharmacology and
15 pharmaceuticals. I have training in drug enforcement
16 administration in their lab in Quantico, Virginia. I
17 have on-the-job experience as a drug analyst from the
18 State Law Enforcement Division where I served as a
19 drug chemist for two years. I have training in the
20 field of forensic toxicology from the State Law
21 Enforcement Division where I served as a forensic
22 toxicologist for nine years. I am a certified
23 hazardous materials technician. I am a certified WMD
24 hazardous materials technician, and I am a certified
25 clandestine laboratory investigating chemist.

1 Q And could you now explain to the jury whether you've
2 ever been qualified as an expert in the field of
3 chemical analysis?

4 A I have been certified as an expert witness in the
5 field of drug analysis and forensic toxicology in
6 several different disciplines of court, as well as
7 criminal and civil depositions and coroner's inquests
8 a minimum of 250 times.

9 MR. CARSON: Your Honor, I would now like to
10 offer Ms. Melissa Hendricks as an expert in the field
11 of chemical analysis.

12 THE COURT: Any voir dire or objection?

13 MR. LITTLEJOHN: No objection, Your Honor.

14 THE COURT: You may proceed.

15 Q If you could, explain to the jury, what is forensic
16 chemical analysis?

17 A Forensics actually means pertaining to the court. I
18 analyze pills, powders, preparations, plant material
19 or any unknown substance to see if I can find any
20 over-the-counter medication, a prescription
21 medication or an illicit drug. Because I am a
22 forensic chemist, I am required to give my analysis
23 and my expert opinion in a court of law.

24 Q Did you perform any analysis on any evidence in this
25 case?

1 A Yes, sir, I did.

2 Q I'd like to show you what's been marked for
3 identification as State's Exhibit No. 2. Could you
4 tell the jury what that is?

5 A The paper is a copy of our city drug analysis request
6 form. The plastic bag is what I put the evidence in
7 after I have tested it. Inside the plastic bag is
8 our best bag. "BEST" stands for Best Evidence Sample
9 Testing. It is a tamper-proof bag that is sealed
10 with evidence inside that is submitted to me for
11 testing.

12 Q I would also like to show you what's been marked for
13 identification State's Exhibit 3. Are you familiar
14 with that?

15 A Yes, sir. This is a copy of my formal drug analysis.

16 Q Now, Ms. Hendricks, did you receive such evidence in
17 this case for testing?

18 A Yes, I did.

19 Q And when you received -- or first tell the jury,
20 where did you receive such evidence from?

21 A I received the BEST bag with the evidence inside of
22 it from our evidence room at the police department.

23 Q So when you say you received it, did you go and you
24 picked it up yourself personally?

25 A I picked it up from one of our technicians and signed

1 for it.

2 Q And what was the condition once you received such
3 evidence?

4 A The blue bag that is inside our BEST bag was sealed
5 on all four sides. It had not been tampered with.
6 And the red gum seal at the top was sealed shut and
7 had not been tampered with.

8 Q And once you received such evidence, what did you do
9 with it?

10 A I took it back to my laboratory for testing.

11 Q Now, you said that was sealed. Would you have taken
12 such evidence if it wasn't sealed?

13 A If I receive evidence that is not sealed, I document
14 that it is not sealed. And our new policy is that I
15 will not test it if it's not sealed.

16 Q Was this evidence tampered with?

17 A This evidence was not tampered with.

18 Q It was your testimony that it was sealed when you
19 received it?

20 A It was completely sealed when I received it. Yes,
21 sir.

22 Q While you had the evidence, was it secure? Did
23 anyone else have access to the evidence while you had
24 it?

25 A I have an evidence locker in my laboratory. I am the

1 only person with the combination. I am the only
2 person with a key. Evidence is locked up any time I
3 leave the laboratory, including to go to the
4 restroom, and I am the only person who has access to
5 it.

6 Q So after -- or outside of testing such drugs, did you
7 alter or tamper with the drugs?

8 A No, sir, I did not.

9 Q Did you perform any analysis on the drugs?

10 A Yes, sir, I did.

11 Q Could you explain to the jury your analysis or your
12 testing of it?

13 A The first thing I do when I open the BEST bag is
14 weigh the evidence and get a weight. I do a spot
15 test. It's a color test that is very similar to the
16 field test that an officer would do that you may have
17 seen on TV. It's a color test. It's a presumptive
18 test. I then did one confirmatory test called an
19 FTIR. It stands for Foray Transfer Infrared. It
20 uses an infrared laser to detect a substance, how
21 much light it absorbs or transmits. All objects
22 transmit or absorb lights at different wavelengths.

23 After I did this test I did a combination test
24 called a gas chromatograph mass-spectrometer. I look
25 at the retention time that the evidence comes up, the

1 particular substance comes out on the gas
2 chromatograph, and then the mas-spectrometer gives a
3 fingerprint identification for that drug that is
4 similar to human fingerprints where no two people
5 have the same fingerprints.

6 Q And could you tell this jury, what were the results
7 of your testing?

8 A I found this particular substance to be cocaine in
9 the base form, commonly referred to as crack cocaine,
10 1.23 grams.

11 Q And you stated that in regards to what's been
12 identified as State's Exhibit 2 that you placed your
13 initials on such bag?

14 A When I open the evidence I place my initials on the
15 bag. And when I seal it back up, I place my initials
16 and the date on the inside of the bag that I seal.

17 Q So I'd like for you to hold State's Exhibit -- are
18 your initials there?

19 A Yes, sir. My initials and the case number are on the
20 Zip-locked bag that contains the rock substance. My
21 initials and the date are on the top of the bag that
22 I sealed shut.

23 Q Again, so this initialing indicates what? Could you
24 explain it to the jury?

25 A This is the laboratory case file number that goes

1 with this piece, this rock evidence and my initials.

2 Q And your initials there indicates what?

3 A The date that I sealed this bag shut.

4 Q After you did such testing, did your tests come back
5 as positive for cocaine base?

6 A Yes, it did.

7 Q Specifically, did it come back as crack cocaine?

8 A Correct. Yes, sir.

9 MR. CARSON: Your Honor, the State will now
10 move -- because this witness has finalized the chain,
11 would now move -- and also she has testified that
12 such drugs are what they purport to be, crack
13 cocaine; we would now move to admit State's Exhibits
14 2 and 3 into evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. LITTLEJOHN: Your Honor, I have no
17 objection. I am assuming the chemist brought the
18 drugs to court today.

19 THE WITNESS: Yes, sir, I did.

20 THE COURT: Thank you very much. They're
21 admitted.

22 MR. CARSON: Record.

23 (WHEREUPON, State's Exhibit No. 2 is admitted
24 into evidence.)
25

1 (WHEREUPON, State's Exhibit No. 3 is admitted
2 into evidence.)

3 Q And for clarification for the record, did you receive
4 these drugs from your locker today? When I say your
5 locker, from the City of Columbia?

6 A I signed them out yesterday afternoon from our
7 evidence custodian to bring to court today.

8 Q When you signed them out on yesterday, why did you
9 sign them out yesterday?

10 A Because they were going to be closed this morning
11 when I needed to be here.

12 Q Okay. After you signed these drugs out, what's been
13 admitted now into evidence as State's 2 --

14 THE COURT: Without objection.

15 Q -- 2 and 3, did you alter or tamper with this drug in
16 any way?

17 A No, sir, I did not.

18 MR. CARSON: Permission to publish such drugs to
19 the jury, Your Honor?

20 THE COURT: Are you going to open it?

21 MR. CARSON: I can't open it but I can show
22 them, Your Honor.

23 THE COURT: Oh. Certainly do that.

24 Q And again, could you explain to the jury what State's
25 Exhibit 3 is?

1 **A** That is my forensic analysis report.

2 **Q** And on the report, how do you know whether it's
3 yours?

4 **A** I signed it. It's my signature and the date.

5 **Q** And when when did you sign and date such?

6 **A** I signed it on July 17th, 2006.

7 **MR. CARSON:** Your Honor, the State has nothing
8 further for this witness.

9 **THE COURT:** Cross examination.

10 **MR. LITTLEJOHN:** Thank you, Your Honor.

11 CROSS EXAMINATION

12 **BY MR. LITTLEJOHN**

13 **Q** Ms. Hendricks, just briefly. Did you do a
14 qualitative analysis?

15 **A** I do a qualitative, not a quantitative. Yes, sir.

16 **Q** Okay. So do you do a percentage?

17 **A** That's a quantitative. No, sir, we do not.

18 **Q** You don't do a percentage examination?

19 **A** No, sir.

20 **Q** Okay. So we don't know whether it's 100 percent
21 crack or ten percent crack?

22 **A** That is correct.

23 **Q** Or one percent crack?

24 **A** Correct.

25 **Q** All right. Thank you.

1 **MR. CARSON:** Nothing further from the State.

2 **THE COURT:** You may come down, ma'am. May this
3 witness be excused?

4 **MR. LITTLEJOHN:** No objection.

5 **THE COURT:** Without objection. Next witness.

6 **MR. CARSON:** The State would now rest, Your
7 Honor.

8 **THE COURT:** All right. All right, ladies and
9 gentlemen. That concludes the case on behalf of the
10 State. As I told you at the beginning of the trial,
11 the defense will now have an opportunity to present a
12 defense. However, at this point in time there is a
13 legal matter I need to take up with the attorneys.
14 I'm going to ask you to just retire to the jury room
15 for just a few minutes while I talk with them about
16 the remainder of the case. And we'll call you in
17 just a few minutes. Again, don't discuss the case
18 among yourselves while you're in the jury room.
19 Thank you very much.

20 (Jury out at 2:30 p.m.)

21 **THE COURT:** Any motions?

22 **MR. CARSON:** None from the State, Your Honor.

23 **MR. LITTLEJOHN:** Your Honor, just for the
24 record, we'd make a motion for a directed verdict.

25 **THE COURT:** All right. I feel there's

1 sufficient evidence, either direct or circumstantial,
2 from which a jury could logically consider the guilt
3 or innocence of the defendant based on the fact that
4 this decision must be viewed in a light most
5 favorable to the State. I must respectfully deny
6 your motion.

7 **MR. LITTLEJOHN:** Thank you, Your Honor.

8 **THE COURT:** Now, is the defendant prepared to go
9 forward?

10 **MR. LITTLEJOHN:** Yes, Your Honor. I would
11 inform the Court the defendant does not intend on
12 taking the stand. I would ask the Court to address
13 him.

14 **THE COURT:** Let me advise him of his right to do
15 so.

16 Mr. Watson, I need to advise you at this time
17 certain of your Constitutional rights. If you do not
18 understand I say, please let me know. If you want me
19 to explain anything in more detail, please let me
20 know. Do you understand?

21 **MR. WATSON:** Yes, sir.

22 **THE COURT:** We have now reached the stage of the
23 trial where you may present your defense. You have
24 the right to claim the protections given to you by
25 the Fifth Amendment to the Constitution of the United

1 States. This amendment states in part: No person
2 shall be compelled in any criminal case to be a
3 witness against himself or herself. This means that
4 you cannot be required to testify in this case. You
5 have the right to testify in your own behalf;
6 however, no one can make you testify. This is a
7 personal right. No one can waive this right except
8 you.

9 If you decide to testify, you will be subject to
10 the same rules that govern other witnesses and you
11 may be examined and cross examined on any relevant
12 issue in this case. In addition, if you have any
13 convictions involving dishonesty or false statement
14 or for crimes punishable by imprisonment for more
15 than one year and this Court determines that the
16 probative value of admitting this evidence outweighs
17 its prejudicial effect to you, the solicitor will be
18 able to introduce your record to attack your
19 credibility.

20 If you decide to testify, this decision on your
21 part must be freely, voluntarily and intelligently
22 made with the knowledge and protections given to you
23 by the Fifth Amendment to the Constitution and the
24 consequences of your decision to testify.

25 If you decide not to testify, I would instruct

1 the jury they cannot give the fact that you did not
2 any consideration whatsoever and that there is to be
3 absolutely no prejudice to you because you did not
4 testify. It's left entirely up to you whether or not
5 you testify. You may talk with your attorney, your
6 family and friends or anyone else, but the final
7 decision is left entirely up to you. Do you
8 understand what I have explained to you?

9 **MR. WATSON:** Yes, sir.

10 **THE COURT:** Do you have any questions about what
11 I have explained to you?

12 **MR. WATSON:** No, sir.

13 **THE COURT:** Have you discussed with your lawyer
14 whether you should testify or not?

15 **MR. WATSON:** We've talked, but I ain't --

16 **THE COURT:** You did talk to him?

17 **MR. WATSON:** Yeah. But I ain't testifying.

18 **THE COURT:** All right. Do you need to talk to
19 your lawyer any more about this?

20 **MR. WATSON:** No, sir.

21 **THE COURT:** Okay. You do not wish to testify?

22 **MR. WATSON:** Nah. I ain't testifying.

23 **THE COURT:** All right. That's fine. Thank you
24 very much.

25 **MR. WATSON:** All right.

1 **THE COURT:** Mr. Littlejohn, will you have any
2 other witnesses on behalf of the defense?

3 **MR. LITTLEJOHN:** No, Your Honor.

4 **THE COURT:** Do you wish to inform the jury that
5 the defense rests, or do you want me to do it?

6 **MR. LITTLEJOHN:** Your Honor, I'd be satisfied if
7 the Court does it.

8 **THE COURT:** All right. Now, are you ready to
9 proceed with closing arguments?

10 **MR. CARSON:** That's correct, Your Honor. The
11 State's ready.

12 **THE COURT:** All right. Let's talk for just a
13 minute about jury charges. Let me give you a copy of
14 my charges and let you review them for a minute and
15 then we'll close. Satisfactory?

16 **MR. LITTLEJOHN:** Yes, Your Honor.

17 **THE COURT:** And the verdict form. I've got one
18 copy. The other copy is coming off. But if you want
19 to look at it, I'll get another one for the State.
20 Or you can you hand them back and forth, however you
21 want to do them.

22 (Pause)

23 **THE COURT:** Are you ready to proceed, counsel?

24 **MR. CARSON:** The State's ready.

25 **THE COURT:** Defense ready?

1 **MR. LITTLEJOHN:** Yes, Your Honor.

2 **THE COURT:** The defense will argue last?

3 **MR. LITTLEJOHN:** Yes, Your Honor.

4 **THE COURT:** Okay. No objection?

5 **MR. LITTLEJOHN:** Two things, Your Honor.

6 **THE COURT:** Oh, okay.

7 **MR. LITTLEJOHN:** I'm sorry.

8 **THE COURT:** I haven't even looked at them
9 myself.

10 **MR. LITTLEJOHN:** Your Honor, one thing I think
11 was just overlooked, at the top of page 3 it
12 indicates that this document is simply the formal
13 written instrument. And the paragraph does not
14 reference the indictment. So it appears to me that
15 the Court might want to say that the indictment is
16 simply the formal written instrument.

17 **THE COURT:** You're right. As I say, I haven't
18 had a chance to proof it yet. Go ahead.

19 **MR. LITTLEJOHN:** Your Honor, and the last thing
20 I have is if I could ask the Court to incorporate in
21 the reasonable doubt language which begins on page 4
22 something to the effect that the State has the burden
23 of proving identity beyond a reasonable doubt.

24 **THE COURT:** All right.

25 **MR. CARSON:** The State would object to that.

1 **THE COURT:** Why?

2 **MR. CARSON:** The State must move -- the State
3 would stand down. The State stands down.

4 **THE COURT:** You've got to prove it. I thought
5 it was in there. I will do it.

6 **MR. LITTLEJOHN:** Thank you, Your Honor. That's
7 all we have.

8 **THE COURT:** Are you ready for the jury?

9 **MR. CARSON:** That's correct, Your Honor. The
10 State is ready.

11 **MR. LITTLEJOHN:** We're ready, Your Honor.

12 **THE COURT:** All right. Bring the jury.

13 (Jury in at 2:42 p.m.)

14 **THE BAILIFF:** All the jury is present, Your
15 Honor.

16 **THE COURT:** All right. Ladies and gentlemen,
17 the defendant has elected not to present a defense.
18 As I told you, that was certainly his option at this
19 time. And that means that he rests. There will be
20 no more evidence to come before you. And at this
21 time the attorneys will make their closing remarks
22 after which I will explain to you the law of South
23 Carolina as it applies to this case. Mr. Carson.

24 (Whereupon, State's Exhibit No. 4 is played for
25 the jury).

1 **MR. CARSON:** I want to double-up. Double-up.
2 June 12th, 2006 Officer Gilliam went to the house.
3 He went there to make a controlled purchase. You
4 heard him right here. He went there to get a
5 double-up. And who did he get the double-up from? I
6 submit to you this defendant, Mark Watson. He went
7 there and he got his double-up. He got his five
8 pieces of crack cocaine. He went on about his way.

9 Ladies and gentlemen of the jury, this is a
10 simple case. This is a case of drug dealing,
11 distributing crack cocaine here in Richland County.
12 The judge is going to tell you about the law.
13 Distributing means to exchange, to transfer. If I
14 say anything that he doesn't say in the law, you take
15 his word. To exchange, to transfer; that's what he
16 did on June 12th.

17 All of you are a little older than I am. Maybe
18 not. I shouldn't go out there on such a far reach
19 and say such. But I do believe that all of you
20 understand the phrase, "the proof is in the pudding.
21 The proof is in in the pudding." Let me show you
22 some pudding. Videos that prove it was him. See
23 him? I show you some more pudding. Pudding, proof
24 is in the pudding.

25 There is one person in this courtroom that sold

1 drugs on June the 12th, 2006. Mark Watson. The
2 proof is in the pudding.

3 Let me show you some more pudding. This in this
4 envelope is crack cocaine. Don't take my word.
5 Chemical analysis. This is her report. You get to
6 take this back in the jury room. It's going to tell
7 you that cocaine crack was found. Not much. Crack
8 was found. He sold it. He sold it.

9 You saw him take the stand. He took his time.
10 What did he tell you? He told you that he's an
11 undercover officer. He made a controlled buy.
12 That's what he does. He also told you that he went
13 there on the 8th. He saw this defendant on the 8th,
14 didn't buy anything from him on that day because he
15 saw him. It goes to ID, identity.

16 He also testified that later in the house he saw
17 him. You can see it on the video later in the house.
18 He said, well, I saw him from the other day. You saw
19 him from the 8th. He saw him on the 8th. The
20 testimony. The dude from the other day came over and
21 he transferred some crack cocaine for \$100. He
22 wanted the double-up. He explained what double-up
23 was.

24 Now, he saw him on the 8th. He was back there
25 on the 12th. It's when he got his double-up. He

1 left the house. Now, what defense counsel would want
2 you to do is when you walk into that door, when you
3 walk into that door, they want you to leave your
4 common sense. They want you to, he's betting that
5 you left that at home this morning. Show him you
6 didn't leave your common sense at home. Because
7 you're an intelligent group of people. You're an
8 intelligent jury.

9 So when he wants you to leave your common sense
10 at the door, he doesn't want you to realize that,
11 well, on this video there is a light. He's testing
12 your common sense that you didn't leave this morning.
13 It's a light and it's a camera. You know what
14 cameras are. It's a glare. So he's testing your
15 common sense by him telling you or suggesting in this
16 court of law that this guy isn't in light.

17 You didn't leave it. Not this morning. There
18 is a glare. And he wants you to believe this guy is
19 light skinned. But we know better. We know what
20 cameras do. We know what the glare does. We've seen
21 audio and video before.

22 A smart jury. The house as he leave. Use your
23 common sense. Well, they harp about, well, no one
24 followed this defendant. No one followed this
25 defendant after such a deal was made. But again,

1 test your common sense. Common sense tells you if
2 you've got an officer in a hostile situation, you've
3 got an officer in a hostile house, he's undercover.
4 We want somebody to stick around? Lives are in
5 jeopardy. Real lives are at stake. That officer
6 needs to get out of that hostile house. He needs to
7 get out of that hostile area. Undercover buy, these
8 guys are a part of this neighborhood. Officer safety
9 first.

10 If you made a buy, you get out of there. Agent
11 Sheard told you safety first. Gilliam told you
12 safety first. It's not Hollywood. This is a real
13 officer which is a real life. This is real crack.
14 These are real-life drug dealers. This is a
15 real-life distribution case. He needs to get out of
16 there.

17 He went back to a rally meeting point, an
18 undetermined point for his safety, and to preserve
19 evidence. So when they start to test your common
20 sense, no. Common sense tells you once you've made a
21 buy in a hostile situation you get out of there. You
22 go back to where your support is. They talk about
23 testing your common sense. You talk about a video
24 camera that's in an alleged situation in an alleged
25 hallway. It's glare. Common sense.

1 Let's talk about some more pudding. Common
2 sense: Proof is in the pudding. Think about that.
3 That's not ice cream. When they conduct a photo
4 line-up to where it's not suggestive, to where it's
5 Constitutional, you must have people with likenesses.

6 He testified when he admitted to making this
7 line-up, this photo line-up, he tries to get
8 everything to look similar. This is evidence. Take
9 it back in the room and look at this. So when
10 they're talking to you and testing your common sense,
11 this is a lot more pudding.

12 You look. Common sense. They want you to
13 believe he's a light skinned dude, a light skinned
14 guy in a transfer? You've got your case.

15 Officer Gilliam went there. He got his
16 double-up. He got his double-up from one person.
17 That one person is Mark Watson in this case. He's
18 sitting over there. Agent Gilliam pointed him out,
19 in-court identification.

20 The officers of the City of Columbia, they put
21 their life on the line every day to protect us, to
22 protect them, all of us. That's what they do.
23 Gilliam did that. He put his life on the line to go
24 make an undercover buy. Why? Agent Sheard puts his
25 life on the line every day. For who? You all,

1 including myself. We make up the community.

2 And we know what drugs do to our community. It
3 breeds mischief and it breeds evil. It doesn't take
4 a chemical analyst to tell you that. You know, you
5 live in our communities. It breeds mischief. It
6 breeds evil. And we've got a breeder in this
7 courtroom today. It breeds mischief. It breeds
8 evil. And I submit to you, here is the breeder.

9 Don't take my word. Again talk about pudding.
10 We've got a video and audio. You get to see this.
11 You get to hear this back in the jury room. Don't
12 take my word. Use your evidence. You've got your
13 pictures. You've got your dope. This is the case,
14 ladies and gentlemen, a case of distributing crack
15 cocaine in your county, Richland County.

16 You guys put on your coat this morning. Again,
17 I must reiterate, you put on your jacket, your
18 scarves; you put on your blouses. But you also put
19 on your common sense. Don't let them test that. So
20 I submit to you we've got one breeder, we have one
21 distributor, one defendant.

22 So I ask you, I want you to consider, consider
23 Agent Sheard putting his life on the line every day.
24 Consider Agent Gilliam putting his life on the line
25 to make our community safe, to clean it. Because we

1 know what drugs do. That's what they do. They live
2 to make our community better. Consider that.
3 Remember what they did.

4 Also remember the State's burden. They're
5 professionals. They understand the burden of proof
6 beyond. A reasonable doubt. So that's why they take
7 the time. That's why you'll see it on the video
8 after the controlled buy. You'll see where he goes
9 to a rallying point. He's giving a description of
10 this defendant, black male, braids. You heard it on
11 the stand. They had that discussion about what's
12 braids? What are dreads? It's plaits. Plaits,
13 braids, plaits. Don't be fooled. Beyond a
14 reasonable doubt.

15 That's why when you look at this you take it
16 back there, you're going to see initials throughout.
17 You're going to see Ms. Hendricks, slash, the chemist
18 analyst. WBM. Judge here. Where is the doubt? No.
19 They are taking the measures to make sure that this
20 case hasn't been tampered with.

21 Pictures, audio. Our pudding in this case,
22 we're talking about pudding in this case beyond a
23 reasonable doubt. They took the measures. We're not
24 talking about a case where you've got to take his
25 word. You've got video, too. Don't take his word.

1 Use his testimony coupled with the video, coupled
2 with an identification. That's the pudding I'm
3 talking about throughout this entire closing
4 argument. That's that pudding. I want you guys to
5 remember it.

6 Proving this case beyond a reasonable doubt,
7 they're making sure that this gets to the evidence
8 locker. You heard Ms. Martin. Donna Martin had it,
9 told you that one of the chains had passed away. But
10 proof beyond a reasonable doubt means they took the
11 time and took the measures to make sure that this was
12 not tampered with.

13 This is the double-up. That double-up was in
14 Gilliam's hands. He was the undercover officer. He
15 gave it to Sheard. Sheard submitted it to the City
16 of Columbia. Ms. Joanne touched it. She is
17 deceased. But Ms. Martin testified to that. She
18 took the stand.

19 Then Ms. Hendricks got it from the locker and
20 she testified about it. They want to make a big
21 question about whether it's qualitative or
22 quantitative. Crack was found. This is how the
23 State reaches its high burden. He says high. We win
24 this case. We welcome such height.

25 How did we get there? Well, we had stairs,

1 stairs to get us there. The first step, well, we
2 have a controlled buy. Junior Black. So we stepped
3 up on that. The second step, that audio and video.
4 Look closely. It proves our case. The third step,
5 well, we showed you a line-up. So we're getting to
6 our burden. The State throws out, we enjoy this,
7 proving our case. We don't want you to take it for
8 granted. The third step, we're getting to proving
9 this case beyond a reasonable doubt. Line-up.
10 Officer Gilliam circled it, dated it, initialed it.

11 It's beyond a reasonable doubt. We're getting
12 higher. I'm going to go here. Drug analysis, dope,
13 proving beyond a reasonable doubt. See, we don't
14 want to take it for granted. High burden. Steps,
15 getting us there. Photos, still video photos of a
16 video.

17 The state of South Carolina asks that once you
18 consider all the evidence, once you consider all the
19 pudding; the proof is in there, we ask that you come
20 back with one verdict. We'd ask that you come back
21 with a verdict of guilty finding this defendant, Mark
22 Watson, guilty of distributing crack cocaine here in
23 Richland County. We ask that you don't take off your
24 cloak of common sense. And we'd ask that you find
25 him guilty. Thank you.

1 **MR. LITTLEJOHN:** If it please the Court.

2 **THE COURT:** Mr. Littlejohn.

3 **MR. LITTLEJOHN:** Mr. Foreman and ladies and
4 gentlemen, I want to thank you for the attention that
5 you've shown during this case. This has not been a
6 long case by comparison to other cases we have.
7 Typically in South Carolina we try cases pretty quick
8 as opposed the places like California where they go
9 on for months sometimes. But during the presentation
10 of the evidence I noticed each every one of you was
11 paying very close attention. We appreciate that.

12 Now, ladies and gentlemen, Mr. Carson presumes
13 that I am going to get up here and ask you to forget
14 your common sense. And I am certainly not going to
15 do that because I know that each and every one of you
16 brought your common sense with you. But I am going
17 to ask you to use your juror sense.

18 The reason we draw juries, because we pick 12
19 people who are impartial citizens of this county to
20 sit in judgment on whether the State has proven their
21 case beyond a reasonable doubt. And juror sense I
22 would submit to you means that you don't take it for
23 granted that when the State comes up here and says
24 somebody is guilty that they're guilty. But you
25 examine evidence. You look at where the State has

1 failed in their burden. You look at where they have
2 succeeded in their burden. And you examine the
3 evidence very analytically and determine if there is
4 sufficient evidence so that you can say to yourself
5 and to your fellow jurors, yes, they proved it beyond
6 a reasonable doubt.

7 I want to point out to you certain things I
8 think that could have been done in this case very
9 easily. Let's talk about Mr. Gilliam first. He told
10 you how he went to this house on Norman Street on
11 June 8th. And you heard his testimony. I'm not
12 going to reiterate all of it. But he indicated he
13 got out of his car and he was scanning the people
14 there and he walked up to the front porch which was
15 about 20 feet. He looked at the people and he went
16 on in the house.

17 And he says that the guy in the hoodie was one
18 of the guys sitting on the porch. He didn't describe
19 his clothing for us. He said he noticed his hair.
20 He didn't talk to him. He didn't introduce himself.
21 Nobody introduced him to him. And all in all, this
22 took by his estimation less than a minute.

23 But, ladies and gentlemen, he had on a video
24 camera investigator Sheard told us. Well, we didn't
25 see the video. We don't know exactly what happened

1 on the 8th and to what extent Mr. Gilliam was able to
2 identify the guy in the hoodie and add that to his
3 identification that he made here in court for you.
4 We don't have that the benefit of that. And I asked
5 him about whether or not anybody introduced him to
6 this fellow that he calls Junior Black. He said no.

7 Now we go to June the 12th. And Mr. Gilliam
8 went to the residence there in order to make a
9 purchase of crack cocaine in his undercover capacity.
10 And he was again wearing the video camera and the
11 wire. And if you recount his testimony, he sat there
12 for an hour waiting for the guy he was willing to
13 make the buy from who never showed up.

14 And I was kind of perplexed when Mr. Carson got
15 up here and said, well, he had to get out of there,
16 he had to leave, it was dangerous, can't stick
17 around, it's just dangerous. He sat there for an
18 hour waiting for this guy to show up.

19 And then he says after the hour some
20 unidentified lady tells him, hey, you remember that
21 guy? Well, how is he going to remember the guy? He
22 walked across the porch. This is some guy he was
23 supposed to have met or been introduced to? The
24 reason I point this out, these are questions, ladies
25 and gentlemen. If you have questions about whether

1 the State has proven the case, I submit to you that
2 you have to resolve those questions in favor of the
3 defendant because he is presumed to be not guilty.

4 Now, you've got the guy in the hoodie that's on
5 the video. And there is no mistake. He looks like
6 the defendant. But, you know, it seems to me that
7 the police could have done a lot more. Well,
8 actually, they could have done a little bit more.
9 They had all those police officers out there
10 undercover in plain clothes. Nobody bothered to
11 follow the guy in the hoodie to see if he went to a
12 car so he could get the license tag or see if he went
13 to a house so you could identify him with an address
14 so you could be convinced beyond a reasonable doubt
15 that the guy in the hoodie was who they say he is.
16 But they didn't do that. They didn't take that step.

17 And now they say, well, we would have
18 compromised our investigation, or it was raining.
19 Why couldn't they do that? Why couldn't they do that
20 so they could bring that evidence to you as they ask
21 you to make the most important decision that will
22 ever be made about Mark Watson, the defendant? Why
23 couldn't they go that little extra mile?

24 Ladies and gentlemen of the jury, it just seems
25 to me that the police department said, well, that's

1 all we need; we're just going to quit now. What more
2 could have been done? More could have been done to
3 satisfy their burden of proof that the person in the
4 hoodie was Mark Watson.

5 You've got the pictures; you've got the
6 evidence. I ask you to look at it very analytically
7 and determine if they have proven their case.
8 Remember Gilliam saw a guy on the porch for less than
9 a minute; I submit to you much less than a minute if
10 you take into consideration the way he described his
11 traverse into that house on June 8th. And then he
12 saw the man in the hoodie for less than a minute
13 inside the house with a hoodie, with a cap. You
14 can't see his hair because of the hoodie.

15 And how much of that time was consumed in the
16 dollar bills or the \$20 bills or taking the crack or
17 talking about the double-up which didn't happen? It
18 wasn't a double-up. But be that as it may, how much
19 of that less than a minute was consumed in that? How
20 much of that took his attention away?

21 Ladies and gentlemen, I submit to you that the
22 decision that you're going to make is way too
23 important to be dependent upon less than two minutes
24 of observation, that more could have been done in
25 this case to determine who the man in the hoodie was.

1 And if more could have been done you, you could find
2 that's reasonable doubt. And if you have a
3 reasonable doubt, you've got to resolve that doubt in
4 favor of the defendant. That's your duty. That's
5 your obligation as jurors. I ask you to use your
6 juror sense. Don't take it for granted just because
7 the State says it is, that it is. I do thank you for
8 your attention.

9 **THE COURT:** All right, ladies and gentlemen.
10 You've now heard all the testimony in this case.
11 You've heard the arguments of both the State and the
12 defendant. You will take to the jury room all the
13 evidence, including the video if you wish to see it
14 in this case that's been introduced.

15 Let me take this opportunity to explain the law
16 to you as it applies to this case. Now, under our
17 Constitution and Code of Laws only the jury can make
18 findings of the fact. As I told you earlier, I'm not
19 permitted to indicate to you how I might feel about
20 the facts. If I have said or done anything in this
21 case which would indicate to you that I have an
22 opinion concerning the facts of the case, then you
23 should disregard that. This jury must independently
24 weigh the evidence presented at the trial and render
25 a verdict based solely on that evidence.

1 Now, the same Constitution and laws which
2 designate and make you the finders of the facts also
3 makes me the instructor of the law. If you have some
4 idea as to what the law is or what the law ought to
5 be and it does not agree with what I now tell you the
6 law is, you are obligated under your oath to abandon
7 this preconception on your part and to accept and
8 apply the law precisely as I now state it to you.

9 The defendant in this case has been charged with
10 distribution of crack cocaine. I remind you again,
11 the fact that the defendant was arrested, charged and
12 indicted in this case is not evidence in this case,
13 cannot be considered by you as evidence of guilt in
14 this case, nor does it create any presumption or
15 inference of guilt. The indictment is simply the
16 formal written instrument by which the charge is
17 contained against the defendant. It's the formal
18 document by which the case is brought into this
19 court.

20 Now, the defendant has pled not guilty to this
21 indictment. That plea puts the burden on the State
22 to prove the defendant guilty. A person charged with
23 committing a criminal offense in South Carolina is
24 never required to prove himself or herself innocent.
25 I charge you again that this is an important rule of

1 law, that the defendant in a criminal trial, no
2 matter how serious the charge may be, will always be
3 presumed innocent of the crime for which the
4 indictment was issued unless guilt has been proven by
5 evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 This presumption of innocence does not end when
8 you begin your deliberations but it accompanies the
9 defendant throughout the trial until you reach a
10 verdict of guilt based on evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 The presumption of innocence it has been said is
13 like -- it's not a mere legal theory. It's not just
14 a legal phrase. It is a substantial right to which
15 every defendant is entitled unless you, the jury, are
16 satisfied from the evidence of the defendant's guilt
17 beyond a reasonable doubt.

18 Now, what is reasonable doubt at law? A
19 reasonable doubt is the kind of doubt that would
20 cause a reasonable person to hesitate. Let me say
21 that again. A reasonable doubt is the kind of doubt
22 that would cause a reasonable person to hesitate to
23 act. The State has the burden of proving the
24 defendant guilty beyond a reasonable doubt.

25 Now, some of you may have served as jurors in

1 civil cases where you were told it's only necessary
2 to prove that a fact is more likely true than not
3 true, such as by the greater weight or preponderance
4 of the evidence. In criminal cases, however, the
5 State's proof must be more powerful than that. It
6 must be beyond a reasonable doubt. Proof beyond a
7 reasonable doubt is proof that leaves you firmly
8 convinced of the defendant's guilt.

9 Now, there are very few things in this world we
10 know with absolute certainty, and in criminal cases
11 the law does not require proof that overcomes every
12 possible doubt. If based on your consideration of
13 the evidence are you firmly convinced that the
14 defendant is guilty of the crime charged, you must
15 find the defendant guilty. On the other hand, if you
16 think is there a real possibility that the defendant
17 is not guilty, then you must give the defendant the
18 benefit of the doubt and find him not guilty.

19 Now, an issue in this case is the identity of
20 the defendant as the person who committed the crime
21 charged. The State has the burden of proving
22 identity beyond a reasonable doubt. You must be
23 satisfied beyond a reasonable doubt of the accuracy
24 of the identification of the defendant before you may
25 convict the defendant.

1 In considering this, you may consider whether
2 the witness that was in this case, the police
3 officer, had an adequate opportunity to observe the
4 offender at the time of the offense. This would be
5 affected by things like how long or short a time was
6 available, how far or close the witness was, the
7 lighting conditions and whether the witness had the
8 chance to see or know the person in the past. If
9 after examining the testimony you have a reasonable
10 doubt as to the accuracy of the identification, you
11 must find the defendant not guilty.

12 Now, generally during the course of a trial
13 there are two types of evidence that are presented:
14 direct evidence and circumstantial evidence. Direct
15 evidence is the testimony of a person who claims to
16 have actual knowledge of a fact, such as an eye
17 witness. It is evidence which immediately
18 establishes the main fact to be proved.

19 Circumstantial evidence, on the other hand, is a
20 chain of facts and circumstances indicating the
21 existence of some fact. It is based on inference and
22 not on personal knowledge or observation. But the
23 law makes absolutely no distinction between the
24 weight or value to be given either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than of
2 direct evidence.

3 You should weigh all the evidence in the case
4 and after weighing all the evidence, if you are not
5 convinced of the guilt of the defendant beyond a
6 reasonable doubt, you must find the defendant not
7 guilty.

8 Necessarily, you must determine the credibility
9 of the witnesses who have testified in this case.
10 Credibility simply means believability. It becomes
11 your duty as jurors to analyze and evaluate the
12 evidence in determining which evidence convinces you
13 of its truth.

14 In order to establish criminal liability,
15 criminal intent is required. Criminal intent must be
16 proven by the State beyond a reasonable doubt. It's
17 always a matter that must be determined by the jury
18 from the facts and circumstances surrounding the
19 situation.

20 There is no way to prove intent to a
21 mathematical certainty. There is no way medical
22 science can dissect a person's brain and determine
23 what the person had in mind. So the law says that
24 criminal intent may be inferred from the
25 circumstances shown to have existed at the time and

1 place. And this is how you make a determination of
2 whether or not the element requiring intent was
3 present.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It's up to you to determine what the
6 defendant intended to do based on the circumstances
7 shown to have existed at the time and place.

8 Now, as you know, the defendant in this case is
9 charged with distribution of crack cocaine. In order
10 to prove the defendant guilty of this charge, the
11 State must prove beyond a reasonable doubt that the
12 defendant distributed crack cocaine. Distribute
13 means to deliver to, to deliver to or actually
14 constructively attempt to deliver to or transfer a
15 drug other than by administering or dispensing.
16 Deliver means to actually constructively or attempt
17 to transfer a drug. And a transfer can involve an
18 exchange for money, a barter or a gift. There does
19 not have to be money given in exchange for the drugs
20 for a transfer to constitute a distribution. In
21 addition, the State must prove beyond a reasonable
22 doubt that the substance that was transferred was
23 crack cocaine.

24 Now, ladies and gentlemen, this is an important
25 part of my instruction. I instruct you and emphasize

1 the fact that the defendant did not testify in this
2 case is not a factor to be considered by you in any
3 way in your deliberation and in your consideration on
4 the question of guilt or innocence of the defendant.
5 It must not be considered by you in any manner
6 whatsoever. A defendant has the Constitutional right
7 to remain silent, and the assertion of this right
8 must not be considered by you in your deliberations.

9 I repeat, under your oath, you are to draw no
10 conclusion whatsoever from the fact that the
11 defendant did not testify in this case. The fact
12 that the defendant did not testify should not even be
13 discussed in the jury room. The burden of proof, as
14 I have stated you before, is on the State. The
15 defendant is not required to prove his innocence.
16 The burden of proof remains on the State to prove
17 guilt beyond a reasonable doubt.

18 Now, ladies and gentlemen, I am required to
19 declare the law as I've done through these
20 instructions to help and guide you to a just and
21 lawful verdict. Whether some of these instructions
22 will apply will depend on what you find to be the
23 facts. The fact that I have instructed on various
24 circumstances in this case must not be taken by you
25 as any indication of an opinion of this Court as to

1 what you should find to be the facts or as to which
2 party is entitled to your verdict.

3 Your verdict must represent the considered
4 judgment of each juror. In order to return a verdict
5 it's necessary that each juror agree. Your verdict
6 must be unanimous in other words. All 12 of you must
7 agree on the verdict. Your verdict cannot be based
8 on sympathy, passion, prejudice, emotion or any other
9 consideration that's not in evidence in this case.

10 Remember at all times that you are not partisans
11 favoring one party over another. You are judges,
12 judges of the facts. Your sole interest is to seek
13 the truth from the evidence in the case.

14 All right, ladies and gentlemen. I'm going to
15 ask you to retire to the jury room at this time. Do
16 not begin your deliberations until all the evidence
17 has been presented to you. The bailiff is going to
18 bring the evidence to you in the jury room and he
19 will also bring to you a jury verdict form.

20 Mr. Foreman, you are to complete the verdict
21 form. It just says, we, the jury, find the defendant
22 not guilty or guilty of the charges. If you will
23 sign that and date that, knock on the jury room door
24 when you've completed your deliberations, we'll
25 receive your verdict. All right. Thank you very

1 much.

2 Again, don't begin your deliberations until you
3 receive all the evidence and the verdict form in this
4 case. And if you want the video, we'll have somebody
5 come in and set it up for you. Thank you very much.

6 (Jury out at 3:20 p.m.)

7 **THE COURT:** Mr. Martin, have the alternate wait
8 in the hall, please. Any objection to the charge
9 from the State?

10 **MR. CARSON:** No objections to the charge, Your
11 Honor; but the State does have a matter to bring
12 before they start deliberating.

13 **THE COURT:** All right. Any exception to the
14 charge from the defense?

15 **MR. LITTLEJOHN:** No, Your Honor.

16 **THE COURT:** All right.

17 **MR. CARSON:** The State would like to --

18 **THE COURT:** Do you want to put it on the record?

19 **MR. CARSON:** Yes. That's fine to put it on the
20 record. Or we may approach and we can determine --

21 **THE COURT:** It's up to you. Somebody has got my
22 jury verdict form.

23 **MR. CARSON:** I'd like to approach, Your Honor.

24 (Whereupon, a bench conference is had)

25 **THE COURT:** Don't take it in yet. Don't take it

1 in yet.

2 (Pause)

3 **MR. LITTLEJOHN:** Your Honor, may my client be
4 excused while we're doing that?

5 **DEPUTY:** We can take him down, Judge.

6 **THE COURT:** Well, I don't know if he wants --
7 they're going to take him back to the holding cell?

8 **MR. LITTLEJOHN:** He just needs to use the
9 restroom.

10 **THE COURT:** Yes, sir. He just needs a restroom
11 break. But you're probably going to have to take him
12 down anyway because the jury is going to start
13 deliberating.

14 **MR. LITTLEJOHN:** That will be fine.

15 (Whereupon, the defendant leaves the
16 courtrooms).

17 (Pause)

18 **THE COURT:** Are you ready, counsel?

19 **MR. CARSON:** Yes, sir. Yes, Your Honor.

20 (Pause)

21 **THE COURT:** Take it on back.

22 (Whereupon, the alternate is excused)

23 (Whereupon, the jury begins deliberating at
24 approximately 3:25 p.m.)

25 **THE COURT:** All right. Let's stand at ease

1 until we hear from the jury.

2 **MR. CARSON:** Thank you, Your Honor. Your Honor,
3 I guess we send that back before they start
4 deliberating.

5 **THE COURT:** You sent the tapes back, didn't you?

6 **MR. CARSON:** No, not all the tapes. I put all
7 three tapes into evidence, but we only published one,
8 and that's still in the video part.

9 **THE COURT:** Well, if they ask for it, they can
10 have it.

11 **MR. CARSON:** Okay.

12 (Whereupon, a break is taken)

13 **THE COURT:** All right, counsel. The bailiff
14 informs the Court that the jury has reached a
15 verdict. Are you ready to receive the verdict?

16 **MR. CARSON:** The State's ready.

17 **MR. LITTLEJOHN:** The defense is ready, Your
18 Honor.

19 **THE COURT:** Bring the jury, please.

20 (Jury in at 3:42 p.m.)

21 **THE BAILIFF:** The jury is all present, Your
22 Honor.

23 **THE COURT:** Thank you very much. Mr. Foreman,
24 has the jury reached a verdict?

25 **FOREMAN:** Your Honor, the jury has reached a

1 verdict.

2 **THE COURT:** All right. Would you hand it to the
3 bailiff, please. Thank you. Madam Clerk, will you
4 publish the verdict, please.

5 **THE CLERK:** Indictment number 2007-GS-40-12278,
6 the State of South Carolina vs. Mark Anthony Watson;
7 we, the jury, by unanimous consent on the charge of
8 distribution of crack cocaine find the defendant,
9 Mark Anthony Watson, guilty. This is signed
10 foreperson, juror number 128, July 9th, 2009. Mr.
11 Foreman, is this your verdict and the verdict of the
12 entire jury?

13 **FOREMAN:** It is.

14 **THE COURT:** Any desire to poll the jury?

15 **MR. LITTLEJOHN:** Not from the defense, Your
16 Honor.

17 **THE COURT:** All right. Thank you very much.
18 All right, ladies and gentlemen. That will conclude
19 your service this week.

20 (Whereupon, the jurors are excused from the
21 trial of this case).

22 **THE COURT:** The defendant is -- are you ready to
23 proceed, Jackie? Are you ready?

24 **THE CLERK:** Once I get DJ's --

25 **THE COURT:** It's going to take about five

1 minutes to do the paperwork. I'm going to excuse
2 you. That is, those of you who wish to leave can do
3 so. The rest of you who wish to do so can either
4 come back in the courtroom and witness the sentencing
5 procedure or I am going to dismiss you; and, as I
6 say, you're free to go. But it's going to take about
7 five minutes. If you'll just, those of you who wish
8 to stay, will bear with us while we get the paperwork
9 done. If you choose to leave, I do want to thank you
10 again for your service.

11 You heard me tell the remainder of the jury
12 panel that this system can do without me, it can do
13 without these attorneys, but it can't do without you.
14 You're such an important part of the judicial system
15 of this county and this state that the system doesn't
16 operate without people who are willing to come and
17 sit and make these decisions. So let's just sit at
18 ease for a few minutes.

19 If you wish to leave, you may do so. And the
20 clerk has your work excuses. If you need work
21 excuses, if you choose to stay, we welcome you to
22 stay. And this procedure will only take a few
23 minutes once we get started. So just relax for a few
24 minutes if you wish to do so.

25 (Whereupon, a break is taken)

1 **THE COURT:** Solicitor.

2 **MR. CARSON:** Any more jurors care to stay?

3 **THE BAILIFF:** No, sir. That's it.

4 **THE COURT:** All right. Thank you very much.
5 All right, Solicitor.

6 **MR. CARSON:** The State calls Mark Watson.

7 **THE COURT:** Come on around, Mr. Watson.

8 **MR. CARSON:** Your Honor, before you is -- May it
9 please the Court, Your Honor. Before you is Mr. Mark
10 Watson with his attorney, Cam Littlejohn, of the
11 Richland County Private Bar. Pursuant to a jury
12 trial where the jury found Mr. Mark Watson guilty of
13 distribution, he is before you on a distribution
14 third, Your Honor.

15 **THE COURT:** This is his third offense?

16 **MR. CARSON:** That is correct, Your Honor.

17 **THE COURT:** For distributing crack cocaine?

18 **MR. CARSON:** That is correct, Your Honor.

19 **THE COURT:** Okay.

20 **MR. CARSON:** And we moved on indictment
21 07-GS-40-12278. In exchange for the jury finding him
22 guilty today the State will be dismissing indictment
23 07-GS-40-12177. That's based upon this same incident
24 date. This was a distribution of crack cocaine
25 proximity; that is, in proximity at this point in

1 time of a school, park --

2 **THE COURT:** That is proximity of a school or
3 park?

4 **MR. CARSON:** That's correct. The State would be
5 dismissing that warrant. The State would also
6 dismiss indictment 09-GS-40-3017. That's for assault
7 and battery of a high and aggravated nature.

8 **THE COURT:** Was that involved in this case?

9 **MR. CARSON:** This is a matter --

10 **THE COURT:** Separate incident.

11 **MR. CARSON:** -- a matter from a separate
12 incident, Your Honor.

13 **THE COURT:** Assault and battery of a high and
14 aggravated nature?

15 **MR. CARSON:** That's right. This incident took
16 place on October 2nd, 2007 here in Richland County.
17 305 Percival Road to be specific, Your Honor. The
18 State will be dismissing or not pros'ing that warrant
19 as well.

20 The State would further dismiss indictment
21 07-GS-40-11044. This is from a separate incident
22 date where this took place on October the 21st, 2007
23 at Piney Belt Road here in Richland County.

24 **THE COURT:** What was that?

25 **MR. CARSON:** Your Honor, this is an indictment

1 for assault and battery with intent to kill, Your
2 Honor, that the State is dismissing.

3 **THE COURT:** All right. He also had an assault
4 and battery with intent to kill?

5 **MR. CARSON:** Indictment. That was pending in
6 our office.

7 **THE COURT:** That was also pending. And you're
8 dismissing that case as a result of this?

9 **MR. CARSON:** That is correct. The State has
10 been in contact with the victim. The victim's rights
11 have been complied with in that matter. The victim
12 would be one Otis Dorsey that resides here in
13 Richland County.

14 And the State will also be dismissing the final
15 two indictments, 09-GS-40-3061 and 09-GS-40-3063.
16 And these two warrants are for failure to stop for
17 blue light and for reckless driving, Your Honor.

18 **THE COURT:** All right. Does he have a record
19 other than the two prior distribution of crack
20 cocaine cases?

21 **MR. ROSE:** Yes, sir, Your Honor. In 2002 he has
22 possession of cocaine. Also in 2002 he has
23 distributing cocaine; 2004 he has distributing crack
24 cocaine, possession of a controlled substance and
25 possession with intent to distribute marijuana. 2006

1 he has a resisting arrest. Later in 2006 he has a
2 grand larceny, another grand larceny and auto
3 breaking.

4 **THE COURT:** All right. Mr. Littlejohn.

5 **MR. LITTLEJOHN:** Thank you, Your Honor. Your
6 Honor, first off I want to thank the Solicitor's
7 Office for dismissing these other charges. We had
8 discussed that by way of a possible plea arrangement
9 in this case. I did not realize that the solicitor
10 was going to dismiss all those charges. Obviously, I
11 don't have to remind the Court, Mr. Watson has not
12 been found guilty of any of those charges, Your
13 Honor. And so I would ask the Court not to consider
14 that in imposing the sentence here.

15 Your Honor, he does have the record as stated by
16 Mr. Rose. Your Honor, one thing I might point out
17 for clarification as to his record. He is on
18 probation until November of this year. And I would
19 ask the Court to terminate that probation just to
20 clean up his record and finish that matter.

21 **THE COURT:** I can't do it here, but I certainly
22 will do so. There is nobody here. I said I would
23 certainly do so. I don't have anybody from probation
24 here to make any record with.

25 **MR. LITTLEJOHN:** I understand, Your Honor.

1 **THE COURT:** If somebody is downstairs we'll get
2 them up here and we'll try to go ahead and do it. Go
3 ahead.

4 **MR. LITTLEJOHN:** Your Honor, Mark here is 23
5 years old. He was raised in Columbia. He's lived
6 here all his life. He has ten brothers and sisters.
7 And many of his family members are present in the
8 courtroom, and a couple of them would like to speak
9 to the Court.

10 Your Honor, he went through the eleventh grade
11 at Eau Clair High School, and he has done various
12 jobs since he got out of school. He's worked with
13 his brother, BJ, in the home improvement business.
14 He's worked as a promoter. He's worked in a
15 cellphone store.

16 Your Honor, he has four children, and they are
17 ages from less than a year to five years old. And he
18 tells me he is supporting all those children.

19 Your Honor, I don't know that Mark really
20 understood the ramifications of going to trial on a
21 case like this. And I realize defendants are
22 normally rewarded for pleading guilty. Obviously he
23 did not plead guilty in this case, Your Honor. But I
24 would ask the Court to consider his background and
25 what his family is about to tell you, also the fact

1 that it was a relatively small amount of crack
2 cocaine. It was \$100 worth.

3 Your Honor, he is like so many young men we see
4 come into court. They get caught up in this drug
5 culture and they have no employment and they get into
6 the idea that they can make money doing this and
7 nobody will be hurt. And obviously that's not true.

8 Your Honor, at this time I would ask his sister,
9 Alexandria, if she would speak to the Court and then
10 his mother, Frankie.

11 **THE COURT:** All right. I'll be glad to hear
12 from them.

13 **ALEXANDRIA:** I would just like to say my name is
14 Alexandria. I'm the sister of Mark Watson. I own my
15 own business in the Sandhill Mall, Street Traits.
16 And he has been there with me constantly. I have put
17 him to work there. He has helped me out a lot in my
18 store. And I would like to say he has really
19 changed. I mean, you know, I love him and --

20 **THE COURT:** Just hold on a minute. How long has
21 he been in jail?

22 **MR. LITTLEJOHN:** Your Honor, about three, three
23 and a half weeks.

24 **THE COURT:** Oh.

25 **MR. CARSON:** That is correct, Your Honor. As a

1 housekeeping matter, not to interject, there is a
2 bench warrant that he is in for from this arrest
3 where he failed to appear.

4 **THE COURT:** Oh, okay. I thought he'd been in
5 jail ever since he's been arrested.

6 **MR. LITTLEJOHN:** No, Your Honor.

7 **MR. CARSON:** He was just picked up on a bench
8 warrant. I would hand that to Your Honor.

9 **THE COURT:** All right. So he's only been in
10 jail --

11 **MR. LITTLEJOHN:** I'd say three weeks ago.

12 **THE COURT:** Okay. Go ahead. Yes, ma'am.

13 **ALEXANDRIA:** Okay. Before they picked him up on
14 his bench warrant he was helping me in my store at
15 the Sandhill Mall. So I have been keeping him out of
16 trouble. I love my brother. And so if you could go
17 lenient on his sentence. I have four kids that look
18 up to him also.

19 **THE COURT:** Okay.

20 **MR. LITTLEJOHN:** Your Honor, next I call on
21 Frankie Watson, his mother.

22 **MRS. FRANKIE WATSON:** Good evening. And I want
23 to apologize for being here on this occasion. And I
24 wanted to -- I am a mother of 11. And me and my
25 husband, we struggled a lot with the kids. And my

husband and I are getting ready to retire
September 1st. Which the next generation of my
grandchildren, we won't have to come here for this
because starting September the 7th we've got a little
business going and we're doing that. Because by him
working and struggling with hours that Mark didn't
have a chance that we now can give the grandchildren.
And I apologize. And I appreciate the jury for
coming to the decision which they come to. And let
Mark know that I love him. And I'll be here.
Whenever you need me, I'm here. Daddy will be here.
And one thing about it, you can't move on until you
fix the past. And I love you with all my heart. No
tears, baby. No tears. Thank you.

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

Do you have this gentleman? Do you want his name?

PROBATION OFFICER: Your Honor, I have to go and

look downstairs and see if we have any paperwork on

him. I didn't know his name.

THE COURT: Well, I know.

PROBATION OFFICER: So I have to go downstairs

and check and see if we have paperwork. Then I can

bring it back up for you.

THE COURT: Well, you can do that.

PROBATION OFFICER: Okay.

1 THE COURT: I don't need it right this minute.

2 But he is on probation --

3 PROBATION OFFICER: Yes, sir.

4 THE COURT: -- as his attorney says. And I

5 think it would be wise to go ahead and terminate that
6 probation now because he's going to do an active

7 sentence.

8 PROBATION OFFICER: All right, sir. Mr.

9 Littlejohn, anything further?

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

11 I appreciate your listening to us.

12 THE COURT: He's 23?

13 MR. LITTLEJOHN: Yes, Your Honor. Your Honor,

14 I'm sorry. He is 24. He turned 24.

15 THE COURT: Somebody said he was 23. Well, as

16 you know, for a third offense, the law of this state
17 says he must be imprisoned for not less than 15 years
18 nor more than 30 years and fined no more than \$50,000
19 or both. You're aware of that? I'm sure you're

20 aware of the penalty --

21 MR. LITTLEJOHN: Yes, Your Honor.

22 THE COURT: -- involved in this case. I just

23 want to make that -- state that for the record,

24 because sometimes jurors wonder what the potential

25 penalties are. But for a third offense --

1 **MR. LITTLEJOHN:** Mr. Watson is aware of that
2 also, Your Honor.

3 **THE COURT:** Okay. And I'm not considering those
4 other offenses, but I have to consider his past
5 offenses. I understand what you're saying about
6 getting caught up with the drug business. But, you
7 know, he's had -- he's been caught once. He's been
8 caught twice. If he was serious about turning his
9 life around, it would seem that those occasions would
10 have encouraged him to perhaps help his sister out
11 more and not stay in the drug business. But be that
12 as it may, I can't rectify what's happened in the
13 past. It's my responsibility to enforce the law.
14 And I'll do so. I'm assuming this is a no parole
15 offense, too.

16 **MR. LITTLEJOHN:** That's correct, Your Honor.

17 **MR. CARSON:** That's correct, Your Honor.

18 **THE COURT:** Do you have anything you want to
19 tell me, Mr. Watson?

20 **MR. WATSON:** No, sir.

21 **THE COURT:** All right, Mr. Watson. The sentence
22 of the Court, because your family is here in support
23 of you, I think you have a potential when you get out
24 to get out of this business and do something that
25 will benefit yourself and your family, I'm only going

1 to give you the minimum allowed by the statute.

2 The sentence of the Court is you be committed to
3 the State Department of Corrections for a period of
4 15 years. Good luck to you, sir.

5 **MR. CARSON:** Thank you, Your Honor.

6 **MR. ROSE:** Thank you, Your Honor.

7 **THE COURT:** Now, if you'll give me some days, he
8 can't have more than three weeks credit for time
9 served. I don't know how long he was in jail --

10 **MR. LITTLEJOHN:** Your Honor, I can --

11 **THE COURT:** -- prior to.

12 **MR. LITTLEJOHN:** I may be able to find that.
13 Let me just ask just --

14 **MR. ROSE:** Thank you, Your Honor.

15 **THE COURT:** Yes. Mr. Price, will you see that
16 the jury is escorted out?

17 **THE BAILIFF:** Yes, sir.

18 **THE COURT:** I don't want any contact with the
19 family.

20 **DEPUTY:** Yes, sir.

21 (Whereupon, the proceedings are concluded)
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 9th day of July, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 1, 2009

Jenny H. Williams

Jenny H. Williams, Court Reporter

546 R201

FORM 5

2012C P4001542

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

MARK A. WATSON #306011)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2012 FEB 23 PM 4:33
JEANETTE W. MCBRIDE
Clerk of Court
S.C. & G.S.

RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence Richland County Court of General
Sessions, 1701 Main St., Columbia, SC 29201
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-40-12278 - Distribution of Crack Third Offense
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence: _____

- (a) July 9, 2009 - 15 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty x
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 12, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

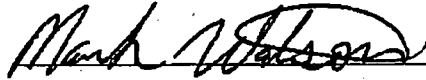
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? X
 - (c) your sentencing? X
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Cameron Littlejohn, Esq., 1720 Main Street, Suite 202, Columbia, SC 29201
 - ii. Kathrine H. Hudgins, Esq., Appellate Defense, P.O. Box 11589, Columbia, SC 29211
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
New trial
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Mark A. Watson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 10
day of Jan, 2012

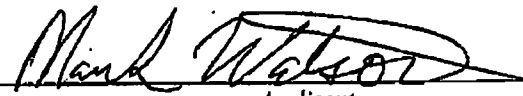
 (L.S.)
Notary Public

My Commission Expires: 10 11 2021

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Mark A. Watson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

10 day of Jan., 2012


Notary Public

My Commission Expires: 10-11-2021

RICHLAND COUNTY
FILED
2012 FEB 23 PM 4:33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

WATSON Mark A -
00306011,

2012CP4001542

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 23, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the December 2007 term of the Richland Grand Jury for Dist. of Crack Cocaine 3rd Offense or More - (2007-GS-40-12278).² He was represented by Cameron Littlejohn, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable G. Thomas Cooper, Jr.. On July 9, 2009, the Applicant was found guilty as indicted and sentenced to fifteen (15) years imprisonment.

¹

<http://www4.sccgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2012CP4001542&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?ld=+00306011>

WATSON Mark A - State's Return - (2012CP4001542)

Direct Appeal

A timely Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf by Kat Hudgins, Esquire, of the Office of Appellate Defense. By order filed February 12, 2011, the Court dismissed the appeal upon request of Applicant to withdraw it. The Remittitur was issued that same day.

The application for post conviction relief (PCR) was filed February 23, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The

courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tommy A. Thomas, Esquire regarding when the hearing should be set.⁴

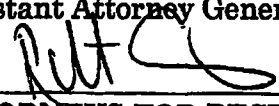
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

March 30, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

WATSON Mark A -
00306011,

2012CP4001542

Applicant,

v.

CERTIFICATE OF SERVICE

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**Tommy A. Thomas, 7588 Woodrow Street; Harrington Building Post Office
Box 88, Irmo, SC 29063**

DATED March 30, 2012.


Jean R. Indriago
Legal Assistant

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 MARK A. WATSON,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 STATE OF SOUTH CAROLINA,) 2012-CP-40-1542
9 DEFENDANT.)

10

11 JULY 17, 2014

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 MR. THOMAS, ESQ.

20

21 FOR THE DEFENDANT:

22 MS. HARRIGAN, ESQ.

23

24

25

1	I-N-D-E-X	
2		PG.
3	MARK WATSON:	
4	DIRECT BY MR. THOMAS	8
5	CROSS BY MS. HARRIGAN	59
6	QUATICA WRIGHT:	
7	DIRECT BY MR. THOMAS	56
8	CROSS BY MS. HARRIGAN	59
9	CAMERON LITTLEJOHN:	
10	DIRECT BY MS. HARRIGAN	61
11	CROSS BY MR. THOMAS	79
12	REDIRECT BY MS. HARRIGAN	93
13	RECROSS BY MR. THOMAS	95
14	CERTIFICATE OF REPORTER:	97
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1	E-X-H-I-B-I-T-S	
2	Plaintiff's	IDEVD
3	No.	
4	1. 3 page chain of custody.	5
5	2. Incident report.	5
6	3. Incident report.	5
7	4. Search warrant.	55
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9	6. Lineup.	27
10	7. Statement.	35
11	8. Document.	91
12		
13	Defendant's	
14	1. Photos.	64
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16		
17		
18		
19		
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21		
22		
23		
24		
25		

1 (The following proceedings were held on
2 July 17, 2014.)

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: May it please the Court, the first
5 matter of the day is Mark Watson v. State of South Carolina,
6 docket number 2012-CP-40-1542. Mr. Watson was indicted
7 during the December 2007 term of the Richland County Grand
8 Jury for distribution of crack cocaine, third offense. He
9 was represented by Cameron Littlejohn.

10 On July 9th, 2009, we proceeded to a jury trial
11 before the Honorable G. Thomas Cooper, Jr., where he was
12 convicted as indicted. Judge Cooper sentenced him to 15
13 years imprisonment. A timely notice of appeal was filed on
14 Mr. Watson's behalf. Following his admission of an Anders
15 brief, the South Carolina Court of Appeals dismissed Mr.
16 Watson's appeal. On February 23rd, 2012, Mr. Watson filed a
17 timely application for post-conviction relief alleging
18 ineffective assistance of counsel. The State made its
19 return on March 13th, 2012, requesting an evidentiary
20 hearing be held. He's represented in this action by Tommy
21 Thomas.

22 THE COURT: All right.

23 MR. THOMAS: May it please the Court, we tried --
24 for best efficiency, we have agreed in regards to the
25 introduction of certain items. And if it will please the

1 Court, I'll go ahead and do so.

2 THE COURT: Go ahead. I think there are two items
3 you mentioned the State objected to?

4 MR. THOMAS: There are, Your Honor.

5 THE COURT: Well, introduce the ones that we have
6 no objection to.

7 MR. THOMAS: Your Honor, if it please the Court,
8 the first one would be Applicant's 1, which is a copy of
9 three pages of chain of custody, including a letter from the
10 solicitor's office identifying where these documents came
11 from. And these items were produced pursuant to an order of
12 discovery.

13 THE COURT: All right.

14 MS. HARRIGAN: The State would have no objection
15 to Applicant's No. 1.

16 (Plaintiff's Exhibit No. 1 was admitted
17 into evidence.)

18 MR. THOMAS: Applicant's 2 and Applicant's 3 are
19 incident reports in regards to this case from the
20 investigative officers. And these were, also, provided,
21 Your Honor, pursuant to order of discovery.

22 THE COURT: Any objection?

23 MS. HARRIGAN: No, Your Honor.

24 (Plaintiff's Exhibit No. 2 and 3 were
25 admitted into evidence.)

1 THE COURT: All right.

2 MR. THOMAS: Your Honor, there is an item that is
3 the initial Anders brief of the applicant. There was an
4 appeal in this case. It's my understanding that that is
5 part of the Court's record.

6 THE COURT: It is.

7 MS. HARRIGAN: It is.

8 THE COURT: Ms. Hudgins, I think, represented --

9 MR. THOMAS: Yes, sir.

10 THE COURT: All right.

11 MR. THOMAS: The only other two items that remain,
12 Your Honor, is copies of the search warrant from 2007 and
13 2005. What we're going to do is mark these for
14 identification.

15 THE COURT: And these as well?

16 MS. HARRIGAN: The State does object to these
17 based on relevance. Mr. Watson was not charged with any
18 crime stemming from either of these search warrants. They
19 are not related to the crimes that he is challenging in this
20 post-conviction relief action and the State would object.

21 THE COURT: All right. Let's mark them for ID
22 right now and we'll see how the testimony unfolds.

23 MR. THOMAS: Yes, sir. The search warrant from
24 2005 would be --

25 THE COURT: Is that the one where nothing was

1 found?

2 MS. HARRIGAN: Yes, sir, there's a 2005 where
3 nothing was found --

4 THE DEFENDANT: Your --

5 THE COURT: Wait a minute, son. Relax.

6 MS. HARRIGAN: And then there's a 2007 after the
7 controlled buy where, again, nothing was found. They are
8 the same residence.

9 MR. THOMAS: The only thing that was taken in
10 2005, Your Honor -- I mean, in 2007 was just money was
11 seized, which they allege was drug money.

12 THE COURT: All right.

13 Mr. Watson, you've got to speak through your
14 lawyer, do you understand that?

15 THE DEFENDANT: (The witness nodded head.)

16 (Whereupon, Plaintiff's Exhibit Nos. 4
17 and 5 were marked for identification.)

18 MR. THOMAS: Your Honor, may it please the Court,
19 we will call Mr. Mark Watson to the stand.

20 THE COURT: Come around, Mr. Watson.

21 All right. Place your left hand on the Bible,
22 raise your right hand.

23 THEREUPON,

24 MARK WATSON,

25 after having been duly sworn, testified as follows:

MARK WATSON DIRECT BY MR. THOMAS

1 THE COURT: All right. Please take a seat, sir.
2 Tell me your full name and spell your last name for the
3 record.

4 THE WITNESS: Mark Watson, W-A-T-S-O-N.

5 DIRECT EXAMINATION

6 BY MR. THOMAS::

7 Q. Mr. Watson, you are certainly incarcerated at the South
8 Carolina Department of Corrections?

9 A. Yes, sir.

10 Q. What are you serving time for?

11 A. One count distribution crack cocaine.

12 Q. Is that third offense?

13 A. Yes, sir.

14 THE COURT: Mr. Watson, you're going to need to
15 speak up loud and clear so I can understand you. Do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right.

19 BY MR. THOMAS::

20 Q. And what type of sentence did you receive?

21 A. Fifteen years.

22 Q. All right. And you had charges that were dismissed as
23 a result of being found guilty at trial?

24 A. Yes, sir.

25 Q. And you understand that you're asking today for a new

MARK WATSON DIRECT BY MR. THOMAS

1 trial? Post-conviction relief, you're asking that your
2 sentence be set aside and that you be given a new
3 trial?

4 A. I'm asking that my case be dismissed with prejudice.

5 Q. All right. But you're asking that it be set aside?

6 A. Yes, sir.

7 Q. That your conviction be dismissed?

8 A. Yes, sir.

9 Q. You understand that you have certain exposure?

10 A. Yes, sir.

11 Q. You have certain risks in that this case could be
12 reinstated and that you could be tried on all of these
13 charges?

14 A. Yes, sir.

15 Q. And you understand that carries a risk with it that you
16 could get more time than you have today?

17 A. Yes, sir.

18 Q. You willing to accept that risk?

19 A. Yes, sir.

20 Q. And you want to go forward?

21 A. I'm willing to go forward.

22 Q. Okay. Now, Mr. Watson, you were arrested when?

23 A. June -- let me --

24 THE COURT: Permission to lead this witness to get
25 certain basic facts.

MARK WATSON DIRECT BY MR. THOMAS

1 MR. THOMAS: All right.

2 THE WITNESS: I need to get these handcuffs off of
3 me.

4 November 21st, 2007.

5 BY MR. THOMAS::

6 Q. Okay. And when did -- and this was for the alleged
7 sale of crack cocaine?

8 A. Yes, sir.

9 Q. Do you remember when that alleged sale was supposedly?

10 A. June 12th, 2006.

11 Q. Okay. And this was -- you weren't arrested until
12 sometime later after this alleged sale?

13 A. Seventeen months.

14 Q. Seventeen months. Okay. And then you had a trial in
15 2009, July 9th?

16 A. Yes, sir.

17 Q. All right, sir. And you retained counsel or you had an
18 attorney appointed?

19 A. Cameron Littlejohn volunteered the case.

20 Q. All right. Did you pay him?

21 A. No.

22 Q. You did not pay him?

23 A. No.

24 Q. How did he become your lawyer?

25 A. I had obtained him for previous charges and he --

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. All right.
- 2 A. -- end up taking this case.
- 3 Q. Okay. All right. What did you do in preparation for
- 4 this trial, did -- was there ever a plea offer?
- 5 A. Twelve years.
- 6 Q. All right. And you declined that offer?
- 7 A. Yes, sir.
- 8 Q. Okay.
- 9 THE COURT: What was the offer for?
- 10 BY MR. THOMAS::
- 11 Q. What was -- the offer was for 12 years and it was for
- 12 what, what were you pleading to?
- 13 A. All the charges.
- 14 Q. All the --
- 15 A. They was going to dismiss all the charges for this.
- 16 Q. Okay. Now, were you going to be 85 percent or were you
- 17 going to be parole eligible?
- 18 A. 85 percent.
- 19 Q. On the 12?
- 20 A. On the 12.
- 21 Q. And today, you're 85 percent of the 15?
- 22 A. Eighty-five percent of the 15.
- 23 Q. Okay. Now, how many times did you meet with
- 24 Mr. Littlejohn?
- 25 A. He came down to the Alvin S. Glenn Detention Center

MARK WATSON DIRECT BY MR. THOMAS

1 probably about three times.

2 Q. Were you detained during this period of time or were
3 you out on bond?

4 A. I was incarcerated when --

5 THE COURT: Mr. Watson, once again, sir, you need
6 to speak louder so I can understand you. All right?

7 THE WITNESS: I was incarcerated those three
8 times, the three times that he came to see me.

9 BY MR. THOMAS::

10 Q. All right. Now, you got credit for your jail time?

11 A. Yes.

12 Q. How much credit?

13 A. I think they gave me like a month time served.

14 Q. All right. That's what was I thinking because I was
15 thinking that you had a short amount of jail time you
16 were given credit for?

17 A. Yeah.

18 Q. All right. Now, you were convicted by the jury?

19 A. Uh-huh.

20 Q. You were found guilty of distribution of crack cocaine,
21 third offense?

22 A. Yes, sir.

23 THE COURT: Mr. Watson, how old are you?

24 THE WITNESS: Twenty-nine.

25 THE COURT: You think you can speak up so I can

MARK WATSON DIRECT BY MR. THOMAS

1 understand you?

2 THE WITNESS: Okay.

3 THE COURT: Talk like you're 29 years old, okay?

4 THE WITNESS: Okay. Yes, sir.

5 THE COURT: Go ahead.

6 BY MR. THOMAS::

7 Q. Did you -- you filed an appeal?

8 A. Yes, sir.

9 Q. An appeal was filed on your behalf?

10 A. Yeah, an appeal was filed. My mom --

11 Q. And --

12 A. -- filed an appeal for me.

13 Q. -- what issue was raised in that appeal, do you
14 remember?

15 A. Appealing to the passion of the jury.

16 Q. Because of comments made in closing?

17 A. Yeah, because of that, yeah.

18 Q. Okay. And did you go forward -- was the appeal
19 dismissed?

20 A. No, sir.

21 Q. It was not? Wasn't it dismissed?

22 A. Yeah.

23 Q. Okay. And it was dismissed because these issues were
24 not preserved for appeal?

25 (There was no response.)

MARK WATSON DIRECT BY MR. THOMAS

1 Q. Is that why you decided to dismiss the case?

2 A. Yeah, because it wasn't preserved for the record.

3 Q. Okay. No objection was made to the comments made in
4 closing argument?

5 A. No.

6 Q. All right. And let me show you --

7 MR. THOMAS: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 BY MR. THOMAS::

10 Q. In regards to the issue of the comments made in
11 closing, Mark, I want to show you transcript Page 166.
12 And we're talking about Line 2 through 8. I'll let you
13 read that to yourself, please, 2 through 8
14 (indicating).

15 (Defendant consults with his attorney.)

16 THE COURT: The officers put their life on the
17 line everyday, is that what you're talking about?

18 MR. THOMAS: Yes, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: Hold on, Your Honor. I need to
21 state on the record -- for the record, Your Honor, on the
22 grounds which I'm being held in custody unlawfully, Your
23 Honor.

24 THE COURT: You can do that later on. Let's
25 proceed with the testimony, sir. I'm going to give you

MARK WATSON DIRECT BY MR. THOMAS

1 every opportunity in the course of this to say anything you
2 want, but there's certain procedure we must follow. Let's
3 take your testimony right now. You understand that?

4 THE WITNESS: Yes, sir.

5 THE COURT: Good.

6 Proceed, Mr. Thomas.

7 MR. THOMAS: All right, Your Honor.

8 BY MR. THOMAS::

9 Q. Page 166, Lines 2 through 8. And they talk about --
10 they identify you, that you're a breeder?

11 A. Uh-huh.

12 Q. And they're talking about you in those terms as being a
13 breeder, is that correct?

14 A. Yes, sir.

15 Q. All right. Now, let's look at Page 166, Lines 20. Do
16 you see that?

17 A. Yeah.

18 Q. Okay. And they are talking about the police officers,
19 that they live to make our community better?

20 A. Uh-huh, yes, sir.

21 Q. Okay. And remember what they did by making the
22 community better?

23 A. Yes, sir.

24 Q. Okay. And then if you look at Page 167, Line 3, and
25 says, Also, remember the State's burden, they're

MARK WATSON DIRECT BY MR. THOMAS

1 professionals. Who are they taking about as being
2 professionals, police officers?

3 A. Yes.

4 Q. Okay.

5 A. Yes, sir.

6 Q. All right. And you feel like that these were comments
7 that were impermissible?

8 A. Yes, sir.

9 Q. And you feel like that those comments prejudiced you in
10 this trial?

11 A. Yes, sir.

12 Q. And was there an objection made to those comments?

13 A. No, sir.

14 Q. All right. Now, Mark, you talked about sequestration
15 of witnesses. And you and I have talked about that a
16 number of times. Do you feel like there was some sort
17 of problem with the witnesses and them being
18 sequestered?

19 A. Yes, sir, Officer Gilliam.

20 Q. Why do you feel like there was a problem with that?

21 A. Because the Judge became an advisor and investigator of
22 the law on how it would not be necessary for a Neal V.
23 Biggers hearing if they testified that they knew who I
24 was.

25 Q. So you're taking about comments made by the trial court

MARK WATSON DIRECT BY MR. THOMAS

- 1 in the Biggers hearing?
- 2 A. Yeah. That single witness --
- 3 Q. Prior to your trial?
- 4 A. Single witness identification hearing.
- 5 Q. And your theory of the defense in this case was,
- 6 basically, a mistaken of identity?
- 7 A. Mistaken identity.
- 8 Q. And they brought drugs from who?
- 9 A. Junior Black.
- 10 Q. Okay. Are you Junior Black?
- 11 A. No.
- 12 Q. Is that your nickname?
- 13 A. No.
- 14 Q. All right. And they were trying to prove that Mark
- 15 Watson was, in fact, Junior Black?
- 16 A. Yes, sir.
- 17 Q. And it was your contention all along that you -- that
- 18 they had the wrong person?
- 19 A. Yes, sir.
- 20 Q. Okay. And there was a motion filed in regards to the
- 21 ID, the identification?
- 22 A. Yes, sir.
- 23 Q. What kind of comment was made by the Judge?
- 24 A. The Judge had told Officer Gilliam to -- that it would
- 25 not be necessary for a Neal V. Biggers hearing if he

MARK WATSON DIRECT BY MR. THOMAS

1 testified he knew who I was.

2 Q. So you're saying that, basically, what happened is that
3 by a comment that was made by the Court that Officer
4 Gilliam was able to circumvent this hearing by just
5 saying that he could identify you?

6 A. Yeah, to tell his testimony, to pick the Judge's
7 version on how it would not be necessary for the
8 Biggers hearing.

9 Q. Okay. And then, basically, what that did is that
10 orchestrated the whole hearing after that, he knew who
11 he had --

12 A. He had to say, yeah.

13 Q. Okay. All right. Now, they allege -- being they, the
14 police officers, they allege that Junior Black had been
15 at this location on Norman Street, is that correct?

16 A. Yes, sir.

17 Q. Now, where did this drug buy happen? What was the
18 address?

19 A. The address is [REDACTED]

20 Q. And where do you live?

21 A. [REDACTED]

22 Q. Forty-eight what?

23 A. [REDACTED] that's where the --

24 Q. All right.

25 A. That's where the buy --

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. That's where the buy was?
- 2 A. Yeah.
- 3 Q. Where did you live at that time?
- 4 A. I live at [REDACTED]
- 5 Q. Okay. All right. So you did not live at this
- 6 location?
- 7 A. No, sir.
- 8 Q. All right. Now, Mr. Gilliam, or I guess Officer
- 9 Gilliam on two separate occasions, he said that he saw
- 10 you, is that correct?
- 11 A. Yes, sir.
- 12 Q. Okay. He saw you at the drug location?
- 13 A. He saw Junior Black, who he contend is Junior Black.
- 14 Q. At [REDACTED]
- 15 A. At [REDACTED]
- 16 Q. Right. And that --
- 17 MR. THOMAS: Your Honor, may I approach?
- 18 THE COURT: Yes, sir.
- 19 BY MR. THOMAS::
- 20 Q. Let me show you Page 82 of the transcript.
- 21 THE COURT: What page, Mr. Thomas.
- 22 MR. THOMAS: Page 82, Your Honor.
- 23 BY MR. THOMAS::
- 24 Q. And we're talking about Lines 18 through 22. All
- 25 right. Now, this is the testimony of who?

MARK WATSON DIRECT BY MR. THOMAS

- 1 A. M.A. Gilliam.
- 2 Q. All right. And he was the undercover police officer,
3 is that correct?
- 4 A. Yes, sir.
- 5 Q. And here's 18 through 22 and they're asking Mr.
6 Gilliam -- or Officer Gilliam what?
- 7 A. And while there, you were able to confront this
8 defendant.
- 9 Q. Being Junior Black?
- 10 A. Yeah.
- 11 Q. And what does he say?
- 12 A. Yes, sir.
- 13 Q. And what does he say he was doing on the eighth?
- 14 A. On June 8th, what time of day were you there making
15 substance control buy?
- 16 Gilliam, It was in the evening time.
- 17 Q. Okay. Now, look at Page 83, lines 1 through 9. And
18 this, again, is Officer Gilliam?
- 19 A. M.A. Gilliam, yes, sir.
- 20 Q. Okay. And he was talking about his having a
21 opportunity to see Junior Black and what he looked
22 like?
- 23 A. Yeah.
- 24 Q. All right. Is that right?
- 25 A. Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. Okay. Now, if we go over to Page 85, he's talking
2 about --

3 THE COURT: What line?

4 MR. THOMAS: Eighty-five, Your Honor, Lines 9
5 through 11.

6 THE COURT: All right.

7 BY MR. THOMAS::

8 Q. Now, he's talking about this location, is that correct?
9 Norman Street?

10 A. Yes, sir.

11 Q. [REDACTED] Norman. And he's talking about this being, in
12 essence, a drug den, a drug house?

13 A. Uh-huh.

14 Q. What is he saying is going on at that house?

15 A. I observed other individuals sitting down, playing
16 cards, smoking crack, basically, just going in and out
17 of the house. I just stayed inside.

18 Q. And that's what he testified to?

19 A. Yes, sir.

20 Q. All right. And at that point in time, do you feel like
21 he was associating you with other illegal activity?

22 A. Yes, sir.

23 Q. He was saying that -- well, not you, I apologize for
24 interchanging. You're the one tried and found guilty
25 of this, but they were associating Junior Black with

MARK WATSON DIRECT BY MR. THOMAS

- 1 drug activity on that date?
- 2 A. Yes, sir.
- 3 Q. On the eighth?
- 4 A. Yes, sir.
- 5 Q. With everybody else who was supposedly there smoking?
- 6 This was allegedly a drug house?
- 7 A. Yes, sir.
- 8 Q. All right. Did you talk to your attorney about this
- 9 being a potentially prior bad act?
- 10 A. No, sir.
- 11 Q. That they were -- that they were talking about Junior
- 12 Black's prior drug activity?
- 13 A. No, sir.
- 14 Q. Okay. And I know you spent a lot of time on this case,
- 15 do you think that is a potentially prior bad act?
- 16 A. It is, yes, sir.
- 17 Q. Okay. And was it presented to the Court to determine
- 18 whether or not it was a prior bad act and whether it
- 19 was admissible?
- 20 A. No.
- 21 Q. All right. Now, Mark, you feel like, also, that they
- 22 -- the testimony of Officer Gilliam and Officer Sheard
- 23 was that in their testimony they talk about the things
- 24 that they seize as being crack cocaine?
- 25 A. Can you --

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. They testified that they seized five rocks of crack
2 cocaine from you?
- 3 A. Yes, sir.
- 4 Q. And that at that point in time, was there ever any
5 testing done on these items?
- 6 A. No, sir.
- 7 Q. Now, later, they do a presumptive test, is that
8 correct?
- 9 A. Yes, sir.
- 10 Q. Now, in that presumptive test, they testified that it
11 -- that it tested presumptively positive for crack
12 cocaine?
- 13 A. Yes, sir.
- 14 Q. Okay. But throughout the trial, these rocks are
15 testified to as drugs?
- 16 A. Yes, sir.
- 17 Q. As cocaine?
- 18 A. Yes, sir.
- 19 Q. You feel like there was a basis for that testimony?
- 20 A. No, no, sir.
- 21 Q. You and I have talked about that and you feel like that
22 was objectionable of them testifying --
- 23 THE COURT: Mr. Thomas, did you say that five
24 rocks presumptively were tested to be crack cocaine and
25 later on found out not to be cocaine?

MARK WATSON DIRECT BY MR. THOMAS

1 MR. THOMAS: No, they were later on testified --

2 THE COURT: Okay.

3 MR. THOMAS: But, Your Honor, I think what
4 Mr. Watson is saying is that he believes that prior to the
5 testing results coming in that they should not have been
6 testified to as crack cocaine because they weren't proven or
7 identified to be crack.

8 THE COURT: Okay. All right. That's fine. Thank
9 you, sir.

10 MR. THOMAS: Yes, sir.

11 BY MR. THOMAS::

12 Q. Now, this is, I know, an extremely important issue for
13 you. We're going to talk about the lineup. Okay.
14 Now, let me ask you a question about the lineup. You
15 feel like the lineup in this case was suggestive, is
16 that correct?

17 A. I feel like it was prejudice, yes, sir.

18 Q. And prejudicial to you?

19 A. Yes, sir.

20 Q. Okay. And what do you think about the lineup? I mean
21 --

22 THE COURT: Do you have a picture of the lineup?

23 MR. THOMAS: I do, Your Honor.

24 THE COURT: You going to introduce it?

25 MS. HARRIGAN: The State has no objection to it

MARK WATSON DIRECT BY MR. THOMAS

1 being introduced.

2 THE COURT: All right. Do you have an extra copy,
3 Mr. Thomas?

4 MR. THOMAS: I don't, Your Honor.

5 MS. HARRIGAN: I've seen it before and I can get
6 one later from Mr. Thomas.

7 THE COURT: Mr. Boykin, can you go make a couple
8 of copies? How long will it take you?

9 THE BAILIFF: Long enough for me to go to your
10 office and right back.

11 THE COURT: Make three copies.

12 We'll be at ease.

13 THE WITNESS: Come here a minute.

14 MR. THOMAS: Mark, I can't speak with you, okay.

15 (Whereupon, a short recess was held.)

16 THE COURT: And you want to mark this as --

17 MR. THOMAS: Yes, Your Honor. I will ask
18 Mr. Watson.

19 THE COURT: Go ahead.

20 BY MR. THOMAS::

21 Q. Mr. Watson, let me show you this document and see if
22 you can identify this?

23 A. Yes, sir.

24 Q. What is that?

25 A. A lineup that they gave to the jury.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. All right. And that's the lineup that they gave

2 Officer Gilliam from Officer Sheard?

3 A. Yes, sir.

4 Q. Okay. And who is that that is circled in that lineup?

5 THE COURT: Is this from a Biggers hearing?

6 MS. HARRIGAN: Yes, Your Honor, there was a

7 Biggers hearing.

8 MR. THOMAS: There was a Biggers hearing, Your

9 Honor.

10 THE COURT: All right. Was it during the Biggers?

11 THE WITNESS: Yes, sir.

12 MR. THOMAS: Yes.

13 THE COURT: Okay. All right.

14 BY MR. THOMAS::

15 Q. That's who?

16 A. That's me, Mark Watson.

17 Q. All right.

18 MR. THOMAS: Your Honor, if it please the Court,

19 we would like to introduce this as Applicant's -- I guess

20 this is --

21 THE COURT REPORTER: Six.

22 MR. THOMAS: Six.

23 MS. HARRIGAN: No objection.

24 THE COURT: All right. Without objection. This

25 is No. 6.

MARK WATSON DIRECT BY MR. THOMAS

1 (Plaintiff's Exhibit No. 6 was admitted
2 into evidence.)

3 BY MR. THOMAS::

4 Q. Mark, now, you had had what you described to me as a
5 run-in with Officer Sheard prior to this?

6 A. In 2005, yes, sir.

7 Q. All right. And what kind of run-in was that?

8 A. Invading privacy.

9 Q. All right. They got a search warrant and they searched
10 your house?

11 A. Yes, sir.

12 Q. All right. And that -- that location of your house was
13 where?

14 A. [REDACTED]

15 MR. THOMAS: Your Honor, if it please the Court,
16 may I approach?

17 THE COURT: Yes, sir.

18 BY MR. THOMAS::

19 Q. Mark, I'm going to show you a copy of a document that's
20 been marked as Applicant's No. 4 and ask if you can
21 identify that?

22 A. I can identify it because of the fact that it was in my
23 motion to discovery.

24 Q. Okay. And what is it?

25 A. A search warrant.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. For what address?

2 A. [REDACTED]

3 Q. Is that the proper address for your residence?

4 A. Yes, sir.

5 Q. Okay.

6 THE COURT: It's 48 what?

7 THE WITNESS: Ten.

8 THE COURT: Twenty?

9 THE WITNESS: Ten.

10 MR. THOMAS: Ten, Your Honor.

11 THE COURT: All right.

12 BY MR. THOMAS::

13 Q. And, Mark, there is an affidavit, there's a search
14 warrant itself, and then there's a return, is that
15 correct, in that packet?

16 A. Yeah, but I'm missing the incident report.

17 Q. We're going to talk about the incident report. Now, in
18 this document, did they take anything from your house,
19 is anything on there?

20 A. No, sir.

21 Q. All right. And at that point in time, what was your
22 relationship with Officer Sheard?

23 A. I don't -- I don't know him.

24 Q. Is it good or bad? I mean, they were frustrated --

25 THE COURT: I believe he said he didn't know him,

MARK WATSON DIRECT BY MR. THOMAS

- 1 but go ahead anyway.
- 2 BY MR. THOMAS::
- 3 Q. All right. Did Officer Sheard --
- 4 A. At this point in time, I didn't know him.
- 5 Q. You didn't know him?
- 6 A. At this point in time.
- 7 Q. Okay.
- 8 A. He --
- 9 Q. All right.
- 10 A. -- just had the run-in, he come in my house.
- 11 Q. Okay. When did you -- when did you have the
- 12 opportunity to have a face-to-face situation with
- 13 Officer Sheard?
- 14 A. In 2005, when he came to my house with the search
- 15 warrant.
- 16 Q. All right.
- 17 MR. THOMAS: Your Honor, may it please the Court?
- 18 THE COURT: Yes, sir.
- 19 BY MR. THOMAS::
- 20 Q. Let me show you this document and ask you what that is?
- 21 A. Search warrant.
- 22 Q. All right. And for what address?
- 23 A. [REDACTED]
- 24 Q. Is that your address?
- 25 A. Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. Okay. It's Mark Watson. And was anything taken from
2 there?

3 A. Two thousand dollars.

4 Q. All right. When was that search warrant -- that was
5 after you were arrested?

6 A. I received it in the motion to discovery.

7 Q. No, no. When -- they searched your house before or
8 after you were arrested?

9 A. Oh, before.

10 Q. All right. And then after they did the search, were
11 you arrested at that time?

12 A. After they did the search, I was arrested.

13 Q. And you were charged with the alleged sale to Officer
14 Gilliam as Junior Black?

15 A. Not that day.

16 Q. Not that day?

17 A. Not that day.

18 Q. When were you charged?

19 A. The following day, the 21st.

20 Q. The following day, okay.

21 THE COURT: All right. This is a good time out.

22 Can I see everybody? Mr. Littlejohn. I think we
23 need to see Ms. Shurling, too. Let's talk a little bit.

24 MS. HARRIGAN: All right. Thank you, Your Honor.

25 (Whereupon, a short recess was held.)

MARK WATSON DIRECT BY MR. THOMAS

1 THE COURT: Everybody ready?

2 MS. HARRIGAN: Yes, Your Honor.

3 THE COURT: You may proceed.

4 MR. THOMAS: All right, Your Honor.

5 BY MR. THOMAS::

6 Q. Mark?

7 A. Yes, sir.

8 Q. We were talking about -- I think we introduced the
9 photo lineup. Let me show you --

10 MR. THOMAS: Your Honor, if I may approach?

11 THE COURT: Yes, sir.

12 MR. THOMAS: And I apologize, Your Honor. I think
13 these have been marked as -- these are the investigative
14 reports. These are -- okay, let's see. I think they may
15 have gone up to the Court. I just need the numbers, Your
16 Honor.

17 THE COURT: This was the lineup?

18 MR. THOMAS: No, Your Honor, I was looking at the
19 investigative reports that we had admitted by agreement.
20 They're marked as 2 and 3?

21 THE COURT: Two and three, yes.

22 MR. THOMAS: Thank you, Your Honor.

23 THE COURT: All right. Go ahead.

24 MR. THOMAS: May it please the Court.

25 BY MR. THOMAS::

MARK WATSON DIRECT BY MR. THOMAS

1 Q. Mark, I want to show you what's been marked as
2 Applicant's Exhibit No. 2, which is a three-page
3 investigative report in regards to Junior Black, is
4 that correct?

5 A. Yes, sir.

6 Q. All right. And this is by Officer Sheard, is that
7 correct?

8 A. Yes, sir.

9 Q. And I want you look on Page 3 of 3 and look at this
10 bottom paragraph and it said that -- well, I'll let you
11 look at it. It said that Sheard had conducted drug
12 investigations in that area before?

13 A. It says, Sheard has conducted numerous drug
14 investigations in the Norman street area and is
15 familiar with many of the drug dealers in this area.
16 On 09/16/05, Sheard assisted a CTR unit with a search
17 warrant S05269 at [REDACTED]

18 Q. All right. Let me stop you there. Is that what -- is
19 that the search warrant that we are talking about
20 that's been marked as Applicant's No. 4 for
21 identification?

22 A. And remember the person name, Junior Black, at the
23 residence.

24 Q. All right. And that's from the 2005 search warrant, is
25 that correct?

MARK WATSON DIRECT BY MR. THOMAS

1 A. Yes, sir.

2 Q. All right. So what he's saying in that incident report
3 is that he had been to Mark Watson's house before
4 pursuant to that search warrant?

5 A. Yes, sir.

6 Q. All right. And he's saying that -- is that how you get
7 that he is tying this Mark Watson to Junior Black?

8 A. Yes, sir.

9 Q. Okay. All right. And then, of course, the search
10 warrant on 2007 was executed after the alleged sale by
11 Junior Black?

12 A. Yes, sir.

13 Q. Okay. All right. Now -- so, Mark, you're saying that
14 Sheard made this suggestive lineup because he had been
15 to your house once before and had been unable to,
16 basically, arrest you for selling drugs?

17 A. Yes, sir.

18 Q. All right. And why do you feel that way?

19 A. Because when he kicked my door in, I had made a phone
20 call to my mother. And he alleged that a black male
21 had ran to my house. And I told him that ain't nobody
22 here, but me. So he got upset and said that he was
23 going to get a search warrant. And when he came back
24 with a search warrant, he slammed me on the ground, put
25 me in handcuffs after he told me that another guy had

MARK WATSON DIRECT BY MR. THOMAS

1 ran in the residence. And somehow, he got mad at the
2 situation because I didn't let him search my house when
3 he came for the guy that he alleged ran in my house.

4 Q. So when you were there, he was, actually, saying that
5 not you, but some other black male had run into your
6 residence?

7 A. Yes, sir.

8 Q. Did he ever accuse you of being that black male that
9 ran into your residence?

10 A. No. He never -- he never said that.

11 Q. Okay.

12 A. I --

13 Q. And you felt that you were being targeted after that?

14 A. Yes, sir.

15 Q. All right. Now, how do you explain -- and you've read
16 this transcript a number of times, how do you
17 explain -- and you've seen the testimony of Detective
18 Gilliam, how do you feel like this lineup became
19 suggestive?

20 A. It was prejudice because, first, I should have never
21 been in a photo lineup under this nickname Junior
22 Black. And due to undercover officer getting an
23 undercover statement, stated that he -- we can enter
24 that into evidence.

25 MR. THOMAS: Your Honor, if the please the Court.

MARK WATSON DIRECT BY MR. THOMAS

1 THE WITNESS: The undercover officer getting
2 statement stated that he made a purchase from a black guy
3 possibly living in the area. And that's how I feel like I
4 was targeted by Investigator Sheard, saying that -- going
5 off his statement and accusing me and telling Officer
6 Gilliam that I'm the one that committed this crime. So I
7 would like to offer Officer Gilliam's statement into
8 evidence.

9 MS. HARRIGAN: No objection, Your Honor.

10 MR. THOMAS: Your Honor, may it please the Court.

11 THE COURT: All right.

12 BY MR. THOMAS::

13 Q. Is this the statement that you're talking about, Mark,
14 from Emmett Gilliam?

15 A. Yes, sir.

16 Q. All right.

17 MR. THOMAS: Your Honor, if it please the Court,
18 we would like to move this as Applicant's --

19 THE COURT: It's admitted without objection.
20 It's No. 7, I believe.

21 THE COURT REPORTER: Seven.

22 THE COURT: All right.

23 (Whereupon, Plaintiff's Exhibit No. 7
24 was admitted into evidence.)

25 MR. THOMAS: Thank you.

MARK WATSON DIRECT BY MR. THOMAS

1 THE WITNESS: And as you can see, Your Honor, on
2 the statement that he never said that he even picked me out
3 of the photo lineup then on this statement. I'm being
4 incarcerated because I'm a black male.

5 BY MR. THOMAS::

6 Q. Mark, so it's your testimony today that Sheard is the
7 one that presented your -- he's the one that made the
8 identification of Junior Black and Mark Watson?

9 A. Sheard is behind the whole situation.

10 Q. All right. And you feel that that was improper?

11 A. Yes, sir.

12 Q. All right. Mark, let's move on the chain of custody.

13 A. Yes, sir.

14 Q. And let me show you --

15 MR. THOMAS: Your Honor, if I may approach?

16 THE COURT: Yes, sir.

17 MR. THOMAS: And I apologize, Your Honor, I think

18 the chain is -- it's been admitted prior and it's

19 Applicant's --

20 MS. HARRIGAN: No. 1, Your Honor.

21 THE COURT: All right.

22 BY MR. THOMAS::

23 Q. Mark, how many pages is there to this document?

24 A. Three.

25 Q. All right. And you've had a copy of this?

MARK WATSON DIRECT BY MR. THOMAS

1 A. Yes, sir.

2 Q. All right.

3 THE COURT: I'm sorry, you said No. 1?

4 MR. THOMAS: Applicant's 1, Your Honor. The other
5 pages are attached to that, Your Honor.

6 THE COURT: Okay.

7 MR. THOMAS: It's that whole package.

8 THE WITNESS: And here, Your Honor, the State
9 failed to comply --

10 THE COURT: I'm sorry, hand me that so I can keep
11 it up here.

12 MR. THOMAS: Yes, sir.

13 THE COURT: Thank you, sir.

14 MR. THOMAS: Yes, sir.

15 BY MR. THOMAS::

16 Q. Mark?

17 A. Yes, sir.

18 Q. That was obtained through an order of discovery in this
19 post-conviction relief case?

20 A. Yes, sir, by Judge Alison Renee Lee.

21 Q. All right.

22 A. By showing of good cause.

23 Q. That came from the solicitor's office, is that where
24 those documents came from?

25 A. Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. All right, sir. And you've had an opportunity to
2 review those documents?

3 A. Yes, sir.

4 Q. How many pages -- other than the solicitor's letter,
5 there's how many pages?

6 A. There's three pages.

7 Q. And the first page says case of -- for general sessions
8 court?

9 A. Yes, sir.

10 Q. That is captioned? And then the second page is a page
11 of signatures?

12 A. Yes, sir.

13 Q. And the third page is what?

14 A. Analysis report.

15 Q. All right. Now, on that first page, does it show where
16 those drugs came from -- what does it show?

17 A. The first page, Your Honor, is -- well, at -- at trial,
18 Donna Martin testified to that another lady, which is
19 Joanne Lewis, who received this evidence before she did
20 and she failed to follow procedures by South Carolina
21 criminal rules of procedure B leaving the evidence to
22 conjecture, Your Honor, and violating my due process --

23 THE COURT: Are you making a statement or
24 argument, Mr. Watson?

25 Help me out, Mr. Thomas.

MARK WATSON DIRECT BY MR. THOMAS

- 1 BY MR. THOMAS::
- 2 Q. Mark, what happened is, evidently, five pieces of --
- 3 five rocks --
- 4 A. Uh-huh.
- 5 Q. -- which were purportedly to be crack cocaine were
- 6 taken from Junior Black, is that correct?
- 7 A. Yes, sir.
- 8 Q. Testimony is that they are then turned over to
- 9 Ms. Joanne Lewis?
- 10 A. Joanne Lewis, yes.
- 11 Q. And Ms. Lewis was the evidence custodian at that time?
- 12 A. Yes, sir.
- 13 Q. For the City of Columbia?
- 14 A. Yes, sir.
- 15 Q. All right. And, unfortunately, Ms. Lewis passes away,
- 16 is that correct?
- 17 A. Yes, sir.
- 18 Q. All right. And then when she passes away, is that when
- 19 Ms. Martin comes into play?
- 20 A. It's -- her testimony is hearsay. I don't know how she
- 21 come into it. There's no testimony to where she come
- 22 into the evidence.
- 23 Q. All right. It's your contention that there's no way to
- 24 determine where the drugs went, is that correct?
- 25 A. Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

1 Q. All right.

2 A. I have no way to determine.

3 Q. If you look at the second page of the signatures --

4 A. Uh-huh.

5 Q. -- there's no indication of whose case is it, is that
6 correct?

7 A. Yes, sir.

8 Q. There's no indication of whose drugs they are?

9 A. No indication.

10 Q. And there's no indication that there are even,
11 actually, any drugs?

12 A. No indication of that.

13 Q. All right. If you go back to the first page, at the
14 top of that page, Page 1, it says these drugs -- these
15 drugs are received by who?

16 A. I don't see where.

17 Q. Does it say Donna Martin at the top?

18 A. Oh, at the top. Logged in drugs by Donna Martin.

19 Q. All right. But in the testimony that Joanne Lewis was
20 the evidence custodian?

21 A. Yes, sir.

22 Q. So then, Ms. Lewis comes back and she testifies --

23 MR. THOMAS: Your Honor, if I could beg the
24 Court's indulgence.

25 BY MR. THOMAS::

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. She testifies -- this is Page 137 of the transcript.
- 2 MR. THOMAS: Your Honor, may I approach?
- 3 THE COURT: Yes, sir.
- 4 BY MR. THOMAS::
- 5 Q. Mark, this is the testimony of Donna Martin at your
- 6 trial?
- 7 A. Yes, sir.
- 8 Q. All right. On Lines 3 to 5, she indicates that Ms.
- 9 Joanne Lewis has passed away?
- 10 A. Yes, sir.
- 11 Q. All right. And then she's talking about that she
- 12 received -- if you'll look at Lines 10 through 12.
- 13 A. Yes, sir.
- 14 Q. And it says, When did you come into contact with such
- 15 evidence. Is that right?
- 16 A. Yes, sir.
- 17 Q. And her response is what?
- 18 A. July the 13th.
- 19 Q. All right. And I would assume that this is July 13th
- 20 of what year?
- 21 A. 2006.
- 22 Q. Okay. Now, I want to show you, which was provided, the
- 23 signature lines on the second page from Columbia Police
- 24 Department?
- 25 A. Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. All right. And you see where it says from and to?
- 2 A. Yes, sir.
- 3 Q. Doesn't give you indication as to what it is, just from
- 4 and to?
- 5 A. No indication of what it is.
- 6 Q. Do you see a July 13th on there?
- 7 A. No, sir.
- 8 Q. All right. Do you see a July date at all?
- 9 A. At the bottom, yes, sir.
- 10 Q. And what date is that?
- 11 A. The eighth.
- 12 Q. And that was when they went for trial of '07?
- 13 A. Yes, sir. I went to trial in '09 -- I mean, on the 9th
- 14 of July.
- 15 Q. All right. And let me show you on page -- same page,
- 16 137, Lines 21 through 22. And what does that say?
- 17 A. So when you log narcotics in, that was this July 13th,
- 18 2006 in this case? And, Yes.
- 19 Q. Okay. And that's Donna Martin?
- 20 A. That's Donna Martin.
- 21 Q. Okay. And if you go back to Page 1 of this document,
- 22 of the chain, this says at the top, Logged in drug book
- 23 by Donna Martin. Does it give you a date?
- 24 A. June 13th, '06.
- 25 Q. '06. But that date is not July 13th?

MARK WATSON DIRECT BY MR. THOMAS

1 A. It's not that day.

2 Q. Okay. And when you were -- you were arrested when?

3 A. I was arrested November 21st, 2007.

4 Q. All right. When -- when did Junior Black allegedly
5 sell these drugs?

6 A. June 6, 2006.

7 Q. All right. So if they came into -- supposedly, on this
8 document, they were logged in on June 13th? ..

9 A. June 13th.

10 Q. Where were they between June 6th and June 13th?

11 MS. HARRIGAN: Your Honor, if I could just object
12 to make the record clear. The sale was on the 12th of June,
13 not the 6th of June.

14 THE COURT: Is that so?

15 THE WITNESS: Yeah.

16 MR. THOMAS: Yes.

17 THE WITNESS: June 12th.

18 THE COURT: All right. Correction.

19 THE WITNESS: Yeah, June 12th, yes, sir.

20 BY MR. THOMAS::

21 Q. But that date is not correct either, is that right?

22 A. Yeah, that date is not correct.

23 Q. And there is no date in there of July 13th, is that
24 correct?

25 A. No dates.

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. All right. And if you look at the last page of that
2 document that -- that is from -- from whom?
- 3 A. Melissa B. Hendricks.
- 4 Q. Who is she?
- 5 A. She's a chemical analyst.
- 6 Q. What does -- does it say what she finds?
- 7 A. Cocaine base.
- 8 Q. All right. Is that an affidavit from her?
- 9 A. No, that --
- 10 Q. Okay.
- 11 A. No.
- 12 Q. Is it signed by her?
- 13 A. It signed, but she doesn't have a statement with it.
- 14 Q. Okay. And is there a notary on that?
- 15 A. No notary.
- 16 Q. Okay. And does she -- what is the date of that report?
- 17 A. July 17th, 2006.
- 18 Q. Okay. And is there -- that date, does that correspond
19 to anything on that signature page?
- 20 A. Oh, no, sir.
- 21 Q. All right.
- 22 A. It's not on there.
- 23 Q. Can you tell from that signature page when those drugs
24 were signed out to Ms. Hendricks?
- 25 A. They wasn't signed out to her.

MARK WATSON DIRECT BY MR. THOMAS

- 1 Q. If you look at the signatures, this one on the second
2 line from the top says to who?
- 3 A. Melissa B. Hendricks.
- 4 Q. Okay.
- 5 A. On 06/22/06.
- 6 Q. Then it comes back, evidently, from Ms. Hendricks on
7 06/30 of '06?
- 8 A. Yeah.
- 9 Q. Okay.
- 10 A. Yes, sir.
- 11 Q. Right. And that's the only indication of when the
12 drugs were taken out?
- 13 A. Yes, sir.
- 14 Q. I mean, that's --
- 15 A. That's the second time. With her analysis report, she
16 said on the 17th, but the Columbia Police Department
17 report say 06/22/06.
- 18 Q. All right. But we would have had to assume that that's
19 what the purpose of that was because it doesn't say?
- 20 A. Yeah, it doesn't say.
- 21 Q. But those dates don't correspond at all with the date
22 of her report?
- 23 A. No, sir.
- 24 Q. Matter of fact, the date of the report, the drugs
25 are -- allegedly, the drugs are shown back in the

MARK WATSON DIRECT BY MR. THOMAS

1 custody of the custodian?

2 A. Yes, sir.

3 Q. Mark, do you believe that this chain is proper?

4 A. No, sir.

5 Q. Okay. Do you think it's a violation of Rule 6?

6 A. Rule 6(b).

7 Q. And I don't normally ask these questions of a client,
8 but you've looked at all this, is that correct?

9 A. Yes, sir.

10 Q. And you have looked at Rule 6?

11 A. Yes.

12 Q. You're not an attorney?

13 A. Huh-uh.

14 Q. But you don't -- you're telling the Court today that
15 you don't believe that Rule 6 was complied with?

16 A. It wasn't.

17 Q. And you're saying that you don't believe that it's a
18 proper chain of custody?

19 A. Yes, sir.

20 Q. And did your attorney object to it?

21 A. He failed to object.

22 Q. Did he -- did he consent to the admission of the drugs?
23 No objection?

24 A. No objection, violating my due process.

25 Q. All right.

MARK WATSON DIRECT BY MR. THOMAS

- 1 A. Under the 14th Amendment.
- 2 Q. Now, let's move on to Emmett Gilliam and I want to ask
- 3 you about Mr. Gilliam. And I know you and I have
- 4 discussed this and you've talked about it with me.
- 5 It's your contention that Mr. Gilliam didn't have the
- 6 authority to operate in Richland County?
- 7 A. Yes, sir. Out of jurisdiction.
- 8 Q. You think it's out of his jurisdiction?
- 9 A. Yes, sir.
- 10 Q. And why do you think that?
- 11 A. Because he was from Lexington County narcotics
- 12 division.
- 13 Q. He works for the Lexington County multi-jurisdiction
- 14 narcotic enforcement team?
- 15 A. Yes, sir.
- 16 Q. Okay. And it also says he was employed by the
- 17 Batesville-Leesville --
- 18 A. Leesville Police Office. Police have.
- 19 THE COURT: Batesburg.
- 20 MR. THOMAS: Batesburg.
- 21 THE COURT: That's all right.
- 22 BY MR. THOMAS::
- 23 Q. Mark, let me show you Page 81 in the transcript.
- 24 MR. THOMAS: May I approach, Your Honor?
- 25 THE COURT: Yes, sir.

MARK WATSON DIRECT BY MR. THOMAS

1 MR. THOMAS: Your Honor, these are Lines 6 through

2 9.

3 BY MR. THOMAS::

4 Q. Mark, this is the testimony of whom?

5 A. Officer Emmett Gilliam.

6 Q. All right. And what does he say in six through nine?

7 A. Before I was employed, I was hired by the

8 Batesburg-Leesville Police Department assigned to the

9 Lexington County multi-jurisdiction narcotics

10 enforcement team.

11 Q. All right. Now, if you go to top of the page on Lines

12 1 and 2, he does say that he was assigned to the street

13 unit metro district. I guess that's City of Columbia?

14 A. Yes, sir.

15 Q. Okay. Now, it's your contention that Officer Gilliam

16 didn't have the authority to be working in Richland

17 County?

18 A. He didn't have the authority, yes, sir.

19 Q. Okay.

20 A. He don't have no paperwork.

21 Q. And let me show you Page 121 of the transcript, Lines 4

22 through 7, Mark. Now, this is the testimony of who?

23 A. Jackson Sheard.

24 Q. And what does he say?

25 A. I was able to go into Lexington County. I know the

MARK WATSON DIRECT BY MR. THOMAS

1 officers over in Lexington County and I knew that
2 Officer Gilliam did undercover work over there. He,
3 also, assisted the Columbia Police Department with
4 undercover investigations.

5 THE COURT: I'm sorry, you said --

6 MR. THOMAS: I'm sorry, Your Honor, it's Lines 2
7 through --

8 THE COURT: Page 121?

9 MR. THOMAS: 121, Your Honor, at the top.

10 THE COURT: My responsibility?

11 MR. THOMAS: Yes, sir.

12 THE COURT: All right. Go ahead.

13 MR. THOMAS: Yes, sir. Then it picks up on Line
14 3, I was able to go into -- the known officers over in
15 Lexington County.

16 BY MR. THOMAS::

17 Q. All right. Let me show you Page 127 of the transcript,
18 Lines 16 through 21, Mark. And again, this is who
19 testifying?

20 A. Jackson Sheard.

21 Q. All right. What does he say here?

22 A. First of all, he's the police officer that works in
23 another jurisdiction. He may be recognized by the
24 other citizens just in the course of common -- common
25 course of duties as a police officer. Now, we're

MARK WATSON DIRECT BY MR. THOMAS

1 putting him into the mix of an unknown environment of
2 buying drugs.

3 Q. So in other words, they were using Emmett because they
4 didn't know him in Richland County, is that right?

5 A. Yes, sir.

6 Q. Okay. That's what your contention is?

7 A. Yes, sir.

8 Q. All right. Last thing, the indictment.

9 A. Yes, sir.

10 Q. And you had pointed out to me --

11 MR. THOMAS: Your Honor, may I approach?

12 THE COURT: Yes, sir.

13 MR. THOMAS: This is Page 202 of the transcript.

14 BY MR. THOMAS::

15 Q. I want to show you this. Is that your indictment?

16 A. Yes, sir.

17 Q. Distribution of crack cocaine, third offense?

18 A. Yes, sir.

19 Q. All right. And you had contended to me that you
20 thought that that indictment was defective?

21 A. Yes, sir.

22 Q. Why do you think it's defective?

23 A. Well, all right, first of all, Your Honor, it's crack
24 cocaine being such not a first offense, all in
25 violation of South Carolina Code of Laws 44-50-3375, is

MARK WATSON DIRECT BY MR. THOMAS

- 1 a penalty enhancement phrase, Your Honor, and --
- 2 Q. Does it say anything about a second?
- 3 A. Yeah.
- 4 Q. No, does it say anything about a second?
- 5 A. It says a third offense.
- 6 Q. But down here -- I'm sorry. I just managed to get it
- 7 all messed up, didn't I? Okay. Does it say anything
- 8 about a second offense?
- 9 A. No, sir.
- 10 Q. All right. It says the first offense?
- 11 A. It don't say that either.
- 12 Q. Yeah, it does, doesn't it?
- 13 A. Being not a first.
- 14 Q. Okay. Such not a first offense, indicating that you
- 15 had more -- that you could potentially have a second
- 16 offense?
- 17 A. Second offense, yeah.
- 18 Q. Mark, I wanted to ask you -- and you and I have talked
- 19 about this, that this is your day in court?
- 20 A. Uh-huh.
- 21 Q. And I know you have been waiting a long time for this
- 22 day. I'm not suggesting that I have left anything out,
- 23 but is there anything else that you would like to add
- 24 for the Court to consider and is there anything you
- 25 feel like I have missed and have forgotten, this is

MARK WATSON DIRECT BY MR. THOMAS

1 your opportunity to say it.

2 A. Yes, sir. I would like to present for the record, Your
3 Honor, is according to section 17-27-90, grounds for
4 relief, my application is incomplete. It's only
5 stating ineffective assistance of counsel. And I would
6 like to state my grounds for the record.

7 Q. Mark, I think we've done that. That's what you and I
8 discussed. We talked about the issue -- we went
9 through issue by issue in regards to what you're
10 presenting to the Court today. Is there anything else
11 you would like to bring to the Court's attention?

12 A. I never put my Brady motion on it.

13 Q. All right.

14 A. So --

15 Q. What do you feel about your Brady?

16 A. Okay. Let me get it right.

17 Your Honor, I had presided in front of Judge
18 Alison Renee Lee March 5th of 2013, and she granted me
19 the motion to seek motion discovery material. So would
20 you want a copy of that to see?

21 THE COURT: No, go ahead. It should be in the
22 file.

23 THE DEFENDANT:

24 THE WITNESS: Okay. So she granted me a motion to
25 seek motion discovery material. And I'm missing incident

1 reports and case notes from date of September 16, '05, which
2 is where I been unfairly targeted by Investigator Sheard.
3 And I would like to offer into evidence to show that this
4 evidence exists, which is reports from his office telling me
5 that the police department is unable to locate these
6 documents. So I feel like that's a Brady violation, Your
7 Honor, by not turning over this incident report to prove my
8 case. And I would like to enter this into evidence as well.

9 THE COURT: Mr. Thomas.

10 MR. THOMAS: Your Honor, if it please the Court.
11 We did make a motion for discovery. We were -- Mark was
12 looking for some other incident reports that potentially
13 revolve out of the first search warrant. What we were given
14 from the City of Columbia -- and we talked -- discussed this
15 the AG's office, is that they said that's everything that
16 exist.

17 THE COURT: I'm sorry?

18 MR. THOMAS: They said that what we got is all
19 that exist, Your Honor, that there wasn't anything further.
20 I know Mark feels strongly that these documents exist, but
21 we haven't been able to obtain them.

22 THE WITNESS: We have the paperwork right here
23 showing that -- well, I want to be able to show the Court
24 something about they recognizing this document and still not
25 turning it over.

1 MR. THOMAS: Mark, let me see what you've got.

2 THE WITNESS: We done talked about this.

3 MR. THOMAS: Oh, these are just letters.

4 THE WITNESS: These are letters.

5 MR. THOMAS: Your Honor, these are letters that I
6 sent to Mark because we were attempting to obtain these
7 documents and Mark -- Mark is in the belief that these
8 documents exist but they are refusing to turn them over.
9 What I had discussed with him is that if they say they don't
10 exist, there is no way that we can prove, in fact that they
11 do exist and that to prove full circle that they have them
12 and they're not going to give them to us. They're saying
13 that they don't exist.

14 THE COURT: All right.

15 MR. THOMAS: We have no other indication that
16 they're not telling the truth. I do believe they existed at
17 one point in time, but we have been unable to obtain them.

18 THE COURT: All right.

19 BY MR. THOMAS::

20 Q. Mark, is that it?

21 A. No, not yet.

22 And, also, Your Honor, I would like to argue and
23 state for the record my due process -- again, due
24 process violation, which is the State failed to comply
25 with Rule 6(b), violating my due process. That's,

1 basically, it.

2 MR. THOMAS: Thank you, Your Honor.

3 THE COURT: Any cross-examination?

4 MS. HARRIGAN: No, Your Honor, no questions of
5 this witness.

6 THE COURT: All right. You may step down,
7 Mr. Watson.

8 MR. THOMAS: Your Honor, if it please the Court,
9 at this time, we would like to move documents 4 and 5, which
10 have been marked for identification, we'd like to move these
11 into evidence at this time based upon the testimony of my
12 client as well as information that is provided in the
13 incident reports which indicate that identification was made
14 previously by the search warrant that was executed in 2005.

15 MS. HARRIGAN: The State has the same objection to
16 relevance.

17 THE COURT: All right. It goes to the weight,
18 I'll let it in.

19 MR. THOMAS: Thank you, Your Honor.

20 (Plaintiff's Exhibit Nos. 4 and 5 were
21 admitted into evidence.)

22 THE COURT: Anything further, Mr. Thomas?

23 MR. THOMAS: Your Honor, if I may ask my client
24 some more questions, we may be done.

25 THE COURT: All right.

1 (Counsel consults with Defendant.)

2 MR. THOMAS: Your Honor, if it please the Court,
3 we have one more brief witness and that would be Ms. Wright.

4 THE COURT: Call her.

5 MR. THOMAS: Ms. Wright, if you would come to the
6 stand.

7 BAILIFF: Please your left hand on the Bible,
8 raise your right hand and face the Judge.

9 THEREUPON,

10 QUATICA WRIGHT,
11 after having been duly sworn, testified as follows:

12 COURT: All right. You need to speak up, ma'am.
13 State your name and spell your last name for the record.

14 THE WITNESS: My name is Quatica Wright,
15 W-R-I-G-H-T.

16 DIRECT EXAMINATION

17 BY MR. THOMAS::

18 Q. Ms. Wright, how, if any, are you related to Mark
19 Watson?

20 A. He -- we used to date, but he, also, the father of -- I
21 got two girls by him.

22 Q. Okay. And during the period of time in '05 and '06,
23 were you living with Mr. Watson?

24 A. Yes, sir.

25 Q. Okay. And what was that address?

QUATICA WRIGHT DIRECT BY MR. THOMAS

- 1 A. [REDACTED]
- 2 Q. Okay. And that is the same address as far as what --
- 3 we were talking about search warrants earlier --
- 4 A. Yes, sir.
- 5 Q. -- that were executed?
- 6 A. Yes, sir.
- 7 Q. Were you present when the first warrant was executed in
- 8 '05?
- 9 A. When they said that --
- 10 Q. When they first came the first time and didn't find
- 11 anything?
- 12 A. I wasn't present, but I had just pulled up and I seen
- 13 all of the police. I kept going.
- 14 Q. All right. And did you know or see Detective Sheard?
- 15 A. I'm not sure -- I wasn't sure. I didn't go back to the
- 16 house until everybody was gone.
- 17 Q. Okay.
- 18 A. I'm not sure who he is.
- 19 Q. Okay. What was the demeanor of the officers, do you
- 20 remember?
- 21 A. No, sir.
- 22 Q. All right. And then the second time, you were present
- 23 in which they executed the search warrant in '06?
- 24 A. Yes, sir.
- 25 Q. And were you -- were you, actually, placed in handcuffs

QUATICA WRIGHT DIRECT BY MR. THOMAS

1 at that time?

2 A. Yes, sir. I was standing out.

3 Q. Okay. And do you know if Officer Sheard was there?

4 A. I don't know how he look, so I can't tell you.

5 Q. All right. What was the demeanor of the officers that
6 day?

7 A. They was -- they was rude, they was nasty. They tore
8 up my house.

9 Q. They tore your house apart?

10 A. Yes, sir.

11 Q. Was anything taken other than some money?

12 A. No, sir, just the money.

13 Q. No drugs were found?

14 A. No drug were found.

15 Q. Either time?

16 A. Neither time.

17 Q. Okay. And at -- in '06, when they executed the search
18 warrant, they took Mark to jail that day?

19 A. Yes, sir.

20 Q. All right.

21 MR. THOMAS: Your Honor, I have no further
22 questions.

23 MS. HARRIGAN: Very briefly, Your Honor.

24 May I approach the witness?

25 THE COURT: Yes, ma'am.

QUATICA WRIGHT CROSS BY MS. HARRIGAN

1 CROSS-EXAMINATION

2 BY MS. HARRIGAN::

3 Q. Ms. Wright, you testified that you were present in 2006
4 when the search warrant was --

5 THE DEFENDANT: 2007.

6 BY MS. HARRIGAN::

7 Q. Was executed, correct?

8 A. You said in 2000 when?

9 Q. You testified before 2006, correct?

10 A. 2006.

11 THE DEFENDANT: Seven.

12 MS. HARRIGAN: Your Honor, if the applicant could
13 stop talking, I'm trying to question the witness about this
14 issue.

15 THE WITNESS: I was there when they came and got
16 him.

17 BY MS. HARRIGAN::

18 Q. Okay.

19 A. When all the police came.

20 Q. I'm going to hand you a copy of what's been already
21 introduced as Applicant's No. 5. What's the date
22 there?

23 A. November the 14th, 2007.

24 Q. Okay.

25 MS. HARRIGAN: No further questions, Your Honor.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 THE COURT: Anything further, Mr. Thomas?

2 MR. THOMAS: Nothing, Your Honor.

3 THE COURT: Ms. Wright, you may step down. I
4 think this witness desires to be excused, is that correct?

5 THE WITNESS: So I can go?

6 THE COURT: Any reason to keep her?

7 MS. HARRIGAN: No objection.

8 THE COURT: You're free to go.

9 THE WITNESS: Thank you.

10 THE COURT: Anything further, Mr. Thomas?

11 MR. THOMAS: Your Honor, if it please the Court,
12 that's the applicant's case.

13 MS. HARRIGAN: Your Honor, the State would call
14 Cameron Littlejohn to the stand.

15 THE COURT: Come around Mr. Littlejohn.

16 THEREUPON,

17 CAMERON LITTLEJOHN,

18 after having been duly sworn, testified as follows:

19 THE COURT: Please take a seat, sir. Tell us your
20 full name and spell your last name for the record.

21 THE WITNESS: Cameron B. Littlejohn, Jr.,
22 L-I-T-T-L-E-J-O-H-N.

23 DIRECT EXAMINATION

24 BY MS. HARRIGAN::

25 Q. Good afternoon, Mr. Littlejohn.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

- 1 A. Good afternoon.
- 2 Q. How long have you been practicing law?
- 3 A. Since November 1975.
- 4 Q. What percentage of your practice is comprised of
5 criminal defense work?
- 6 A. Ninety-five percent at present. At various times, 100
7 percent.
- 8 Q. At the time you were representing Mr. Watson, what
9 percentage, around 95 still?
- 10 A. Probably 95, yes, ma'am.
- 11 Q. Have you ever prosecuted any cases?
- 12 A. I have, I was a prosecutor for 12 years.
- 13 Q. Were you retained in this case?
- 14 A. I was.
- 15 Q. You -- were you retained for these charges or can you
16 describe for the Court how you got involved with
17 Mr. Watson's case?
- 18 A. Originally, I was retained in June of 2006. Mr. Watson
19 had a number of different charges pending. And then
20 later on in 2007, I learned that he had been charged in
21 this particular incident.
- 22 Q. Then were you retained for these new charges?
- 23 A. Yes, ma'am.
- 24 Q. What ended up -- what was the ultimate result of those
25 June 2006 charges?

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 A. We went to trial on the incident offenses. Mr. Watson,
2 the record will reflect, was found guilty and as the
3 transcript will reflect, the State agree to dismiss the
4 remaining charges that were pending as of the date of
5 the guilty verdict.

6 Q. So after the guilty verdict, your representation of
7 Mr. Watson ceased, there were no remaining charges?

8 A. Correct.

9 Q. How many times did you meet with Mr. Watson prior to
10 trial?

11 A. I -- I couldn't tell you. We met several times in my
12 office. Then in preparation of trial, he was
13 incarcerated and I met with him at the detention
14 center. I believe he said three times, that sounds
15 fairly accurate at the detention center.

16 Q. Was he out on bond at one point?

17 A. He was, as I recall.

18 Q. Why was bond revoked?

19 A. I -- I can't recall exactly why it was revoked.

20 Q. But you recall meeting with him several times at your
21 office before he was incarcerated?

22 A. Yes.

23 Q. Did you file any Brady or Rule 5 motions in this case?

24 A. I'm sure I filed a Brady motion, standard discovery
25 motion.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 Q. Did you receive these discovery materials from the
2 State?

3 A. Yes, sir.

4 Q. Did you review these materials with Mr. Watson?

5 A. I did.

6 Q. Do you recall when you reviewed them with him?

7 A. Not exactly. I'm sure we went over them in the course
8 of preparing for the trial. There wasn't a whole lot
9 of discovery on this particular case because it wasn't
10 a real complex case, but I know we went over it and
11 talked about it at length.

12 Q. What was the discovery for this specific distribution
13 third charge?

14 A. Well, there were incident reports, the lab reports,
15 pictures of the photo lineup. There were pictures
16 taken from the video audiotape that was made by Officer
17 Gilliam. I think we were, also, furnished with the
18 actual copy of the video and audio.

19 MS. HARRIGAN: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 BY MS. HARRIGAN::

23 Q. When you discussed stills from the video -- do you
24 recognize what this document is?

25 A. I do.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 Q. And what is it?

2 A. These are stills that were taken from the video that
3 was made by Officer Gilliam at the time of the
4 purchase.

5 MS. HARRIGAN: Your Honor, the State would move to
6 introduce this as Defendant's Exhibit No. 1. I believe Mr.
7 Thomas has a copy.

8 MR. THOMAS: I have no objection.

9 THE COURT: Okay.

10 (Defendant's Exhibit No. 1 was admitted
11 into evidence.)

12 BY MS. HARRIGAN::

13 Q. Did you show these stills to your client?

14 A. I'm sure I did.

15 MS. HARRIGAN: Beg the Court's indulgence, Your
16 Honor.

17 BY MS. HARRIGAN::

18 Q. And Mr. Littlejohn, did you, also, have in your
19 discovery the photo lineup?

20 A. Yes, sir.

21 MS. HARRIGAN: Your Honor, may I approach?

22 THE COURT: Yes, ma'am.

23 BY MS. HARRIGAN::

24 Q. I'm going to hand you what's already been introduced
25 into evidence as Applicant's No. 6.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

- 1 A. Right.
- 2 Q. Is that the lineup in which your client was identified?
- 3 A. That's correct.
- 4 Q. I'm, also, going to hand you back again Defendant's
- 5 Exhibit 1. Do you see any similar facial
- 6 characteristics between those two pictures?
- 7 A. Yes.
- 8 Q. Can you describe what those are for the Court?
- 9 A. I don't know how to tell you, just --
- 10 Q. Does it appear to be the same person in those picture?
- 11 A. Yes.
- 12 Q. Did you explain that to your client?
- 13 A. At length.
- 14 Q. Okay. And you said you, also, had a copy of the video
- 15 surveillance?
- 16 A. Yes.
- 17 Q. Did you watch that with your client?
- 18 A. I'm sure we did.
- 19 Q. What was your client's version of facts that he gave
- 20 you? How did he explain that it appeared to be him in
- 21 the picture and him in the video?
- 22 A. Well, he, actually, didn't really give me a -- he just
- 23 said it wasn't him.
- 24 Q. Did you tell him that it appeared to you that it was
- 25 him in the pictures and him in the video?

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 A. Several times.

2 Q. Did you explain to him that a jury would likely, based
3 on visuals, think it was, also, him?

4 A. Yes.

5 Q. Did you discuss the elements of distribution of crack
6 third and what the State would be required to prove at
7 trial to Mr. Watson?

8 A. Yes, I'm sure I did.

9 Q. Did you discuss sentence ranges with him?

10 A. Definitely.

11 Q. Did you explain to him that there was a mandatory
12 minimum of 15 years?

13 A. Yes.

14 Q. Did you ever advise him of likely outcomes or success
15 at trial?

16 A. Yes.

17 Q. What were those?

18 A. Both. I told him that his success at trial was not
19 very good and that, in all likelihood, he would
20 possibly get a 25-year sentence or so based on the fact
21 that this was a third offense.

22 Q. And again, he denied that he was ever at the residence
23 or sold crack to Officer Gilliam?

24 A. Yes.

25 Q. Did you discuss possible defenses with Mr. Watson?

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

- 1 A. Yes.
- 2 Q. What were those?
- 3 A. Well, the identity was the primary defense. I mean, he
4 was saying that wasn't him, so that's what I based his
5 defense on.
- 6 Q. Did this defense center around that these rock
7 substances weren't really crack cocaine?
- 8 A. No.
- 9 Q. So you were never challenging that it was crack, just
10 it wasn't Mark that sold the crack, correct?
- 11 A. Exactly. I mean, they had an analysis that it was,
12 actually, crack cocaine. So that really wasn't -- to
13 me, that wasn't an issue or defense, I guess.
- 14 Q. Do you recall entering into plea negotiations with the
15 State on behalf of Mr. Watson?
- 16 A. I remember talking to Mr. Carson about that. I don't
17 recall specifically -- apparently, Mr. Watson remembers
18 a 12-year sentence being offered, which I don't
19 independently recall, but, in any event, it was
20 rejected by him.
- 21 Q. It was his decision to proceed to trial?
- 22 A. Correct.
- 23 Q. Referencing the lineup which has been introduced, I
24 believe Applicant's No. 6, did you attempt to challenge
25 the validity of the lineup before trial?

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 A. We asked for a Biggers hearing because I thought based
2 on an identity issue, you know, I was obligated to do
3 that, and, also, as a defense strategy to see if there
4 were any problems with the identification procedure
5 that was used by the Columbia Police Department. So we
6 did make that an issue. As to the lineup itself, it
7 was a pretty good lineup, actually.

8 Q. Did you discuss with your client the likelihood of
9 suppression of that lineup?

10 A. I'm sure we did at some point, yes.

11 Q. Did you inform him that it would likely be suppressed?

12 A. I told him based on the video, the identification by
13 the police officer, and the lineup that the chances of
14 his identification being suppressed were slim.

15 Q. Mr. Littlejohn, have you -- have you in your career as
16 a prosecutor and representing clients charged with drug
17 offenses or charge with offenses represented charged
18 with distribution third before?

19 A. Certainly.

20 Q. There's been an allegation raised that it was improper
21 that the undercover officer being used and that Gilliam
22 worked in another jurisdiction. Were you aware of
23 that?

24 A. I was.

25 Q. Okay. Based on your experience as a prosecutor and as

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 a defense attorney, do you see any problem or reason to
2 challenge the controlled buy based on Officer Gilliam
3 working for Batesburg-Leesville?

4 A. I don't see any reason at all. Drug cases are made all
5 the time by citizens, by convicted felons, by police
6 officers who are outside of their jurisdiction, police
7 officers that are inside their jurisdiction. It really
8 doesn't matter. As long as the prosecution is
9 agreeable to using someone to make a controlled
10 purchase, it doesn't matter really what their status
11 is.

12 Q. And who was the lead on this controlled buy, was it
13 Officer Gilliam or was it Officer Sheard -- or
14 Investigator Sheard?

15 A. I guess Sheard would have been the case officer.

16 Q. So you didn't see any reason to challenge his arrest or
17 any other parts of the case based on Gilliam working
18 for Batesburg-Leesville, not City of Columbia?

19 A. No.

20 Q. Do you have a copy of the transcript in front of you?

21 A. I do.

22 Q. If would you turn to Page 166, please. I'm going to
23 ask you about a few portions that were highlighted
24 during Mr. Watson's testimony.

25 A. All right.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 Q. If you would first look at Lines 2 through 8 and read
2 that to yourself, please.

3 A. All right. I've already read it.

4 Q. Do you find this portion of the State's closing to be
5 objectionable?

6 A. I could have objected to it. I mean, you can object to
7 anything. My standard is if I think I can win their
8 objection, then, you know, I'm more likely to make it.
9 But I didn't think in the context of what was said and
10 the context of a previous ruling by Judge Cooper where
11 I had objected to the police officers testifying about
12 the safety of the officers and all that, I didn't think
13 Judge Cooper would sustain that objection. It wasn't
14 as bad as some arguments I've seen. So no, I chose not
15 to. Plus, the other thing is that the whole issue was
16 identification. It was whether it was Mark or someone
17 else that made the sale. We were contending it wasn't
18 him and he wasn't a drug dealer, therefore, he wasn't a
19 breeder or whatever the term they used.

20 Q. So, really, this comment is irrelevant to your overall
21 defense strategy?

22 A. Yes.

23 Q. Do you have any strategic reasons for not objecting
24 during closing arguments?

25 A. Well, I -- in overall course of trying a case, any time

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 you object, if you're -- if you're not going to win the
2 objection, you know, the jury could get the sense
3 you're trying to hide something, you're trying to
4 prevent them from knowing something. In the case of a
5 closing argument, like I said, I hate to object unless
6 I think I have a winning objection because then, it
7 looks like I'm trying to prevent the jury from
8 knowing -- from having the benefit of what the
9 prosecution wants to say. So that's kind of my general
10 rule of thumb.

11 Q. If you would, also, look at little further down the
12 page to Line 20 to -- really, all the way through 14.
13 If you would read that briefly to yourself, Line 20 on
14 166 --

15 A. All right.

16 Q. -- to Line 14 on 167?

17 A. All right.

18 Q. Would your prior testimony in regards to Lines 2
19 through 8 be similar for Lines 20 through 14 on the
20 next page as to why you didn't object?

21 A. Yes.

22 Q. Regarding the allegation of all the sequestration of
23 witnesses, do you recall the order in which witnesses
24 testified in this case?

25 A. Officer Gilliam testified first and then Agent Sheard.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 Q. And Agent Sheard was the lead investigator or chief
2 officer on this case, correct?

3 A. Yes, he was the case officer.

4 Q. Based on your experience, was he entitled to stay in
5 the courtroom throughout the entire proceeding?

6 A. Yes.

7 Q. And again, Officer Gilliam testified first, correct?

8 A. Yes.

9 Q. So even if you made a sequestration motion, Officer
10 Sheard would have been able to stay through Officer
11 Gilliam's testimony, correct?

12 A. Correct.

13 Q. Then after both had testified, they would be able to
14 remain in the courtroom throughout the entire time,
15 correct?

16 A. Exactly.

17 Q. Do you think a sequestration motion would have done any
18 good in this case --

19 A. No.

20 Q. -- based on the order? Regarding the allegation that
21 the officer referred to the rocky substances, crack
22 cocaine before the chemist testified, do you find this
23 objectionable?

24 A. Technically, it was probably objectionable, but if I
25 kept objecting to them referring to it as crack

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 cocaine, then knowing at the end of their presentation
2 they were going to prove it was crack cocaine, I -- I
3 think I would have looked kind of ridiculous in front
4 of the jury.

5 Q. Again, your defense wasn't that this wasn't crack, it
6 was that Mark didn't sell the crack, correct?

7 A. Exactly.

8 MS. HARRIGAN: Beg the Court's indulgence, Your
9 Honor.

10 May I approach, Your Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. HARRIGAN::

13 Q. I'm handing you Plaintiff's Exhibit No. 1, which is the
14 chain of custody?

15 A. Okay.

16 Q. Do you know when Mr. Watson was arrested?

17 A. Let's see, I believe it was sometime in 2007,
18 November 7th, I believe. That's according to Mr.
19 Watson's testimony.

20 Q. And do you recall when the incident date was?

21 A. That would have been June 12th, 2006.

22 Q. And Page 2 of Plaintiff's No. 1, does it reference when
23 the drugs were received into evidence? If you will
24 look at the incident date line.

25 A. Yes, says incident date was 06/12/06 and then it was

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 received from the locker by Joanne Lewis on 06/13/06.

2 Q. Do you recall if Joanne Lewis testified at trial?

3 A. She did not.

4 Q. And what was the reason?

5 A. She had passed away, according to the testimony.

6 Q. And do you --

7 A. -- from Ms. Martin.

8 Q. Do you see the top portion of the documents -- I think
9 mine is a different angle than yours, logged into the
10 drug book by Donna Martin on 06/13/06?

11 A. Yes.

12 Q. And Donna Martin testified at trial, correct?

13 A. Correct.

14 Q. She testified -- do you recall what she testified in
15 regards to when she received the drugs?

16 A. Apparently, looking at the transcript, she testified
17 that she received them in July of 2006. But I think
18 she must have misspoken as to the month and it wasn't
19 corrected.

20 Q. Did she receive them directly from Ms. Lewis?

21 A. That's my understanding. Yes, that's what I remember
22 from her testimony.

23 Q. If you will turn to Page 2 of Applicant's Exhibit No.

24 one. Where does it appear the drugs went after leaving
25 the evidence locker?

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

- 1 A. Appears it went to the lab on 06/22/06.
- 2 Q. And how long did it appear to stay in the lab until?
- 3 A. Eight days.
- 4 Q. Until the 30th?
- 5 A. Correct.
- 6 Q. And then if you'll turn to the last page, which is the
- 7 City of Columbia Police Department laboratory analysis
- 8 report.
- 9 A. Right.
- 10 Q. What is the date on there?
- 11 A. July 17th, 2006.
- 12 Q. Does it say on here what date the drugs were tested?
- 13 A. Let me look. I don't think so, no.
- 14 Q. Do you see an -- based on your experience, both as a
- 15 prosecutor and as the defense attorney, are reports,
- 16 analysis reports of drug tests sometimes printed after
- 17 the drugs have been analyzed and tested and returned
- 18 back to evidence?
- 19 A. Yes.
- 20 Q. Do you --
- 21 A. I don't find that unusual at all.
- 22 Q. Do you see any reason to challenge chain of custody
- 23 based on this?
- 24 A. No.
- 25 Q. Based on the overall chain of custody and the testimony

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 you've heard today and your experience of this case,
2 did you see any reason to challenge chain of custody in
3 this case?

4 A. No. I mean, it used to be -- the State had to account
5 for every minute of possession of a contraband item,
6 but I think the law had changed. In this case, the
7 record well reflects that the drug were sealed in an
8 envelope, they were turned into the evidence custodian.
9 They weren't unsealed until the chemist got it. She
10 resealed it and that's the state it was brought to
11 Court in by the chemist.

12 Q. Okay. Thank you. Turning to the final allegation that
13 is made by Mr. Watson regarding the indictment, if
14 you'll turn in your transcript or the record of appeal
15 to Page 202, please.

16 A. All right.

17 Q. If you'll read the large capitalized font and tell the
18 Court what offense that says there?

19 A. It says distribution of crack cocaine third offense.

20 Q. Based on this indictment, were you aware of what your
21 client was being charged with?

22 A. Yes. And it was, in fact, a third offense.

23 Q. Did you explain to your client he was being charged
24 with distribution of crack cocaine third offense?

25 A. Yes, definitely.

CAMERON LITTLEJOHN DIRECT BY MS. HARRIGAN

1 Q. He was also on notice that he was being charged with
2 that crime, correct?

3 A. Yes.

4 Q. The final portion of the paragraph that says crack
5 cocaine being such not a first offense, do you think
6 you had a valid reason to move to quash the indictment
7 based on a missing and second offense?

8 A. No, not at all.

9 Q. If you had made such a motion, what do you think the
10 resolve would have been?

11 A. I think it would have been denied.

12 Q. And had you made such a motion, could the State have
13 reindicted Mr. Watson or directly presented an
14 indictment --

15 A. If the indictment --

16 Q. -- or move to amend?

17 A. If the indictment would have been quashed, yes.

18 MS. HARRIGAN: Beg the Court's indulgence, Your
19 Honor.

20 THE WITNESS: Assuming the Court didn't dismiss it
21 with prejudice, which I couldn't see the Court doing that.

22 BY MS. HARRIGAN::

23 Q. Regarding the testimony that Investigator Sheard had a
24 longstanding view or problem with your client, have you
25 ever heard any of that before coming into court today?

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 A. Well, I was aware that he had been the subject of a
2 search warrant earlier. And that was, I think, part of
3 some of the other cases. I didn't really know that
4 Jack Sheard was one of the main officers involved. But
5 I don't think I really discussed that with Mark because
6 it didn't appear to be germane to this particular
7 situation.

8 Q. And again your client does have two -- your client at
9 the time did have two prior convictions for drug
10 offenses, correct?

11 A. Correct.

12 Q. And to the best of your recollection, the Norman Street
13 area was known for drug trafficking and drug sales,
14 correct?

15 A. According to what the police officer said, I don't
16 know.

17 MS. HARRIGAN: No further questions, Your Honor.

18 THE COURT: All right. Let's take a little short
19 break. I need to make a phone call and arrange something
20 else, be about 10 minutes or so.

21 MR. THOMAS: All right. Thank you, Your Honor.

22 (Whereupon, a short recess was held.)

23 THE COURT: Everybody ready?

24 MS. HARRIGAN: Yes, Your Honor.

25 THE COURT: All right.

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 Mr. Thomas.

2 MR. THOMAS: All right, Your Honor, may it please
3 the Court.

4 CROSS-EXAMINATION

5 BY MR. THOMAS::

6 Q. Counsel, I think you testified that this case pretty
7 much was always going to be a trial?

8 A. Yes, according to Mark.

9 Q. According to Mark?

10 A. Right.

11 Q. And so it was -- Mark also wanted to go to trial, is
12 that right?

13 A. Yes.

14 Q. Did he indicate to you the reason he wanted to take it
15 to trial was that he was not Junior Black?

16 A. Pretty much, yes, basically, and it wasn't him.

17 Q. And that was the whole thing, that I'm not Junior
18 Black?

19 A. Well, his whole thing was it wasn't Mark Watson.

20 Q. It wasn't Mark Watson. Okay. Now, were you able to
21 determine or get any information in regards to any kind
22 of animosity between he and Investigator Sheard?

23 A. I don't recall that coming up during the conversation.

24 I mean --

25 Q. Okay.

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 A. -- he may have mentioned it, but I didn't -- quite
2 frankly, I didn't see that as an issue.

3 Q. And then --

4 A. Once the police suspect you as being a drug dealer or
5 other criminal, they're going to be prejudice against
6 you. I mean, that's just the way the game is played.

7 Q. And as part of motion at the Biggers hearing, was
8 there -- so that didn't really come into play at the
9 Biggers hearing in regards to there was a particularly
10 suggestive lineup?

11 A. I mean, the issue of whether there was a lineup or not
12 came into play, yes.

13 Q. But I think the basis for contesting the lineup was
14 purely that they had just misidentified -- they were
15 unable to identify Mark Watson?

16 A. Well, the basis for the Biggers motion was that Gilliam
17 didn't have the proper circumstances in order to make a
18 reliable identification, that's what Biggers is all
19 about.

20 Q. All right.

21 A. And so based on the fact that this was an identity
22 defense, I felt it incumbent to make a Biggers motion
23 and if nothing else -- with the officers what the
24 circumstances were, all of the circumstances behind the
25 identification.

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 Q. Because really what Gilliam testifies to is that he saw
2 him on the porch one time, saw this guy that he thought
3 was Junior Black -- or was identified as Junior Black.
4 And then the only other time was that he had gone --
5 the second time he had gone to purchase drugs from
6 someone else who didn't show up. And this unidentified
7 female says well, I can call Junior Black and he can
8 come sell you drugs?

9 A. Kind of a nutshell kind of way, yes, that's, basically,
10 what it was, yes.

11 Q. Okay.

12 A. Of course, he had the video and the audio.

13 Q. Right. And was it your argument that there wasn't
14 sufficient lighting or time or place to be able to
15 identify this person as Mark Watson?

16 A. Well, that was part of the cross-examination of
17 Gilliam, that he didn't have the proper opportunity,
18 yes, sir.

19 Q. And you didn't see any reason in sequestration of the
20 witnesses?

21 A. Really wouldn't have done any good.

22 Q. And Mark had asked me, do you think there was any
23 influence by the statement the Court made, Well, if he
24 can identify the defendant, then it doesn't matter in
25 regards to the Biggers hearing? Do you think that had

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 any play as far as Gilliam then saying, oh, okay, I
2 will act upon that and I'm going to just say this is
3 Mark Watson, he's here in the courtroom?

4 A. What statement of the Court are you referring to?

5 Q. I think in the initial -- in the initial -- all right.
6 If you look at Page 7 -- and this is -- have you got a
7 copy of the transcript?

8 A. I do.

9 Q. Page 7 on Line 13, the Court says -- 13 through, I
10 think, 18, But it appears Officer Gilliam knew or was
11 acquainted with the defendant, then the facts of the
12 lineup are less significant. It may not even be
13 significant at all. I mean, we don't have to do a
14 Biggers hearing if the witness knows the defendant.

15 A. Correct.

16 Q. So do you feel like that had an impact upon Gilliam's
17 testimony at the Biggers hearing and him say, well, I
18 can get around this because I know this is Mark Watson?

19 A. No, I think Judge Cooper was just stating what the
20 standard for the Court allow identification testimony
21 in. In other words, he was saying instead of a chance
22 encounter, you might have, say, during an armed robbery
23 or something, if you knew the individual for a long
24 time and were acquainted with him, the identification
25 question is -- you no longer need a Biggers hearing.

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

- 1 Q. Right. But the facts were that Gilliam didn't know
2 Mark Watson. I mean, the only way he, allegedly, was
3 able to identify him was through the photo lineup?
- 4 A. And through the observations, yes.
- 5 Q. Through his observations and after in the photo
6 lineup --
- 7 A. True.
- 8 Q. -- which was prepared by Sheard?
- 9 A. Correct.
- 10 Q. Okay. But there was no -- there was no basis for --
11 for objection based upon any -- any allegations that
12 Sheard had some reason to go after Mark Watson?
- 13 A. Quite frankly, I didn't see any. Matter of fact, I was
14 kind of surprised that they did a photo lineup because,
15 normally, where a police officer is your identification
16 witness, they don't do that.
- 17 Q. Yeah.
- 18 A. So he kind of went an extra step in doing the photo
19 lineup.
- 20 Q. Let me ask you about Gilliam. I guess this is probably
21 a good time to do that. Did you have any concern at
22 all about him being from Batesburg-Leesville and him
23 working the Lexington County in regards to his ability
24 or jurisdiction to be working with the City of Columbia
25 in Richland County?

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 A. Well, I had a concern that it's a lot worse to have a
2 police officer to identify your client as opposed to a
3 layperson.

4 Q. Okay.

5 A. But from the standpoint of his position, no. He could
6 have been a convicted drug dealer and still made a
7 controlled buy under the way the rules operate.

8 Q. Okay. Now, the comments made in closing by the
9 solicitor and I think -- and I won't go through the
10 pages again because we've done that --

11 A. Right.

12 Q. Being a breeder, they live to make our community
13 better, they're the professionals, you didn't see any
14 basis to make an objection to those, those comments?

15 A. Mr. Thomas, I thought it was kind of close, but by the
16 time the words are out, it's kind of hard to -- you
17 know, it's like toothpaste, once it comes out, you
18 can't get it back in. And if I objected, I really
19 don't think Judge Cooper would have sustained it. And
20 then again, it was an issue of identification. It
21 wasn't an issue of whether Mark was a drug dealer or
22 not, it was an issue of identification, whether it was
23 him or not.

24 Q. And you didn't see it being significant enough to
25 preserve those issues for appeal?

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

- 1 A. I really didn't, no.
- 2 Q. What do you think about the fact that they talked about
3 Junior Black being in this house of -- for lack of
4 better words, a drug den, you know, everybody is using
5 drugs? Did you feel like or think that was a possible
6 indication of any kind of prior bad acts?
- 7 A. No, because -- well, I don't quite understand your
8 question. Because the hour he was in there and he was
9 waiting for the drug dealer he had targeted.
- 10 Q. Right. But they say on two different occasions. You
11 know, on the first occasion, he says -- Emmett says he
12 goes not to make a drug buy from Junior Black, he goes
13 to make a drug buy from someone else --
- 14 A. Correct.
- 15 Q. -- and he sees somebody who, I guess -- or comes to his
16 attention as Junior Black. And then he later testifies
17 that this is a drug house, that he's in there -- and
18 would include Junior Black, they're in there using
19 drugs --
- 20 A. Uh-huh.
- 21 Q. -- you know, setting the stage for Junior Black coming
22 back the second time. You know, in other words, he's
23 more culpable because he's in the drug den?
- 24 A. No. I mean, I didn't see that as an overriding concern
25 to the question of identity, which we had put into

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 issue. And I think the State was able to prove the
2 circumstances under whether Gilliam had the opportunity
3 to observe Mark and identify him. So I don't think I
4 could have kept that out, no.

5 Q. And you testified about them referring to the substance
6 that they had taken as being crack cocaine and, you
7 know, five rocks of crack cocaine?

8 A. Right.

9 Q. You think that was objectionable prior to the drug
10 analysis coming in?

11 A. Technically, it could have been, but, you know,
12 ultimately, they were going to prove that it was
13 cocaine base, which is crack cocaine. So, I mean, I
14 don't know what the difference would have been. If I
15 had made technical objections and then it came in, I'd
16 look kind of -- kind of bad in front of the jury.

17 Q. Now, you've seen the chain of custody?

18 A. Yes.

19 Q. You think there's any unusual about that, specifically,
20 the second page where it's just signatures, from and
21 to?

22 A. Let me see, Mr. Thomas. I didn't really look at that
23 page.

24 Q. That's Exhibit 1.

25 MR. THOMAS: Your Honor, I can just use this copy.

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 THE COURT: All right.

2 MR. THOMAS: If it please the Court.

3 THE WITNESS: Oh, here it is, sorry.

4 BY MR. THOMAS::

5 Q. I mean, I looked at it and I just thought that it was
6 odd coming from the city police department, a little
7 bit surprised that it wasn't more thorough than this.
8 Because on the face, it doesn't provide you any
9 information at all.

10 A. Yeah. It, also, appears it picks up after -- it picks
11 up at the point that Ms. Hendricks received a -- the
12 package.

13 Q. Right.

14 A. Instead of what happened before then.

15 Q. Right. And in all fairness, there are some notations
16 on the first page that says case for general sessions?

17 A. Right.

18 Q. But it's confusing to me that they talk about Donna
19 Martin and they talk about Ms. Lewis, who has passed
20 away, but they've got both people on here saying that
21 it was logged in by Donna Martin. Of course, it wasn't
22 logged in until 06/13 -- well, that's the day after.
23 The incident date is 06/12?

24 A. Yeah. And I believe the officers testified they
25 deposited -- they put it in the slot for the evidence

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 --

2 Q. Right --

3 A. -- safe before that.

4 Q. But my concern with this document is it really
5 doesn't -- you know, it doesn't say anything. I mean,
6 it doesn't say, you know, these are five rocks of crack
7 cocaine with a certain weight. It doesn't give you any
8 case number. It doesn't -- I mean, it attempts to, I
9 guess, on the first page, but on this, which is,
10 actually, I think, really the chain, it doesn't say --
11 I mean, it could be anything and it could be somebody
12 other than Mark Watson?

13 A. Well, true, if they didn't have the control numbers up
14 there.

15 Q. Right.

16 A. They've got a control number. And I guess that's
17 their -- the way they keep track of this particular
18 exhibit being the one referred to on this page.

19 Q. Yeah. And I understand the case law because I've
20 looked at the case of State vs. Hatcher, when it says
21 that, you know, you don't have to account for every
22 second, you know, with a signed affidavit as to where
23 it's going from person to person. But it just appeared
24 to me that this is a little loose.

25 A. Mr. Thomas, it may be, but from the standpoint of what

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 was presented at trial, and that's what we had to be
2 concerned with --

3 Q. Right.

4 A. -- they had a sealed envelope that wasn't unsealed
5 until the chemist got it and then she resealed it and
6 it was brought to Court in a sealed condition.

7 Q. Right.

8 A. So I think we could have played with the chain of
9 custody on cross-examination, but I just don't think it
10 would have gotten us anywhere.

11 Q. And I understand that even though Ms. Lewis had passed
12 away prior that you could have Ms. Martin, who stepped
13 in, but I was just wondering that, you know, with the
14 circumstances of her passing and the fact that this
15 really not being descriptive at all may have given you
16 an opportunity to be more susceptible on some sort of
17 suppression?

18 A. I looked over this and I didn't see any. I mean, I
19 just didn't see pursuing this line of questioning.

20 Q. Okay. And do you feel like -- I'm sure that you're
21 familiar with Rule 6 of the criminal procedure. Did
22 you see anything in here that would have given you
23 concern about meeting the requirements of Rule 6?

24 A. No, not really.

25 Q. Okay. And as far as this laboratory analysis report,

CAMERON LITTLEJOHN CROSS BY MR. THOMAS.

1 does it have to be notarized? Does this have to be a
2 sworn affidavit pursuant to the rule?

3 A. Mr. Thomas, I don't have the rule in front of me. If
4 that's what the rules requires, then that's what it
5 requires.

6 MR. THOMAS: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. THOMAS::

9 Q. I've got a copy of it there.

10 A. Okay. I see the rule.

11 Q. Where it says affidavit?

12 A. Uh-huh.

13 Q. Okay.

14 A. Correct me if I'm wrong, but I was -- I was thinking
15 this ruled applied if they were seeking to introduce
16 the evidence without proving the chain of custody as
17 long as they had the affidavits and the persons who
18 were in the chain of custody.

19 Q. Okay. Doesn't it still require --

20 A. But we had the witnesses in court.

21 Q. Okay. Did you have a -- were you provided a copy of
22 the chain prior to the hearing?

23 A. Mr. Thomas, I'm sure I was. I don't recall
24 specifically.

25 MR. THOMAS: Your Honor, may I approach?

CAMERON LITTLEJOHN CROSS BY MR. THOMAS

1 THE COURT: Yes, sir.

2 BY MR. THOMAS::

3 Q. Counsel, I received this from your office in our
4 request for a copy of your file, is that the discovery
5 checklist that you received?

6 A. Apparently so.

7 Q. And it shows that you had a checkmark beside the drug
8 analysis?

9 A. Right.

10 Q. And is there a checkmark beside the chain of custody?

11 A. There's not.

12 Q. Do you know whether or not you received the chain of
13 custody prior to trial?

14 A. That's what I said, I don't remember whether I did or
15 not.

16 Q. And that came out of your file that was provided to us?

17 A. I mean, it looks like a document that would have been
18 in my file, yes.

19 MR. THOMAS: Your Honor, we'd like to move this as
20 Applicant's 8.

21 MS. HARRIGAN: No objection, Your Honor.

22 THE COURT: Okay.

23 (Plaintiff's Exhibit No. 8 was admitted
24 into evidence.)

25 BY MR. THOMAS::

CAMERON LITTLEJOHN REDIRECT BY MS. HARRIGAN

1 Q. In regards to the indictment, you didn't see any defect
2 in the indictment --

3 A. I really didn't. And even if I did, they could have
4 reindicted him.

5 Q. Okay.

6 MR. THOMAS: Your Honor, beg the Court's
7 indulgence.

8 THE COURT: Yes, sir.

9 BY MR. THOMAS::

10 Q. Counselor, attached to the chain of custody is the
11 laboratory analysis report?

12 A. Correct.

13 Q. And it's dated July 17th?

14 A. That's right.

15 Q. Now, that date really doesn't correspond -- if you go
16 to Page 2 of this document, it doesn't correspond with
17 any of those dates on the in and out, does it?

18 A. No.

19 Q. So you would just have to assume that this report was
20 written after the drugs were returned?

21 A. Yes.

22 Q. Okay.

23 A. If it had been the other way around, you might have had
24 an issue, but.

25 Q. All right. Now -- and you did not object to the

CAMERON LITTLEJOHN REDIRECT BY MS. HARRIGAN

1 introduction of the drugs into evidence?

2 A. No.

3 MR. THOMAS: Your Honor, I have no further
4 questions.

5 MS. HARRIGAN: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. HARRIGAN::

8 Q. Mr. Littlejohn, if you'll look at Applicant's Exhibit
9 No. 1.

10 MS. HARRIGAN: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MS. HARRIGAN::

13 Q. Does it appear that Pages 2 and 3 are part of the chain
14 of custody, 2 starting with cases for general sessions
15 and three starting with Columbia Police Department?

16 A. That's the way I would look at it, yes.

17 Q. If you will turn to Page 4, which says City of Columbia
18 Police Department laboratory analysis report, this
19 document isn't part of the chain of custody, correct?

20 A. No, this really doesn't have anything to do with chain
21 of custody.

22 Q. It just got stuck in the back of the packet from the
23 solicitor, it would appear, correct?

24 A. That's the way it would appear, right.

25 Q. And Rule 6(b) of criminal procedure, as you pointed

CAMERON LITTLEJOHN REDIRECT BY MS. HARRIGAN

1 out, deals with when you're trying to introduce a part
2 of evidence that you don't have people testifying to
3 chain of custody, correct?

4 A. That's my understanding.

5 Q. And Page No. 4 that we just discussed in Applicant's
6 Exhibit No. 1, the lab analysis, that's not part of the
7 chain of custody, correct?

8 A. No, I wouldn't --

9 Q. And --

10 A. It doesn't have a begin and end date, so.

11 Q. And Lab Analyst Hendricks came and testified at trial,
12 correct?

13 A. Correct, under oath.

14 MS. HARRIGAN: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MS. HARRIGAN::

17 Q. I'm handing you Plaintiff's Exhibit No. 8, which is the
18 discovery checklist.

19 A. Right.

20 Q. Are those common that you receive those from the
21 solicitor's office when you're getting discovery?

22 A. Yes.

23 Q. Does discovery often come in multiple batches?

24 A. Very well can, yes.

25 Q. Do you know if that's the only discovery checklist you

CAMERON LITTLEJOHN REDIRECT BY MS. HARRIGAN

1 ever received from the solicitor's office in this case?

2 A. I don't remember. I can't tell you.

3 Q. Is it possible that you could have received another
4 discovery checklist and received the chain of custody
5 in a different batch of discovery?

6 A. Yes, could have happened.

7 Q. And again, based on your review of the chain of custody
8 in comparison with the testimony provided at trial, you
9 didn't see any reason to challenge chain of custody of
10 the crack cocaine?

11 A. Based on the testimony that was presented, no.

12 Q. And if you had made such a challenge, do you think it
13 would have been successful?

14 A. No.

15 MS. HARRIGAN: No further questions, Your Honor.

16 THE COURT: Anything else?

17 MR. THOMAS: Just one or two.

18 THE COURT: All right.

19 RE CROSS-EXAMINATION

20 BY MR. THOMAS::

21 Q. Counselor, if I told you that, you know, we requested
22 your file and that was the only chain -- or the only
23 discovery checklist we received, would you know any
24 different than that? I mean, would you be able to tell
25 us differently?

1 A. No. I mean, I told you before I don't recall having
2 the chain of custody.

3 Q. Okay. And on that document, it indicates the analysis
4 report, but it doesn't indicate that the chain was
5 given to you?

6 A. On Exhibit No. 8, Plaintiff's Exhibit No. 8, that's
7 correct.

8 MR. THOMAS: Thank you, Your Honor.

9 THE COURT: Anything further of this witness?

10 MS. HARRIGAN: No, Your Honor. And the State has
11 no additional witnesses to call.

12 THE COURT: All right. You may step down, Mr.
13 Littlejohn.

14 THE WITNESS: Am I excused, Your Honor? Please.

15 THE COURT: I will take it under advisement.

16 You can leave.

17

18 END OF PROCEEDINGS

19

20

21

22

23

24

25

1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Mark Watson Vs. State of SC,
5 Case No. 2012-CP-40-1542, at the Richland County Courthouse,
6 July 17, 2014.

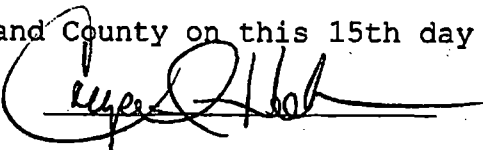
7 I FURTHER CERTIFY that the foregoing pages 1
8 through 97 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 15th day of June, 2013.

15

16


Crystal Holmes, Official Court Reporter

17

18

19

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21

22

23

24

25



Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

The State of South Carolina



SOLICITOR'S OFFICE
Fifth Judicial Circuit

Daniel R. Goldberg
Deputy Solicitor

Brett Perry
Deputy Solicitor

October 22, 2013

Via Facsimile Transmittal (803) 781-4226

Tommy A. Thomas, Esquire
Attorney and Counselor at Law
Post Office Box 88
Irmo, South Carolina 29063

RE: Mark Watson v. State of South Carolina
Docket No.: 2012-CP-40-1542
Indictment No.: 2007-GS-40-12278

Dear Mr. Thomas:

Pursuant to your written request as well as my telephone conversation with your office, please find a copy of the chain of custody (4 pages) regarding the above-referenced indictment. I apologize for the delay in responding to your request.

If you have any questions regarding the same, please feel free to contact our office.

With kindest regards,

Arlene Anderson
Paralegal to Deputy Solicitor Daniel Goldberg

:aja

Enclosure

****Logged in Drug Book by Donna Martin on 06-13-06****

CASES FOR GENERAL SESSIONS COURT

BC 64978

CASE AGAINST: Mark Watson Control No. 18898CASE NUMBER: 06-16953TYPE OF CRIME: Dist. CrackOFFENSE NUMBER: L06-149TO LAB: JoAnn 6/22/06 FROM LAB: JoAnn 6/30/06INCIDENT DATE: 06-12-06 (rec'd 06-13-06 f/locker by JoAnn Lewis)OFFICER: J. Sheard #11892

DISPOSITION OF EVIDENCE: _____

EVIDENCE RECEIVED: quantity of yellow/white rock

FORM 8200 REV 8-01

COLUMBIA POLICE DEPARTMENT

FROM: [Signature] DATE: 6/22/06TO: M. Andrews DATE: 6/22/06FROM: Melissa Andrews DATE: 6/30/06TO: [Signature] DATE: 6/30/06FROM: [Signature] DATE: 7-8-07TO: Melissa Andrews DATE: 7-8-07

FROM: DATE:

TO: DATE:

FROM: DATE:

TO: DATE:

FROM: DATE:

TO: DATE:

FROM: DATE:

TO: DATE:

FROM: DATE:

TO: DATE:

FROM: DATE:

TO: DATE:



"The Positive Difference"

City of Columbia Police Department

H. Dean Crisp
Chief of Police

Date: 7/17/2006

Investigator J. A. Sheard
Columbia Police Department
1 Justice Square
Columbia SC. 29201

LABORATORY ANALYSIS REPORT

Lab Number: L06-149

Case Number: 06-16953

Incident Date: 06/12/2006

Subject: Watson, Mark A.

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L06-149

Item 1: One (1) ziploc plastic bag containing rock substance.

Results:

Cocaine base (Crack) found

1.23 gram(s)

C-II

Handwritten signature of Melissa B. Hendricks over a horizontal line.

Melissa B. Hendricks

Chemical Analyst

Handwritten signature "July 17, 2006" over a horizontal line.

Date



COLUMBIA POLICE
SCO4001 00

INCIDENT REPORT

INVESTIGATION ONLY

0, 6 - 1, 6, 9, 5, 3

INCIDENT NO. 317

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
Distribution of Crack Cocaine		☒ YES ☐ NO	☐ YES ☐ NO	Residence		☐ Individual ☐ Business ☐ Financial Inst. ☒ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
Distribution of Crack Cocaine within a 1/2 mile of a Park		☒ YES ☐ NO	☐ YES ☐ NO	Residence		
3. INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)		ZIP CODE			WEAPON TYPE	
INCIDENT DATE 12/06/1827		29203				
DISPATCH DATE/TIME 24 HR. CLOCK		LOCATION NO.				
DISP. DATE		DISP. TIME			TIME ARRIVED	
DISP. DATE		DISP. TIME			DEPART TIME	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
J. A. Sheard		ST		J	SOU	W
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
1 Justice Square		Columbia		SC	29201	212
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX
City of Columbia				J	SOU	
HEIGHT		WEIGHT		HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.
1 Justice Square		Columbia		SC	29201	212
VISIBLE INJURY (VICT. 1) ☐ YES NO ☒ EXPLAIN-		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES NO ☒				
VICTIM (NO. 1) USING: ALCOHOL ☐ YES NO ☒ UNK ☐		DRUGS ☐ YES NO ☒ UNK ☐ TYPE				
TWO-MAN VEH. ☐		ONE-MAN VEH. ☐		DETECTIVE/SPL. ASMT. ☐ OTHER ☐		
ALONE ☐		ASSISTED ☐				
J-This Jurisdiction. S-State. O-Out of State. U-Unknown.						
SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE
See investigative page				B	M	21
RUNAWAY		DATE OF BIRTH				
WANTED		HEIGHT				
WARRANT		WEIGHT				
ARREST		HAIR				
EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
SUBJECT (NO. 1) USING: ALCOHOL ☐ YES NO ☒ UNK ☐		ARRESTED NEAR OFFENSE SCENE ☐ YES NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
SUMMONS		DRUGS: ☐ YES NO ☐ UNK ☒ TYPE:		TOTAL # ARRESTED		
DAY OF THE WEEK		HOW REPORTED		A= OFFICER DISPATCHED ON CALL		
S M T W T F S UNK		A B C D E F		D= COMPLAINT WRITTEN IN		
1 2 3 4 5 6 7 8				B= REPORT TAKEN BY PHONE		
				E= OFFICER INITIATED		
				C= COMPLAINANT WALKED IN		
				F= OTHER		
				DIFF. FACTOR		
				A= RESISTANCE/HOSTILITY		
				B= WEAPONS		
				C= UNFOUNDED CALLS		
				D= MENTAL SUBJECT		
				E= COMPLAINANT FRE-QUENTLY INTOXICATED		
				F= DOMESTIC		
				N= NORMAL		
The suspect did sell to an undercover police officer working for the Columbia Police Department's Organized Crime / Narcotics Unit, a quantity of yellowish white rock-like substance which was presented and sold as crack cocaine. This exchange was for \$100 in recorded confidential funds and did occur within a 1/2 mile of Katy St. Park located at 4900 Katy St.						
PLAINTIFF'S EXHIBIT 2						
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
TYPE (GROUP)		Crack Cocaine				TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED		1 GM				
SUBJECT IDENTIFIED		SUBJECT LOCATED		S.F. AI		
☒ YES ☐ NO		☐ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18
				☐ UNFOUNDED		☐ EX-CLEAR UNDER 18
						☐ ARRESTED 18 AND OVER
						☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
J. A. Sheard		06-12-06		11892		
FOLLOW-UP INVESTIGATION		☐ YES ☐ NO		OFFICER		

INVESTIGATIVE REPORT

0 6 - 1 6 9 5 3

INQ. ENTD

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 3 PAGES

ORIGINAL INCIDENT TYPE

Distribution of Crack Cocaine
Distribution of Crack Cocaine within a 1/2 mile of a Park

ORIGINAL INCIDENT

DATE 06-12-06
TIME 1827
LOCATION NO 112

ORIGINAL INCIDENT LOCATION

NAME OF COMPLAINANT

J. A. Sheard

SUSPECTS NAME

Vatson, Mark, A. aka: "Junior Black"

SUSPECTS ADDRESS

RACE	SEX	DATE OF BIRTH	AGE
B	M		21
HEIGHT	WEIGHT	HAIR	EYES
509	150	Blk	Bm

On 06-12-06, undercover police officer [redacted] Lexington County Multi-Agency Narcotics Enforcement Team was assisting the Columbia Police Department with an ongoing drug problem at [redacted] Gilliam had made a crack cocaine buy from this location on 06-08-06 and while conducting this transaction, Mark A. WATSON aka: JUNIOR BLACK, was there and had been pointed out as another crack cocaine dealer. Gilliam was told by Inv. J. A. Sheard that he was to attempt to buy crack cocaine from Emanuel SHORTEN, the person he purchased from on 06-08-06 at [redacted] Norman St., or anyone else that would be willing to sell to him if SHORTEN was not available.

Gilliam arrived at [redacted] Norman St. and was invited into the residence. Once inside, the people inside the residence were told that Gilliam was waiting for SHORTEN to bring him crack cocaine. After a long period of time without getting any drugs, an unidentified black male asked Gilliam if he remembered that "dude" from the other day (referring to WATSON) and Gilliam acknowledged that he did.

Shortly after this, an unidentified black male got up from the kitchen table and left the house. Within a few minutes, WATSON and the unidentified black male came into the residence. Gilliam then asked WATSON if he had a "yard" (street slang for \$100 worth of crack cocaine) and WATSON said yes.

Gilliam then asked for a double-up (street slang for twice the amount) and WATSON then took back the five rocks and said he didn't have it. The unidentified black female convinced Gilliam that WATSON'S crack cocaine was good and that he could make money off of it. Gilliam then agreed to buy the crack, which WATSON then placed the five pieces back into Gilliam's hand. [redacted] recorded confidential funds, bearing serial numbers CE02016634D, EA26120342F, EA46923338E, EB21334736B, and EC19547095A. This money had earlier been documented by Sheard and provided to Gilliam.

After the transaction was completed, Gilliam left the area and met with Sheard, J. P. Williams, E. Kirkland (LEXMANET), and C. D. Marshall who were providing surveillance from a distance. Gilliam then gave the objects that had been presented and sold as crack cocaine to Sheard. The objects did field test positive as crack cocaine and had an approximate weight of 1.25 grams.

Gilliam was then debriefed with the following information given: Gilliam described WATSON as being a black male approximately 23 years old, about 5' 6" 160 lbs., possibly living in this neighborhood, and going by the nickname JUNIOR BLACK.

The crack cocaine was placed into the evidence locker in the property room at the Columbia Police Department.

SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☐ YES ☐ NO	S.F. AI	☒ ACTIVE ☐ ADM.CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
			☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER

SON FOR EXCEPTIONAL CLEARANCE ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ EXTRADITION DENIED ☐ VICTIM DECLINES COOPERATION ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S) J. A. Sheard	DATE 06-12-06	UNIT NUMBER 11892	APPROVING OFFICER	DATE	UNIT NUMBER
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO			OFFICER		

COLUMBIA POLICE
CO400100

INVESTIGATIVE REPORT

0 6 - 1 6 9 5 3

NO. 319

☒ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 OF 3 PAGES

ORIGINAL INCIDENT TYPE

Distribution of Crack Cocaine

Distribution of Crack Cocaine within a 1/2 mile of a Park

ORIGINAL INCIDENT

DATE 06-12-06

TIME 1827

LOCATION NO

112

ORIGINAL INCIDENT LOCATION

NAME OF COMPLAINANT

J. A. Sheard

SUSPECTS NAME

RACE

SEX

DATE OF BIRTH

AGE

B

M

21

SUSPECTS ADDRESS

HEIGHT

WEIGHT

HAIR

EYES

509

150

Blk

Brn

This incident did take place within a 1/2 mile of Katy St. Park which is located at 4900 Katy St. This incident was recorded through the use of audio and video equipment and preserved as evidence.

During this transaction, Agent Gilliam observed people in the residence smoking what he believed to be crack cocaine. Agent Gilliam could smell the smoke coming from the burning substance and attempted to distance himself from that part of the house. Because of the possible exposure to the crack cocaine smoke, Sgt. K. M. Hite was notified.

Sheard has conducted numerous drug investigations in the Norman St. area and is familiar with many of the drug dealers in this area. On 09-16-05, Sheard assisted the North Region's CRT unit with a search warrant (S05-269) at [REDACTED] and remembered a person at this residence nicknamed JUNIOR BLACK. A review of that search warrant return showed that the warrant was left with Mark A.

ATSON of 4810 Norman St.. Based on this information, a six person photo line-up was made and given to Gilliam to review. Gilliam immediately selected WATSON by circling his picture and placing his initials and the date. Sheard later reviewed the video evidence and

was able to positively identify WATSON as the person conducting the transaction with Gilliam.

NARRATIVE

ADMIN

SUBJECT IDENTIFIED
☒ YES ☐ NO

SUBJECT LOCATED
☐ YES ☐ NO

S.F. AI

☒ ACTIVE ☐ ADM.CLOSED
☐ UNFOUNDED

☐ ARRESTED UNDER 18
☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18
☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRADITION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT
NUMBER

APPROVING OFFICER

DATE

UNIT
NUMBER

J. A. Sheard

06-12-06

11892

FOLLOW-UP
INVESTIGATION ☐ YES ☐ NO

OFFICER

RECORDS ☐

SLED ☐

INVESTIGATIONS ☐

DISTRICT ☐

FORM 391

INVESTIGATIVE REPORT

0, 6, - 1, 6, 9, 5, 3, , , ,

INQ. ENTD

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☒ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 of 1 PAGES

ORIGINAL INCIDENT TYPE

ORIGINAL INCIDENT

Distribution of Crack Cocaine
Distribution of Crack Cocaine within a 1/2 mile of a Park

DATE ▶ 06-12-06
TIME ▶ 1827

LOCATION NO

112

ORIGINAL INCIDENT LOCATION

NAME OF COMPLAINANT

St.

J. A. Sheard

SUSPECTS NAME

RACE

SEX

DATE OF BIRTH

AGE

Watson, Mark, A. aka: "Junior Black"

B

M

23

SUSPECTS ADDRESS

HEIGHT

WEIGHT

HAIR

EYES

Columbia, SC

509

160

Blk

Bm

On November 2, 2007 at approximately 11:00 am, a search warrant was executed by the Columbia Police Department's Organized Crime/Narcotics unit and SWAT team at 3310 Normal St. for crack cocaine being sold from the residence (see CPD case # 07-37299). Mark A. WATSON was located by Inv. J. A. Sheard and MPO B. Smalls laying under the covers of a bed in the rear right bedroom. WATSON was arrested and later served warrants K-291515 and K-291516 for Distribution of Crack Cocaine and Distribution of Crack Cocaine within a 1/2 mile of a Park.



SUBJECT IDENTIFIED

☒ YES ☐ NO

SUBJECT LOCATED

☒ YES ☐ NO

S.F. CJ

☐ ACTIVE

☐ ADM.CLOSED

☐ ARRESTED UNDER 18

☐ EX-CLEAR UNDER 18

☐ UNFOUNDED

☒ ARRESTED 18 AND OVER

☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH

2 ☐ NO PROSECUTION

3 ☐ EXTRADITION DENIED

4 ☐ VICTIM DECLINES COOPERATION

5 ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

J. A. Sheard

11-21-07

11892

FOLLOW-UP

INVESTIGATION ☐ YES ☐ NO

OFFICER

RECORDS ☐

SLED ☐

INVESTIGATIONS ☐

DISTRICT ☐

FORM 3-91

SOS-264

STATE OF SOUTH CAROLINA



County of Richland

Columbia, South Carolina

ORIGINAL

SEARCH WARRANT

The place to be searched will be located at

[REDACTED]
Columbia, South Carolina 29203

Also to be searched will be any individuals specified in
this warrant.

Date September 16, 2005

Officer J. A. SHEARD

COUNTY OF Richland

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 13, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Columbia, South Carolina

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

 , Columbia, SC 29203 can be located traveling north on from Isabell St. towards Vann St., it is the first structure on the right. The outside of the house is currently being secured by the Columbia Police Department. The person to be searched for inside of the residence is a black male in his early 20's with a light skin complexion, low hair, approximately 5' 9" 170 lbs., and was wearing a yellow t-shirt with black writing, blue jean shorts, and should be missing one blue and white shoe. The person to be located was involved in a vehicle pursuit and hit and run and has been identified by Officers J. E. Kemfort, R. E. Behney, and E. C. Milford in a photo line-up as Reggie L. Kelley, DOB 5'10" 175 lbs.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

The person to be searched for inside of the residence is a black male in his early 20's with a light skin complexion, low hair, approximately 5' 9" 170 lbs., and was wearing a yellow t-shirt with black writing, blue jean shorts, and should be missing one blue and white shoe. The person to be located was involved in a vehicle pursuit and hit and run and has been identified by Officers J. E. Kemfort, R. E. Behney, and E. C. Milford in a photo line-up as Reggie L. Kelley, DOB 5'10" 175 lbs.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

City of Columbia Municipal Court, 811 Washington Street, Columbia, South Carolina 29201

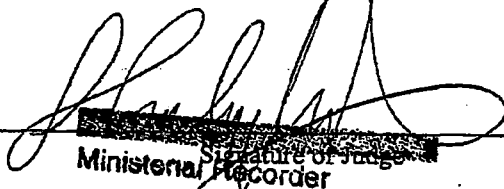
within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Columbia, S. C.

September 16, 20 05

SCCA/513
(3-78)

 (L.S.)
Ministerial Recorder

STATE OF SOUTH CAROLINA

COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, one C. D. Marshall J. A. SHEARD
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

The person to be searched for inside of the residence is a black male in his early 20's with a light skin complexion, low hair,
 approximately 5' 9" 170 lbs., and was wearing a yellow t-shirt with black writing, blue jean shorts, and should be missing one blue and
 white shoe. The person to be located was involved in a vehicle pursuit and hit and run and has been identified by Officers J. E.
 Kemfort, R. E. Behney, and E. C. Milford in a photo line-up as Reggie L. Kelley, DOB [REDACTED], 5'10" 175 lbs.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

[REDACTED], Columbia, SC 29203 can be located traveling north [REDACTED] from Isabell St. towards Vann St., it is the
 first structure on the right. The outside of the house is currently being secured by the Columbia Police Department. The person to be
 searched for inside of the residence is a black male in his early 20's with a light skin complexion, low hair, approximately 5' 9" 170 lbs.,
 and was wearing a yellow t-shirt with black writing, blue jean shorts, and should be missing one blue and white shoe. The person to be
 located was involved in a vehicle pursuit and hit and run and has been identified by Officers J. E. Kemfort, R. E. Behney, and E. C.
 Milford in a photo line-up as Reggie L. Kelley, DOB [REDACTED], 5'10" 175 lbs.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

On 09-16-05, officers of the Columbia Police Department were involved in a traffic pursuit that resulted in the suspect/driver of the
 offender vehicle causing his car to strike a patrol car as he was exiting his car. The suspect then fled the scene and was tracked by
 officer P. T. Blendowski and his trained tracking dog, "Jinx", to the front door of [REDACTED]. Officers J. E. Kemfort, R. E.
 Behney, and E. C. Milford were able to observe the suspects face during the pursuit and were later able to identify him in a photo
 line-up as Reggie L. Kelley, DOB [REDACTED] 5'10" 175 lbs. After Blendowski and K-9 "Jinx" tracked to [REDACTED], other police
 officers set up a perimeter around the house. An unidentified male at the residence denied access to the inside of the residence for
 search for the suspect, Reggie L. Kelley. It is believed that a search of this residence will reveal the location of Reggie L. Kelley inside
 of [REDACTED].

Sworn to and Subscribed before me

this 16th day of September, 2005
 [REDACTED] (L. S.)

Minister of the Gospel

J. A. SHEARD
 Affiant

Address 1 Justice SquareColumbia, South Carolina 29201Phone 545-3597

RETURN

I received the attached Search Warrant 505-269 20 05, and have executed it as follows:
 On 09-16-05 20 05 at 12:15 o'clock P.M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with MARK A. WATSON    

Name of person searched or "at the place of search" with.
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

NOTHING TAKEN

This inventory was made in the presence of J.P. WILLIAMS, R.E. BOWEY, P.T. BLENOWSKI,
 AND T. PETOSKEY, J.A. SACARD, N.A. FORTNER.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

WORN to before me this Sept.
 day of 16th 20 05

Alicia Fautman (L.S.)

Signature of Judge

T. A. B.

(Signature of Officer Executing Warrant)



SD7-303.
STATE OF SOUTH CAROLINA

County of Richland

Columbia, South Carolina

COPY

SEARCH WARRANT

The residence to be searched is located at
[REDACTED]
Columbia, South Carolina

Case # 07-37299

Date November 14, 2007

Officer L.C. Reeves

20029

COUNTY OF Richland

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 16, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Columbia, South Carolina

it appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

As you travel in the 4800 block of Norman St from Isabel St towards Vann St, the residence to be searched will be the first structure on the right. This residence is a corner house located on the corner of Norman St and Isabel St. The structure is constructed of red brick with white trim. Black colored shutters are attached to the windows on the front of the house. A tall chain link fence surrounds the house and has a gate that faces Norman St. The front porch is supported by two white pillars. The porch is at ground level. As you face the structure from Norman St, a panel of wooden fence is attached to the left side of the structure. Two large bushy trees are located outside of the chain link fence in front of the house. Also to be searched is a black male, 5'08", 175 pounds, dark skin, with long hair that is pulled into two pony tails. (see attached photos)

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Crack cocaine, cocaine, drug paraphernalia, scales, monies, papers and documents related to the possession, distribution, sale, storage, manufacture or consumption of crack cocaine or cocaine. Books, records or photographs significant to the identification of individuals occupying the location or required to establish possession of items of evidence. Electronic devices, computers or storage media which is being used to facilitate, document or aid in the distribution of illegal drugs.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

City of Columbia Municipal Court, 811 Washington Street, Columbia SC 29201

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

) Columbia, South Carolina

S. C.

November15th2007

(L.S.)

SD7-303

Ministerial Recorder

COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, one L.C. Reeves
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Crack cocaine, cocaine, drug paraphernalia, scales, monies, papers and documents related to the possession, distribution, sale, storage, manufacture or consumption of crack cocaine or cocaine. Books, records or photographs significant to the identification of individuals occupying the location or required to establish possession of items of evidence. Electronic devices, computers or storage media which is being used to facilitate, document or aid in the distribution of illegal drugs.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

As you travel in the 4800 block of Norman St from Isabel St towards Vann St, the residence to be searched will be the first structure on the right. This residence is a corner house located on the corner of Norman St and Isabel St. The structure is constructed of red brick with white trim. Black colored shutters are attached to the windows on the front of the house. A tall chain link fence surrounds the house and has a gate that faces Norman St. The front porch is supported by two white pillars. The porch is at ground level. As you face the structure from Norman St, a panel of wooden fence is attached to the left side of the structure. Two large bushy trees are located outside of the chain link fence in front of the house. Also to be searched is a black male, 5'08", 175 pounds, dark skin, with long hair that is pulled into two pony tails. (see attached photos)

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

1. Within the past 72 hours, a reliable and confidential source of the Columbia Police Department's OCN unit has observed quantities of an off white rock like substance being kept and offered for sale as the illegal drug crack cocaine coming from within the residence of [REDACTED]. The subject distributing these drugs is described as a black male, 5'08", 175 pounds, dark skin, with long hair that is pulled into two pony tails. The source has established reliability because 1) the source has demonstrated the ability to recognize the specific drug being sought, 2) the source has provided information relative to the people who distribute illegal drugs and where those drugs are being distributed, which in turn has lead to the seizure of those drugs and the arrests of specific people distributing which has cooperated this information, 3) the source has completed purchases of the illegal drug being sought under the direct surveillance and supervision of Law Enforcement agents.
2. The affiant, L.C. Reeves, is a Narcotics agent with the city of Columbia Police Department. Affiant has been employed as a police officer for over 10 years and believes through his numerous hours of drug training and professional experiences that this combined with police observations that drugs are being distributed and stored from the property of [REDACTED], Columbia SC on a regular and continuous basis.

Sworn to and Subscribed before me

this 15th day of Nov, 2007
[Signature] (L. S.)
Minister of the Court

[Signature]
Affiant

Address #1 Justice SquareColumbia, SC 29201Phone 803-545-3599

SD7-303

RETURN

I received the attached Search Warrant 11-21 20 07, and have executed it as follows:
On 11-21 20 07 at 1102 o'clock M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with RESIDENT
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: ITEM #1 FOUND BY K.O. ADAMS

IN Room # 7 #2000. IN US CURRENCY ITEM #2

Nothing Follows

This inventory was made in the presence of CPO SWART, M. KELLY, S. SHALD, B. SMALLS,
AND C. YOUNG, B. VANNOY, L. REYES, CS WHITE, C. STOKES, K.O. ADAMS

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

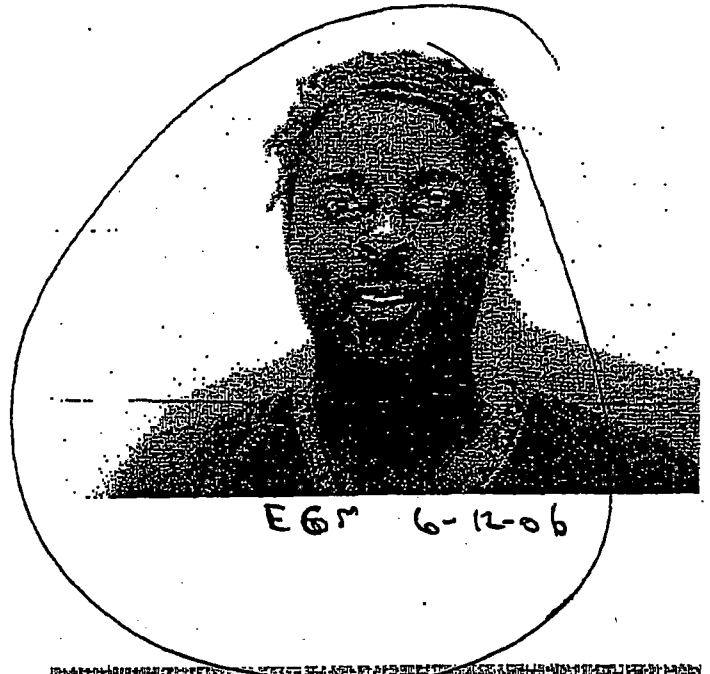
day of

20

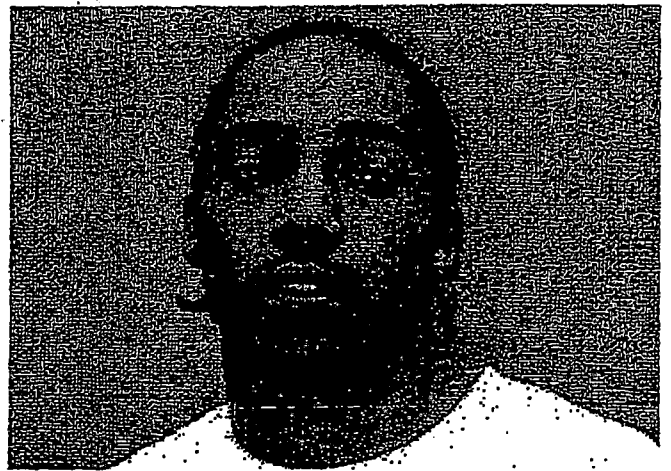
(L. S.)

Ministerial Recorder

(Signature of Officer Executing Warrant)



EGM 6-12-06



PLAINTIFF'S
EXHIBIT
1a



Columbia Police Department - Organized Crime / Narcotics

Undercover Officer Statement

On June 12, 2006 while assisting the Columbia Police Department Narcotics Division in an
 date
 undercover capacity [REDACTED] of the LCMANET
 name of u/c u/c's employing agency
 completed a controlled purchase of CRACK COCAINE from a
 type of drug
BLACK MALE while at [REDACTED] COLUMBIA SC
 race sex location of purchase
 I requested a CRACK COCAINE The suspect then gave me
 how drug was asked for
CRACK COCAINE and in exchange I gave the suspect
 quantity of drugs
100 in recorded US currency which was provided to me by
 amount of money exchanged
 Agent J. A. SHEARD of Columbia PD. I in turn gave the substance purchased to
 case agent
 Agent J. A. SHEARD The suspect is described as BLACK MALE
 case agent race sex
 approximately 23 in age, approx. 506 and 160 The suspect
 years height weight
 was wearing GRAY HOOD AND BLACK OR DARK COLOR PANT

Additional notes/remarks I AGENT GILLIAM OF THE LCMANET . MET WITH AGENTS OF CITY OF
 COLUMBIA PD. AND LCMANET. WE DISCUSSED ME DOING A CONTROLLED DRUG PURCHASE FROM
 A BLACK MALE NICK NAME T-MAN AT THE ABOVE LOCATION. AGENT SHEARD WIRE ME WITH
 SURVEILLANCE EQUIPMENT. AGENT SHEARD GAVE ME DOCUMENT FUNDS TO MAKE THE
 CONTROLLED PURCHASE. I MADE A CALL TO T-MACK AND HE TOLD ME TO MEET HIM AT THE
 ABOVE LOCATION. I ARRIVE AT THE ABOVE LOCATION AND HE WASN'T THERE. SO I WAITED.
 LATER I CALL T-MAN BACK AND HE STATED HE'S COMING AND HE WILL BE THERE IN TEN TO
 FIFTEEN MINUTES. STILL NO SHOW AND LATER HE PASS BY IN HIS TRUCK AND LATER CAME OVER
 AND SAID, NOTHING WAS GOING ON AND LEFT. THEN LADY OF THE HOUSE TOLD ANOTHER GUY
 TO GO GET JUNIOR BLACK. SO THE BLACK MALE WENT TO GET JUNIOR BLACK FROM UP THE
 STREET . A FEW MINUTES LATER [REDACTED]
[REDACTED] THEN I LEFT THE RESIDENCE HEADED BACK TO THE MEETING PLACE AND TURN THE
 CRACK COCAINE OVER TO AGENT SHEARD.

Sworn to and subscribed before me
 this day of 2002

Notary Public for South Carolina
 My Commission Expires:

[Signature]
 Signature

DISCOVERY CHECKLIST

WARRANT(S) ☒

TICKET(S) _____

CASE SUMMARY _____

INCIDENT REPORT ☒

SUPPLEMENTAL REPORT _____

INVESTIGATIVE REPORT ☒

SEARCH WARRANT _____

ARREST REPORT _____

BOOKING REPORT _____

INDICTMENTS _____

RAP SHEET ☒DRIVING RECORD ☒DRUG ANALYSIS ☒

CHAIN OF CUSTODY _____

ADVICE OF RIGHTS _____

DEFENDANT'S STATEMENT _____

CONSENT TO SEARCH _____

PHOTO LINE-UP ☒PROPERTY REPORT ☒PHOTOGRAPHS ☒

MUGSHOT _____

TOW REPORT _____

CASH SEIZURE REPORT _____

BA SLIP _____

STATEMENTS undercover officer

STATEMENTS _____

STATEMENTS _____

STATEMENTS _____

STATEMENTS _____

OTHER _____

OTHER _____

OTHER _____

OTHER _____

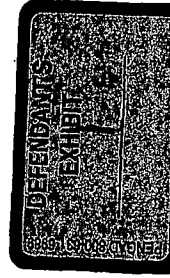
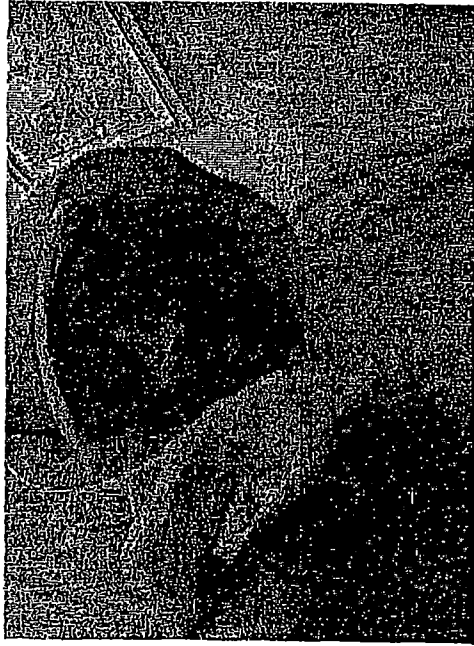
OTHER _____

DEC 13 2007

*Patricia Ramirez*DEFENDANT Mark Watson WARRANT# K291515- K291516ASOL I Justice

PREPARED BY: Casey Rego, Paralegal

DATE: 12/12/07ATTORNEY: Micah Leddy



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mark Watson, SCDC # 306011,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-01542

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 SEP 29 AM 11:12
JEANETTE W. NEWMAN
C.C.P. & G.S.

This matter comes before the Court by way of an application for post-conviction relief filed February 23, 2012. The State made its Return on March 30, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on July 17, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk of Court. Applicant was indicted during the December 2007 term of the Richland County Grand Jury for Distribution of Crack Cocaine – Third Offense (2007-GS-40-12278). Applicant

was represented by Cameron B. Littlejohn, Esquire. On July 9, 2009, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was convicted as indicted. Judge Cooper sentenced Applicant to fifteen years imprisonment.

Applicant filed a notice of appeal. Following the submission of an Anders¹ brief, Applicant elected to voluntarily withdrawal his appeal. The South Carolina Court of Appeals dismissed Applicant's appeal and the remittitur was sent on July 12, 2011.

On February 23, 2012, Applicant filed an application for post-conviction relief alleging "ineffective assistance of counsel" without any supporting facts or allegations. At the evidentiary hearing, Applicant proceeded forward on the following allegations of ineffective assistance of counsel:

1. Counsel failed to object to impermissible comments during the State's closing characterizing Applicant as a "breeder";
2. Counsel failed to request sequestration of the witnesses;
3. Counsel failed to object to the State's witnesses referring to the material in question as "crack cocaine" before actually being tested;
4. Counsel failed to object to Applicant being referred to as "Junior Black";
5. Counsel failed to examine the drugs prior to admission into evidence;
6. Counsel failed to object to the presumptive drug test on the basis that it changed the overall drug weight;
7. Counsel failed to object to the unduly suggestive lineup;
8. Counsel failed to object to the drugs based on chain of custody discrepancies; and
9. Counsel failed to challenge the indictment.

¹ Anders v. California, 386 U.S. 738 (1967).

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and called his former girlfriend, Quaticka Wright. Respondent presented testimony from trial counsel, Cameron B. Littlejohn, Esquire (hereinafter "Counsel"). This Court also had before it Applicant's trial transcript, appellate records, the records from the Richland County Clerk of Court regarding the subject convictions, and Applicant's records from the South Carolina Department of Corrections. Additionally, this Court had before it seven exhibits introduced by Applicant and one exhibit introduced by Respondent.

Applicant testified first on his own behalf. Applicant testified that he is currently serving a fifteen year sentence within the Department of Corrections for Distribution of Crack Cocaine – Third Offense. He acknowledged that other pending charges were dismissed after he was convicted. He testified that he was arrested on November 21, 2007, more than seventeen months after the sale to an undercover officer. He testified that he had retained Counsel for previous, pending charges and that Counsel assumed representation of him on these charges when he was arrested. He testified that he met with Counsel three times before trial. He testified that Counsel presented him with a plea offer for twelve years that would require him to serve eight-five percent of the sentence before becoming eligible for early release, but that he elected to turn down this offer and proceed to trial.

Applicant testified that Counsel was ineffective for failing to object various comments made by the State in its closing argument, including comments that he was a "breeder" and that member of law enforcement are professionals who put their lives on the line to clean up the

community from people like Applicant. See p. 166 lns. 2-8; p. 166 ln. 20 – p. 167 ln. 14. He testified that these comments were raised in his direct appeal brief, but were not persevered for appellate review because Counsel failed to object. Applicant also testified that Counsel was ineffective for failing to move for the sequestration of witnesses. Applicant also testified that Counsel should have objected to the State's witnesses repeatedly calling the substance "crack cocaine" before a conclusive tests confirmed its chemical composition. Additionally, he testified that Counsel never physically handled or inspected the drugs before they were introduced into evidence and failed to make any objection. Applicant also testified that Counsel should have challenged the introduction of the drugs on the basis that the presumptive field test changed the overall weight of the drugs.

Next, Applicant testified that Counsel was ineffective for failing to object to testimony regarding "Junior Black." He elaborated that this was the nickname of the suspect sought by law enforcement which was erroneously attributed to him. He testified that he has never been referred to as "Junior Black" and had not previously heard this nickname until this case. He testified that this case was essentially a case of mistaken identity and that the police were really looking for a suspect named "Junior Black," not him. He testified that although he previously lived on Norman Street (where the drug purchase took place), he lived at an entirely different address and has not been to the address where the purchase occurred.

Applicant testified that the photographic lineup that was shown to Officer Gilliam was suggestive, essentially amounting to Investigator Sheard compiling photographs of five persons who looked like Applicant and then encouraging Gilliam to pick him. He testified that Sheard

knew him from previous dealings and had a vendetta against him based on other unsuccessful attempts to arrest him. He acknowledged that Counsel moved to suppress the lineup as unduly suggestive, but testified that Counsel did not raise the issues surrounding his past dealings with Sheard as a basis for suppression.

Applicant testified that Counsel failed to object to flaws in the chain of custody for the drugs. He elaborated that the chain of custody documents have different dates than the lab report generated, which shows that the drugs were not tested on the date testified. He testified that Counsel should have moved to suppress the drugs on this basis and that his failure to object was ineffective. Additionally, Applicant testified that Counsel should have moved to quash his indictment because the indictment only lists that it is "not a first offense." Applicant testified that it the indictment needed to reference that he had been convicted of a first and second offense because it was for distribution of crack cocaine – third offense.

Following Applicant's testimony, he called his former girlfriend and the mother of his children, Quatika Wright. She testified that she previously lived with Applicant at a residence on Norman Street. She testified that she has never been present when the house was searched and does not know Investigator Sheard.

Next, Respondent called Counsel to testify. He testified that he has been practicing law since 1975 and that approximately ninety-five percent of his practice is criminal defense work. He testified that his extensive criminal law background also includes a number of years as a prosecutor. He testified that Applicant retained him in June of 2006 for a number of pending charges. He testified that once Applicant was indicted on this distribution of crack cocaine –

third offense, he assumed representation of this charge at Applicant's request. He testified that Applicant was initially out on bond when he was first retained, but that Applicant was later detained and his bond revoked after receiving additional charges. He testified that he could not recall the exact number of times that he met with Applicant, but that it was several times. He testified that this charge stemmed from an undercover law enforcement officer's controlled and video recorded purchase of crack cocaine from Applicant. He testified that he reviewed the indictment and did not think that there was any reasonable basis for challenging it, including Applicant's contention that it failed to state Applicant had been convicted of two prior offenses.

Counsel testified that he filed all appropriate discovery motions and thoroughly reviewed all materials with Applicant. He testified that there was overwhelming evidence of guilt, including a video recording of the drug purchase and photographic stills that clearly identified Applicant as the suspect. He elaborated that the stills, introduced as Respondent's Ex. No. 1, clearly identify Applicant the suspect and undoubtedly match the photograph of Applicant in the lineup shown to Officer Gilliam. He testified that he informed Applicant that it was readily evident that he was the suspect in the video and photos and that Applicant would likely be convicted at trial, but that Applicant was adamant that he wanted to proceed to trial.

Counsel testified that he informed Applicant that he would make a suppression motion but that it was very unlikely that it would be successful. He testified that he made such a motion and a Neil v. Biggers² hearing was held, but that after hearing the testimony from both Officer Gilliam and Investigator Sheard, the trial court denied his motion to suppress the identification. He testified that Applicant never informed him of any previous interactions with Sheard and he

² 409 U.S. 188 (1972).

saw no reason or motive for Sheard to set-up Applicant based on all discovery materials. He testified that although it was readily apparent to anyone looking at the photographs from the purchase that Applicant was the suspect, his only possible defense was mistaken identity once Applicant insisted on proceeding to trial. He testified that there was no viable basis to challenge that the substance was not crack cocaine. He testified that he fully prepared for trial and tried to highlight any weaknesses in the State's case. Counsel testified that he did not have an arguable basis for objecting to the State's witnesses referring to the suspect as "Junior Black," particularly in light of his defense of mistaken identity.

Regarding the closing arguments allegation, Counsel testified that he has reviewed the passages in question and does not think that they are objectionable. Counsel elaborated that had he made an objection, he does not think it would have been sustained and therefore only highlighted these comments to the jury. Additionally, Counsel testified that because his defense theory was one of mistaken identity, these comments were not particularly harmful to Applicant or his case.

Regarding the sequestration of the witnesses, Counsel testified that he did not move for sequestration because it was not necessary. He elaborated that the State only called two fact witnesses, first Officer Emmitt Gilliam followed by Investigator Jackson Sheard, and that Sheard was entitled to be present regardless of any sequestration orders because he was the chief investigating officer. He testified that a sequestration order would have been pointless based on this and would have had no impact.

Regarding the allegation that he was ineffective for failing to object to any testimony referring to the substance as crack cocaine before the chemist testified, Counsel testified that

such an objection would not likely have been sustained. Additionally, he testified that this would have had no impact on Applicant's case, as his defense was mistaken identify, not mistaken substance. Furthermore, Counsel testified that he had reviewed the chemist's report prior to trial and knew that the substance tested positive for crack cocaine, so such an objection would have amounted to wasting the court's time -- not a favorable tactic to employ before the jury. Counsel also testified that he did view the substance before it was introduced at the trial and there is no merit for Applicant's claim to the contrary. Counsel testified that he has prosecuted and defended numerous drug cases and that he has never before objected to the drug's admission on the basis that the presumptive field test changes the substance's weight. He testified that making such an argument would not have resulted in the suppression of the drugs and would have no effect on the case, as the amount of substance used for a presumptive field test is miniscule. Counsel additionally testified that he thoroughly reviewed all chain of custody documents regarding the drugs and saw no irregularities sufficient to warrant moving for suppression. Counsel also testified that it is not uncommon for the actual laboratory report to be printed out from the computer on a different date than when the actual testing was performed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds that Counsel's testimony is credible and should be afforded great weight; conversely, this Court finds that Applicant's testimony lacks credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application and establishing that he is entitled to relief. Abney v. State, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (S.C. Ct. App. 2014), *reh'g denied* (Apr. 24, 2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Abney, 408 S.C. at 46, 757 S.E.2d at 546 (citing Strickland, 466 U.S. at 690).

After careful review based on the standard discussed above, including a review of the testimony and exhibits presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are this Court's findings in regards to each of Applicant's specific allegations of ineffective assistance of counsel:

Allegation that Counsel failed to object to impermissible comments from the State's closing argument

Applicant testified that Counsel was ineffective for failing to object various comments made by the State in its closing argument, including comments that he was a "breeder" and that member of law enforcement are professionals who put their lives on the line to clean up the community from people like Applicant. See p. 166 lns. 2-8; p. 166 ln. 20 – p. 167 ln. 14. He testified that these comments were raised in his direct appeal brief, but were not persevered for appellate review because Counsel failed to object. Counsel testified that he has reviewed the passages in question and does not think that they are objectionable. Counsel elaborated that had he made an objection, he does not it would have been sustained and would only have highlighted these comments to the jury. Additionally, Counsel testified that because his defense theory was one of mistaken identity, these comments were not particularly harmful to Applicant or his case.

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. at 609-10, 602 S.E.2d at 744. "On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

This Court finds that Applicant has failed to meet his burden of establishing any deficiency in regards to this allegation. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Specifically, this Court finds that the solicitor's comments during closing argument were not "calculated to arouse the jurors' passions or prejudices" and were not objectionable. See Simmons, supra. Additionally, this Court finds that had Counsel objected and preserved the issue for appellate review, Applicant's conviction would be affirmed. Furthermore, this Court finds that Applicant cannot establish any resulting

prejudice from Counsel's alleged deficiency, as there is no reasonable likelihood that the result of the proceeding would have been different based on overwhelming evidence of guilt. See Simmons, supra. Therefore, this Court finds that Applicant has failed to meet his burden of proof in regards to both deficiency and prejudice and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to move for sequestration

Applicant alleges that Counsel was ineffective for failing to move for sequestration of the State's witnesses. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. As Counsel correctly testified that the evidentiary hearing, sequestration would not have had any impact on the State's case, as only two fact witnesses testified and the second witness was the chief investigator who would have been exempt from any sequestration order. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel.

Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as sequestration would have had no impact on Applicant's trial. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to object to the State's witnesses referring to the substance as "crack cocaine" before the chemist testified

Applicant alleges that Counsel was ineffective for failing to object to the State's witnesses referring to the white, rock-like substance as "crack cocaine" before the chemist testified that the substance tested positive for crack cocaine. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. Counsel testified that such an objection would not likely have sustained. Additionally, he testified that this would have had no impact on Applicant's case, as his defense was mistaken identify, not mistaken substance. Furthermore, Counsel testified that he had reviewed the chemist's report prior to trial and knew that the substance tested positive for crack cocaine, so such an objection would have been wholly meritless. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as such an objection would not have been sustained. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to object to the State's witnesses referring to Applicant as "Junior Black"

Applicant alleges that Counsel was ineffective for failing to object to the State's witnesses referring to the suspect as "Junior Black," arguing that this amounted to a prior bad act

because law enforcement knew "Junior Black" from previous encounters. Counsel testified that he saw no arguable basis for objecting to the reported nickname of the suspect, particularly in light of his defense strategy that Applicant was not the suspect and law enforcement had arrested the wrong individual. This Court finds that Counsel's performance was reasonable and prudent based on the facts and circumstances of this case and that Applicant has failed to establish any deficiency of Counsel. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as there is overwhelming evidence of Applicant's guilt. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to examine the drugs prior to introduction at trial

Applicant alleges that Counsel was ineffective for failing to examine the drugs prior to trial. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. Counsel's credible testimony sharply refuted this allegation, as he testified that he examined the drugs prior to their admission at trial. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as there is overwhelming evidence of Applicant's guilt. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has

failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to object to the presumptive drug test on the basis that it changed the overall drug weight

Applicant alleges that Counsel was ineffective for failing to object to the introduction of the drugs based on the presumptive field test changing the overall weight. This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. Counsel testified that he has prosecuted and defended numerous drug cases and that he has never before objected to the drug's admission on the basis that the presumptive field test changes the substance's weight. He testified that making such an argument would not have resulted in the suppression of the drugs and would have no effect on the case, as the amount of substance used for a presumptive field test is miniscule. This Court agrees and finds that Counsel's performance was reasonable based on professional standards. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as there is overwhelming evidence of Applicant's guilt. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to object to the photographic lineup

Applicant alleges that the photographic lineup that was shown to Officer Gilliam after the drug buy was suggestive, essentially amounting to Investigator Sheard compiling photographs of five persons who looked like Applicant and then encouraging Gilliam to select Applicant's

photograph. He testified that Sheard knew him from previous dealings and had a vendetta against him based on other unsuccessful attempts to arrest him. He acknowledged that Counsel moved to suppress the lineup as unduly suggestive, but testified that Counsel did not raise the issues surrounding his past dealings with Sheard as a basis for suppression.

This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. Counsel testified and the record reveals that Counsel moved to suppress the lineup and a Neil v. Biggers hearing was held, but that after hearing the testimony from both Officer Gilliam and Investigator Sheard, the trial court denied his motion to suppress the identification. Additionally, Counsel testified that Applicant never informed him of any previous interactions with Sheard and he saw no reason or motive for Sheard to set-up Applicant based on all discovery materials and that it was readily apparent to anyone looking at the photographic stills that Applicant was the suspect. This Court finds that Counsel's performance was reasonable based on professional standards. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as there is overwhelming evidence of Applicant's guilt. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to object to the introduction of drugs based on chain of custody discrepancies

Applicant alleges that Counsel failed to object to flaws in the chain of custody for the drugs. Specifically, Applicant alleges that the chain of custody documents have different dates

than the lab report generated, which shows that the drugs were not tested on the date testified to by the State's chemist. He testified that Counsel should have moved to suppress the drugs on this basis and that his failure to object was ineffective. Counsel refuted this allegation, testifying that he thoroughly reviewed all chain of custody documents regarding the drugs and saw no irregularities sufficient to warrant moving for suppression. Counsel also testified that it is not uncommon for the actual laboratory report to be printed out from the computer on a different date than when the actual testing was performed.

This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. This Court has reviewed the documents in question (entered as Applicant's Exhibits), coupled with Counsel's credible testimony based on numerous years both prosecuting and defending drug cases, and finds that no irregularities exist to warrant suppression. Therefore, this Court finds that Counsel's performance was reasonable based on professional standards. Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," as there is overwhelming evidence of Applicant's guilt. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel was ineffective for failing to challenge the indictments

Applicant alleges that Counsel was ineffective for failing to challenge his indictment. Specifically, Applicant alleges that the indictment states only that he has been convicted of a

prior drug offense, but fails to state that he has been convicted of the requisite two offenses necessary for an indictment of distribution – third offense. Counsel testified that he reviewed all charging documents and found no deficiencies or defects.

“The indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by § 17-19-90. If the objection is timely made, the circuit court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Further, whether the indictment could be more definite or certain is irrelevant.” State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (internal citations omitted).

This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. This Court has reviewed the documents in question and agrees with Counsel that there is no valid challenge to the indictment. The indictment properly put Applicant on notice that he was being charged with a third drug offense and any such challenge would not have been successful. Therefore, this Court finds that Counsel was not deficient for failing to challenge a valid, non-deficient indictment.

Additionally, this Court finds that Applicant cannot establish any resulting prejudice from Counsel's alleged deficiency, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Had counsel made the motion to quash the indictment as complained, it would have had no effect on the outcome of the charges as the motion would have been unsuccessful and, even if successful, would not have stopped the state from pursuing the charges at a later date. First, even had counsel made an objection or otherwise moved to quash the indictment based on the date discrepancy, the outcome would have been no different as the trial court would have denied the motion to quash. Furthermore, even if the trial court granted counsel's motion to quash the indictments, the State could still have re-indicted or directly indicted Applicant, who then could be prosecuted and sentenced for the crimes at a later date. Under S.C. Code Ann. § 17-19-90 (2003), "every objection to any indictment for any defect apparent on the fact thereof shall be taken . . . on motion to quash such indictment before the jury shall be sworn and not afterwards." Since the Double Jeopardy Clause of the Fifth Amendment attaches in a jury trial only once the jury is sworn, a successful motion to quash, by its very definition, will not work to bar subsequent prosecution on the same allegation on that grounds. See State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). Accordingly, this Court finds Applicant has failed to prove resulting prejudice from counsel's failure to move to quash the indictments. Therefore, this Court finds that Applicant has failed to meet his burden of proof and that this allegation must be denied and dismissed with prejudice.

CONCLUSION

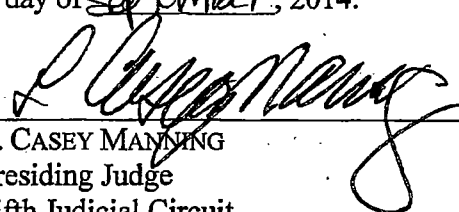
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 20 day of September, 2014.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2012-CP-40-1542

MARK A. WATSON #306011,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

**NOTICE OF MOTION AND
 MOTION TO ALTER OR
 AMEND THE JUDGMENT**

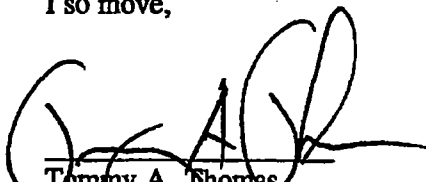
PLEASE TAKE NOTICE that the Applicant, through his undersigned attorneys will move before the Honorable L. Casey Manning to alter or amend the judgment entered in this action on September 26, 2014. A copy of the Order of Dismissal was received by the undersigned attorney on October 1, 2014.

COMES NOW the Applicant, by and through his undersigned attorneys, and submits the following grounds in support of his Motion to Alter or Amend the Judgment:

1. That the Applicant is concerned that all of the issues raised at trial are not addressed in the Court's Order denying Post-Conviction Relief.
2. That counsel for the Applicant is filing this Motion to preserve Applicant's right to address these issues.
3. That counsel will supplement this Motion after further consultation with Applicant.

THEREFORE, based upon the foregoing the Applicant prays that the Court
alter or amend the Order of Dismissal.

I so move,



Tommy A. Thomas
Attorney for Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

October 10, 2014
Irmo, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2012-CP-40-1542

MARK A. WATSON #306011,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

CERTIFICATE OF SERVICE
 BY MAIL

, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Appellant
 hereby certify that I placed in the United States Mail, a copy of an Notice of Motion and
 Motion to Alter or Amend, with postage prepaid and the return address clearly shown on said
 envelope to Megan E. Harrigan, Esq. of the Attorney General's Office, at:

Megan E. Harrigan, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549



Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

October 10, 2014
 Irmo, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

2012-CP-40-1542

MARK A. WATSON #306011,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

SUPPLEMENT TO APPLICANT'S
 MOTION TO ALTER OR AMEND
 PURSUANT TO RULE 59 (e)

That the Applicant, in Supplement to his Motion to Alter or Amend pursuant to Rule 59 (e) would respectfully submit the following:

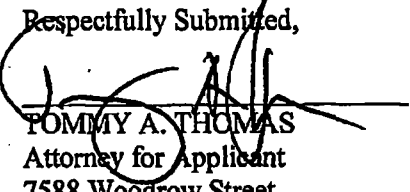
1. That the Order should be altered or amended to include the issue of Subject matter jurisdiction. That certain evidence, including the chain in custody and incident reports were obtained from the City of Columbia and the Richland County Solicitor's Office. This was pursuant to an Order of Discovery in the Post-Conviction Relief action. That the Applicant believes that this information was not provided in a timely manner. Specifically in his original case. That Rules 3 and 6 of the South Carolina Rules of Criminal Procedure require timely production of these documents and the Applicant did not receive any of this evidence until four years after his sentence.
2. That the Applicant believes that the Order should be altered or amended to include the discussion of due process violation. The Applicant more specifically believes that the missing links in the chain of custody create a situation where there is not a valid chain. That as a result of this defective chain, Applicant was denied due

process. That the chain is so defective that it fails to provide any reasonable due process or comply with established procedural requirements.

3. That the Applicant believes that the Order should be altered or amended to include that the Applicant was denied due process when counsel failed to object to the chemist testifying at trial. That the evidence should have been suppressed as a result of the missing links in the chain. That counsel should have objected to the chemist testifying regarding the drugs as well as her analysis of the drugs.
4. That the Applicant believes that the Order should be altered or amended to address the issue of prosecutorial misconduct. The Applicant believes that the impermissible comment made by the Solicitor in closing arises to prosecutorial misconduct and as such should be addressed in the Order.

The Applicant respectfully requests a hearing on this Motion.

Respectfully Submitted,


TOMMY A. THOMAS
Attorney for Applicant
7588 Woodrow Street
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

October 31, 2014
Irmo, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

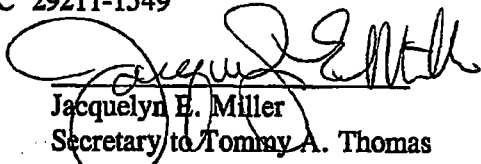
2012-CP-40-1542

MARK A. WATSON #306011,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

CERTIFICATE OF SERVICE
 BY MAIL

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Supplement to Applicant's Motion to Alter or Amend, with postage prepaid and the return address clearly shown on said envelope to Megan E. Harrigan, Esq. of the Attorney General's Office, at:

Megan E. Harrigan, Esq.
 Attorney General's Office
 P.O. Box 11549
 Columbia, SC 29211-1549


 Jacquelyn E. Miller
 Secretary to Tommy A. Thomas
 Attorney for Applicant
 P.O. Box 88
 Irmo, SC 29063
 (803) 732-5507

October 31, 2014
 Irmo, SC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mark A. Watson, SCDC #306011,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-1542

**RETURN TO APPLICANT'S "MOTION
TO ALTER OR AMEND THE
JUDGEMENT" AND "SUPPLEMENT
TO APPLICANT'S MOTION TO
ALTER OR AMEND PURUSANT TO
RULE 59(E)"**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter or Amend the Judgment" and "Supplement to Applicant's Motion to Alter or Amend Pursuant to Rule 59(e)," would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the December 2007 term of the Richland County Grand Jury for Distribution of Crack Cocaine – Third Offense (2007-GS-40-12278). Applicant was represented by Cameron B. Littlejohn, Esquire. On July 9, 2009, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was convicted as indicted. Judge Cooper sentenced Applicant to fifteen years imprisonment.

Applicant filed a notice of appeal. Following the submission of an Anders¹ brief, Applicant elected to voluntarily withdrawal his appeal. The South Carolina Court of Appeals dismissed Applicant's appeal and the remittitur was sent on July 12, 2011.

¹ Anders v. California, 386 U.S. 738 (1967).

II.

On February 23, 2012, Applicant filed an application for post-conviction relief alleging “ineffective assistance of counsel” without any supporting facts or allegations. Respondent made its Return on March 30, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on July 17, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, the Court found that there were no constitutional deprivations or other grounds on which to grant relief and is denied and dismissed the application with prejudice. A formal Order of Dismissal was signed by the Court on September 26, 2014 and filed on September 29, 2014.

Applicant, by way of his counsel, received this Order of Dismissal on October 1, 2014. He filed a “Motion to Alter or Amend the Judgment” pursuant to Rule 59(e), SCRCP, on October 10, 2014. On October 31, 2014, Applicant filed a “Supplement to Applicant’s Motion to Alter or Amend Pursuant to Rule 59(e).” This Return follows.

III.

In his “Supplement to Applicant’s Motion to Alter or Amend Pursuant to Rule 59(e),” Applicant states that four additional allegations should be included and addressed in this Court’s Order of Dismissal. These are as follows:

1. The Order should be altered or amended to include the issue of subject matter jurisdiction, particularly related to a purported allegation that chain of custody evidence and incident reports were withheld from Applicant;
2. The Order should be altered or amended to include the issue of an alleged due process violation pertaining to the chain of custody;
3. The Order should be altered or amended to include the issue of an alleged due process violation pertaining to the testimony of the chemist testifying at trial; and
4. The Order should be altered or amended to include the issue of prosecutorial misconduct pertaining to the alleged impermissible comments of the State during its closing argument.

As a preliminary matter, Respondent notes that Applicant failed to allege any of these grounds for relief in his application and did not argue these grounds with any specificity at the evidentiary hearing. Specifically, Applicant did not present any testimony or evidence whatsoever regarding number 3 and 4 from above. Therefore, Respondent argues these all four of these issues were not properly raised and should not be addressed or ruled upon by the Court. See Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial.). See also C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct.App.1990).

Additionally, Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Respondent submits that this Court fully ruled on all issues properly presented at the post-conviction relief hearing and that Applicant's motion should be denied. Furthermore, Respondent submits that these new allegations are wholly without merit.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 6, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

2012-CP-40-1542

MARK A. WATSON, #306011)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

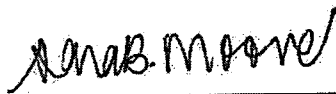
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's "Motion to Alter or Amend the Judgement"** and **"Supplement to Applicant's Motion to Alter or Amend Pursuant to Rule 59(e)"** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire
 7588 Woodrow St
 Irmo, SC 29063

DATED this 6th day of November, 2014.



Sara Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Mark A. Watson, SCDC #306011,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-40-1542

**ORDER DENYING APPLICANT'S
"MOTION TO ALTER OR AMEND THE
JUDGEMENT" AND "SUPPLEMENT
TO APPLICANT'S MOTION TO
ALTER OR AMEND PURSUANT TO
RULE 59(E)"**

RICHLAND COUNTY
FILED
2015 MAR -2 AM 10:37
J. P. G.S.

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend the Judgment" and "Supplement to Applicant's Motion to Alter or Amend Pursuant to Rule 59(e)," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the December 2007 term of the Richland County Grand Jury for Distribution of Crack Cocaine – Third Offense (2007-GS-40-12278). Applicant was represented by Cameron B. Littlejohn, Esquire. On July 9, 2009, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was convicted as indicted. Judge Cooper sentenced Applicant to fifteen years imprisonment.

Applicant filed a notice of appeal. Following the submission of an Anders¹ brief, Applicant elected to voluntarily withdraw his appeal. The South Carolina Court of Appeals dismissed Applicant's appeal and the remittitur was sent on July 12, 2011.

¹ Anders v. California, 386 U.S. 738 (1967).

II.

On February 23, 2012, Applicant filed an application for post-conviction relief alleging "ineffective assistance of counsel" without any supporting facts or allegations. Respondent made its Return on March 30, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on July 17, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Tommy A. Thomas, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and evidence presented at the hearing, along with a review of all records provided to the Court, the Court found that there were no constitutional deprivations or other grounds on which to grant relief and is denied and dismissed the application with prejudice. A formal Order of Dismissal was signed by the Court on September 26, 2014 and filed on September 29, 2014.

Applicant, by way of his counsel, received this Order of Dismissal on October 1, 2014. He filed a "Motion to Alter or Amend the Judgment" pursuant to Rule 59(e), SCRPC, on October 10, 2014. On October 31, 2014, Applicant filed a "Supplement to Applicant's Motion to Alter or Amend Pursuant to Rule 59(e)." In his "Supplement to Applicant's Motion to Alter or Amend Pursuant to Rule 59(e)," Applicant states that four additional allegations should be included and addressed in this Court's Order of Dismissal. These are as follows:

1. The Order should be altered or amended to include the issue of subject matter jurisdiction, particularly related to a purported allegation that chain of custody evidence and incident reports were withheld from Applicant;
2. The Order should be altered or amended to include the issue of an alleged due process violation pertaining to the chain of custody;

3. The Order should be altered or amended to include the issue of an alleged due process violation pertaining to the testimony of the chemist testifying at trial; and
4. The Order should be altered or amended to include the issue of prosecutorial misconduct pertaining to the alleged impermissible comments of the State during its closing argument.

Respondent filed its Return to this motion on or about November 5, 2014, arguing that the issues raised in this motion had not previously been raised and were meritless.

III.

This Court's find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.² This Court agrees with Respondent and finds that none of these allegations as set forth in Applicant's to his motion were properly raised prior. Therefore, these allegations are not properly before this Court. See Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial.). See also C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct.App.1990).

Furthermore, this Court finds these allegations must be denied and dismissed regardless. This Court finds that Applicant's first issue that the court lacked subject matter jurisdiction due to a purported delay in receiving discovery is without merit, as any discovery violation would have no impact on the trial court's ability to preside over his case. "[S]ubject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong." Edwards v. State, 372

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

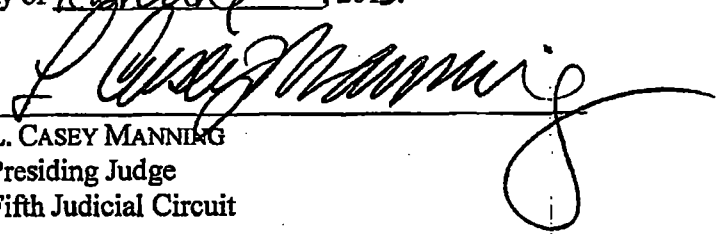
S.C. 493, 496, 642 S.E.2d 738, 739 (2007) (internal citation omitted). As discussed in the Order of Dismissal, this Court finds that there was no defect in Applicant's indictments and that the trial court properly had jurisdiction over Applicant's case.

Regarding Applicant's two claims that his due process rights were violated by alleged defects in the chain of custody, this Court also finds these claims to be meritless. See State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) ("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice."). There is nothing in the record to demonstrate that there was a defect in the chain of custody, which this Court previously found in its Order of Dismissal.

Regarding Applicant's final issue in his motion that the State committed prosecutorial misconduct, this Court finds that this allegation is also without merit. As this Court previously ruled in its Order of Dismissal, the State's comments during closing were not impermissible and certainly do not rise to the level of misconduct. Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms its previous Order of Dismissal.

This Court notes that if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 25th day of February, 2015.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

(S) SHEARD - CPD

L.C. Reeves - CPD

ARREST WARRANT NUMBER

K291515

ACTION OF GRAND JURY

TRUE BILL

Sharon Wilson
Foreperson of Grand Jury

Date: **DEC 13 2007**

VERDICT

DOCKET NO. 2007-GS-40-12278

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

11

THE STATE

vs.

MARK ANTHONY WATSON

Indictment for

DISTRIBUTION OF CRACK COCAINE

3RD OFFENSE OR MORE

SC Code: 44-53-375(B)(3)

CDR Code: 0114

Class FEL/A

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Janetta L. ...
C.C.C.P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

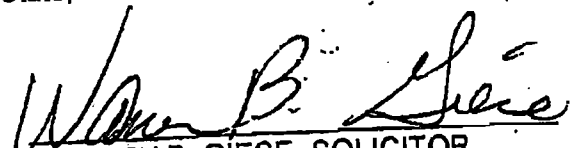
INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

DISTRIBUTION OF CRACK COCAINE3rd OFFENSE

That Mark Anthony Watson did in Richland County on or about June 12, 2006, manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance, to wit: Crack Cocaine such being not a first offense. All in violation of SC Code of Laws § 44-53-375.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR