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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Alison Renee Lee, Circuit Court Judge

JEROME WATSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001713

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JUSTIN HUNTER
Office of the Attorney General
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 26 – 28, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF	275
RETURN	282
<u>STATE V. WATSON</u> UNPUBLISHED OPINION NO. 2013-UP-312 (JULY 3, 2013).....	287
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 14, 2014	292
APPELLANT’S EXHIBIT NO. 1 (LETTER RE: SENTENCING AGREEMENT).....	339
ORDER OF DISMISSAL	340
INDICTMENT	347

E-X-A-M-I-N-A-T-I-O-N

WITNESSBY:PAGE:

J.B. KENNEDY

SOLICITOR EPTING

29-35 (In-Camera)
97-108
119

MS. ANDERSON

36-42 (In-Camera)

MR. DELANEY

42-49 (In-Camera)
108-118

WALTON BECK

SOLICITOR EPTING

50-60 (In-Camera)
144-157

MS. ANDERSON

61-70 (In-Camera)

MR. DELANEY

71-75 (In-Camera)
158-179

SHARON HARTSOE

SOLICITOR HOLLAND

120-124

MS. ANDERSON

124-125

MARVIN BROWN

SOLICITOR HOLLAND

127-130 (In-Camera)
180-186

MR. DELANEY

130-134 (In-Camera)
186-187

CYNTHIA MITCHUM

SOLICITOR EPTING

136-141

MR. DELANEY

141-143

DAMITA CROCKETT

MS. ANDERSON

192-193

JEROME WATSON

MS. ANDERSON

193-200

SOLICITOR EPTING

200-207

CLOSING

MR. DELANEY

233-241

SOLICITOR EPTING

241-249

E-X-A-M-I-N-A-T-I-O-N Con't.

CHARGE	249-264
VERDICT	265
SENTENCING	269-272
CERTIFICATE PAGE	273

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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
ST.1	PHOTO	P.101	P.102
ST.2	DRUGS		P.158
ST.3	CHEMIST REPORT	P.137	P.141
ST.4	PHOTO		P.148
CT.1	MIRANDA CARD	P.57	P.58
CT.2	JURY QUESTION		P.272

REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE YORK
COUNTY CLERK OF COURT'S OFFICE.

1 (ON THE RECORD APRIL 26, 2010 AT

2 SOLICITOR EPTING: May it please the court?

3 THE COURT: Yes, sir.

4 SOLICITOR EPTING: Your Honor, before the court today
5 is Jerome L. Watson with his defense counsel Erik Delaney.
6 As a preliminary matter there is a motion by the State to
7 amend the indictment to include some language concerning
8 the distribution and change a scribblers error to 4453 375
9 to 4453 370. Again I would like to give Defense counsel a
10 chance to be heard on that if they have any objection.

11 MR. DELANEY: As far as - -

12 SOLICITOR EPTING: As far as changing - -

13 MR. DELANEY: No objection.

14 THE COURT: All right. Well I will allow it then.

15 SOLICITOR EPTING: All right, Your Honor, at this time
16 we would like to arraign Mr. Watson on this indictment.

17 THE COURT: All right. Mr. Watson, you just listen to
18 what Mr. Epting has to say please.

19 SOLICITOR EPTING: Jerome L. Watson if you answer by
20 that name raise your right hand? I am reading the amended
21 indictment 2010-GS-46-01381 the State v. Jerome L. Watson
22 possession of heroin with intent to distribute. The
23 indictment alleges that on or about September 24th 2009 in
24 York Courty, South Carolina the defendant Jerome L. Watson
25 did purchase or possess with the intent to distribute,

1 dispense, deliver or otherwise aid abet attempted to
2 conspire to manufacture; distribute, dispense, purchase or
3 deliver to another a quantity of heroine a controlled
4 substance under the provisions of Section 44 53 370 Code of
5 Laws of 1976 as amended such not having been authorized by
6 law all in violation of Section 44 53 370 Code of Laws of
7 South Carolina in 19767 as amended.

8 What say you Jerome L. Watson are you guilty or not
9 guilty of the felony where you stand indicted?

10 MR. WATSON: Not guilty, Your Honor.

11 SOLICITOR EPTING: How shall you be tried?

12 MR. WATSON: By a jury.

13 SOLICITOR EPTING: These good and lawful jurors have
14 between you and the state upon the trial of the case if you
15 challenge them or any of them you will do as each is called
16 to the bar to be sworn and before he or she is sworn. May
17 God grant you a just deliverance.

18 THE COURT: All right. You can have a seat and we
19 will get the jury up. Any motions that we need to take up
20 as far as general motions about discovery? Why don't we do
21 that real quick. I got motions in limine, Mr. Delany.
22 First is to determine whether the state has complied with
23 discovery Rule 5 and Brady.

24 SOLICITOR EPTING: The state has complied with
25 discovery and as an alternative we would ask the court to

1 ask the defendant if they have complied with reciprocal
2 discovery.

3 THE COURT: All right.

4 MR. DELANEY: We have, Your Honor. And I know there
5 is a couple of phone calls I listened to in this case that
6 were recorded. It's my understanding that the phone calls
7 are not going to be used.

8 SOLICITOR EPTING: At this time we do not plan to
9 introduce any evidence of those phone calls. However
10 should something strange happen they may indeed become
11 evidence..

12 THE COURT: All right. Next is looks like prior
13 offenses for enhancement and potential sentencing. Have
14 you given them copies of Mr. Watson's -- Well it's two
15 things. It says enhancement and offenses.

16 SOLICITOR EPTING: I have provided certified copies to
17 the defense of all offenses listed on Mr. Watson's rap
18 sheet. He should have those - -

19 THE COURT: Is that correct, Mr. Delaney?

20 MR. DELANEY: That's correct, Judge.

21 THE COURT: All right. I've got a witness list. Have
22 you provided it to the Defendant?

23 SOLICITOR EPTING: I have, Your Honor.

24 THE COURT: Prior record of State's witnesses.

25 SOLICITOR EPTING: No prior record; all law

1 enforcement, Your Honor.

2 THE COURT: Motion to suppress evidence seized from
3 Mr. Watson's car

4 SOLICITOR EPTING: We would ask to hold that matter
5 open for tomorrow.

6 THE COURT: Okay. Suppress money that would be the
7 same thing?

8 SOLICITOR EPTING: I would think so. We might be able
9 to handle that matter now if they are ready to make their
10 argument.

11 MR. DELANEY: Your Honor, - -

12 SOLICITOR EPTING: That might be - -

13 THE COURT: Motion Six motion to suppress any and all
14 money seized from Mr. Watson's wallet. Defendant contends
15 this evidence is irrelevant and more prejudicial than
16 probative.

17 MR. DELANEY: It is my understanding, Your Honor,
18 there was a hundred and seventy-five dollars taken from Mr.
19 Watson's wallet that was cash that was in a pocket there is
20 no as far as being we also have a cord in this case that it
21 was twenty dollars and it was all twenties or whatever the
22 denominations were we just have a hundred and seventy five
23 dollars in my client's wallet. We would argue that that
24 was more prejudicial than probative and also is irrelevant
25 to what connection to this case that hundred and seventy

1 five dollars has.

2 SOLICITOR EPTING: We would argue that that money was
3 an issue of drug dealing activity and that makes it
4 relevant a standard to be applied under Rule 403 which I
5 assume Mr. Delaney is arguing under. The evidence must be
6 substantially more prejudicial than probative. We think
7 it's probative if anything.

8 THE COURT: All right. He said money in the pocket
9 too. What about that?

10 SOLICITOR EPTING: We would argue that any money
11 seized on his person - -

12 THE COURT:

13 MR. DELANEY: We would argue it was not any money
14 found in his pocket -- There was no money in his pocket it
15 was in his wallet.

16 THE COURT: Well I'm going to allow it. I believe
17 that case law it might be the Cherry case that talks about
18 some money being -- Well this was found in his wallet.
19 What kind of denominations?

20 SOLICITOR EPTING: Mr. Delaney is correct. We do not
21 have listed the denominations so we don't know if this is
22 all in fives or twenties we do not have that information
23 yet. The State's position is that the mere existence of
24 money is a situation we make relevant.

25 MR. DELANEY: We would argue, Judge, the mere

1 existence - -

2 THE COURT: Well I'm inclined -- I'm gonna go with the
3 Defense on this. I think if it was three thousand dollars
4 it might be different but all twenties it might be
5 different but somebody having money in their wallet I mean
6 I'm not fortunate to have a hundred and seventy five
7 dollars in my wallet right now but I might have two or
8 three twenties and I don't think that's indicative of any
9 thing other than all money I got. So I'm going to grant -
10 I'm going to suppress that money. All right Jackson versus
11 Denno statement?

12 SOLICITOR EPTING: We would have the actual if they
13 need Jackson v. Denno we will have that hearing tomorrow.
14 I have spoken with Mr. Delaney on several occasions and
15 advised him of all statements that Mr. Watson made that we
16 intend to introduce at trial.

17 THE COURT: All right. Lyle 404 B evidence?

18 SOLICITOR EPTING: We do not intend to introduce any
19 Lyle evidence - -

20 THE COURT: I will grant reciprocal sequestration. So
21 we're leaving open the suppression of the evidence from the
22 car and the statements and we will take those up first
23 thing in the morning.

24 MR. DELANEY: Judge, as far as impeachable offenses

25 - -

1 SOLICITOR EPTING: Your Honor, assuming nothing we
2 think that shouldn't be testified we would be allowed to
3 impeach with possession of crack cocaine which comes from
4 2006. 2005 unlawful concealment of goods, intent to steal
5 baby formula; 2000 PWID of a controlled substance which was
6 heroin within one thousand feet of a school and that's from
7 New Jersey and we do have a certified copy of that.

8 THE COURT: Two: Non thefts come in as they are
9 because they certainly deal with moral turpitude and
10 rehabiliy. The other two I'm not going to allow you to
11 question him about by name. You may ask him whether or not
12 he has on those dates or those years been convicted of
13 felonies.

14 SOLICITOR EPTING: Your Honor, we would seek leave to
15 introduce those should the door be open; should the
16 defendant get up and testify as to his intent to distribute
17 in this particular area.

18 THE COURT: Well we've got to cross that bridge when
19 we come to it.

20 SOLICITOR EPTING: He does have some more older
21 convictions that should he testify we don't feel will fall
22 within the rules of evdience and we do not seek to impeach
23 him with those.

24 THE COURT: All right. We'll bring the jury up
25 qualify them draw a jury. Strikes will be five and five on

1 this?

2 SOLICITOR EPTING: That's my understanding, Your
3 Honor.

4 THE COURT: We'll the jury maybe 10:30 in the morning
5 and at 9:30 go over these motions and get started on them.
6 And the voir dire let's look at them real quick. The
7 Defendant's voir dire Number One is okay. Two looks okay,
8 Three looks okay. I'm going to ask Number Four because
9 those are general -- About anybody having any moral or
10 religious, philosophical beliefs that would make them
11 unable to be fair and impartial in this trial if they know
12 what the trial is about. I'm not going to ask about - Well
13 I will ask Number Five and Six. And Seven of course I
14 always ask. Anything else?

15 SOLICITOR EPTING: Nothing from the State, Your Honor.

16 MR. DELANEY: Nothing from the Defense.

17 THE COURT: Bring us up a panel.

18 Members of the jury I am John Hayes from Rock Hill and
19 along with Judge Alford I am the other judge here this week
20 and we are going to start our first trial of the week here
21 in this courtroom. It is the case of the State of South
22 Carolina versus Jerome Elton Watson. This young lady
23 seated up here is an attorney, Meghan Terry she is my law
24 clerk and she will be assisting me with what I need to do
25 up here on the bench.

1 I am in just a moment going to ask you some questions
2 that are similar to what Judge Alford asked you this
3 morning but they are a little different. These will be
4 case specifically. I don't know how Judge Alford handled
5 it this morning. Generally I invite you to come up and
6 discuss matters with me when I am qualifying a jury but I
7 am not going to ask you in this setting to do that. I will
8 ask you questions and if you need to talk to me and respond
9 to any of the questions I will ask you just to stand and
10 stand in your place and you will have dialogue here where
11 you are seated.

12 First let me tell you this case is that of Jerome --
13 The State is represented by Mr. Epting and Ms. Collins.
14 I'm sorry, Mr. Epting and Ms. Collins. And Mr. Elton
15 Watson is represented by Mr. Delaney and Ms. Anderson.
16 This is Mr. Delaney in the checked shirt.

17 You may be seated. Mr. Watson is charged with the
18 offense of the possession of heroin with intent to
19 distribute. It's alleged that here in York County on or
20 about September 27th 2009 Mr. Watson was in possession of
21 heroin and possessed it with the intent to distribute it.
22 To this charge he has entered a plea of not guilty and his
23 plea of not guilty places on the State the burden of
24 proving his guilt beyond a reasonable doubt.

25 First I am going to ask are any of you here -- Do any

1 of you here know any of the individuals to whom you have
2 just been introduced? The lawyers or Mr. Watson if so
3 please stand?

4 All right. Yes, sir, you have to give me your names
5 and each time you stand because even if I know who you are
6 I happen to know both these gentlemen the record has to
7 reflect who's standing so tell us who you are and your
8 number and why you are standing.

9 A. Your Honor, Josh Vann, Juror Number 229 and I know
10 some of the attorneys; I've had cases with them in the
11 past.

12 THE COURT: Just remain standing for a moment if you
13 don't mind.

14 A. Frank Osteen, Juror One seventy-Three and I have the
15 same relation.

16 THE COURT: Do either of you -- Let me rephrase that.
17 Based on your knowing the attorneys if that would prevent
18 you from being fair and impartial in a trial of this case
19 and if you would not be able to base your verdict on all
20 the evidence in this case please raise your right hand?

21 Neither does. You may be seated. Thank you.

22 Were you any of you on this panel members of the grand
23 jury which passed on this indictment at an earlier time if
24 so please stand?

25 No one stands.

1 Have any of you heard about this case from any source
2 whatsoever or have you formed or expressed an opinion about
3 any matter or issue that would be involved in this case if
4 so please stand?

5 No one stands.

6 Are any of you aware of any bias or prejudice towards
7 the State, the Solicitor Mr. Brackett or counsel present on
8 behalf of the State or any bias or prejudice toward Mr.
9 Watson or his counsel if so please stand?

10 No one stands.

11 Are any of you aware of any moral, religious or
12 philosophical beliefs that you have that would prevent you
13 from being fair and impartial in a trial such as this one
14 or this one in particular if so please stand?

15 No one stands.

16 The next question is somewhat personal and I am not
17 going to ask you to go into details. But I need to ask you
18 this and then follow up with that general question about
19 fairness. If any of you or a member of your family have
20 been charged with a drug related offense or if any of you
21 feel like you have had your lives affected by illegal
22 controlled substances that is a family member or some event
23 that happened in your life that you relate to someone
24 having used or being involved in the drug trade if so
25 please stand?

1 No one stands. Oh. Okay, sir, your name and number?

2 A. Roger Mesiemore, One Sixty.

3 THE COURT: All right I'm not going to ask you to go
4 into details but since you have stood I will ask having
5 this in your background would that prevent you from being
6 fair and impartial in a trial of this case?

7 MR. MESIEMORE: I believe it will.

8 THE COURT: All right. Well I will excuse you. Just
9 have a seat and don't leave. We will take you out of the
10 draw.

11 Did you all get that one?

12 What was your number again?

13 MR. MESIEMORE: One Sixty.

14 THE COURT: Are any of you or a member of your family
15 members of or contributors to organizations such as
16 Mother's Against Drunk Drivers; Student's Against Drunk
17 Drivers; Citizen's Against Violence, sometimes referred to
18 as CAV. The Trooper's Association, the Sheriff's
19 Association, the Fraternal Order of Police if so please
20 stand?

21 All right. Mr. Vann, you've got to give us your name
22 again and your number and tell us what organization.

23 MR. VANN: Yes, sir, Your Honor. Juror Number Two
24 Twenty-Nine, I give money ever year to the Fraternal Order
25 of Police.

1 THE COURT: All right just remain standing.

2 Yes, ma'am, your name and number?

3 A. Charlene Chadwich, Number Forty Seven.

4 THE COURT: Mr. Osteen, your name and number?

5 MR. OSTEEN: Frank Osteen, One Seventy-Three and I'm
6 sure my office gives money to a non profit organization

7 THE COURT: All right. Yes, ma'am, your name and
8 number?

9 A. Lynn Ellis, Number Seventy-Seven and I give to the - -

10 THE COURT: All right. If any of the four of you who
11 are standing believe that that would prevent you from being
12 fair and impartial in this case please raise your right
13 hand?

14 No one does. You may be seated. Thank you.

15 And any of you or a member of your immediate family
16 involved in law enforcement at any level; anything from
17 military police, local sheriff to a constable? Or are any
18 of you or a member of your immediate family involved in the
19 prosecution of criminal cases at any level solicitor, city
20 attorney, city prosecutor, district attorney, judge
21 advocate general or anything like that if so please stand?

22 All right your name and number?

23 A. Geoffrey Knox, Number One Thirty-Two, Your Honor, My
24 sister does work for the solicitor's office in Rock Hill.

25 THE COURT: All right just remain standing.

1 Yes, sir.

2 A. Gary Ogden. One Seventy-One. My daughter works for
3 the sheriff's department but not here.

4 THE COURT: Not in this county?

5 MR. OGDEN: Not in this county.

6 THE COURT: Okay. Just remain standing.

7 Yes, ma'am.

8 A. Tauna Kimbrell, Number One Twenty-Nine. My sister in
9 law works for the police department in Rock Hill.

10 THE COURT: Rock Hill? Is this a Rock Hill case?

11 SOLICITOR EPTING: Your Honor, it's a drug enforcement
12 case.

13 THE COURT: Okay. All right. Yes, ma'am.

14 A. Miriam Harrell, Juror One Hundred and my father is
15 retired from the sheriff's department in Kentucky.

16 THE COURT: All right. If this relationship would
17 cause any of you to be unfair -- Let me rephrase it. If
18 this would prevent you from being fair and impartial please
19 raise your right hand?

20 No one does. You may be seated. Thank you.

21 Anything else from the State?

22 SOLICITOR EPTING: Nothing from the State, Your Honor.

23 THE COURT: Anything from the Defense other than the
24 witnesses?

25 MR. DELANEY: No, Judge.

1 THE COURT: The following are possible witnesses in
2 this case I do not know if they will all testify they may.
3 If any of you know or are related or if you are related to
4 any of these individuals or if you know them or if you
5 socialize with them well if you socialize with them you
6 probably know them but I mean things like go to the same
7 church along the same social organizations or those sort of
8 things. Denetta Crockett. Officers B.J. Kennedy, Walton
9 Beck, Allen Cantey, Kevin Tolson, Tim Buchannan. And then
10 Clara Painter and Cynthia Mitchum. Anybody related or know
11 any of those individuals if so please stand?

12 No one stands. Finally if any of you know of any
13 reason whatsoever why you could not or should not serve as
14 a fair and impartial juror in the trial of this case please
15 stand?

16 No one stands. The way we draw jury's in this court
17 is as follows. If you hear your name called please come
18 forward. The bailiff will be stationed sort of out in the
19 middle of the floor here, please come up and stand by the
20 bailiff turn around and face first the table where the
21 solicitor's are seated. One of them will say either excuse
22 the juror or present the juror. If they say excuse the
23 juror simply return to your seat; don't leave simply return
24 to your seat. If they say present the juror turn and face
25 the table where Mr. Watson and his counsel are seated. One

1 of them will say either excuse the juror which again means
2 you may return to your seat. Or they will say swear the
3 juror which means you will have a seat in the jury box.
4 The bailiff will tell you how many to count down. We are
5 going to draw two alternates. As to the twelve jurors each
6 side has the right to remove, we call it strike or excuse,
7 up to five individuals. As to the alternates the state can
8 move or strike one each and the defense two each. So if
9 you hear your name called please come forward. And bring
10 with you any personal belongings that you may have so that
11 you won't have to go back and fetch them if you are seated.
12 Thank you.

13 MADAME CLERK: Number One Seventy-One, Gary Ogden.

14 What say you for the State?

15 SOLICITOR COLLINS: Present the juror.

16 MADAME CLERK: The Defense?

17 MR. DELANEY: Please seat the juror.

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

19 Number Two Thirty-Seven, Helen Ware..

20 What say you for the State?

21 MS. COLLINS: Please present the juror.

22 MADAME CLERK: Defense?

23 MR. DELANEY:

24 MADAME CLERK: Number Two Twenty-Seven, Velma Tuttle.

25 What say you for the State?

1 MS. HOLLAND:
2 MADAME CLERK: Defense?
3 MS. HOLLAND:
4 MADAME CLERK: Number Seventy-Three, Carol Earnheart.
5 MADAME CLERK: Number One Seventy-Five, Roger Parker.
6 MADAME CLERK: Number One Thirty-Two, Geoffrey Knox.
7 MADAME CLERK: Number Two Twenty-Two, Mark Thompson.
8 What say you for the State?
9 SOLICITOR HOLLAND: Please present the juror.
10 MADAME CLERK: Defense?
11 MR. DELANEY: Please seat the juror.
12 MADAME CLERK: Please have a seat in the jury box.
13 Number One Fifty-Three, Janet Matthews.
14 MADAME CLERK: Number Sixty-Five, Robert Diselvestre.
15 MR. DELANEY: Please seat the juror.
16 MADAME CLERK: Please have a seat in the jury box.
17 Number Seven, Debbie Allen.
18 What say you for the State?
19 MS. HOLLAND: Please present the juror.
20 MADAME CLERK: Defense?
21 MADAME CLERK: What say you for the State?
22 MS. HOLLAND: Please seat the juror.
23 MADAME CLERK: Defense?
24 MADAME CLERK: -- Jacob Martin.
25 What say you for the State?

1 MADAME CLERK: Number Seventy-Seven, Lynn Ellis.

2 What say you for the State?

3 MS. HOLLAND: Please present the juror.

4 THE COURT: Alternate strikes will be one and two.

5 MADAME CLERK: Number One Forty Six, Jennifer Lowery.

6 What say you for the State?

7 SOLICITOR HOLLAND: Please seat the juror.

8 MADAME CLERK: Defense?

9 MR. DELANEY: Please excuse the juror.

10 MADAME CLERK: You're excused from this case.

11 Number Twenty-Five, Paul Behr.

12 What say you for the State?

13 SOLICITOR HOLLAND: Please present the juror.

14 MADAME CLERK: Defense?

15 MR. DELANEY: Please seat the juror.

16 MADAME CLERK: Please have a seat in the jury box.

17 Number 1-0-3, James Hix.

18 What say you for the State?

19 SOLICITOR HOLLAND: Please excuse the juror.

20 MADAME CLERK: You're excused from this case, sir.

21 Number Two Twenty-Nine, Joshua Vann.

22 What say you for the State?

23 SOLICITOR HOLLAND: Please present the juror.

24 MADAME CLERK: Defense?

25 MR. DELANEY: Please excuse the juror.

1 MADAME CLERK: You're excused from this case.

2 Number Twenty, Laura Virden.

3 What say you for the State?

4 SOLICITOR HOLLAND: Please present the juror.

5 MADAME CLERK: Defense?

6 MR. DELANEY: Please seat the juror.

7 MADAME CLERK: Please have a seat in the jury box.

8 THE COURT: Anything from the State involving the
9 striking of the panel?

10 SOLICITOR EPTING: Nothing from the State, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. DELANEY: Nothing from the Defense, Your Honor.

13 THE COURT: For those of you who were not chosen I am
14 going to allow you to leave. Please call back tonight
15 after Seven to find out what your instructions are. I am
16 sure Judge Alford told you how important that it is that
17 you follow those instructions to let us know the reason why
18 you can't. So please leave quietly so I can start working
19 with this panel and I hope to see you more some time next
20 week but you are through for today. Call tonight after
21 Seven and follow those instructions. Thank you.

22 (JURY DISMISSED.)

23 THE COURT: For those of you who were chosen we are
24 not going to administer the oath tonight. We will swear
25 you in tomorrow but that does not negate the fact that you

1 are in fact on this panel so I've got to give you a few
2 instructions. When you come in tomorrow I will have some
3 more to give you. For tonight all I will tell you is of
4 course Number One Mr. Watson is presumed innocent of this
5 charge he does not have to prove his innocence the State
6 must prove his guilty beyond a reasonable doubt. You are
7 on this jury panel you are not to discuss the case among
8 yourselves or try to make up your own mind until we've
9 reached the point in the trial where I instruct you to
10 jointly deliberate and return a unanimous verdict. Prior
11 to that time you're not equipped with all the tools you
12 need to make a fair and reasonable decision. Do not let
13 anyone discuss this case with you outside of the courtroom.
14 If anyone tries to discuss the case with you you tell them
15 that you cannot do so that you are serving as a juror. And
16 report back to me if anyone tries to discuss this case with
17 you so that I can take the appropriate action that needs to
18 be taken if someone attempts to talk to a seated juror.

19 Again don't make up your own mind and don't discuss
20 the case until I instruct you to do so. I don't know that
21 this case will receive any news coverage but do not let
22 yourselves be exposed to anything that could remotely deal
23 with this trial. Don't read about it don't watch anything
24 about it don't listen to anything about it. If anything
25 catches your eye or ear that could remotely deal with this

1 trial do not let yourselves be exposed to it. Do not go on
2 line. We've had this happen in cases that had to be set
3 aside and we are now instructing jurors don't do any
4 independent research. Don't go on line to look up any of
5 the terms used during this trial don't look up anything at
6 all that remotely deals with this trial that's not fair.
7 The State and Mr. Watson are entitled to be tried solely on
8 the evidence presented in this trial and not on any
9 independent research by the old fashion way of going to the
10 scene or going to the library or talking to people or going
11 on line checking things out. That is improper so do not do
12 that.

13 Ms. Ellis, I'm going to ask you to be the Forelady.
14 When you return in the morning you will seat here in this
15 first seat on the front row and I will tell you a little
16 bit more about those responsibilities tomorrow. The two
17 alternates will always sit in those two seats. As to
18 everyone else there is no assigned seating. Just come in
19 and sit where you happen to be in line. We have some
20 matters that we have to take up what we call pretrial
21 matters. We've done some this afternoon we still have a
22 few more to do. So I am going to ask you to be here at
23 10:30 we are going to start working earlier than that but
24 we will need you here at 10:30. Now I don't know if any of
25 you served here on the jury at Moss Justice Center before

1 but we've got a new procedure. You will report when you
2 come in to the room downstairs in the jury assembly room
3 where you reported this morning. Once you are all
4 assembled the bailiff will bring you up here and put you in
5 the jury room on this floor which will be your jury room
6 while you are here during breaks and while you deliberate.
7 So have a pleasant evening and we will see you back at
8 10:30. Before you leave let me make sure that anything
9 else the State wants me to cover this evening.

10 SOLICITOR EPTING: Nothing from the State, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. DELANEY: No, Your Honor.

13 THE COURT: All right have a pleasant evening and
14 report back to the jury assembly room by 10:30 in the
15 morning. Thank you.

16 (PETIT JURY DISMISSED FOR THE EVENING.)

17 THE COURT: Anything else this afternoon or do you
18 want to reconvene at 9:30?

19 SOLICITOR EPTING: Your Honor, I think we will
20 reconvene and handle all the remaining matters tomorrow.

21 THE COURT: Thank you. Mr. Watson, you are here and
22 you are on trial. The jury has not been sworn so you are
23 still under bond. I am going to allow you to stay out.
24 I've got a right to put you in jail since the case has
25 started and have you stay there until the end of the trial

1 but I am going to let you stay out over night. I do want
2 you to be aware though that if for some reason you do not
3 show up tomorrow this case will go forward and you will be
4 tried in your absence and whatever verdict is rendered if
5 it's a verdict of guilt I will render a sentence and seal
6 it and a bench warrant will be issued for your arrest. You
7 obviously ought to be here and if you are not we will seek
8 getting you here. So if you don't show up the case will
9 proceed and you will be tried in your absence do you
10 understand that?

11 MR. WATSON: Yes, sir.

12 THE COURT: Have you explained that to him, Mr.
13 Delaney?

14 MR. DELANEY: Yes, Your Honor.

15 THE COURT: All right. We will be at ease until 9:30
16 in the morning. Thank you. Everybody have a pleasant
17 evening.

18 (COURT RECESSED FOR THE EVENING.)

19 (BACK ON THE RECORD APRIL 27, 2010.)

20 THE COURT: We are ready to have some motions. I
21 believe we've got a motion to suppress and items seized
22 from the car. I guess the way it reads it looks like from
23 him personally and or his car based on illegal detention
24 not supported by probable cause.

25 SOLICITOR EPTING: Your Honor, before we move into

1 Denno and Fourth Amendment issue what the State would like
2 to make a motion to include any self serving hearsay coming
3 out at trial. Just routine motion we would like to get a
4 rule on that before the trial begins.

5 THE COURT: Well its kind of hard to rule on something
6 that is a rule of evidence. Hearsay is not admissible
7 whether it's self serving or - I've got to - You will just
8 have to object as we go along. I can't - I don' tknow how
9 to rule on an unknown.

10 SOLICITOR EPTING: And the issue come up this morning
11 we learned that the evidence technician down stairs in the
12 evidence room is out sick today who actually handled the
13 drug. I informed Mr. Delaney about that this morning. Our
14 plan right now to get around that not to cause an undue
15 delay in the trial is to call the other technician Sharon
16 Hartsoe to come up to testify about Clara Painter's
17 signature. If she recognizes the signature that she's seen
18 it many many times because they share the same duty. If
19 Your Honor should feel that would cause an undue burden on
20 the trial then we could delay - -

21 THE COURT: Chain issue?

22 SOLICITOR EPTING: Correct, Your Honor.

23 THE COURT: Well I guess I will have to look at it and
24 I will go ahead and ask my clerk there is a case about the
25 Lyle cases about what has to be established and it doesn't.

1 I don't think it has to be established to a precise tee but
2 it's got to be sufficient such that it's clear.

3 SOLICITOR EPTING: It could be a weak chain - -

4 THE COURT: So I will have to deal with that if it
5 comes up.

6 SOLICITOR EPTING: Right now the State's ready for
7 Jackson v. Denno.

8 THE COURT: All right let's deal - are the same
9 witnesses involved in that?

10 SOLICITOR EPTING: Same witnesses.

11 THE COURT: All right let's get started then.
12 Anything before we do that?

13 MR. DELANEY: No, Judge.

14 THE COURT: All right.

15 SOLICITOR EPTING: State calls B.J. Kennedy to the
16 stand.

17 THE COURT: Mr. Delaney and Mr. Watson, once we get
18 the jury sworn we will require Mr. Watson to remain. I did
19 let him stay out over night and he came back. That's fine
20 I'm not - Did not expect him not to. But once the jury is
21 impaneled I will require him to remain incarcerated.

22 MADAME CLERK: Raise your right hand.

23 THE COURT: The other way.

24 MADAME CLERK: The other way.

25 (WHEREUPON: B.J. KENNEDY,

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

29

1 BEING DULY CALLED AND SWORN, TESTIFIED AS FOLLOWS:)

2 DIRECT EXAMINATION, IN CAMERA.

3 OFFICER B.J. KENNEDY BY SOLICITOR EPTING:

4 Q. Officer Kennedy, would you state your full name for
5 the record?

6 A. Lieutenant B. J. Kennedy.

7 Q. And what do you do for a living?

8 A. I'm a lieutenant with the Fort Mill Police Department
9 assigned to York County Multi Jurisdictional Drug
10 Enforcement Unit.

11 Q. And did you become involved in September of last year
12 in any investigation regarding Jerome Watson?

13 A. Yes, sir, I did.

14 Q. How did you first become involved?

15 A. We were actually working up on Carawinds Boulevard
16 based on complaints from the district commander up in Fort
17 Mill from the sheriff's office. The patrol guys was making
18 a lot of drug cases up there getting a lot of calls. We
19 actually made a fair number of cases up there ourselves.
20 So we were up there checking the area looking for
21 suspicious activity checking vehicles out things like that.

22 Q. Okay. Did you notice anything suspicious in that
23 parking lot?

24 A. Yes, sir, I did. As I pulled into the KFC parking lot
25 -- We done a lot of drug deals up there. We intercepted a

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

30

1 lot of drug deals up there. I pulled into the parking lot
2 and observed a green Isuzu backed into a parking space. Off
3 center to the rear of the back of the building there was a
4 small silver Buick pulled in beside it. There were two
5 males sitting in the Isuzu but it didn't appear to be
6 eating or drinking anything from KFC they were just
7 carrying on a conversation. Based on where the vehicle was
8 backed in that's common for vehicles to be backed in to
9 keep law enforcement from seeing the tag numbers and such.
10 I pulled down to the lower end of the parking lot and
11 observed what was going on. For several minutes the two
12 individuals one of them was later identified as Mr. Watson
13 sitting in the vehicle he was the passenger in the vehicle.
14 There was some conversation some hand gestures again there
15 was never any food or drink observed. Mr. Watson got out
16 of the vehicle walked around to the driver's side leaned
17 into the window could have been a hand shake could have
18 been something passed on. Kind of questionable don't want
19 to say for sure what it was but Mr. Watson then got into
20 the silver Buick. As he backed out I pulled out and got
21 behind it and read the tag number off to Officer Beck.
22 Officer Beck thought he recognized the tag number. At that
23 point we started following the vehicles. Both vehicles
24 pulled out I instructed Officer Beck and Officer Cantey to
25 follow the silver car and I stayed with the green Isuzu.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

31

1 When I got on the Carowinds Boulevard Mr. Watson continued.
2 straight under the over pass. The green Isuzu down on the
3 interstate south bound headed towards Columbia. It was
4 afternoon evening time around rush hour traffic we got in
5 the traffic on the interstate. I was able to stay with the
6 Isuzu until someone between Gold Hill and 160 got caught up
7 in traffic I lost the Isuzu. And Officer Beck we were all
8 talking back and forth on the radio and advised me that he
9 was at Wells Fargo.

10 Q. Okay. Before we go on to what you saw at Wells Fargo
11 you said that Officer Beck recognized the tag on the car
12 that the defendant was driving.

13 A. Yes.

14 Q. How did he recognize that number?

15 A. He had heard Commander Brown run that tag earlier in
16 the day on the radio.

17 Q. Okay. And why was that so significant?

18 A. When I called Commander on the telephone to find out
19 if that was the case he advised me that they had done a
20 deal earlier in the day with the person operating that
21 vehicle.

22 Q. So you go to Wells Fargo where Officer Beck has
23 encountered the defendant?

24 A. Yes, sir.

25 Q. And what do you see there?

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

32

1 A. Oh when I got there Mr. Watson was already in Officer
2 Beck's vehicle. His car was sitting not in the parking
3 space -- talking about Mr. Watson's car -- not in a parking
4 space but in the road way of the parking lot. Walked up
5 talked to Officer Beck. Officer Beck advised me that he
6 had done a consensual encounter with Mr. Watson found out
7 that he did not have his driver's license and that during
8 the communication he had received consent to search the
9 vehicle and found a cigarette pack containing heroin. And
10 that he had been arrested and advised of his Maranda
11 rights.

12 Q. And at some point was Mr. Watson taken to the station?

13 A. Yes, sir, he was.

14 Q. About how much time pasted between him being arrested
15 put back in the patrol car at the Wells Fargo and him being
16 taken to the station?

17 A. About fifteen maybe twenty minutes somewhere in that
18 neighborhood.

19 Q. And while at the station did you speak with him?

20 A. I did.

21 Q. Who else was present at that time?

22 A. Officer Beck was there pretty much the entire time
23 that I was in there talking with him and Officer Cantey
24 kind of back and forth into the office doing other
25 paperwork and all.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

33

1 Q. And this was at a room at the Fort Mill PD; correct?

2 A. Yes, sir.

3 Q. How big was that room?

4 A. Maybe fifteen by fifteen; fourteen by fifteen,
5 somewhere in that neighborhood.

6 Q. If I heard you correctly you and Beck and Cantey in
7 and out?

8 A. Cantey was in and out because where the officers are
9 set up our main office is really really small and the room
10 that we use to talk to is across the hall and it's a pretty
11 good size room it's got a big wooden table. So Cantey
12 would come in and out from out the office while we were
13 talking with him. But for the most part it was Officer
14 Beck, myself and Mr. Watson.

15 Q. About how long did your total conversation take place
16 with Mr. Watson?

17 A. Maybe an hour.

18 Q. Were any promises made to get him to talk?

19 A. No, sir.

20 Q. Or did you promise him any reward?

21 A. No, sir.

22 Q. Were any threats made?

23 A. No, sir.

24 Q. Were guns drawn?

25 A. No, sir.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

34

1 Q. Now you said there were at most three officers two in
2 there most of the time and one in and out?

3 A. Yes, sir.

4 Q. Was he denied food or water at this time?

5 A. No, sir, he wasn't.

6 Q. At any time during the conversation did he tell you
7 that he wanted an attorney?

8 A. No, sir.

9 Q. Did he invoke his right to remain silent?

10 A. No, sir, he didn't.

11 Q. What did he say?

12 A. We started talking about the drugs and his past and
13 all that. One of the things we talked about was customer
14 based because we asked about the -- He said he did sell
15 that he may use a little but he sold. We ask about who he
16 knew in the area what was going on where that came from.
17 He stated that he had gotten that from an individual on the
18 green Isuzu. We tried to talk to him about cooperating he
19 stated that the guy in the green Isuzu was a nobody that
20 that wasn't who we wanted but he knew people in Charlotte
21 that would be better suited as a target for his coop -- If
22 he was going to cooperate. I asked him about his customer
23 base he said he sold to some people in Rock Hill and the
24 area. He liked to sell to younger white people because he
25 could tell them to come by themselves and they would show

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

35

1 up by themselves and he wouldn't have to worry about
2 getting robbed or anything like that or strangers coming to
3 a deal. I walked down and was going to go into our office
4 and was going to start helping Officer Beck with the
5 evidence and was going to attempt to weigh the vindles and
6 checked through them. We separated the vindles because
7 they were all packed together. The one in the middle had
8 nothing in it. I stuck my head in the door and I asked Mr.
9 Watson if he - What was going on with that? There was
10 twenty four and only twenty three of them had anything in
11 it and what was in it. He got kind of a puzzled look on
12 his face and said well that makes sense that I've had a
13 customer that would buy like five or six at a time and was
14 complaining that one's been empty before that maybe it was
15 in the package from the people it came from.

16 Q. I have no further questions at this time. Please
17 answer any questions the defense might have.

18 THE COURT: Spell vindles for me.

19 SOLICITOR EPTING: V-i-n-d-l-e-s.

20 THE COURT: Vindle. All right.

21 MR. DELANEY: Judge, I just have a question for Your
22 Honor. We have put up Ms. Anderson

23 THE COURT: No problem.

24 CROSS EXAMINATION IN CAMERA

25 OFFICER B.J. KENNEDY BY MS. ANDERSON:

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

36

1 Q. All right, Mr. Kennedy, when you went to the KFC
2 parking lot you Officer Beck was already there?

3 A. No. I was the first one to get to the KFC parking lot
4 and I called on the radio and advised them they had two
5 individuals sitting in a vehicle that were not eating and
6 they actually came over to the area that I was at.

7 Q. I apologize. When you get to the Wells Fargo parking
8 lot Lieutenant -- Officer Beck was already at the Wells
9 Fargo?

10 A. Yes, ma'am.

11 Q. So you don't have any idea of any conversation Officer
12 Beck had with Mr. Watson when - -

13 A. Other than what Officer Beck related to me no.

14 Q. And did you have a conversation with Mr. Watson in the
15 Wells Fargo parking lot?

16 A. No, ma'am.

17 Q. And you indicated that approximately you were in the
18 Wells Fargo parking lot for approximately fifteen minutes?

19 A. No. I think Mr. Epting asked how long from the time
20 he was arrested to when he got to the Fort Mill PD. No I
21 was only in Wells Fargo probably about a few minutes. I
22 actually arrived and they were about to leave. I parked my
23 car at Wells Fargo and drove Mr. Watson's car back to Fort
24 Mill PD to do a better search of the vehicle.

25 Q. So the fifteen minutes the actual period of time in

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

37

1 the Wells Fargo parking lot would have been longer to that
2 than you were saying the fifteen minutes from the time you
3 arrived to Fort Mill so it would have been more time

4 A. Yes, ma'am.

5 Q. And were you in uniform in the Wells Fargo parking
6 lot?

7 A. No, ma'am.

8 Q. Were you armed?

9 A. Yes, ma'am.

10 Q. Were your weapons - Was your weapon drawn at the time?

11 A. No, ma'am.

12 Q. Were there any other officers there?

13 A. When I got there Office Beck and Officer Cantey were
14 already there.

15 Q. So three officers total?

16 A. Yes, ma'am.

17 Q. And are you aware of whether Mr. Watson was given his
18 Maranda rights at Wells Fargo?

19 A. Officer Beck advised he had the standard procedure for
20 drug personnel. As soon as someone was arrested we all
21 carry the same rights card so as soon as somebody is
22 arrested we immediately - -

23 Q. But you did not personally do that?

24 A. No, ma'am.

25 Q. And you didn't personally witness that?

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

38

1 A. No, ma'am.

2 Q. And you were there at the Fort Mill Police Department
3 you indicated?

4 A. Yes, ma'am.

5 Q. And as far as this room that you were in that's a room
6 at Fort Mill Police Department?

7 A. Again it's about a fifteen by fifteen room maybe a
8 little bit larger maybe a little smaller. It's a fairly
9 good size room. Its actually a supply room that they have
10 office in. It's got a big wooden table probably the table
11 is as big as the area that the pedestal that the attorneys
12 sit behind the table itself is that big with chairs sitting
13 around it. We use it as a conference room to interview
14 people.

15 Q. So basically you get to the Fort Mill Police
16 Department you didn't have to use your own office?

17 A. Well our office would be so small because our offices
18 may be two thirds or half the size of the room we actually
19 use. So between the desk and us trying to do evidence or
20 do the paper work and having other things going on there is
21 really no way in our office to talk to somebody.

22 Q. Okay. But you could have basically chosen somewhere
23 else; the Fort Mill Police Department would have let you
24 used another - -

25 A. No that's where our office is at the Fort Mill Police

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

39

1 Department.

2 Q. Right. But I'm saying you are not actually using your
3 office at the Fort Mill Police Department. The police
4 department lets you use a different room in the facility?

5 A. Yes right across the hall.

6 Q. And Mr. Watson was in custody at that time; correct?

7 A. Yes, ma'am.

8 Q. Was he handcuffed?

9 A. When we got to the police department the handcuffs
10 were removed.

11 Q. And you indicated it was approximately an hour that he
12 was interviewed?

13 A. Yes, ma'am.

14 Q. And you indicated there was a discussion with him he
15 was actually you thought get him to work with you; correct?

16 A. During the interview when I questioned him about the
17 green Isuzu he indicated that he could cooperate but not
18 with the Isuzu because that was a nobody that he had some
19 other targets that were larger targets than that if he was
20 going to cooperate.

21 Q. You didn't attempt to get him to work in order to help
22 himself out?

23 A. Oh yeah I mean if he wants to work I mean we always go
24 with anybody that wants to cooperate.

25 Q. And you also discussed him; correct, about how much

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

40

1 time he could receive on the charge; correct?

2 A. I don't know that we discussed that in particular
3 because his criminal history from New Jersey is kind of
4 hard to read so we didn't know exactly how many offenses it
5 was. I think the one indictment said third or subsequent
6 because trying to make sense of that criminal history was a
7 little confusing that night.

8 Q. You didn't tell him that you were looking at thirty
9 years?

10 A. I don't think I did. I want to tell you I didn't
11 because I'm not sure but I don't think I told him thirty
12 years. Normally when people ask if I don't know I will get
13 the book out and read it to them.

14 THE COURT: Mr. Kennedy, I'm going to ask you to don't
15 chew gum. I was going to wait until we got through but - -

16 A. I'm sorry. To try to answer the question if the
17 statute calls for thirty years then it's highly possible
18 that I did tell him he could receive up to thirty years.

19 BY MS. ANDERSON:

20 Q. And you testified on direct about some statements that
21 you indicated Mr. Watson said in that room?

22 A. Yes, ma'am.

23 Q. And you indicated that he said something about the guy
24 in the Isuzu?

25 A. Yes, ma'am.

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON

41

1 Q. And did you ask him anything further about who that
2 individual was?

3 A. I did ask him and he would not identify that person.
4 He stated that was a nobody that's just who he got it from
5 that day and he refused to identify that person.

6 Q. And you didn't know who that individual was?

7 A. At the time I did not.

8 Q. And you didn't run the tag on that individual at the
9 course of the time - -

10 A. I couldn't because they backed into the KFC where you
11 couldn't read it. Like I told you once we merged onto 77
12 the traffic was so bad I never got close enough to it.

13 Q. And then you testified on direct that he had discussed
14 an individual in Charlotte?

15 A. Yes, ma'am.

16 Q. And you also testified that he indicated about selling
17 to white people?

18 A. That was his words.

19 Q. And you did not fill out the incident report; correct?

20 A. No I didn't.

21 Q. And you indicated Officer Beck was present at the time
22 these statements were made?

23 A. Yes, ma'am.

24 Q. Did you review Officer Beck's report?

25 A. I did.

B.J. KENNEDY: CROSS EXAMINATION BY MS. ANDERSON
CROSS EXAMINATION BY MR. DELANEY

42

1 Q. And some of the statements you just said did not --
2 Were not put in Officer Beck's incident report?

3 A. In the Incident Report? No there weren't any
4 statements put in the Incident Report.

5 Q. The statements were not completely documented in your
6 incident report?

7 A. No, ma'am.

8 Q. And Mr. Watson did not give a written statement?

9 A. No, ma'am.

10 Q. And there is no memorandum you insert in the file of
11 what statements you heard?

12 A. No, ma'am.

13 Q. And the statements weren't tape recorded?

14 A. No, ma'am.

15 Q. Or video taped?

16 A. No, ma'am.

17 Q. I beg the Court's indulgence. Your Honor, I have no
18 further questions for this witness.

19 THE COURT: All right. Mr. Delaney.

20 CROSS EXAMINATION IN CAMERA

21 OFFICER B.J. KENNEDY BY MR. DELANEY:

22 Q. You testified earlier, Lieutenant, that at
23 approximately 4:45 you observed two males inside this

24 A. I didn't give a time but I mean it was in the
25 afternoon yes, sir.

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

43

1 Q. You said you reviewed the incident report in this
2 case?

3 A. Yes, sir.

4 Q. And the incident report states that the two
5 individuals were observed at about 4:45; - - -

6 A. Yes, sir.

7 Q. - - - correct?

8 A. That's correct.

9 Q. And the Isuzu was backed into a parking place at KFC?

10 A. Yes, sir.

11 Q. And that's the KFC off of Carowinds?

12 A. Yes, sir, it is.

13 Q. And Officer Beck and Officer Cantey then began
14 conducting surveillance of the parking lot but more
15 specifically of the Isuzu; right?

16 A. Sir?

17 Q. Officer Cantey and Office began then to conducting
18 surveillance of the parking lot specifically this vehicle;
19 is that right?

20 A. No, sir. What happened was I pulled into the parking
21 lot and observed it. I actually was on the vehicle in the
22 KFC parking lot.

23 Q. Okay.

24 A. They were -- One was right at the -- hotel and one was
25 at the Petro. You have to drive by both of those to get

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

44

1 out of the KFC.

2 Q. So they were patrolling - - -

3 A. Well they were just sitting.

4 Q. - - - flagged - -

5 A. Yes, sir.

6 Q. And at some point you all began conducting
7 surveillance of this vehicle?

8 A. Yes, sir.

9 Q. Okay. And there is no investigation targeting Jerome
10 Watson at this time?

11 A. At that time no, sir.

12 Q. No information that Jerome Watson was selling drugs in
13 the parking lot of the KFC; right?

14 A. No, sir.

15 Q. And had absolutely no information that Jerome Watson
16 was involved in any type of drug activity at this time?

17 A. Up until we ran the tag. I gave the tag number back to
18 the officer.

19 Q. You never heard of Jerome Watson; is that right?

20 A. No, sir.

21 Q. The driver of the red Isuzu was not identified;
22 correct?

23 A. It was actually green but by us it was not.

24 Q. This is a green Isuzu?

25 A. It's a green Isuzu.

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

45

1 Q. And the individual did you see a black male white
2 male?

3 A. Yes, sir, he was a black male.

4 Q. Black male. And he was not someone that was known by
5 DEU?

6 A. Not by the York office no, sir.

7 Q. You wasn't working for the DEU?

8 A. No, sir.

9 Q. And he was not someone known to DEU?

10 A. Not by the north office no, sir.

11 Q. He wasn't working for - With the DEU?

12 A. No, sir.

13 Q. And you weren't obviously you testified you all were
14 not there conducting surveillance with any type of
15 controlled by; right?

16 A. No, sir.

17 Q. And you say after watching the vehicle for a few
18 minutes the passenger in the vehicle later identified as
19 Jerome Watson gets out of the vehicle; right?

20 A. Yes, sir, that's correct.

21 Q. And prior to Mr. Watson exiting the vehicle nothing is
22 observed in the vehicle as far as indicating any type of
23 drug transaction?

24 A. No, sir. The way the vehicle is set up you can't
25 really see what was going on in their laps and in their

1 hands other than there was no food no eating or drinking so
2 unless something was done below the door I couldn't see it.

3 Q. But at that point in time the only thing was there
4 were two individuals inside the car and you all had a hunch
5 or suspicion that something was going on - -

6 A. Yeah we had so many drug deals going on up there and
7 it's always the same scenario one vehicle backed in and
8 maybe two backed in we can't read the tags. That's just
9 common.

10 Q. You would admit that at that time there was nothing
11 more than suspicion on your part?

12 A. Suspicion yes, sir.

13 Q. And you state that the male passenger Mr. Watson gets
14 out of the vehicle and he is talking to the driver of the
15 vehicle; is that correct?

16 A. Yes, sir.

17 Q. Okay. And I believe the incident report states that
18 he talked to him on the passenger side for a few minutes
19 and on the driver's side for a few minutes; is that
20 correct?

21 A. Yes, sir.

22 Q. Okay. There is nothing in the incident report that
23 mentions that Mr. Watson leans into the car or he seems to
24 have a hand shake or anything like that; is that correct?

25 A. I haven't reviewed it in a while but if you read it

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

47

1 and it is not in there no, sir.

2 Q. You said that you read it a while ago?

3 A. Yes like way back.

4 Q. You didn't review it today?

5 A. No, sir.

6 Q. And you testified that you observed Mr. Watson at some
7 point leaning into the vehicle; is that correct?

8 A. Walks up to the window kind a the hand goes in it
9 could have been a hand shake. That's why I was saying it
10 would be speculation for me to say that he gave him
11 something.

12 Q. So you just at that point again it's suspicion - -

13 A. Strictly suspicion yes, sir.

14 Q. At approximately I guess about 5:00 p.m. is when Mr.
15 Watson goes to the Buick; is that right?

16 A. Maybe fifteen minutes but maybe not. Somewhere
17 between 4:45 and Five o'clock yes, sir.

18 Q. Okay. So he leaves the Isuzu and he goes to his car?

19 A. Yes, sir.

20 Q. Okay. And at that time Mr. Watson then drives out of
21 the KFC parking lot; is that correct?

22 A. Both of the vehicles did yes, sir.

23 Q. Okay. And you follow the Isuzu?

24 A. Yes, sir.

25 Q. And Officer Beck following Officer Cantey following

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

48

1 Mr. Watson in the 2003 Buick?

2 A. Yes, sir.

3 Q. Is that right?

4 A. That's correct.

5 Q. And you stated that at some point a call comes in or
6 you hear something or discussing with Officer Beck and you
7 call a tag in about some information about Mr. Watson; is
8 that -

9 A. When I gave the tag number out over the radio to
10 Officer Beck because he normally handles all of that
11 through the county dispatch getting it ran when I gave the
12 tag number to Mr. Watson's vehicle Officer Beck immediately
13 recognizes this being the tag that Commander Brown had ran
14 earlier in the day when they were doing a heroin deal in
15 Rock Hill. He advised me of that over the radio I called
16 Commander Brown on the telephone and asked him if that was
17 true and if he knew anything about that vehicle. Commander
18 Brown stated yes but that was the vehicle that they had
19 bought heroin out of earlier in the day down in Rock Hill
20 with Charlotte, Mecklinburg. From there I advised them to
21 stay with that vehicle and I was going to stay on the
22 interstate trying to keep up with the Isuzu.

23 Q. Okay. You testified that at that point you had no
24 knowledge of Jerome Watson personally?

25 A. No, sir.

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

49

1 Q. And as far as the investigation going - -

2 A. No, sir.

3 Q. Jerome Watson he was never charged with any offenses
4 of distribution of heroin or selling heroin or anything
5 like that; - - -

6 A. No.

7 Q. - - - is that right?

8 A. That's right that's correct.

9 Q. You loose the Isuzu and tracked it?

10 A. Yes.

11 Q. And then you go back to Wells Fargo?

12 A. That's correct.

13 Q. When you get back to Wells Fargo do you then join in
14 the surveillance at Wells Fargo or at that point do they
15 already have Mr. Watson - -

16 A. Mr. Watson was already in custody by the time I got
17 back to Wells Fargo.

18 Q. Okay. I don't have any further questions for the
19 Lieutenant.

20 THE COURT: Redirect?

21 SOLICITOR EPTING: I have no redirect, Your Honor.

22 THE COURT: All right. You can step down. Thank you
23 for your time.

24 OFFICER KENNEDY: Thank you, Judge.

25 THE COURT: All right call your next witness.

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

50

1 SOLICITOR EPTING: The State calls Officer Beck.

2 Your Honor, I do want to make sure I - there is
3 somebody in the room earlier I just want to make sure our
4 mutual sequestration is still in play if she is a witness
5 or not.

6 THE COURT: That's up to each of you. If somebody is
7 a witness and they are in here it's not my business to keep
8 them out. If they call them to testify and they been in
9 they can testify. Both of you volunteered to
10 sequestration.

11 SOLICITOR EPTING: I understand, Your Honor.

12 (WHEREUPON: OFFICER WALTON

13 BECK BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
14 FOLLOWS:)

15 DIRECT EXAMINATION IN CAMERA

16 OFFICER WALTON BECK BY SOLICITOR EPTING:

17 Q. Would you please state your full name for the record?

18 A. Walton Beck.

19 Q. And Beck what do you do for a living?

20 A. I'm an investigator assigned to the York County Multi
21 Jurisdictional Drug Enforcement Unit.

22 Q. And were you involved in the investigation involving
23 Jerome Watson?

24 A. Yes I was.

25 Q. This was in September of last year?

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

51

1 A. Yes, sir.

2 Q. Would you please tell the court about your
3 investigation.

4 A. We were - Myself and the other officers that work in
5 my office were up on Carowinds Boulevard in reference to
6 some complaints we received about drug activity going on up
7 there through the sheriff's office. While we were up there
8 Lieutenant Kennedy came upon a couple of vehicles in the
9 parking lot of the KFC there on Carowinds Boulevard that
10 did appear to be meeting with each other. And Lieutenant
11 Kennedy began doing surveillance on it. I had taken my
12 vehicle over to the Plaza Hotel parking lot and was there
13 in a position to be in the area if needed.

14 Q. Now at some point these cars begin to leave the
15 parking lot; correct?

16 A. That's correct. Lieutenant Kennedy contacted the
17 service radio and said they were leaving.

18 Q. Which car were you trying to follow?

19 A. I was given the Buick I believe a silver Buick Century
20 to get on.

21 Q. And who is that car? Who is associated with that car
22 at the time?

23 A. Jerome Watson was the driver of that vehicle.

24 Q. And where did Mr. Watson drive to?

25 A. He drove to the Wells Fargo office complex on State

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

52

1 View Boulevard off of Spring Hill Farm Road.

2 Q. And did he park? Did he circle the parking lot and
3 park? What did he do?

4 A. When he drove into the complex he turned on to State
5 View and drove down the Boulevard there. Excuse me. And
6 went down to the last set of buildings and made a right
7 into the parking lot there and parked in a parking space
8 for a few minutes.

9 Q. Now where were you parked?

10 A. I followed him down into there I was in an unmarked
11 plane stock vehicle in plain clothes so I was able to
12 follow him down in there covertly and I just kind of parked
13 behind him off centered a little before I could see what
14 was going on with that vehicle.

15 Q. So you were not directly behind him?

16 A. No not directly behind him no.

17 Q. His path was not blocked?

18 A. No. I was a few rows away from him. He had driven
19 into a parking space on one row and I was way off from him
20 a little bit just to where I could see him to see what was
21 going on.

22 Q. And did you get out of the vehicle or did you stay
23 back and watch?

24 A. No I stayed back and watched what he was doing. I had
25 one more officer coming to me Officer Cantey. Lieutenant

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

53

1 Kennedy was following the Isuzu down the interstate trying
2 to find it so I was sitting there watching that Buick to
3 see what it was doing. It stayed there for a few minutes
4 and then it moved.

5 Q. Okay. Where did it move to?

6 A. It came out of the parking space and parked not in a
7 parking space but in the drive way in kind of through as
8 you drive through the parking lot in front of one of the
9 exits to the building right there near it. He had just
10 parked right there not in the parking space or anything but
11 parking there like he was waiting on somebody to leave the
12 building.

13 Q. And did you approach?

14 A. After a few minutes whenever I knew Office Kennedy was
15 getting real close to me trying to find me I went ahead and
16 drove my truck around and parked behind him there and got
17 out and walked up and talked to the -- To Mr. Watson.

18 Q. You said you were in plain clothes. Did you have any
19 indicia on your person indicating you were a law
20 enforcement officer?

21 A. On plain view? No I was -- I don't remember exactly
22 what I was wearing that day but I was probably wearing you
23 know just regular pants and a T shirt or sweat shirt of
24 some type.

25 Q. Did you have a badge?

1 A. I did have my badge. My badge is clipped to my belt
2 as it is today you know right there. Normally a lot of the
3 time it's covered up so I make an effort to when I get out
4 to somebody or deal with somebody in a law enforcement
5 capacity to identify myself. You know pull my shirt up
6 pull it back over my stuff and identify myself as an
7 officer.

8 Q. And just to be clear. Were your blue lights on at
9 this time?

10 A. No. No my blue lights weren't on.

11 Q. And it's Five o'clock so it was day time turning dark.
12 Dark already?

13 A. It was still day light you could see all through the
14 parking lot. Like I said I was several -- I was several
15 just a few rows back from him whenever we were in the
16 parking lot and I could see his vehicle fine.

17 Q. And were there other people in that parking lot?

18 A. There were. There were other people in the parking
19 lot. People were getting off work going out to their cars
20 and stuff like that.

21 Q. And you approach him and you speak with Mr. Watson.
22 Did you have a gun drawn when you spoke with him?

23 A. No.

24 Q. What did you say to him?

25 A. Walked up to him identified myself as a police officer

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

55

1 and told him who I was. Talked to him for just a minute
2 and said, sir, do you have any driver's license on you, any
3 ID? And he didn't have a driver's license he gave me an ID
4 card and told me he didn't have a license. And I had seen
5 him driving on the road on the way there so you know he
6 didn't have a license or anything so I kind of went on with
7 that. I asked him to get out of the car and walk back and
8 talk to me and he did. He got out of the car and walked
9 back and talked to me. I asked him if he had anything
10 illegal on him and if I could search him and he give me
11 consent to search him. I searched him he didn't have
12 anything illegal on him on his person or any kind of
13 weapons or anything.

14 Q. What was the tone of your voice when you asked him
15 that?

16 A. Just the way we are talking now. Just talking to him.
17 I wasn't screaming or wasn't yelling.

18 Q. Did you take the keys to his car when you walked him
19 back to the patrol car?

20 A. No. No.

21 Q. Where was the key?

22 A. I didn't have them. I assumed they were probably in
23 the ignition.

24 Q. So you asked him if he minded if you took a look at
25 his car?

1 A. Yeah I asked him if I could search his vehicle to make
2 sure there was nothing illegal inside it and he gave me
3 consent to search his vehicle. When I had first been up
4 there talking to him I noticed a cigarette pack in the --
5 This is kind of hard to describe but I will do my best.
6 When you are sitting behind the wheel of a car and you have
7 your driver's door there is that handle there to open to
8 pull the door in. It was sitting right there in that
9 little handle I believe a Newport cigarette pack. So that
10 kind of you know drew my attention to it when I first
11 started talking to him because you know we've seen a lot of
12 drugs before in cigarette packs. So I got consent to
13 search the vehicle from him and I walked up -- He's back
14 standing in front of my truck at the front grill of my
15 truck which is parked behind his car. So being very
16 careful I don't know Mr. Watson or anything so I'm watching
17 him and watching what I'm doing. Officer Cantey is in the
18 parking lot on his way to me and I find a cigarette pack
19 that cigarette pack there and I opened it up and it had
20 several windles of heroin in it.

21 Q. Was that readily apparent it was heroin?

22 A. Yes it was readily apparent.

23 Q. At that time was Mr. Watson placed under arrest?

24 A. At that time I went ahead and stuck it in my pocket
25 and I walked back over to Mr. Watson placed him in

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

57

1 handcuffs and placed him under arrest and advised him of
2 his Maranda rights.

3 Q. And are those Maranda rights read from memory or from
4 a card?

5 A. I read them from a card I carry on me.

6 Q. And I would ask to mark as Court's Exhibit One.

7 THE COURT: No objection.

8 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE MARKED FOR
9 IDENTIFICATION.)

10 BY SOLICITOR EPTING:

11 Q. Officer Beck, I am handing you what has been marked as
12 Court's Exhibit One if you would please look over that and
13 tell me if you recognize it?

14 A. I do recognize this. This is a copy of my Maranda card
15 that I carry. And this is my notes that I made underneath
16 it "Read to Jerome Watson on September 24th, 2009
17 approximately 5:25 p.m. by W. Beck."

18 Q. And those are the same Maranda rights that you read
19 Mr. Watson upon his arrest - -

20 A. Yes, sir, this is a copy of the card I read to him.

21 Q. Your Honor, I would ask to move that in as a Court's
22 Exhibit.

23 THE COURT: Any objection.

24 MR. DELANEY: No objection.

25 THE COURT: In without objection.

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

58

1 ((WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND
2 MARKED, ENTERED INTO EVIDENCE.)

3 BY SOLICITOR EPTING:

4 Q. So after he is arrested you read him his Maranda
5 rights and you take him to the station; correct?

6 A. Read him Maranda rights and place him in the vehicle.
7 I believe Officer Cantey arrived as I was putting him in
8 the vehicle. Lieutenant Kennedy arrived just a couple of
9 seconds after that and I drove him over to the Fort Mill
10 Police Department where our office is.

11 Q. And how long before he was at the station did you guys
12 get to see him?

13 A. Just a few minutes; just a very few minutes.

14 Q. So how long had passed between you reading those
15 Maranda rights and the beginning of questioning him if you

16 - -
17 A. Maybe twenty to twenty-five minutes at the most.

18 Q. Twenty to twenty-five minutes?

19 A. Because it's a fifteen to twenty minute drive over to
20 the office from there up on State View Boulevard afternoon
21 during traffic.

22 Q. And without going into details yet you speak with Mr.
23 Watson; correct?

24 A. We did.

25 Q. You and Officer Cantey?

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

59

1 A. That's correct.

2 Q. At any point did anyone threaten Mr. Watson to get him
3 to talk?

4 A. No, sir.

5 Q. Offer him promises?

6 A. No, sir.

7 Q. Was he denied - - denied who you are?

8 A. No, sir.

9 Q. (CANNOT UNDERSTAND FROM AUDIO.)

10 A. No, sir.

11 Q. Were your guns drawn when you spoke with him?

12 A. No, sir.

13 Q. And again this is you and Kennedy in an approximate
14 fifteen by fifteen room?

15 A. That's correct.

16 Q. And at any time did Mr. Watson ask for an attorney?

17 A. No.

18 Q. At any time did he wish that he wanted to terminate
19 speaking with you all and exercise his right to remain
20 silent?

21 A. No, sir.

22 Q. What did the defendant say?

23 A. He talked with us about selling heroin and talked with
24 us about what he could do to help himself out. We had
25 talked with him about his charge and what he was looking

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

60

1 at. He was willing to cooperate with us and wanted to get
2 on board with us and work with us as an informant.

3 Q. What specifically did he tell you? Did he tell you he
4 was a drug dealer?

5 A. He talked with us about selling drugs. He lived in
6 Rock Hill I believe on Hoyle Street or Hoyle Avenue or
7 something like that. That you know he would sell heroin to
8 white people because they didn't bring people around. If
9 you told them not to bring anybody they wouldn't bring
10 anybody.

11 Q. Did he say anything about being a drug user as well?

12 A. I believe he did. He talked a little bit about that
13 he used but he used a little and that he sold.

14 Q. And did he make any comments about what occurred at
15 the KFC parking lot?

16 A. He did. He talked with us that he met with the guy in
17 the green Isuzu and bought the heroin that he had from --
18 That we found on him that he bought from the guy in the
19 green Isuzu. But that that wasn't who we really wanted
20 that you know he wasn't a big player in the dope game that
21 he could put us on these other people.

22 Q. Okay. I have no further questions at this time.
23 Please answer any questions defense counsel may have.

24 CROSS EXAMINATION IN CAMERA

25 OFFICER WALTON BECK BY MS. ANDERSON:

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

61

1 Q. Officer Beck, you dealt with Mr. Watson in the Wells
2 Fargo parking lot; correct?

3 A. That's correct.

4 Q. And you were the sole officer at the time who had any
5 sort of discussion or conversation with him?

6 A. That's right.

7 Q. And you were -- You were essentially interacting with
8 Mr. Watson face to face; correct?

9 A. That's correct.

10 Q. Okay. And you had an opportunity to observed his
11 demeanor?

12 A. That's right.

13 Q. And when you were dealing with him did you observe
14 that he appeared to be under the influence at the time?

15 A. No.

16 Q. Yet, your position is you did not believe him to be
17 under the influence of any drugs at the time?

18 A. I didn't believe that he was under the influence of
19 any drugs at that time.

20 Q. And on your incident report you indicated - - - - ;
21 correct?

22 A. That's correct.

23 Q. And when you sit with him in the parking lot did you
24 question him at all about what was going on or what had
25 been going on?

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

62

1 A. Over at the Kentucky Fried Chicken?

2 Q. Yes.

3 A. I don't believe I got into that there. I believe I
4 had just -- I don't think we talked about that there.

5 Q. So when you walk up and approach his vehicle what did
6 you talk with him about?

7 A. I just walked up. It was a very brief encounter all
8 together. I just walked up identified myself as Officer
9 Beck with the Drug Enforcement Unit. I told him that we
10 had some complaints about some drug activity going on in
11 the area. I do remember telling him that. I kind of
12 played it off that we were more or less looking in the
13 Wells Fargo area where he was parked at and asked him for
14 is ID and asked him for his driver's license and he gave me
15 an ID card I believe and he said he didn't have a license.

16 Q. So the basis of you going up and talking with him was
17 for a drug offense issue?

18 A. Yes. Yes that's what we do.

19 Q. And you ultimately ended up arresting him at the Wells
20 Fargo parking lot; correct?

21 A. That's correct.

22 Q. And he was placed in handcuffs?

23 A. Yes, ma'am.

24 Q. Was he placed in handcuffs at any point for safety
25 reasons because of you being alone?

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

63

1 A. While I was searching the vehicle or anything?

2 Q. Yes.

3 A. No, ma'am, he was not in handcuffs while searching the
4 vehicle. Well I don't know. I don't remember because I
5 know he didn't have his license or anything so I'm not
6 totally sure. Because the fact that we had seen him
7 driving and he didn't have a license I really don't
8 remember if I had placed him in cuffs or not yet at that
9 time.

10 Q. So you don't recall either way?

11 A. I don't remember. I may have I may not have. I'm not
12 sure.

13 Q. And you indicated you read him Maranda rights in the
14 Wells Fargo parking lot?

15 A. That's correct.

16 Q. Did you question him at all in the Wells Fargo parking
17 lot?

18 A. I don't believe so.

19 Q. Did you have questions for him at all in the
20 conversation in your vehicle on the way to the Fort Mill
21 Police Department?

22 A. We talked on the way to the police department about
23 what had gone on. I don't remember exactly what all we
24 talked about. Generally whenever I'm transporting anybody
25 over I generally kind of talk to them just about things

1 that are going on and just you know it's fifteen minutes of
2 silence is a long time.

3 Q. So you very well could have been questioning him at
4 that time about what had gone on?

5 A. Possibly could have been.

6 Q. Was your vehicle equipped with an in car video system?

7 A. No it's not.

8 Q. So there is no video or audio of your conversation?

9 A. No, ma'am.

10 Q. And you can't recall specifically what was said during
11 that ride?

12 A. On the way to the police department? No I don't think
13 we really got into any kind of details about what was going
14 on on the ride over.

15 Q. And when he went to the Fort Mill Police Department
16 you were with him and met with him in this room; correct?

17 A. I took him in there yes, ma'am.

18 Q. And you basically could have taken him in any room
19 sort of in the Fort Mill Police Department in order to meet
20 and talk with him?

21 A. Generally we have one room that we generally designate
22 for interviews in dealing with people that we bring in in
23 intake of people we arrest. I don't know that I could have
24 taken him in any room in the police department.

25 Q. And you did not take any audio recording equipment

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

65

1 with you into the room in order to record the interview
2 that you were about to have?

3 A. No we didn't record the interview.

4 Q. And you didn't use any video recording equipment?

5 A. No we didn't use any video recording equipment.

6 Q. And those -- At that facility there would have been a
7 video recording equipment available at the Fort Mill Police
8 Department; correct?

9 A. Could have found a video camera in there somewhere.

10 Q. Okay. Or could have used the room they use for BA
11 rooms for DUI's that have video equipment?

12 A. We have been specifically told that the BA room is not
13 an interview room. It's a BA room. Not an interview room.
14 I distinctly remember having that beat into my head before.

15 Q. But DEU has audio recording equipment you could
16 utilize?

17 A. Right. We have audio recorders we have video
18 recorders.

19 Q. Because you basically use that in connection with
20 controlled buys in order to record what people say and what
21 goes on?

22 A. That's correct.

23 Q. But you chose not to do that on this occasion?

24 A. That's correct.

25 Q. And was Mr. Watson given his Maranda rights give at

1 this point or solely out at Wells Fargo?

2 A. Solely out at Wells Fargo.

3 Q. And he was still in custody at this time; correct?

4 A. That's correct he was not free to leave.

5 Q. And he was actually under arrest at this point for
6 possession with intent to distribute heroin?

7 A. Yes, ma'am.

8 Q. Was he handcuffed at the time you took him into the
9 room?

10 A. When we took him in yes, ma'am. We'll take the hand
11 cuffs off once we get them inside there.

12 Q. Was he taken into the room upon arrival at Fort Mill
13 Police Department?

14 A. I believe so.

15 Q. He was taken through any booking process prior to
16 that?

17 A. Normally we do the booking in that room. We fill out
18 the booking sheet and the medical sheets in that room.

19 Q. He hadn't been allowed to make any phone calls prior
20 to that point?

21 A. I think -- I don't think he made a phone call.

22 Q. And there were between two and three officers in the
23 room at all times?

24 A. Yeah at this time.

25 Q. And did you offer him any food or drink?

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

67

1 A. No we didn't offer him anything.

2 Q. Did you offer him any chance to go to the restroom?

3 A. I don't think we specifically asked him if he needed
4 to go no, ma'am.

5 Q. And you indicated he was kept in the room for the
6 interview for approximately an hour?

7 A. Yes, ma'am, that's about how long we talked to him
8 there.

9 Q. And you discussed with him his charge; correct?

10 A. Yes, ma'am.

11 Q. And by that point you are already charging him with
12 possession with intent to distribute heroin 3rd offense;
13 correct?

14 A. Third or subsequent. His criminal history a lot of it
15 was out of New Jersey and we knew he was at least first
16 subsequent.

17 Q. And in fact you told him that he was looking at thirty
18 years on this charge?

19 A. He was looking up to thirty yes, ma'am.

20 Q. And did you in fact offer if he would cooperate that
21 he could help himself out?

22 A. What do you mean?

23 Q. That if he worked with you as an informant or gave
24 information that could help him in terms of the charge --
25 The charges?

1 A. We didn't make -- We don't make a promise or anything
2 to them that if you do this you know your charge will
3 magically go away. But you know he had asked about what he
4 could do to help himself and we explained to him you know
5 you get on board and help us we will see where it goes.

6 Q. But he was in fact in some manner told that he could
7 help himself out if he worked with you? Not specifically
8 as to what happened but that it would help him.

9 A. Yeah. Yes, ma'am, I believe that -- I'm trying to
10 follow what you're saying but - -

11 Q. You didn't make him any specific promises about what
12 would happen - - -

13 A. Right.

14 Q. - - - if he helped?

15 A. That - -

16 Q. But it was communicated to him that his situation
17 could get better if he were to work with you?

18 A. Right. We kind of explained to him that if he was an
19 informant -- The way -- The easiest way to kind of explain
20 that is you know we've had people come in and work with us
21 who you know have received reduced sentences or have
22 received consideration and that's just the best way I can
23 explain it to you.

24 Q. But isn't it specific promises about what you would
25 receive but there - -

WALTON BECK: CROSS EXAMINATION BY MS. ANDERSON

69

1 A. No we can't do that.

2 Q. Okay. But there are sort of promises that you will
3 get some consideration?

4 A. Promises is such a hard word. You know we just tell
5 them. You know look you know you can help yourself or you
6 cannot it's up to you.

7 Q. And this would have been at this time you would have
8 been discussing according to back to what he was facing on
9 the charge; correct, since we been in the same sort of time
10 period?

11 A. In the room we were talking in?

12 Q. Yes.

13 A. I guess. It was within that hour within the -- within
14 the conversation.

15 Q. And I want to be clear to what exactly you indicated;
16 he did admit to you or did make a statement to you about
17 being the user or heroin?

18 A. Yeah he said that he had used some yes, ma'am, that's
19 correct.

20 Q. And you said that he told you he lived on Hoyle Avenue
21 in Rock Hill?

22 A. I believe that was it. Hoyle Avenue or Hoyle Street
23 I'm not - -

24 Q. And you indicated he made some sort of statement about
25 selling to white people?

1 A. Yes, ma'am.

2 Q. And did he volunteer this information or was this in
3 response to you questioning him about certain things?

4 A. This was just in the mist of us talking back and
5 forth.

6 Q. Were you asking him if he sold or were you asking him
7 who do you sell to? What was sort of how the information
8 come out?

9 A. Just during the course of our interview talking with
10 him I don't remember the specifically exactly the question
11 or how exactly we asked it to him but that one statement
12 just stood out in my mind that you know he just point blank
13 come out and said you know while he was talking to us you
14 know I only sell to white people because they don't bring
15 people around with them when you tell them not to. That
16 kind of honesty normally just coming right out and saying
17 that kind of sticks in your mind.

18 Q. Were both you and Lieutenant Kennedy questioning him
19 or talking with him?

20 A. We both were talking with him.

21 Q. I beg the Court's indulgence.

22 (PAUSE.)

23 Q. No further questions on this issue, Your Honor.

24 CROSS EXAMINATION

25 OFFICER WALTON BECK BY MR. DELANEY:

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

71

1 Q. Yourself and Officer Cantey followed Jerome Watson
2 from the KFC to the Wells Fargo; right?

3 A. Officer Cantey was more stuck in traffic way back
4 behind me.

5 Q. Okay. So you all were in separate vehicles - - -

6 A. Yes, sir.

7 Q. - - - you were behind Jerome Watson? You were behind
8 the Buick, Cantey was a little bit further?

9 A. That's correct.

10 Q. Okay. The distance from KFC to Wells Fargo about one
11 mile; is that right?

12 A. Ball park yes, sir.

13 Q. And the Wells Fargo it's a big complex there; - - -

14 A. Yes, sir.

15 Q. - - - is that right?

16 A. Yes, sir. I think there are four big office
17 buildings.

18 Q. And you testified that Jerome Watson went to the back
19 of the parking complex; is that right?

20 A. He went to the last building as you come into the
21 complex it's the very last building on the right. He
22 parked down beside it.

23 Q. So there is one big building when you come in, parking
24 area then you go past that and another big building with
25 another big parking area; is that right?

1 A. I think there is four all together.

2 Q. Okay.

3 A. He was in the very last one. I think two were
4 connected and then the other two were connected. Does that
5 make sense?

6 Q. Yeah it does.

7 A. Okay.

8 Q. And you parked in a parking space?

9 A. Yes, sir.

10 Q. Okay.

11 A. Yes, sir. First to park in a parking space.

12 Q. And he stayed inside his vehicle at that time;
13 correct?

14 A. Yes, sir.

15 Q. Okay. And you didn't observe no one approach the
16 vehicle at that time; right?

17 A. That's correct.

18 Q. Okay. And after a few minutes you observed Mr. Watson
19 move his vehicle to the side of the building; correct?

20 A. Yes, sir.

21 Q. Up to the side - -

22 A. Yes, sir, exactly like that. Kind of right there in
23 the road way but not in the parking space.

24 Q. But you said up next to the building outside an exit
25 sign?

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

73

1 A. Yes, sir.

2 Q. Okay. And this was just after Five o'clock; between
3 5:00 and 5:30; is that right?

4 A. Yes, sir.

5 Q. Okay.

6 A. Yes, sir.

7 Q. And when he pulled his vehicle up to where you said to
8 the side of the building he did not get out of his vehicle;
9 right?

10 A. That's correct.

11 Q. No one came to the vehicle; is that right?

12 A. That's correct.

13 Q. Okay. And you learned later that he was there to pick
14 up his wife who works at Wells Fargo; is that right?

15 A. That's correct.

16 Q. Okay. And while he's parked outside this exit sign
17 that is when you approached the vehicle; correct?

18 A.

19 A. Yes, sir.

20 Q. All right. And you testified you walked up to the car
21 you identified yourself as a police officer?

22 A. Yes, sir.

23 Q. Okay. You said you kind of pulled your jacket up or
24 your shirt up a little bit. You showed your badge?

25 A. Right. I do that for a couple of reasons. I do it to

1 identify myself and also for my protection because my gun
2 and my badge are right beside each other so if I'm wearing
3 a T shirt or something that is covering it up I will take
4 it and I will stick it underneath there that way you know
5 if I need to defend myself I can get to my firearm and also
6 my badge is visible.

7 Q. SO you are walking up to the car at that time you got
8 -- You have your badge visible and your gun is visible; is
9 that correct?

10 A. Yes, sir.

11 Q. Okay. And did you tell initially Mr. Watson that you
12 were in the parking lot or you were in the car and that you
13 were investigating vehicles that were being broken into?

14 Do you recall - -

15 A. I think I talked with him about drug activity going on
16 there at Wells Fargo.

17 Q. But you don't recall telling him that you were there
18 investigating vehicles that were broken into?

19 A. I don't recall that.

20 Q. Okay. And you asked him for his driver's license;
21 correct?

22 A. That's correct.

23 Q. Okay. And he gave you an ID; is that correct?

24 A. That's correct.

25 Q. Okay. He also gave you registration and insurance of

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

75

1 the vehicle; is that right?

2 A. I don't recall he may have.

3 Q. Okay. And you didn't get a license number or run his
4 name as far as to see the status of his license; is that
5 right?

6 A. I don't believe so not at that time.

7 Q. He was not charged with driving under suspension or
8 anything like that; - - -

9 A. No, sir.

10 Q. - - - correct? Okay. And so when you came to the car
11 again you identified yourself showed him your badge asked
12 him for his license he gave you his ID at that time he was
13 asked to exit the vehicle; is that correct?

14 A. That's correct.

15 Q. And when he exited the vehicle you were there right
16 next to him; is that correct?

17 A. Right there close by him yes, sir.

18 Q. In close proximity? Okay. And after that is when he
19 ultimately consented after he was out of the vehicle with
20 you is when he consents to the search of his vehicle; is
21 that correct?

22 A. That is correct.

23 Q. No further questions, Judge.

24 SOLICITOR EPTING: Nothing from the State, Your Honor.

25 THE COURT: All right. You can step down. Thank you.

1 OFFICER BECK: Thank you, sir.

2 THE COURT: Any more witnesses?

3 SOLICITOR SPRINGS: Not from the State, Your Honor.

4 THE COURT: All right. Defense have any witnesses?

5 MR. DELANEY: No, Judge.

6 THE COURT: All right. Mr. Delaney, it's you all's
7 motions. I will let you and then Ms. Anderson tell me
8 about your positions on the two issues.

9 MR. DELANEY: Thank you, Your Honor. As for the State
10 not having probable cause to conduct a seizure of Mr.
11 Watson, Judge, Officer Kennedy testified that in KFC
12 parking lot that there observed him and they had a
13 suspicion and all they had was this suspicion of two
14 individuals in a car in a fast food restaurant parking lot.
15 And they observed these two individuals for close to about
16 fifteen minutes in that parking lot. And they did not
17 observe any criminal activity at that point that would give
18 them reasonable suspicion to conduct a traffic stop or
19 probable cause to seize these individuals in the parking
20 lot. And that's what we heard from Lieutenant Kennedy. We
21 heard from Office Beck that he followed Mr. Watson when he
22 left the parking lot and he went to Wells Fargo that he was
23 observed there for a number of minutes as far as parking
24 and no activity no illegal suspicious activity was observed
25 by the officers at that point. He was parked no one was

1 coming to his vehicle no one met with him at his vehicle.
2 He parked in a parking space and then pulled up to the side
3 of the building between 5:00 and 5:30 a work day. Officer
4 Beck as you heard approaches the car and at that time ask
5 Mr. Watson for his drivers' license. Mr. Watson states he
6 does not have a driver's license to give him he gives him
7 identification and at that point Mr. Watson is asked to
8 exit his vehicle. I would argue, Your Honor, that at that
9 point the seizure is taken place of Mr. Watson as far as he
10 did not -- A reason person would not be -- Given the
11 totality of the circumstances a reasonable person would not
12 feel that they were free to go at that point. When you
13 have an officer who is approaching the car and as you heard
14 the testimony looking up showing you -- After he showed him
15 the badge he is also showing you a gun and asking you for
16 ID for a driver's license which you do comply you do give
17 them ID. Now he states he doesn't have a driver's license
18 and you heard Officer Beck testify well we saw him driving.
19 We also heard the officer testify they didn't run his
20 driver's license that he was in fact suspended at that
21 time. And so I would argue this wasn't a -- They weren't
22 getting him out to conduct any search incident to arrest.
23 They simply got him out of the vehicle and at that point
24 seized him. A reasonable person, Your Honor, at that time
25 would not feel that they were free to go. You heard I

1 know some testimony that he didn't have the keys; the keys
2 may have been in the car still at that point but again,
3 Judge, what we personally feel at that time once they are
4 asked to exit the vehicle that they would then read you --
5 Disregard the officers actually do get back in the vehicle
6 and drive off. So for those purposes we would argue that
7 these did take place so the case law that I looked at,
8 Judge, in State v. Williams and Florida versus Bostic - -

9 THE COURT: You got copies of those for me to look at?

10 MR. DELANEY: Yeah. I handed up those two cases
11 because as I was and I believe that these two cases the
12 test were -- It was established and determined which
13 indicates and the court must consider under all the
14 circumstances, all the circumstances surrounding the
15 encounter between law enforcement and citizens a reasonable
16 person would have believed he was not free to leave.
17 Judge, the question is not whether the specific individual
18 is free to walk away but rather a reasonable person would
19 felt free to leave under the same circumstances. If a
20 reasonable person would feel free to terminate the
21 encounter then he or she has not been seized so long as the
22 person approaching questions you; free to disregard the
23 officers questions and walks away in order for you to find
24 the person liberties and privacy has taken place and no
25 constitution no encounter is necessary. These cases just

1 mainly talk about the text and the test that's used to
2 determine whether or not obviously Judge, Officer Cantey
3 essential encounters can occur they do occur and an officer
4 can walk up to an individual and ask them for their ID.
5 And in this case Mr. Watson did give him his ID. He said
6 he didn't have a driver's license again there was no
7 evidence presented here today that the officers knew or did
8 check the individual out in fact were under suspension he
9 did comply with -- I would argue he did comply with some
10 other things as far as other documentation as far as
11 registration and insurance. Officer Beck did not remember
12 that. Again, Your Honor, we would argue it's easier it did
13 occur in this case and we would argue that if anything any
14 consent that was given after this illegal search was
15 obtained and even a knowing and voluntary consent is given
16 the taint of the original seizure would take away the
17 consent to search at all.

18 SOLICITOR EPTING: Your Honor, I disagree a little bit
19 with Mr. Delaney's version of the facts. My reading is
20 that they see activity in a very high crime area not just a
21 high crime area but a particular parking lot where they
22 said they have had a large number of drug transactions
23 before. B.J. Kennedy observes what could very well be a
24 drug transaction occur in that parking lot as Mr. Jerome
25 Watson is leaving they find out through hearsay -- Through

1 hearsay that a person in that car with that license plate
2 has been involved in the sale of heroin that very day.
3 Your Honor, my opinion that gives them reasonable suspicion
4 to approach him and do a further investigation. In fact
5 that would not require arrest to rely solely on voluntary
6 consent at the encounter.

7 THE COURT: I agree with the State's position. I
8 believe in looking at the totality of the circumstances and
9 I have not had a chance to completely read State versus
10 Williams which cites ----- versus ----- they -- The
11 officers had observed that activity at KFC which at best
12 was suspicious. That they did recognize the activity was
13 the type indicative of drug deals. Can't say with absolute
14 certainty that that alone was circumstantial giving rise to
15 reasonable suspicion that some illegal activity had
16 occurred but that is an intricate part of the totality of
17 the circumstances. That coupled with the information
18 relayed about the tag again we're looking at the totality.
19 I know that's hearsay but based on State versus Bacus or
20 Backus which is not completely off point 367 SC 41 I
21 believe the receipt of that information could be utilized
22 by Officer Beck in making this stop. The tag as I said had
23 been recognized by drug enforcement and I'm not going to go
24 through the whole Multi Jurisdictional person you called
25 but the DEA the drug individuals, Drug Enforcement group,

1 recognized that tag as one which had been involved in a buy
2 by the drug unit along with the Charlotte Mecklinburg
3 authorities to make a buy from that car. So I believe all
4 this information gives rise to accomplish circumstances at
5 least to a reasonable suspicion and actually beyond a
6 reasonable suspicion plus there was no stop here the stop
7 had already been made. The officer approached the vehicle
8 and asked some questions and so there is no stop. Now
9 there may have been a seizure when Mr. Watson exited the
10 car but I don't believe it was. In the case they handed up
11 State versus Williams it starts off it is well settled
12 "mere police questioning does not constitute a seizure".
13 And of course it names the purposes. Here we had the mere
14 police question; questioning was appropriate based on the
15 totality of the circumstances we've already gone over that
16 was done by an officer who observed the operation of that
17 vehicle by Mr. Watson. Mr. Watson admitted that he had no
18 driver's license and that he gave the officer the right to
19 seize him at that point. If he had not already been seized
20 I think he was at that point but they had the right to stop
21 and did stop him and they had the right to question him and
22 they had the right to ask the questions they imposed and
23 based on the answer that he had been observed driving and
24 answered that he had no driver's license. The seizure of
25 Mr. -- And further detention of Mr. Watson was reasonable

1 and do not constitute a violation of his Fourth Amendment
2 right.

3 All right now, Ms. Anderson.

4 MS. ANDERSON: Your Honor, as to the statement - -

5 THE COURT: Before you get into that I need that
6 exhibit. All right.

7 MS. ANDERSON: As to the statement in Officer Beck's
8 testimony who was the main officer that dealt with Mr.
9 Watson he testified that Mr. Watson was taken straight from
10 the scene of the Wells Fargo into the interview room. He
11 was taken into hand cuffs at the time and wasn't even
12 booked prior to getting in there and was not -- And while
13 he was in that room the officer's testified they were there
14 approximately an hour. The officer testified that they did
15 not offer him any food or drink or offer to go to the
16 restroom. The officer was a little uncertain but did not
17 recall that he was allowed to make a telephone call. The
18 officer - -

19 THE COURT: I don't remember anybody even asking him
20 about the telephone call. Maybe I just missed it.

21 MS. ANDERSON: He doesn't recall whether or not he had
22 made a call prior to coming in. Your Honor, the officer
23 also testified that they actually did the booking in that
24 room. Your Honor, I don't think there was testimony he
25 specifically asked for that but you could construe that Mr.

1 Watson perhaps had not been able to be booked and been able
2 to make the phone call and make bond until he finished
3 speaking with the officers and so with that being coupled
4 up in there I think that the situation Mr. Watson was in
5 fear that unless he spoke to the officers he would not be
6 able to exit the room and should be booked in when the
7 opportunity -- Officer Beck indicated he did and Officer
8 Kennedy also they did discuss with him in terms of the
9 amount of time he was facing. Officer Beck indicated in
10 their discussions where they told he was facing up to
11 thirty years. I understand that the officers who testified
12 that they gave Mr. Watson to make an operate but in terms
13 of while Officer Beck was reluctant to use the word promise
14 he did indicate there was a discussion with Mr. Watson in
15 order to essentially cooperate with the officers would be
16 to his benefit which I think the court could in fact
17 construe was some sort of promises made to him if he gave
18 them a statement. And that the statement would re-
19 implicate himself as well as other individuals. Your
20 Honor, as to the statement about dealing with white people
21 also or referring to deals with white people also indicate
22 that that would in terms of that being character evidence
23 or the question of relevancy of that statement the case
24 officer did not charge with the distribution there is no on
25 going investigation of Mr. Watson with the distribution the

1 officer was clear at the time he was being questioned he
2 was charged only with the possession with intent to
3 distribute. I believe it was Lieutenant Kennedy who
4 testified he this individual was black male you know there
5 is no testimony of any white individuals involved in this
6 case so often that statement was vague in nature that
7 statement not being specifically related to the facts in
8 hand of the allegations of this specific charge.

9 Additionally I ask that that statement be suppressed in
10 addition incorporating him in sort of other discussions
11 about what happened in the room in connection with the
12 statement.

13 THE COURT: I don't need to hear from the State. As
14 to starting from the tail end I do find that the statement
15 which I am going to find is admissible and let the jury
16 pass on that issue. Also I do find the statement about
17 being white people to be relevant because it has to do with
18 intent. He was not charged with distribution but he does
19 -- He is charged with possessing the heroin in the car with
20 the "intent" distribute and I certainly think that that
21 means -- That that's relevant as to the intent. I do find
22 that this was a freely and voluntarily and knowingly made
23 confession. I find that Mr. Watson was properly warned
24 under the Maranda requirements and the constitution
25 requirements of both the United States and the State of

1 South Carolina. He was warned he had the right to remain
2 silent and anything he said could and would be used against
3 him in a court of law. He had the right to talk to an
4 attorney and have that attorney present with him while he
5 was being questioned. If he could not afford to hire an
6 attorney one would be appointed to represent him before any
7 questioning if he wished. And he could decide at any time
8 to exercise these rights and not answer any questions or
9 make any statements. So I find that any statements made
10 after Maranda warning were given and made freely and
11 voluntarily knowingly and intelligently without hope of
12 reward or threat. And I have considered the we will help
13 you if you will help us I don't consider that any promise
14 or threat. No promise of anything let alone promise a
15 reward. The testimony is that Mr. Watson never asked for
16 an attorney never said he wanted to speak with an attorney.
17 Did talk about helping them as I said. That he was advised
18 as to the charges he was looking at and the amount of time
19 he could receive. That there was no promise or hope of
20 reward no threats. There is no indication that he was
21 deprived of food or water or bath room breaks or any
22 rights. So I find that his statements made after his
23 taking to the Fort Mill Police Department to be freely
24 voluntarily and knowingly and intelligently made in
25 compliance with Maranda and his constitutional rights to

1 state and federal and I therefore will allow them into
2 evidence. And of course allow the jury as I said to also
3 determine to what degree if any give to the statements.
4 Anything further?

5 SOLICITOR EPTING: Nothing further from the State.

6 MR. DELANEY: Just, Judge, there was some testimony
7 that came out through the officers regarding potential Lyle
8 evidence in the case regarding the tag, Mr. Watson's tag
9 involved in a heroin deal so to speak. Yesterday when we
10 began we were told there was going to be no Lyle evidence
11 by the State. Just wanted to check on that.

12 SOLICITOR EPTING: Your Honor, that was purely for
13 purposes of this proceeding. We do not intend to introduce
14 of that evidence.

15 THE COURT: All right. Well let's take about a ten
16 minute break because we haven't had one. We been going at
17 it almost a couple of hours. Well not that long little
18 over an hour and half maybe and so we will take a break and
19 when we come back we will get the jury in and make opening
20 statements and move on. We will be at ease for a few
21 minutes.

22 (COURT IN SHORT RECESS.)

23 (BACK ON THE RECORD.)

24 THE COURT: Now that you all are comfortably seated
25 would you all stand the Clerk will administer the oath.

1 MADAME CLERK: Please raise your right hand.

2 (WHEREUPON: PETIT JURY SWORN.)

3 THE COURT: You can be seated. I appreciate your
4 patience. I told you when we took up some matters
5 yesterday we had some today but it took a little bit longer
6 than we thought. I do know how to tell time. I did attend
7 that class in kindergarten so I told you to be here at
8 10:30 but we were working up until just a few minutes ago.
9 We did take a short break but I appreciate your patience.

10 I remind you of the admonitions I gave you yesterday
11 about not discussing the case no research no news coverage
12 and not making up your own minds. I'm not going to go into
13 that again but I do have a few more things to talk to you
14 about. I told you yesterday that Mr. Watson was charged in
15 this indictment and again the indictment is not evidence
16 and I will tell you more about that when I charge you in
17 the case with possession of heroin with intent to
18 distribute. He has entered a plea of not guilty to this
19 charge he is presumed innocent of this charge he does not
20 have to prove his innocence the state must prove his guilty
21 beyond a reasonable doubt.

22 I have three primary jobs in this case one is I take
23 care of the logistics; that we take breaks, that one person
24 speaks at a time, make an effort to make sure that you can
25 hear. That mechanical part of the trial. My second job is

1 to rule on questions of admissibility of evidence. Once I
2 have ruled on the question of admissibility of evidence
3 that ruling is binding on the witnesses and the lawyers.
4 And my third job is I am the sole judge of the law in this
5 case. You must take accept and apply the law as I charge
6 it and this is true even if you think I charge the law in
7 error or even if you think the law should be different.
8 Your oath requires you to take and accept and apply the law
9 as I charge it. You are not to infer from anything I say
10 or do at any time during this trial as being an opinion on
11 the facts in this case that is your job. I've given you
12 some legal principals now during the trial of the case I
13 may give you some. At the end of the trial I will give you
14 a concise and comprehensive charge on the law that you are
15 to apply to the facts in this case as you determine them to
16 be. You are the sole judge of the facts it is solely up to
17 you to examine the evidence and give to the evidence the
18 effect the value and the weight and the truth that you
19 believe the evidence should have. In doing this you can
20 believe one witness as opposed to several several witnesses
21 as opposed to one you may believe all or part or none of a
22 witnesses testimony. As you analyze the evidence use your
23 common sense your sense of logic your sense of reason use
24 your experiences in life. As the judges of the facts you
25 necessity must just the credibility that is the

1 believability of the witnesses who testify. In assessing
2 believability use the things I just talked to you about.
3 Use the things that you find in your day to day life as
4 indicating to you truthfulness and you can use certain
5 evaluators. The witnesses demeanor how they act on the
6 stand are they hesitant or start forward in responding to
7 questions. In considering the opportunity a witness had to
8 know those things they testify about. Consider the
9 opportunity a witness had to observe those things. You can
10 consider the consistencies and inconsistencies of a
11 witnesses testimony and whether a witness had any bias or
12 prejudice that is any reason to help or hurt one side or
13 the other. All these things you consider to determine the
14 true facts and you will be able to return a verdict
15 applying the law that speaks the truth.

16 If you can't see or you can't hear let me know. Cup
17 your ear or give me a voice raising gesture or nudging
18 gesture and I will try to correct that. It's not fair to
19 ask you to resolve this matter or assign that task to you
20 and then not let you see and hear those things you need to
21 see and hear.

22 Madame Forelady, you will be the liaison between the
23 jury and myself; reside over the jury's deliberations and
24 ultimately sign on behalf of the jury it's unanimous
25 verdict. In just a moment -- Well before I tell you that

1 we take breaks about every hour and a half. I find that is
2 a pretty good break time. We try to go no later than 5:30
3 in the afternoon. I find that's a comfortable time to
4 stop. Even though we try to take breaks about every hour
5 and half I know that if you are not comfortable you are not
6 able to pay attention so if any of you need a break at any
7 time simply raise your hand and with no questions asked we
8 will take a break. We want to move the case along but if
9 anybody needs a break we will take it and I extend that to
10 counsel and Mr. Watson.

11 Now in just a moment the attorneys have the right but
12 no obligation to stand before you and make what are called
13 opening statements. These opening statements are blue
14 prints or outlines of the trial. The attorneys are not
15 witnesses and at this point they are not arguing their
16 position they are not trying to convince you of anything.
17 They are simply outlining the trial for you to tell you
18 more about what they expect to be presented than I have.
19 So I am going to ask you to give them your attention and I
20 turn it over to the attorneys at this time.

21 SOLICITOR EPTING: Thank you, Your Honor. May it
22 please the court.

23 THE COURT: Yes, sir.

24 SOLICITOR EPTING: Ladies and gentlemen, September of
25 last year officers of the Drug Enforcement Unit were on

1 patrol. They were on patrol in the Carowinds Boulevard
2 area in the KFC parking lot nearby they saw what they
3 believed to be suspicious activity they believed to be a
4 drug deal, a drug deal going down. They followed close to
5 those cars both those cars sat in the parking lot one got
6 lost on I 77. One went to a Wells Fargo parking lot.
7 Officer Beck of the Drug Enforcement Unit approached that
8 person ask if he could look in his car. And inside that
9 vehicle he found twenty-four vinds of heroin. And you
10 will hear later they took him back to the station they
11 marandized him and ----- told him
12 that he was ----- in the KFC parking lot.
13 Then he went over some of his methods that you will hear
14 today from that stand during the trial. Now I mentioned
15 officers from the DEU. You are going to hear a lot about
16 them today. The Drug Enforcement Unit is a highly trained
17 team a highly specialized team of people whose primary
18 focus in investigation is about drugs and drug dealers.
19 And they used their skills on the night of September the
20 24th 2009. You will hear from Officer Beck who was on
21 patrol in the Carowinds Boulevard area in which he will
22 testify is a high crime drug area. He saw a car parked in
23 the parking lot with two people inside the defendant in the
24 passenger seat and another person in the driver's side.
25 Now you all that may not seem necessarily unusual two

1 people sitting in a parking lot. But given what he knew
2 about the area and given his expertise in training but he
3 did what he was trained to do. He didn't rush in he sat
4 back and waited for a while. They are in unmarked patrol
5 cars and they are in plain clothes ----- They
6 watch and the defendant gets out of the passenger seat
7 approaches the passenger side something appears to be
8 handed off and at that point the defendant leaves. The car
9 -- The driver of the car that the defendant was in leaves
10 he goes in one direction towards I 77. The defendant goes
11 another to Wells Fargo as I told you earlier. Officer
12 Kennedy follows the driver car. -----
13 he goes -- That car goes onto I 77 at Five o'clock -----
14 ----- I 77 at Five o'clock is rush hour so he moves -----
15 ----- Mr. Watson did not go I 77 he goes to Wells Fargo.
16 Plain clothes with his badge showing Officer Beck goes up
17 and ----- do you mind if I take a look in your car?
18 Whatever ----- Mr. Watson said yes and he searches
19 the vehicle. Ladies and gentlemen, you will hear more from
20 the officers about what happened. They can explain it
21 better than I can because they were there. They will tell
22 you what they saw ----- Ladies and gentlemen, you
23 are the finders of the facts in this case the judge has
24 told you that and told you down stairs yesterday -----
25 --- you all are the only ones that can tell us what

1 happened on that day. That power belongs to you and only
2 you. And in doing so we expect you to use; you will use
3 your common sense and your good judgment. You are asked
4 to determine whether or not Mr. Watson possessed this
5 heroin to distribute it. The law says that we can look at
6 several things to determine that. The weight of the drugs.
7 How much the drugs weigh -----
8 ----- And when you see those drugs in
9 here it will look like a little baggy with that much in it.
10 But the law says that the inference the level for which you
11 are permitted and not apply but permitted to find a person
12 possessing that amount for sale is two grams. He possesses
13 three times ----- You can look at the packaging.
14 You will hear it was packaged in twenty three different
15 vandles. Twenty three vandles and you will learn about
16 vandles and you will learn about heroin and you will learn
17 about all that stuff from the Drug Enforcement Unit. You
18 will look at what was found and what was not found to
19 determine ----- did the person have something to
20 use the drugs with when they were arrested. You will hear
21 that Mr. Watson did not. ----- the statements
22 will be up there in ----- You all will hear that. I
23 won't bore you all about it ----- You have a
24 great power and we expect that you will use that we expect
25 that you will use your good sense in evaluating -----

1 ----- and at the close of this case I am going to ask
2 that you find the only verdict in this case -----
3 ----- that you are going to hear from that stand
4 and that's guilty as charged possession with intent to
5 distribute heroin.

6 MS. ANDERSON: May it please the court. Ladies and
7 gentlemen, I am sure all of you have at some point in your
8 life heard that phrase making a mountain out of a mole
9 hill. I know it's a cliché it's one of those phrases
10 people throw around you've heard it a bunch of times but I
11 bring it up here today because it's important in this case.
12 I'm going to tell you that and why. There are two things
13 that I want you to remember about this case. As you listen
14 to all the testimony as you go through and the judge
15 referenced it and you will hear more about them more during
16 the course of this case and at the end of the case. And
17 the first thing is the presumption of innocence and that's
18 such an important part of our legal system. And the judge
19 referenced that and what does that mean? Jerome Watson is
20 presumed innocent he is presumed innocent throughout his
21 trial and the only time that changes is if you find beyond
22 a reasonable doubt that he is guilty. And when you talk
23 about the point the only point at which that can change you
24 bring ----- it is so important for you to remember
25 about this case and that's that the burden of proof is

1 always on the State. The burden of proof is on the State
2 to prove its case and the standard they have to prove that
3 by is beyond a reasonable doubt. And again I'm not going
4 to go into detail and I'm not going to talk to you about it
5 a lot because you will hear more about that during the
6 close of the case and when it's time for you to make a
7 decision. But what I want you to remember is that that
8 burden is always on you. And that they burden that they
9 have to met they have to prove each and every single
10 element beyond a reasonable doubt. And it's your duty as a
11 jury to hold them to that and if they don't met that
12 standard it's your duty to return a verdict that finds
13 someone not guilty. It doesn't matter if they get close.
14 If it's a race and it's a marathon and if they get within
15 three feet of the finish and they don't finish then the law
16 says they haven't met their burden and your verdict is not
17 guilty. And now I want to get back to what I was talking
18 about why I brought up the phrase making a mountain out of
19 a mole hill. I bring that up because ladies and gentlemen
20 that's exactly what the State is trying to do here today.
21 You heard Mr. Epting talk about what he anticipates in the
22 trial. You will hear testimony but what this ultimately
23 comes down to ladies and gentlemen is the State is trying
24 to make this case into something more than it is. The
25 State is trying make this case into a possession with

1 intent to distribute. And ladies and gentlemen what this
2 case is a case about possession of heroin. And ladies and
3 gentlemen I'm going to stand here right now and tell you
4 Jerome Watson possessed heroin. He is guilty of possession
5 of heroin but that's all he's guilty of. And what you will
6 hear from the State in talking about this possession with
7 intent to distribute is trying to make this case into
8 something that it isn't. And that ladies and gentlemen is
9 a burden they can't prove. They can't go all the way
10 around that way they can't climb that mountain. Ladies and
11 gentlemen I trust that I don't have to ask you to listen to
12 testimony and pay attention and use your eyes and your ears
13 I know you will do that. I know you will listen carefully
14 you will consider everything. What I ask you to do is to
15 use what other people have referenced your common sense.
16 And you use that just as much as you use your other senses.
17 So listen to the testimony and listen to the evidence and
18 to see this case for what it really is. This is a case
19 where Jerome Watson possessed heroin. Just a possession
20 not a possession with intent to distribute. And that
21 ladies and gentlemen is the verdict that I ask for. Thank
22 you.

23 THE COURT: Call your first witness.

24 SOLICITOR EPTING: The State calls Lieutenant B.J.
25 Kennedy to the stand.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

97

1 THE COURT: You can have the case agent.

2 SOLICITOR EPTING: I'm sorry, Your Honor.

3 THE COURT: You can have the case agent.

4 (WHEREUPON: B.J. KENNEDY,

5 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION

7 LIEUTENANT B.J. KENNEDY BY SOLICITOR EPTING:

8 Q. Would you please state your full name for the record?

9 A. Lieutenant B.J. Kennedy.

10 Q. Lieutenant Kennedy, what do you do for a living?

11 A. I am a Lieutenant with the Fort Mill Police Department
12 who is assigned to the York County Multi Jurisdictional
13 Drug Enforcement Unit.

14 Q. And what is the Drug Enforcement Unit?

15 A. It's a drug unit made up of every law enforcement
16 agency in York County. Each agency provides a certain
17 number of officers to the unit that is over seen by the
18 governing board which is made up of all the chiefs, the
19 sheriff's and the solicitor's office here in York County.

20 Q. And what type of things do the officers in the Drug
21 Enforcement Unit typically do?

22 A. We investigate drug activity, trafficking, drug sales,
23 alcohol violations, gambling. Pretty much any vice types
24 crimes they are sent to us.

25 Q. Do you all patrol areas?

1 A. Yes we do.

2 Q. How do you chose which areas to patrol?

3 A. Basically they come from what we call the intell or
4 intelligence and those are normally generated from the
5 supervisors off the patrol shifts, the sheriff's office and
6 district commanders and things like that.

7 Q. Were you involved in the investigation that led to
8 charges for Jerome Watson?

9 A. Yes, sir, I was.

10 Q. Could you please tell the jury about the
11 investigation?

12 A. We were up on Carowinds Boulevard on the day in
13 question and that came from a followup. We had received
14 information from the district commander who is the
15 lieutenant over at the sheriff's office requesting that we
16 start working the area of Carowinds Boulevard. His patrol
17 shifts had been making numerous drug cases up on Carowinds
18 Boulevard; they were answering a lot of calls from
19 restaurants and the hotels about possible drug activity.
20 On that afternoon myself and two other officers went up to
21 Carowinds Boulevard we drive unmarked cars we wear plain
22 clothes we are inconspicuous and what we normally do we
23 monitor each parking lot we walk through at the hotels and
24 things like that looking for possible drug activity.

25 Q. And did you see anything suspicious in the KFC parking

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

99

1 lot off of Carowinds Boulevard?

2 A. Yes, sir, I did. The primary area that we run into

3 suspicious activity which has led to drug arrest in the

4 past and where the guys was getting the most complaints

5 around the Petro and KFC and that group of motels on that

6 side of Carowinds Boulevard. We've done several drug deals

7 or that we initiated in an undercover capacity. We've

8 intercepted a lot of drug deals going on on that area of

9 Carowinds Boulevard so naturally we kind of spread out and

10 ride through the areas in different cars. That afternoon I

11 pulled through the KFC parking lot which is right in front

12 of the Plaza Hotel and right beside -- Right across the

13 street from the Petro that I was talking about. As I

14 pulled in I noticed there was a silver Buick sitting -- As

15 soon as you pull in the parking lot if you were sitting

16 facing the building there was a green Isuzu Trooper parked

17 beside it. This Isuzu is backed in as opposed to pulled

18 straight in and they were all set from the entrance way and

19 there were two individuals sitting in the vehicle carrying

20 on a conversation. That by itself wasn't really suspicious

21 but factoring in that it's normal practice of people

22 committing crimes specifically drug dealing when they're

23 backed in where the law enforcement can't read their tag on

24 normal patrol you can't identify the vehicles. They

25 weren't eating they weren't drinking anything they weren't

1 coming out of the restaurant or going into the restaurant
2 so I just got on the radio and let the other officers know
3 that I had a possibility to take a look at. I pulled down
4 to the lower end of the parking lot. From where I was
5 sitting I could see the two individuals one was driving and
6 the passenger which was later identified as Mr. Watson were
7 carrying on a conversation. Based on the way the vehicle
8 was sitting you couldn't really see any hand movements or
9 gestures or anything going on in the vehicle. They were
10 carrying on a normal conversation talking whatever it was
11 they were doing but obviously they weren't eating and they
12 weren't drinking there was nothing related to the restaurant
13 going on in the vehicle. After several minutes Mr. Watson
14 got out of the vehicle walked around to the driver's side
15 approached the window. Could have been a hand shake could
16 have been anything he was handing -- The driver could have
17 handed him something I don't know. At that point he went
18 and got into the silver Buick. I notified the other
19 officers with what I had just to see where it takes us we
20 were going to follow the vehicles. As we pulled out the
21 silver car backed out I gave the information to Officer
22 Beck about the silver vehicle I followed the Isuzu. The
23 silver vehicle Mr. Watson was driving when they pulled out
24 they got on the Carowinds Boulevard Mr. Watson continued
25 under the over pass to I 77. The green Isuzu got on the

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

101

1 interstate going south bound on the interstate. Right
2 around Five o'clock traffic I never got the vehicle
3 information on the Isuzu and eventually lost the vehicle
4 somewhere on the interstate between Gold Hill Road and 160.
5 While all this was going on we were relating back and forth
6 to each other on the radio and Officer Beck advised that he
7 had followed Watson to the Wells Fargo building which is in
8 Fort Mill.

9 Q. Before we get to you going to Wells Fargo to meet up
10 with Officer Beck I would like to show you an exhibit.

11 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE PREMARKED FOR
12 IDENTIFICATION.)

13 BY SOLICITOR EPTING:

14 Q. Officer Kennedy, I am handing you what's been marked
15 State's Exhibit One. Would you please look over that and
16 look up when you are clear?

17 A. Yes.

18 Q. Do you recognize State's Exhibit One?

19 A. Yes, sir, I do.

20 Q. Are you familiar with it?

21 A. Yes, sir, I am.

22 Q. Now are you familiar with it?

23 A. This is an over head photo of the parking lot for the
24 KFC and one end of the parking lot to the Plaza Hotel on
25 Carowinds Boulevard.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

102

1 Q. Is a fair and accurate depiction?

2 A. Yes, sir.

3 Q. Your Honor, the State would move to enter State's
4 Exhibit One into evidence.

5 MR. DELANEY: Without objection.

6 THE COURT: In without objection.

7 WHEREUPON: STATE'S EXHIBIT NUMBER ONE IDENTIFIED AND
8 MARKED, ENTERED INTO EVIDENCE.)

9 SOLICITOR EPTING: Your Honor, at this time we would
10 ask to publish - -

11 THE COURT: Yes, sir.

12 BY SOLICITOR EPTING:

13 Q. Officer Kennedy, I know you've been over what occurred
14 in the parking lot but now with the picture I'm going to
15 ask that you go back over that using the picture as a
16 visual aid.

17 A. Okay.

18 Q. It takes a little bit of time for that thing to warm
19 up.

20 (NOTE: STATE'S EXHIBIT PUBLISHED TO THE JURY ON
21 COURTROOM OVER HEAD.)

22 BY SOLICITOR EPTING:

23 Q. Now first of all what is this here?

24 A. This is Carowinds Boulevard here. And this is where
25 you turn off Carowinds Boulevard and it goes back to the

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

103

1 Plaza Hotel -- You turn around here it goes back to the
2 hotel and this is the KFC parking lot here the KFC.

3 Q. And is that in York County?

4 A. Yes, sir, it's in the Fort Mill area.

5 Q. And you said that there was two cars parked next to
6 each other?

7 A. Yes.

8 Q. A Isuzu and the defendant's car. Where were those
9 cars?

10 A. This drive way comes in here the silver car was parked
11 here. Here was Mr. Watson's vehicle the Isuzu was parked
12 here facing out the silver car was parked - -

13 Q. Where were you parked when you observed all this?

14 A. When I drove in I came in here and I was almost
15 immediately on top of them. I noticed them I drove down to
16 here while I couldn't see anything suspicious I could see
17 what was going on.

18 Q. Okay. And where was Beck and Cantey?

19 A. Officer Beck was somewhere over here in the Plaza
20 parking lot. I think he was more towards this corner. And
21 the Petro Express that I was talking about this drive that
22 comes off right here and Officer Cantey was up here.

23 Q. All right. Please have a seat. Now when I
24 interrupted you you were about to say that you were going
25 to the Wells Fargo.

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

104

1 A. Yes, sir.

2 Q. Could you please tell the jury what you saw and
3 experienced there?

4 A. Once I got to the Wells Fargo Officer Beck and Officer
5 Cantey were already at the scene. When I got there Mr.
6 Watson's vehicle was sitting not in a parking space but in
7 the drive that you would drive through to get in the
8 parking spaces. It's a pretty large parking lot. He was
9 actually sitting in the parking lot the vehicle was. Mr.
10 Watson was already detained inside Officer Beck's vehicle.

11 Q. Through the course of your investigation did you
12 determine some things that they found out of the car?

13 A. Yes I did.

14 Q. What was that?

15 A. I spoke to Officer Beck he advised me that he had
16 approached Mr. Watson in what we call a consensual
17 encounter identified himself began speaking with him. In
18 the course of that we was granted consent to search the
19 vehicle. In the vehicle we found a Newport cigarette pack
20 that contained actually twenty four vindles of heroin.

21 Q. Okay.

22 A. Twenty four vindles - -

23 Q. Would you please describe to the jury what a vindle
24 is?

25 A. It is a piece of wax paper similar to what you would

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING

105

1 see a Goody's or BC Power wrapped in that are sealed and
2 folded. It's a normal packaging for power heroin.

3 Q. Okay. And what's the street value of one vindle?

4 A. The going price in Charlotte which is our source city
5 within York County for heroin is Fifteen to Twenty Dollars
6 per vindle. It resales here in York County for Twenty-Five
7 to Thirty Dollars per vindle.

8 Q. Okay. And how much -- How many vindles would it take
9 for an average individual to get high?

10 A. One vindle.

11 MR. DELANEY: Your Honor, I would object to his
12 testimony - -

13 THE COURT: I sustain that objection.

14 Disregard that question and answer, members of the
15 jury.

16 BY SOLICITOR EPTING:

17 Q. After Mr. Watson was placed under arrest he was
18 transported to the Fort Mill Police Department; correct?

19 A. That's correct.

20 Q. At that time did you speak with him?

21 A. I did.

22 Q. Did you make any promises or threats to - -

23 A. No, sir, I didn't.

24 Q. How long did you talk; did your conversation last
25 total?

1 A. Total in between doing other things and talking to him
2 about an hour.

3 Q. What was the defendant's demeanor at the time?

4 A. He was calm cooperative pleasant to talk with.

5 Q. Did he appear to understand your questions?

6 A. Yes he did.

7 Q. Did he give appropriate responses?

8 A. Yes, sir, he did.

9 Q. Did he appear intoxicated?

10 A. No, sir.

11 Q. Did he appear to understand what was going on?

12 A. Yes, sir, he appeared to understand.

13 Q. What if anything did he say to you?

14 A. We talked several minutes. We talked about the green
15 Isuzu. About the heroin itself. Spoke with him about
16 that. He stated to me he had actually just purchased the
17 heroin from the individual in the green Isuzu. We talked
18 about who that person was. He wouldn't give that person
19 up. He wouldn't identify that person. He just stated that
20 that was a nobody that you know he wasn't the person that
21 we wanted that it was somebody there were other people in
22 charge that were higher up the so called ladder than that
23 individual. We went down and started talking about as far
24 as selling versus using and versus just possession. He
25 advised us that he did sell that he had customers in the

1 Rock Hill area. When we asked him about his customer base
2 he stated that he had a particular customer base that he
3 liked to sell to that he sold to the younger white crowd
4 because they follow the instructions that he advised told
5 them to come alone they would come alone they wouldn't
6 bring somebody along with them. Said he didn't have to
7 worry about being robbed or having new people introduced
8 where he had to worry about getting caught.

9 Q. Did he say anything else about the vindles?

10 A. When we were checking the vindles because we were
11 trying to - They were packaged fairly tight we separated
12 the vindles from one another from the original the way they
13 were together. As we were looking through them one - There
14 were twenty-four vindles but one of the vindles from inside
15 the stack was empty but it was sealed just like the others.
16 I walked back into the little room because we were back and
17 forth and asked -- Brought up the fact that one of the
18 vindles was empty. And Mr. Watson got a kind of a funny
19 look on his face and commented that that kind of made sense
20 because he had had a customer that bought five or six at a
21 time that had complained to him that one of the vindles had
22 been empty before that it must have been just something
23 going on with the packaging when the people were processing
24 the packages.

25 Q. One final question. Was the Wells Fargo parking lot

B.J. KENNEDY: DIRECT EXAMINATION BY SOLICITOR EPTING
CROSS EXAMINATION BY MR. DELANEY

108

1 where the defendant was located was that in York County as
2 well?

3 A. Yes, sir, it is. Its in an industrial park off of
4 Carowinds.

5 Q. No further questions at this time. Please answer any
6 questions the defense counsel may have.

7 A. Yes, sir.

8 CROSS EXAMINATION

9 LIEUTENANT B.J. KENNEDY BY MR. DELANEY

10 Q. Good morning. I guess good afternoon.

11 A. Yes, sir. Good morning or good afternoon.

12 Q. And, Lieutenant Kennedy, did you prepare any reports
13 in this case, incident reports, interview reports, anything
14 of that nature?

15 A. No, sir, I didn't.

16 Q. Any ----- in this case?

17 A. No, sir.

18 Q. Any surveillance reports?

19 A. No, sir.

20 Q. Okay. And did you have an opportunity prior to this
21 trial to review the incident reports that were - -

22 A. When they were turned in back several months ago yes,
23 sir, I did review them.

24 Q. You need a copy of one now?

25 A. Yes, sir, please.

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

109

1 Q. Okay. May I approach?

2 A. Thank you.

3 Q. And that is the General Sessions Case File Summary; is
4 that right?

5 A. Yes, sir, it is.

6 Q. All right. And this was September 24th; right?

7 A. Yes.

8 Q. My calculation seven, eight months ago; is that right?

9 A. Yes, sir.

10 Q. Okay. And Thursday afternoon weekday; is that right?

11 A. Yes, sir.

12 Q. And approximately 4:45; is that correct?

13 A. It was shortly before Five O'clock when we -- When I
14 observed them at the KFC yes, sir.

15 Q. Okay. And what you testified and what you observed is
16 you observed I guess is it a red or a green Isuzu?

17 A. It's a green Isuzu.

18 Q. Okay. Now in the Incident Report there it states a
19 red Isuzu --

20 SOLICITOR EPTING: Your Honor, I'm going to object to
21 him impeaching him with the report that Officer Kennedy did
22 not write.

23 THE COURT: I sustain the objection.

24 BY MR. DELANEY:

25 Q. So was the -- I guess to make it clear it was a green

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

110

1 Isuzu?

2 A. Yes, sir, it was a green Isuzu.

3 Q. Okay. And the Isuzu, the green Isuzu that you
4 observed was backed into a parking spot; is that correct?

5 A. That's correct.

6 Q. And Officer Beck and Office Cantey were also in this
7 general area; is that correct?

8 A. That's correct.

9 Q. I believe one of the officers were in the Plaza Hotel
10 parking lot; is that right?

11 A. Yes, sir.

12 Q. And another officer was nearby?

13 A. Yes, sir.

14 Q. Okay. And you all began at some point began to focus
15 your attention your surveillance on this vehicle and the
16 two occupants of the vehicle; is that correct?

17 A. That's correct.

18 Q. Okay. And prior to that point there was no
19 investigation going on regarding Jerome Watson; correct?

20 A. From my office that's correct.

21 Q. Right.

22 A. Yes, sir.

23 Q. And you were not there at the KFC because of Jerome
24 Watson; correct?

25 A. That's correct.

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

111

1 Q. And you had no information at that time that Jerome
2 Watson was at the KFC to sell some drugs; right?

3 A. That's correct.

4 Q. No information at that time that Jerome Watson was
5 involved in any type of drug activity; correct?

6 A. That's correct.

7 Q. Okay. And you yourself as a member of the drug
8 enforcement unit at that time had never heard of Jerome
9 Watson; correct?

10 A. Myself or the drug enforcement unit?

11 Q. Yourself?

12 A. Myself no, sir, I had - -

13 Q. A member of the drug enforcement unit you never heard
14 of Jerome Watson; correct?

15 A. That's correct.

16 Q. Okay. And there are a lot of occasions where members
17 of our yourself or members of the DEU where you are doing
18 surveillance you are there for a particular reason; is that
19 right?

20 A. Sometimes - -

21 Q. As far as a confidential buy?

22 A. Sometimes yes, sir.

23 Q. And in a confidential buy, control buy situation
24 that's where a CI is involved; correct?

25 A. That's correct.

1 Q. A confidential informant?

2 A. Yes, sir.

3 Q. Okay. And your confidential informant will come to
4 you; come to one of your officers to tell you they can buy
5 dope from somebody; correct?

6 A. That's correct.

7 Q. And if you believe they are credible you will put some
8 devices on them as far as electronic audio video equipment;
9 right?

10 A. That's correct.

11 Q. And go out and monitor a buy; correct?

12 A. Yes, sir.

13 Q. Okay. And that is not the situation we have here;
14 correct?

15 A. Correct that is not the situation.

16 Q. And you testified you were there patrolling the area;
17 correct?

18 A. Yes, sir.

19 Q. And you observed from your experience what you
20 considered a suspicious situation; right?

21 A. That's correct.

22 Q. Okay. And the driver of the Isuzu you testified was
23 never identified; correct?

24 A. Later down the road he was identified yes, sir.

25 Q. But he was not identified that day; correct?

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

113

1 A. That is correct.

2 Q. He was later identified?

3 A. Yes, sir.

4 Q. And this individual was a black male; correct?

5 A. That's correct.

6 Q. And this is the individual that you lost on Interstate
7 77; correct?

8 A. That is correct.

9 Q. Okay. And at that time September the 24th 2009 this
10 black individual in the Isuzu was not working for the Drug
11 Enforcement Unit; right?

12 A. That's correct.

13 Q. Now you stated you were watching this vehicle and you
14 are following -- You are on the other side of the parking
15 lot; is that right?

16 A. It's noticed the way some of the vehicles is parked
17 some of the cars park this way and some park this way and
18 they were parked this way. I just pulled past them and
19 pulled in the parking place. I was in the same lot and not
20 on a different parking lot.

21 Q. And again you weren't in a different parking lot but
22 from the picture we saw you were on the other side of the
23 parking lot?

24 A. Yeah. I just drove past and down to the lower end
25 yes, sir.

1 Q. Okay. And while you were observing the red Isuzu you
2 did not see any activity in the vehicle as far as anything
3 that you could tell for sure what was going on in that
4 vehicle; right?

5 A. It was a green Isuzu.

6 Q. The green Isuzu.

7 A. Other than the fact they were weren't eating and they
8 were carrying on a conversation again like I said backed in
9 that's normal behavior to law enforcement detection.

10 Q. But you can't tell this jury what was going on inside
11 that vehicle?

12 A. No, sir. I can say it rose my suspicion yes, sir.

13 Q. Right. And after a few minutes you observed the
14 driver or the passenger of the vehicle later identified as
15 Jerome Watson exit the vehicle; correct?

16 A. That's correct.

17 Q. Okay. You stayed at the car for a few minutes; is
18 that right?

19 A. Just a few moments. He walked over to the passenger's
20 door. I mean to the driver's door. I'm sorry.

21 Q. And there was conversation between the two of them; is
22 that right?

23 A. That's correct.

24 Q. It appeared to be but you don't know what was being
25 talked about; right?

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

115

1 A. That's correct.

2 Q. Okay. And after that Mr. Watson goes to a 2003 Buick;
3 is that correct?

4 A. That's correct.

5 Q. And at this time is when you follow the green Isuzu?

6 A. That's correct.

7 Q. And Officer Beck and Officer Cantey follow the vehicle
8 Mr. Watson was driving?

9 A. That's correct.

10 Q. Okay. And in dealing a lot of times you are dealing
11 with drug dealers; right?

12 A. Yes, sir.

13 Q. And you are dealing with drug users; right?

14 A. That's correct.

15 Q. And there is a cycle that goes on; correct?

16 A. I'm not sure I - -

17 Q. As far as the drug dealers need the drug users; right?

18 A. Yes, sir.

19 Q. And vice versa?

20 A. Yes, sir.

21 Q. And you believe you were -- You had a hunch you had a
22 suspicion that there was a situation going on that could
23 have involved a situation where you had a drug dealer and a
24 drug user; right?

25 A. Well there is also supplies and resellers also and on

1 up. Supplies from bigger cities come to smaller counties
2 like York County and Chester County and Lancaster County
3 and resupply the locale sellers yes, sir.

4 Q. Right. You made it back to or you made it to the
5 Wells Fargo parking lot; right?

6 A. Yes, sir.

7 Q. And you testified that when you got there Jerome
8 Watson was already in the back of a car; is that correct?

9 A. He was in the front seat of Officer Beck's car yes,
10 sir.

11 Q. Okay. And you observed that you were advised that day
12 officers found some heroin in a cigarette pack; is that
13 right?

14 A. That's correct.

15 Q. And inside the pack we heard your testimony about
16 these vindles; right?

17 A. That's correct.

18 Q. And these vindles these are I think you described them
19 as wax; kind of wax - -

20 A. Yes.

21 Q. Okay. And the heroin or the drugs are put down into
22 the wax paper; is that correct?

23 A. They would have to be folded inside before they were
24 sealed but yes, sir, the drugs are actually inside the wax
25 paper.

B.J. KENNEDY: CROSS EXAMINATION BY MR. DELANEY

117

1 Q. Right. And the type of heroin that was found in this
2 case was in powder form; correct?

3 A. That's correct.

4 Q. And powder heroin can be put in put up someone's nose
5 to get high; correct?

6 A. That's correct.

7 Q. And that is not an uncommon at all usage of the powder
8 form of heroin; right?

9 A. That's correct.

10 Q. And we heard testimony that you were saying the twenty
11 four or twenty three vindles; correct?

12 A. That's correct.

13 Q. And do you have any knowledge of how much heroin was
14 taken out of these twenty-three to twenty-four vindles?

15 A. No, sir.

16 Q. You have no idea?

17 A. No, sir.

18 Q. As a member of the drug enforcement you have abilities
19 to video tape to record; is that correct?

20 A. When we have a -- As we run an investigation to do a
21 buy or such like you talk about yes we do have that
22 ability. We are just out here patrolling we do not have
23 that.

24 Q. Right. But back at the department back at your office
25 you have machines, you have devices that can record

1 conversations that can video tape conversations; correct?

2 A. That's correct.

3 Q. Okay. And you testified that you were back at the
4 Fort Mill Police Department with Mr. Watson; is that
5 correct?

6 A. That's correct.

7 Q. Okay. And how long did you say you talked to him for
8 roughly?

9 A. Roughly an hour.

10 Q. An hour?

11 A. Yes, sir.

12 Q. And at no time was the conversation recorded; right?

13 A. That's correct.

14 Q. No time it was video taped; - - -

15 A. That's correct.

16 Q. - - - is that right? No time did you have Mr. Watson
17 write anything down; right?

18 A. That's correct.

19 Q. And did you write anything down?

20 A. No, sir.

21 Q. And you are coming into court here today eight months
22 later and testifying?

23 A. Yes, sir.

24 Q. I have no further questions for this witness.

25 THE COURT: Redirect?

B.J. KENNEDY: REDIRECT EXAMINATION BY SOLICITOR EPTING

119

1 SOLICITOR EPTING: Your Honor, may we approach
2 briefly?

3 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
4 THE JURY.)

5 REDIRECT EXAMINATION

6 LIEUTENANT B.J. KENNEDY BY SOLICITOR EPTING:

7 Q. Lieutenant Kennedy, Mr. Delaney ask you if heroin
8 could be taken through the nose?

9 A. That's correct it is.

10 Q. Did you find any paraphernalia that would allow Mr.
11 Watson in his vehicle to take it?

12 A. No, sir, we didn't.

13 Q. And as to the video tape would you find people are
14 more less likely to tell on people or to snitch if they are
15 being video taped while you are talking to them?

16 A. They are a lot less likely and a lot more apprehensive
17 if you do it from you're sitting in an open room to give me
18 just a few minutes and go back and set a video camera up in
19 the room.

20 Q. No further questions.

21 MR. DELANEY: No further questions, Judge.

22 THE COURT: You can step down. We appreciate your
23 time. Thank you, you can be excused.

24 Call your next witness.

25 SOLICITOR HOLLAND: The State calls Sharon Hartsoe.

SHARON HARTSOE: DIRECT EXAMINATION BY SOLICITOR HOLLAND

120

(
1 (WHEREUPON: SHARON HARTSOE, BEING
2 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

3 DIRECT EXAMINATION

4 SHARON HARTSOE BY SOLICITOR HOLLAND:

5 Q. Would you state your name spelling your last name?

6 A. Sharon Hartsoe, H-a-r-t-s-o-e.

7 Q. And where are you employed?

8 A. York County Sheriff's Office.

9 Q. And what is your position there?

10 A. Evidence technician.

11 Q. And what are your duties as an evidence technician?

12 A. I receive and store evidence in a central location
13 until it's needed for drug testing or court.

14 Q. Are there any other evidence technicians that work
15 with you?

16 A. Yes.

17 Q. And what are their names?

18 A. Clara Painter and Lieutenant Pete Mitchum is the
19 supervisor.

20 Q. Does Clara Painter perform the same duties as you?

21 A. Yes.

22 Q. And do you have the occasion to handle narcotics?

23 A. Yes.

24 Q. And you said that you receive evidence. Exactly where
25 do you receive this evidence?

SHARON HARTSOE: DIRECT EXAMINATION BY SOLICITOR HOLLAND

121

1 A. We have a drop box at Rock Hill PD, one at Fort Mill
2 PD and then we have one at Moss Justice Center.

3 Q. And how is that collected from let's say Fort Mill
4 Police Department how would that be collected?

5 A. There's evidence lockers with locks on them and we
6 have the key.

7 Q. Who else has keys to that locker?

8 A. There's just one key and it stays in evidence.

9 Q. And who would have access to that key?

10 A. Just me and Clara and Lieutenant Mitchum.

11 Q. And describe what your procedures are from when you
12 collect evidence from the Fort Mill Police Department.

13 A. Get it out of the locker and bring it back to the car
14 and bring it into Moss Justice Center and we sign it in and
15 then we log it into a computer.

16 Q. And where is it stored once it's brought here; brought
17 here to the Moss Justice Center?

18 A. Here in evidence in Moss Justice.

19 Q. I'm going to hand you what's been marked as State's
20 Exhibit Number Two. I believe it's right there.

21 A. Okay.

22 Q. If you can look at that and tell me if you recognize
23 that?

24 A. Yes.

25 Q. Have you ever handled that before?

1 A. Yes.

2 Q. Describe your contact with that exhibit.

3 A. I collected it from the Fort Mill Police Department
4 and brought it back to Moss Justice Center. Logged it into
5 the computer and put the bar code -- A bar code label on
6 it.

7 Q. And when you collected it from the Fort Mill Police
8 Department until you dropped it off here was it under your
9 custody and control the entire time?

10 A. Yes.

11 Q. And generally after the narcotics are placed in
12 evidence how are they eventually taken to a chemist?

13 A. We receive a list from the Solicitor's office and we
14 pull the narcotics that are needed and we sit down with a
15 chemist and transfer the drugs to her.

16 Q. So you or an evidence tech would - - -

17 A. Yes.

18 Q. - - - transfer the evidence - - -

19 A. Yes.

20 Q. - - - to the chemist?

21 A. Yes.

22 Q. About how many times have you done that?

23 A. I do it every other week and I've been here for over a
24 year so thirty.

25 Q. Have you ever seen Clara Painter do that?

SHARON HARTSOE: DIRECT EXAMINATION BY SOLICITOR HOLLAND

123

- 1 A. Yes.
- 2 Q. How long have you worked with Clara Painter?
- 3 A. Fourteen months.
- 4 Q. Have you worked with her everyday?
- 5 A. Yes.
- 6 Q. Have you ever seen Clara Painter sign her name?
- 7 A. Yes.
- 8 Q. How many times?
- 9 A. I see it every day.
- 10 Q. So you've see it hundreds?
- 11 A. Yeah hundreds of times.
- 12 Q. How many times do you think you've actually seen her
- 13 signature?
- 14 A. Hundreds.
- 15 Q. And could you identify Clara Painter's signature?
- 16 A. Yes.
- 17 Q. And do you see Clara Painter's signature any where on
- 18 State's Exhibit Number Two?
- 19 A. Yes.
- 20 Q. And what does that signature indicate?
- 21 A. That she is the one who signed it out to our chemist.
- 22 Q. Okay. And where is Clara Painter today?
- 23 A. She is out for oral surgery.
- 24 Q. So she's not available to be in court today?
- 25 A. Uh-huh.

SHARON HARTSOE: CROSS EXAMINATION BY MS. ANDERSON

124

1 Q. I beg the Court's indulgence. Your Honor, that's all
2 the questions I have for Ms. Hartsoe.

3 If you can answer any questions the defense has.

4 A. Okay.

5 CROSS EXAMINATION

6 SHARON HARTSOE BY MS. ANDERSON:

7 Q. You testified you had seen Clara Painter sign before
8 but you didn't actually see Ms. Painter sign this State's
9 Exhibit Two; correct?

10 A. No.

11 Q. And you didn't actually see Ms. Painter with State's
12 Exhibit Number Two in her custody?

13 A. Not exactly sure what you mean.

14 Q. You didn't see Clara Painter holding what's in front
15 of you State's Exhibit Two did you?

16 A. I can't -- I mean I can't say if I did or not because
17 we have so much evidence. I can't say for sure.

18 Q. But you don't have any specific knowledge of what
19 you've seen as to Clara Painter having you don't know
20 either way?

21 A. The only way that I know is because she -- Because her
22 signature is on it.

23 Q. Okay. And that signature indicates that would be on
24 October 30th of last year?

25 A. Correct.

SHARON HARTSOE: CROSS EXAMINATION BY MS. ANDERSON

125

1 Q. And again you're basing that solely on just looking at
2 that signature not on any personal knowledge?

3 A. That's right.

4 Q. Nothing further.

5 SOLICITOR HOLLAND: Nothing from the State, Your
6 Honor, we just ask that she be excused.

7 THE COURT: You can step down and be excused. We
8 appreciate your time and thank you.

9 Call your next witness.

10 SOLICITOR EPTING: State calls Cynthia Mitchum.

11 (WHEREUPON: CYNTHIA MITCHUM,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

13 SOLICITOR HOLLAND: Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (WHEREUPON: BENCH CONFERENCE OFF THE RECORD OUT OF
16 THE HEARING OF THE JURY.)

17 THE COURT: I am informed that now is a good time to
18 break for lunch so that is what we will do. I would try to
19 wait a little bit longer but due to logistics it's a good
20 time to break for lunch. So we will break until Two
21 o'clock. Have a pleasant lunch and be back and report
22 down stairs and we will start back as promptly as we can.
23 Thank you.

24 (NOTE: JURY DISMISSED FOR LUNCH.)

25 THE COURT: Be back at Two o'clock and Mr. Watson will

1 I State Level Narcotics II, I went to State Level Commander
2 School, to the Federal Commander School put on by DEA.

3 Just several narcotics schools over the years. And then I
4 started helping with this federal DEA narcotics commander
5 course. I taught a session of that a session of that.

6 I've also have three one hour blocks that I teach from time
7 to time on acid forfeiture, basic narcotics and search and
8 seizures.

9 Q. Do you have experience although as an instructor and
10 for yourself?

11 A. Yes, ma'am.

12 Q. And does your training include identifying narcotics?

13 A. Yes it does.

14 Q. Does it include drug detection and packaging?

15 A. Yes, ma'am.

16 Q. The street value of drugs?

17 A. Street level drugs yes.

18 Q. Okay. And the Value of drugs?

19 A. Yes, ma'am, the value of street level drugs.

20 Q. And narcotic transactions?

21 A. Yes.

22 Q. In your thirty-four years in law enforcement have you
23 made narcotic arrest?

24 A. Yes, ma'am, in the thousands. In the Drug Enforcement
25 Unit which I head up make about seventeen hundred to two

SHARON HARTSOE: CROSS EXAMINATION BY MS. ANDERSON

126

1 remain in custody.

2 (NOTE: COURT IN RECESS FOR LUNCH.)

3 (NOTE: BACK ON THE RECORD.)

4 THE COURT: Back on the record and we need Mr. Watson.

5 (NOTE: DEFENDANT ENTERING COURTROOM.)

6 THE COURT: In fact we had an in chambers conference I
7 was advised by the State they had additional witness Mr.
8 Marvin Brown. He's not listed and I am going to ask the
9 jury when they come in if anybody is related by blood or
10 marriage or knows him and see what they say.

11 Mr. Delaney.

12 MR. DELANEY: Your Honor, the defense would have an
13 objection to the State calling Mr. Brown to the stand at
14 this time. He was not a witness that was provided before
15 this trial and the State was calling him in the case and in
16 fact I would submit that Mr. Brown or Officer Brown from
17 what we heard at pretrial had no involvement in this case
18 that whatsoever as far as I just don't see that he had any
19 involvement in this case.

20 THE COURT: Why don't we do this? Why don't we have a
21 proffer first. Let's do that because I understand you are
22 offering him as an expert so we better proffer him. I see
23 Mr. Brown out there, Commander Brown.

24 Mr. Brown, if you will come forward - - -

25 MR. BROWN: Yes, sir.

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

127

1 THE COURT: - - - and be sworn. Of course your
2 objection is to the latest and all and then you find out
3 whether or not to testify - -

4 MR. DELANEY: Yes, sir.

5 (WHEREUPON: MARVIN BROWN, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 DIRECT EXAMINATION IN CAMERA

8 MARVIN BROWN BY SOLICITOR HOLLAND:

9 Q. Would you state your name for the record?

10 A. Marvin Brown.

11 Q. And where are you employed?

12 A. I'm employed here at the Sixteenth Circuit Solicitor's
13 Office.

14 Q. And what is your official title?

15 A. I'm assigned to the Drug Enforcement Unit. I'm the
16 commander of the drug unit the local county wide drug unit.

17 Q. How many years total do you have in law enforcement?

18 A. Thirty-four.

19 Q. How many years have you spent in narcotics?

20 A. About thirty. We formed the first narcotic unit in
21 the Rock Hill PD set up about thirty years.

22 Q. Can you describe any formal training you have in the
23 area of illegal narcotics?

24 A. I went to the South Carolina Criminal Justice Academy,
25 I've attended several schools, state level basic narcotics

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

129

1 thousand charges a year and I've been involved in drug
2 enforcement for about thirty years so in the thousands.

3 Q. Have any of those cases ever involved heroin?

4 A. Yes. When I started policing in the seventies I saw
5 it was in Rock Hill at that time was heroin and marijuana
6 and through the seventies and early eighties it was heroin
7 and then it turned to powder cocaine. In the nineties it
8 went to crack and now we back to heroin again more so than
9 in the past.

10 Q. And - -

11 A. We never lost - -

12 Q. I'm sorry.

13 A. We never completely went away from heroin but it was
14 prevalent in the seventies and eighties but it's coming
15 back.

16 Q. And during those years you were dealing with heroin
17 did you deal at all with the packaging and the street value
18 of heroin?

19 A. Yes.

20 Q. And during this time have you ever conducted
21 interviews with people suspected of dealing or using
22 narcotics?

23 A. Yes, ma'am.

24 Q. Okay. Approximately how many times would you say?

25 A. Hundreds.

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND
CROSS EXAMINATION BY MR. DELANEY

130

1 Q. I beg the Court's indulgence. Your Honor, at this
2 point we would offer him as an expert in the area of street
3 level dealing and narcotics and the use of narcotics.

4 THE COURT: Do you have any voir dire?

5 CROSS EXAMINATION IN CAMERA

6 MARVIN BROWN BY MR. DELANEY:

7 Q. You said through the seventies and eighties that's
8 when you dealt with a lot of heroin?

9 A. Yes. When I started policing in the seventies there
10 was a lot of heroin in Rock Hill at that time.

11 Q. Now you say that -- We don't get a lot of heroin cases
12 on average compared to crack, powder, meth, weed. Heroin
13 -- We get a lot more of those cases than heroin cases;
14 right?

15 A. Yes that's correct.

16 Q. And in the last year how many heroin cases have you
17 been involved in?

18 A. I'm not sure. The use itself has not changed since
19 the seventies. The oxycotin the pain killers is what's
20 bring the heroin back. A dozen or so off the top of my
21 head maybe.

22 Q. As far as your training compared to other drugs have
23 you had specialized training in heroin?

24 A. That's where I started was heroin and then it moved on
25 to cocaine and crack. I've had specialized training at the

MARVIN BROWN: CROSS EXAMINATION BY MR. DELANEY

131

1 police academy and the basic narcotic classes that talked
2 about street level dealing and they included heroin in
3 those topics of training. Now on the street I dealt more
4 with crack and cocaine than heroin but the training classes
5 included all the drugs LSD, marijuana all of them.

6 Q. That's it, Judge.

7 SOLICITOR HOLLAND: That could go into his testimony I
8 think the subject matter.

9 THE COURT: No just his qualifications at this time.

10 SOLICITOR HOLLAND: Okay.

11 THE COURT: That will be enough. And you are
12 proffering him as an expert?

13 SOLICITOR HOLLAND: Proffer him as an expert in the
14 area of packaging, street value and use of heroin or legal
15 narcotics.

16 THE COURT: All right.

17 MR. DELANEY: Judge, we would just object to him being
18 an expert in this case as far as what has been established
19 to qualify him as an expert in heroin specifically.

20 THE COURT: All right. I find that he is qualified to
21 testify on the drug heroin. He's testified to his
22 familiarity with it and drugs in general. His education
23 both as a student and a teacher and his involvement in the
24 trade or the drug trade not participating of course. He's
25 been a law enforcement for over thirty years well thirty

MARVIN BROWN: CROSS EXAMINATION BY MR. DELANEY

132

1 years as I find he is qualified to testify regarding the
2 drug heroin. All right.

3 You can step down.

4 And bring in the jury.

5 You can step down.

6 THE COURT: All right let's wait. Have a seat. Have
7 a seat again.

8 SOLICITOR HOLLAND: I want him to clarify - -

9 THE COURT: Well is this for discovery or is this got
10 to do with - -

11 SOLICITOR HOLLAND: This has to do with the relevance
12 I mean - -

13 THE COURT: Okay. Have a seat. Go ahead. Go ahead.
14 Go ahead. Do you have questions? You said Mr. Delaney
15 wanted to ask some questions.

16 SOLICITOR HOLLAND: No, sir, I thought his motion went
17 into the content -- If he is satisfied with his motion then
18 I'm fine.

19 THE COURT: No he's not.

20 MR. DELANEY: I've got just a few questions.

21 THE COURT: All right he's got questions. Let me do
22 it this way before we get back off track again.

23 Do you have any more questions?

24 SOLICITOR HOLLAND: I can proffer the remainder of the
25 testimony.

MARVIN BROWN: CROSS EXAMINATION BY MR. DELANEY

133

1 THE COURT: I'm just going to let you all do whatever
2 you want. You all are in charge of this. He's not my
3 witness. You decide what you got to ask him.

4 And you decide what you got to ask him. And I will
5 decide what I got to rule and decide how to rule.

6 SOLICITOR HOLLAND: Your Honor, if you are not going
7 to require any more testimony - -

8 THE COURT: I'm not going to require him to do
9 anything.

10 SOLICITOR HOLLAND: Okay. Then the state is satisfied
11 at this point.

12 CROSS EXAMINATION IN CAMERA

13 MARVIN BROWN BY MR. DELANEY:

14 Q. Officer Brown, just a few questions about your
15 involvement in this case. Did you have -- What was your --
16 Did you have any involvement in this particular case here
17 regarding Jerome Watson and the heroin that was found in
18 his car?

19 A. Not on the arrest. I had an involvement earlier that
20 day when he was involved in something else.

21 Q. I'm talking about - - -

22 A. No.

23 Q. - - - the drug - -

24 A. The answer would be no.

25 Q. And did you see these drugs as far as after they were

MARVIN BROWN: CROSS EXAMINATION BY MR. DELANEY

134

1 taken off of him at the DEU office or at the Fort Mill
2 Police Department? Did you have a chance to observe the
3 heroin in these vandles?

4 A. No.

5 Q. Okay. You had no idea what was as far as what was in
6 the vandles?

7 A. No. I saw the lab report and I saw how many vandles
8 there was total.

9 Q. Okay.

10 A. But I did not see the vandles. I do not know how much
11 heroin was in each vindle.

12 Q. That's all the questions I have for the officer. And,
13 Judge, I would make my objection as far as the officer's
14 involvement in the case. He did not have any first hand
15 knowledge; he looked at a drug report but as far as him
16 having any knowledge of the drugs involved in this case. I
17 believe there is other officers that potentially could --
18 They could try to illicit testimony from and the officers
19 based their objection on the lateness of Mr. Brown's being
20 notified to testify.

21 SOLICITOR HOLLAND: Your Honor, as to the content of
22 his testimony he is testifying as an expert that does not
23 require him to be present at the arrest or otherwise he has
24 been qualified as an expert in general packaging street
25 value of the heroin in this case. And as to the lateness -

1 ----- he is not on the witness list and we would ask that
2 he be allowed to testify -----.

3 THE COURT: You can step down. All right I am going
4 to allow him to testify as I find him qualified.

5 All right bring in the jury.

6 MR. DELANEY: Judge, I just have a little bit of a
7 concern for Officer Brown who knows pretrial and not to go
8 certain places in terms of things that happened prior.

9 THE COURT: Well I think she's not going to ask him
10 those questions and if she does go that way just stand up
11 and object. She's made it clear that she's going to
12 illicit and she made it clear that he's not involved in
13 anything and if he blurts out something then you move for a
14 mistrial. The solicitor is experienced and seasoned and
15 solicitor's know how to handle a case.

16 (JURY ENTERING THE COURTROOM.)

17 THE COURT: All right. Over lunch and break I have
18 been informed that the State anticipates calling an
19 additional witness a gentleman named Marvin Brown who is
20 with the Drug Multi Jurisdictional Drug Enforcement Unit
21 for York County. Does anybody know or related to Mr.
22 Marvin Brown?

23 No one indicates they are not.

24 All right you may proceed. Thank you.

25 SOLICITOR EPTING: Thank you, Your Honor. The State

CYNTHIA MITCHUM: DIRECT EXAMINATION BY SOLICITOR EPTING

136

1 calls Cynthia Mitchum to the stand.

2 (WHEREUPON: CYNTHIA MITCHUM,

3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 CYNTHIA MITCHUM BY SOLICITOR EPTING:

6 Q. Ms. Mitchum, would you please state your name and your
7 occupation for the record?

8 A. It's Cynthia Mitchum and I'm a resident chemist with
9 the York County Sheriff's Office.

10 Q. How long have you been a chemist for the York County?

11 A. Ten years.

12 Q. And prior to working for York County were you employed
13 anywhere else as a chemist?

14 A. Yes.

15 Q. Where was that?

16 A. I was at the South Carolina Law Enforcement Division
17 known as SLED in Columbia, South Carolina and I was there
18 for a little over seven years.

19 Q. And what sort of training and education have you had
20 in order to become a chemist?

21 A. I have a Bachelor of Science Degree in chemistry which
22 I received from the University in 1990. And then I had
23 training through South Carolina Law Enforcement Division in
24 their drug lab and through various instrumentations such as
25 ----- technology.

CYNTHIA MITCHUM: DIRECT EXAMINATION BY SOLICITOR EPTING

137

1 Q. And do you regularly analyze substances such as
2 narcotics and illegal drugs as part of your duty?

3 A. Yes I do.

4 Q. Have you ever analyzed substances to determine whether
5 or not substances were heroin?

6 A. Yes.

7 Q. How many times?

8 A. Probably in excess in my career a thousand times.

9 Q. Have you ever been qualified to testify as an expert
10 in this field?

11 A. Yes.

12 Q. Approximately how many times have you been qualified?

13 A. In excess of two hundred times.

14 Q. Your Honor, at this time I move to declare this
15 witness an expert in the field of chemistry and the
16 analysis of the weighing of narcotics.

17 MR. DELANEY: No objection.

18 THE COURT: I find she is qualified.

19 BY SOLICITOR EPTING:

20 Q. Now I am going to show you a paper - -

21 I beg the Court's indulgence.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER THREE PREMARKED
23 FOR IDENTIFICATION.)

24 BY SOLICITOR EPTING:

25 q. Ms. Mitchum, I'm handing you State's Exhibit Three.

1 Would you please look over that and when you are done
2 looking over that would you when you get finished look up?

3 Do you recognize State's Exhibit Three?

4 A. Yes I do.

5 Q. When did you receive that exhibit?

6 A. I received this on October the 30th of 2009.

7 Q. And from whom did you get it?

8 A. I have the report not the evidence.

9 Q. Okay. Did you receive drugs -- I believe that's
10 State's Exhibit Two.

11 A. Two that's correct. Yes I received this from Clara
12 Painter on October 30th of 2009.

13 Q. And what condition was it in when you received it?

14 A. When I received it it was in this inner bag with the
15 blue sealer down the side and that was sealed and unopen
16 because I got okay the date and my initials on the inside.

17 Q. And when you received it at that time did it appear to
18 have been tampered with?

19 A. No.

20 Q. What did you do with it when you received it?

21 A. Once I receive the evidence I take it back to my
22 laboratory and it was therefore going into a locked filing
23 cabinet that I have the only keys for it. It will stay in
24 that cabinet until I have the time to be able to open it
25 and analyze it and then I will return it back to the

CYNTHIA MITCHUM; DIRECT EXAMINATION BY SOLICITOR EPTING

139

1 evidence room to which it came from.

2 Q. And was it continuously in your custody and control
3 while you had that exhibit?

4 A. Yes.

5 Q. What did you do after you put the contents back in the
6 bag?

7 A. After that I sealed it in this outer bag and then it
8 has the date and when I sealed it.

9 Q. And what was the condition of the bag when it left
10 your possession?

11 A. It was sealed.

12 Q. And the bag was in the same condition now as it was
13 when it left your possession?

14 A. It has been reopened for the purposes of doing
15 fingerprints and then I sealed it again so it is sealed
16 today and that was done in my presence.

17 Q. And as to your report did you make a determination to
18 determinate what substance you tested was and the weight of
19 that substance?

20 A. Yes.

21 Q. What did you determine the substance to be?

22 A. State's Exhibit Number Two which is Item No. 1 in this
23 case I found it be heroin in the amount of zero point four
24 three grams or six point six grains controlled. Should be
25 controlled one substance.

1 Q. And did you make a report of your finding?

2 A. Yes.

3 Q. Your Honor, at this time the State moves to enter
4 State's Exhibit Three into evidence as State's Exhibit Two.

5 MR. DELANEY: Your Honor, we would object at this time
6 as far as the state not having any proper chain.

7 THE COURT: All right. Let the jury go to the jury
8 room while we take up a legal matter.

9 (JURY LEAVING COURTROOM.)

10 THE COURT: Yes, sir.

11 MR. DELANEY: Judge, I had two issues here. One we
12 don't know how as far as Officer Beck has not testified yet
13 to how these drugs got in the vehicle.

14 THE COURT: I agree. You're entirely right.

15 SOLICITOR EPTING: And, Your Honor, we would withdraw
16 that request I apologize.

17 THE COURT: Okay.

18 MR. DELANEY: And the other issue I don't believe the
19 issue we had earlier the testimony that the signature was
20 recognized - -

21 THE COURT: Well we really hadn't gotten into that but
22 we don't even have the first link in the chain at this
23 point. We got the first one that they found by -- No we
24 don't have any but we don't have any of those.

25 All right bring in the jury.

CYNTHIA MITCHUM: DIRECT EXAMINATION BY SOLICITOR EPTING
CROSS EXAMINATION BY MR. DELANEY

141

1 I sustain the objection.

2 (JURY ENTERING COURTROOM.)

3 SOLICITOR EPTING: Your Honor, the State would
4 withdraw -- We withdraw our request to admit State's
5 Exhibit Two but do continue in our request to admit State's
6 Exhibit Three the chemist report.

7 MR. DELANEY: No objection.

8 THE COURT: In without objection.

9 WHEREUPON: STATE'S EXHIBIT NUMBER THREE IDENTIFIED
10 AND MARKED, ENTERED INTO EVIDENCE.)

11 BY SOLICITOR EPTING:

12 Q. Now, Ms. Mitchum, the bag -- The drugs in that bag are
13 dumped into one bag now. Were they in that condition when
14 you first received them?

15 A. No. The way they were there were twenty three
16 individual single bags in here plus the one that was empty
17 and the power was in each of those twenty three bags.

18 Q. And who placed them into the other baggies?

19 A. I did.

20 Q. No further questions at this time. Please answer any
21 questions the defense may have for you.

22 CROSS EXAMINATION

23 CYNTHIA MITCHUM BY MR. DELANEY:

24 Q. Just a couple of questions. May I approach, Your
25 Honor?

CYNTHIA MITCHUM: CROSS EXAMINATION BY MR. DELANEY

142

1 THE COURT: Yes, sir.

2 BY MR. DELANEY:

3 Q. If I may.

4 A. Sure.

5 Q. Thank you. And it's your testimony that you took out
6 the powder out of the smaller bags; is that right?

7 A. That is correct.

8 Q. And that what we have here -- What we have here is
9 what came out; is that correct?

10 A. That's correct.

11 Q. And that would be what you testified as to the drug
12 report the zero point four three grams?

13 A. That's correct.

14 Q. Of heroin; correct, came out of here?

15 A. Uh-huh.

16 Q. And you don't have any knowledge of the specific
17 amounts that came out of each bag; is that right?

18 A. Correct no.

19 Q. And you weren't given that information by the Drug
20 Enforcement Unit; is that right?

21 A. Correct. Now I did not individually weigh them
22 individually but all together.

23 Q. All together?

24 A. Right.

25 Q. Okay. And that came to point four three grams?

CYNTHIA MITCHUM: CROSS EXAMINATION BY MR. DELANEY

143

1 A. Correct.

2 Q. Okay. Are you familiar with a Equal packet or Sweet
3 and Low packet?

4 A. Yes.

5 Q. And those would contain -- Those are said to contain
6 one gram; is that correct?

7 A. That's correct.

8 Q. Okay. And the amount that we are dealing with here as
9 far as weight wise would be just a little less than a half
10 of a Equal or a Sweet and Low packet; is that correct?

11 A. That's correct.

12 Q. Okay. No further questions.

13 SOLICITOR EPTING: No further questions by this
14 witness.

15 THE COURT: You may be excused.

16 Call your next witness.

17 SOLICITOR EPTING: The State calls Officer Walton
18 Beck.

19 (WHEREUPON: WALTON BECK, BEING
20 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 OFFICER WALTON BECK BY SOLICITOR EPTING:

23 Q. Would you please state your full name for the record
24 please?

25 A. Walton Beck.

CYNTHIA MITCHUM: CROSS EXAMINATION BY MR. DELANEY
WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTIN

144

1 Q. And Officer Beck, what do you do for a living?

2 A. I am a deputy sheriff assigned to the York County
3 Multi Jurisdictional Drug Enforcement Unit.

4 Q. And were you involved in the investigation involving
5 Jerome Watson?

6 A. I was.

7 Q. Please tell the jury about the investigation.

8 A. September of 2009 we were out in the area of Carowinds
9 Boulevard in reference to complaints about drug activity
10 going on up there from the patrol division of the sheriff's
11 office. While we were out there Lieutenant Kennedy
12 notified us or notified myself via radio and also the other
13 officer that was with us Officer Cantey that he had
14 stumbled upon a couple of guys sitting in the parking lot
15 of the KFC up off Carowinds Boulevard and that he was going
16 to be doing surveillance on them so I moved into a position
17 to be close by across the road at the Plaza Hotel in the
18 parking lot over there in case something happened. And
19 Officer Cantey moved over to the Petro Express parking lot
20 close by also. After a little while Officer Kennedy said
21 that the person in the Buick that was there - -

22 MR. DELANEY: Your Honor, I object at this time to
23 hearsay.

24 THE COURT: Don't go into what someone else had told
25 you.

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

145

1 A. Okay. I'm sorry.

2 Q. Without repeating what anyone told you - - -

3 A. Right.

4 Q. - - - explain to the jury what you did.

5 A. The silver Buick that Mr. Watson was driving left the
6 parking lot I began following that vehicle in my vehicle
7 which is unmarked it doesn't look like a police car at all
8 or anything. I followed it down Carowinds Boulevard
9 underneath I 77 before it made a left onto Spring Hill Farm
10 Road and then made a left on State View Boulevard to go
11 into the Wells Fargo Complex where they have office
12 buildings and stuff going on there.

13 Q. Did you see the car park?

14 A. The car went into the parking lot of Wells Fargo past
15 the last building and parked in a parking space in the
16 parking lot and sat there for a few minutes. I was
17 watching the vehicle from in the parking lot also. I had
18 parked in a parking space just like a normal other vehicle
19 just to blend in was watching the Buick there that Mr.
20 Watson was in trying you know to see what they were doing.
21 Officer Cantey was heading my way but hadn't quite made it
22 there yet. This was like some time like a little after
23 Five on a weekday afternoon on Carowinds Boulevard it's
24 pretty hectic up there so it's kind of hard to move around
25 unless you are a car or two behind somebody. So I sat

1 there and watched the vehicle for a couple of minutes while
2 I was parked in the parking space and after a little while
3 it moved out of the parking space and parked beside --
4 Parked near one of the exits to the building and sat there.
5 It didn't park in a parking space it kind of parked on the
6 road as cars moved through the parking lot looking for
7 parking spaces. Just parked right there and just sitting
8 like he was waiting on somebody. After a few minutes it
9 sat there and Officer Cantey still hadn't made it there to
10 me yet but he was in the area trying to find me. I pulled
11 my vehicle around and parked behind the vehicle Mr. Watson
12 was driving and got out and walked up to the vehicle and
13 made contact with Mr. Watson.

14 Q. I believe you said earlier that you were not wearing a
15 police uniform.

16 A. No. No I don't wear a police uniform when I'm working
17 with the drug enforcement unit. I don't drive a marked car
18 or anything like that.

19 Q. Did you have any kind of identification to show that
20 you were a police officer?

21 A. I did. I wear my badge on my belt right beside my
22 pistol and a lot of the time I will have a T shirt on or
23 sweat shirt covering up my gun and my badge and stuff and
24 whenever I go out to make an encounter with somebody and
25 deal with somebody I will take my clothes and I will peel

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

147

1 them over so that I am readily identified as a police
2 officer.

3 Q. Before we get to the conversation I would like to show
4 you something.

5 A. Yes, sir.

6 Q. Your Honor, may I approach the witness?

7 I'm handing the witness what's been marked as State's
8 Exhibit Four I ask you to take a look at that and look up
9 when you are done.

10 A. Okay.

11 Q. Are you familiar with the subject matter in State's
12 Exhibit Four?

13 A. Yes, sir.

14 Q. How are you familiar with that?

15 A. This looks like an aerial photo of the last two
16 buildings there at the Wells Fargo complex.

17 Q. And is this the area where Mr. Watson parked his
18 vehicle?

19 A. Yes, sir. You can see in the parking lot here the
20 area where he was parked in.

21 Q. Is it a fair and accurate depiction?

22 A. Yes, sir.

23 Q. Your Honor, at this time I would ask to move State's
24 Exhibit Four into evidence and publish.

25 THE COURT: Any objection?

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

148

1 MR. DELANEY: No objection, Judge.

2 THE COURT: In without objection. You may publish.

3 (STATE'S EXHIBIT FOUR PUBLISHED TO THE JURY ON OVER
4 HEAD.)

5 BY SOLICITOR EPTING:

6 Q. If you would come down off the stand. And if you
7 would using State's Exhibit Four which has been placed on
8 the over head for all the courtroom to see go through what
9 you just testified to. Point out to the jury where each
10 person parked.

11 A. Okay. I can kind of show you. This right here State
12 View Boulevard if you come in to the Wells Fargo complex
13 off of Spring Hill Farm Road where the defendant had drove
14 in and actually just barely off the map up here there is an
15 entrance into the parking lot there is some side parking up
16 here. The defendant Mr. Watson drove past this entrance
17 here went up and turned in and then parked right here in
18 this area of parking spaces. After a few minutes he sat
19 there and then he moved up into the parking lot and parked
20 -- Do you see these little lines here between the parking
21 spaces? He parked right there just in the lane in front
22 of the parking spaces pointed out that way. I simply when
23 I approached to him I drove my vehicle around and parked
24 right behind him.

25 Q. Okay. Did you block his access to leave?

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

149

1 A. No he could have -- He was able to pull out straight
2 that way. You can kind of see the area there. Nothing
3 blocking there. I just parked behind him.

4 Q. Okay. You can have your seat. Thank you.

5 Now, Officer Beck, at some point you approached Mr.
6 Watson, correct?

7 A. That's correct.

8 Q. Was he driving his vehicle?

9 A. He was driving. Not at the time I walked up there but
10 he had been driving going down the road.

11 Q. Did he have any passengers in the car?

12 A. No, sir.

13 Q. Okay. Please tell the jury about your encounter with
14 Mr. Watson.

15 A. I walked up to Mr. Watson identified myself as a
16 police officer with the Drug Enforcement Unit. I told him
17 we were up there in reference to some problems we had been
18 having in the area. Asked for his driver's license said he
19 didn't have a driver's license handed me an ID card. Said
20 he didn't have a license asked him to get out of the
21 vehicle please he got out of the vehicle.

22 MR. DELANEY: Your Honor, at this time we would just
23 renew our objections that we made earlier in this case.

24 THE COURT: The ruling is the same.

25 MR. DELANEY: Thank you.

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

150

1 BY SOLICITOR EPTING:

2 Q. Go ahead.

3 A. Okay. I'm sorry I just lost my track of thought.

4 Q. You approach him you are speaking with him you tell
5 him there has been problems in the area.

6 A. Right. He didn't have a license ask him to get on out
7 of the vehicle walked back to the back. He did walk back
8 there and ask - -

9 Q. What was your tone of voice when you were exchanging
10 - -

11 A. Just talking to him just like I talk to anybody else.
12 Wasn't screaming yelling.

13 Q. Its Five o'clock so is it getting dark?

14 A. It was still daylight. There were people in the
15 parking lot Wells Fargo they get off at all times of weird
16 hours so they have a lot of people leaving between Four and
17 Six. So there were people out in the parking lot and
18 people leaving work.

19 Q. Okay. So you were talking to him.

20 A. Right. We were talking to each other you know just
21 like any other two people you know.

22 Q. Did you ask him if you could look in his car?

23 A. Well I got him back got him to the back of the car and
24 was talking to him. I said do you have anything illegal on
25 you. He said no. I said can I search to make sure you

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

151

1 don't have anything illegal on you? He gave me consent to
2 search him and searched him and he didn't have anything
3 illegal on him. I ask for consent to search the vehicle he
4 gave consent to search the vehicle. When I was first up
5 there talking to him there was something that struck me as
6 interesting. When you are sitting behind the wheel of a
7 vehicle the interior door handle there was a Newport
8 cigarette pack there and that's just something that kind of
9 caught my eye was that cigarette pack when I was first up
10 there and I was talking to him. And I was able to see it
11 whenever he opened up the door and got out of the vehicle.
12 So he's back there at my truck and walked up to the vehicle
13 and opened up the cigarette pack and happen to see the
14 heroin inside of there.

15 Q. Okay.

16 A. Just kind of put that down in my pocket kind of looked
17 around for just a second to make sure everything was good.
18 I really didn't do a thorough search because I was by
19 myself and it was just me and Mr. Watson and went back
20 there and placed him under arrest and advised him of his
21 rights.

22 Q. And what happened at that point? Did you read him his
23 Maranda rights?

24 A. I placed him under arrest and advised him of his
25 Maranda rights. He advised me he understood them. He was

1 in handcuffs placed him in the front seat of my vehicle
2 which is just because of the type vehicles we drive it's
3 easier to transport somebody in the front seat. We don't
4 have the springs or the cages like you see in a marked
5 patrol car usually so the safest way to transport somebody
6 when you are by yourself is up in the front seat.

7 Q. We'll come back to the Maranda rights. You hear a lot
8 of stuff on the news and on TV about that. Did you read
9 them from memory? Do you have them memorized or do you
10 read them from a card?

11 A. No, sir. As part of being on the drug enforcement
12 unit your first day there I distinctly remember it
13 Commander Brown give you a Maranda Rights Card. And we use
14 that whenever we arrest people we advise them of their
15 Maranda rights immediately. We read them from that card.

16 Q. And that's what you did?

17 A. That is correct that is exactly what I did.

18 Q. Do you have that card with you today?

19 A. I do.

20 Q. Could you read that for the jury please?

21 A. Sure. I always carry it in my left pocket. It says,

22 "You have the right to remain silent
23 anything you say can or will be used against you
24 in a court of law. You have the right to talk to
25 a lawyer and have them present with you while you are

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

153

1 being questioned. If you cannot afford to hire a
2 lawyer one will appointed to represent you before
3 any questioning if you wish. You can decide at any
4 time to exercise these rights and not answer any
5 questions or make any statements. Do you understand
6 each of these rights I've explained to you? Having
7 these rights in mind do you wish to talk to us now?"

8 Q. And did the defendant then or at any time later invoke
9 his right to remain silent?

10 A. No he didn't.

11 Q. Did he invoke his right for an attorney?

12 A. No he didn't.

13 Q. Now you said you found heroin. You found heroin in
14 the car in a Newport cigarette pack?

15 A. Yes, sir.

16 Q. Did you find any methods of using heroin in that car?

17 A. No not in the car then. Like I said I didn't do a very
18 thorough search of the vehicle when it was just me and Mr.
19 Watson out there. We transported -- I transported him on
20 over to Fort Mill Police Department and we had the car take
21 back to the Fort Mill Police Department and did a thorough
22 search of it there and we never found any kind of other
23 paraphernalia or straws or anything like that.

24 Q. And I assume you didn't stay at Wells Fargo forever.
25 Eventually you all met somewhere - -

1 A. We were not at Wells Fargo very long at all. We - -

2 Q. Where did you go?

3 A. Me and Mr. Watson I took him to the Fort Mill Police
4 Department where our office is.

5 Q. Okay. Where did you have him in that police
6 department?

7 A. We have a room that's directly across from our office
8 that we use for doing booking forms and interviewing
9 people. It's literally right across the hall from our
10 office so it's real easy for us and our office is just --
11 It's not a good environment to talk to people or bring
12 people that are under arrest because it's so cramped.
13 Three investigators and a supervisor in a very small room.

14 Q. How big is the room that you brought Mr. Watson in?

15 A. It's a kind of like a conference room. Its about like
16 approximately fifteen by fifteen maybe. Pretty good size.
17 Its kind of a supply room; there's some supplies and stuff
18 on the wall. There's a long table in there, a wooden table
19 where we can sit and talk to people at.

20 Q. Was B. J. Kennedy present?

21 A. He was.

22 Q. And without going into the substance did you and B.J.
23 Kennedy speak with Mr. Watson?

24 A. We did.

25 Q. Did you guys threaten him to get him to speak with

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

155

1 you?

2 A. No, sir.

3 Q. Did you promise him any reward for not speaking with
4 you?

5 A. No, sir.

6 Q. During the course of your interview -- How long did
7 the interview take?

8 A. Around about an hour.

9 Q. Did you deny him food or water?

10 A. No, sir.

11 Q. Did you deny him a bathroom break?

12 A. No, sir.

13 Q. (COULD NOT UNDERSTAND QUESTION ON AUDIO BACKUP.)

14 A. No, sir.

15 Q. So you spoke with him?

16 A. Sir?

17 Q. You did speak with him and he spoke with you?

18 A. Yes, sir.

19 Q. Please tell the jury what he told you on that day?

20 A. We talked to him about what all had been going on that
21 day and this that and another you know. We explained to
22 him you know we didn't kind of -- Let's talk about what
23 happened here today and what went on. He talked with us
24 about what happened at the KFC with the heroin in the
25 vehicle that we found.

1 Q. What specifically did he say about the heroin?

2 A. We were talking with him about possibly working with
3 us as a confidential informant and working to help himself
4 out. And he talked about you know we were like who was the
5 guy in the green Isuzu you met with. He was like oh he's
6 nobody important he's not a big player in the game you know
7 I can give you these other people though. He never wanted
8 to talk about that guy.

9 Q. Did he tell you where he got the heroin?

10 A. He told us that he had bought from that guy in the
11 green Isuzu at the Kentucky Fried Chicken there where we
12 had been doing surveillance on them.

13 Q. Did he say anything else?

14 A. Well he went on to say you know that he sold heroin
15 that mainly -- The main thing that stood out in my mind was
16 the fact that he said he sold mainly to white people
17 because white people if he told them not to bring anybody
18 they wouldn't. And while that kind of means a lot to
19 people who sell dope sometimes because new people coming
20 around when you are doing something illegal doesn't make
21 people feel comfortable.

22 Q. Now let's talk about the heroin that you found in the
23 vehicle.

24 A. Yes, sir.

25 Q. You took it from the scene; correct?

WALTON BECK: DIRECT EXAMINATION BY SOLICITOR EPTING

157

1 A. Yes, sir. I took it into my custody.

2 Q. Once you take it into your custody from the defendant
3 what did you do with it?

4 A. I took -- It stayed with me we took it to our office.
5 We did a weight of what was in there. There were twenty
6 four vindles and one of the vindles was empty. So we had
7 twenty three vindles that actually contained heroin.

8 Weighed it got an approximate weight. Packaged it into
9 evidence bag and sealed it initialed it filled out the
10 front and dropped it into the Fort Mill Police Department
11 evidence drop.

12 Q. And that evidence drop is it locked?

13 A. It is.

14 Q. Are you aware of who has a key to that?

15 A. I think just evidence personnel has keys to that.
16 Nobody else other than them to my knowledge does.

17 Q. And when was that? You said there was one empty
18 vindle.

19 A. Yes.

20 Q. Did that appear to have been opened and used or - -

21 A. No, sir, it just appeared it had been closed like the
22 other ones and just hadn't been filled.

23 Q. Well, Your Honor, at this time I move to admit State's
24 Exhibit Two into evidence.

25 MR. DELANEY: No objection.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

158

1 THE COURT: In without objection.

2 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO IDENTIFIED AND
3 MARKED, ENTERED INTO EVIDENCE.)

4 SOLICITOR EPTING: No further questions at this time.
5 Please answer any questions the defense may have.

6 CROSS EXAMINATION

7 OFFICER WALTON BECK BY MR. DELANEY:

8 Q. Good afternoon, Officer.

9 A. Good afternoon. How you doing?

10 Q. You've had training at the police academy; is that
11 right?

12 A. Yes, sir.

13 Q. And various other places you've received law
14 enforcement training; is that correct?

15 A. Yes, sir.

16 Q. Through I guess seminars you received training through
17 that and through education and schooling; is that right?

18 A. Yes, sir.

19 Q. Okay. And at the academy they train you there
20 initially to write incident reports; is that right?

21 A. That's correct.

22 Q. Okay. And they train you as to the importance of an
23 incident report as what you put in there?

24 A. Yes, sir.

25 Q. And you are trained to be as accurate and detailed as

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

159

1 possible when you are writing an incident report; correct?

2 A. Yes, sir.

3 Q. Okay. In this case, Officer, you were the case agent,
4 is that correct?

5 A. Yes, sir.

6 Q. And as the case agent that's equivalent to being the
7 lead investigator in the case; is that correct?

8 A. Yes, sir.

9 Q. You are essentially responsible for all the
10 information in the case; is that right?

11 A. Yes, sir.

12 Q. And you will review any documents that are prepared in
13 the case; right?

14 A. Yes, sir. I put together the case folder that gets
15 turned in.

16 Q. Okay. And I want to go over with you a few of the
17 documents that were prepared in this case to find out who
18 prepared them okay?

19 A. Okay.

20 Q. The first one I'm looking at here the General Sessions
21 Case File Summary that appears to be prepared by yourself;
22 is that correct?

23 A. I believe so yes, sir.

24 Q. And I guess you want to - -

25 May I approach, Your Honor.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

160

1 A. I'm pretty sure I typed up the -- Yes, sir, that's --
2 Yes, sir.

3 Q. Okay. And the charge is possession with intent to
4 distribute heroin; correct?

5 A. Yes, sir.

6 Q. Okay. The York County Sheriff's Office the Incident
7 Report is this prepared by yourself as well?

8 A. No, sir.

9 Q. Who is that prepared by?

10 A. It appears to have be done by Lieutenant Kennedy.

11 Q. Okay. And at some point in this investigation you
12 would have had a chance to review that?

13 A. Yes, sir.

14 Q. Okay. And it reflects that the charge and in this
15 case again is the possession with intent to distribute
16 heroin; correct?

17 A. Yes, sir.

18 Q. Okay. And you are not the officer that took out the
19 warrant in this case; is that correct?

20 A. I don't recall.

21 Q. If I show you the warrant would that refresh your
22 memory?

23 A. Yes, sir, that would help a lot.

24 Q. May I approach, Your Honor.

25 A. This appears to be done by Officer Cantey.

WALTON BECK; CROSS EXAMINATION BY MR. DELANEY

161

1 Q. Okay. And he swore out a warrant again for Jerome
2 Watson for possession with the intent to distribute heroin;
3 correct?

4 A. Yes, sir.

5 Q. And it appears that warrant is based on the amount
6 that was recovered; correct?

7 A. Yes, sir.

8 Q. And what is the amount that's listed in that warrant?

9 A. Approximately two point three grams of heroin.

10 Q. So it says two point three grams of heroin recovered
11 in police investigation; right?

12 A. Yes, sir. Police investigation recovery of evidence.

13 Q. Okay. And finally if I may approach the witness, Your
14 Honor.

15 That appears to be a booking report; is that correct?

16 A. Yes, sir.

17 Q. And you were the officer that was present when Jerome
18 Watson was booked in at the jail; is that correct?

19 A. Over at the Fort Mill Police Department?

20 Q. Right?

21 A. Yes, sir, that's where we will fill out our booking
22 sheets and stuff like that.

23 Q. To get the picture taken?

24 A. No, sir, not there.

25 Q. Okay.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

162

1 A. No, sir, he doesn't get fingerprinted or photographed
2 there at Fort Mill. Fort Mill Police Department is just a
3 temporary holding facility.

4 Q. Okay.

5 A. And, like he was arrested at 5:25 in the evening.

6 Q. Okay.

7 A. Normally later in the night like at One or Two in the
8 morning the detention transport van will come by and bring
9 them over to Moss Justice to get photographed and
10 fingerprinted and they go before the bond judge over here.

11 Q. And no photograph was taken of Jerome Watson at the
12 Fort Mill Police Department?

13 A. Not to my knowledge.

14 Q. Okay. Now you don't happen to have a copy of this ---
15 -- up there with you do you?

16 A. No, sir.

17 Q. I'm going to give you a copy - - -

18 A. Okay.

19 Q. - - - I want to go over a few things? The first I
20 guess three little mini paragraphs it's just a very brief
21 summary of what the allegations are what the charges are;
22 is that right?

23 A. Yes, sir.

24 Q. Okay? And if you could just read that first just
25 little Paragraph Two to the jury.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

163

1 A. The very beginning paragraph?

2 Q. Yes just the very beginning.

3 A. "Thursday afternoon September 24th 2009 approximately
4 5:25 p.m. Jerome Elton Watson was arrested by officers of
5 the York County Multi Jurisdictional Drug Enforcement Unit
6 -- for possession with intent to distribute heroin while in
7 the parking lot of 3560 State View Boulevard, Wells Fargo,
8 Fort Mill, County of York, South Carolina. The sequence of
9 events is as follows."

10 Q. Okay. Thank you. And obviously at that point you are
11 -- This is an investigation that has to do with the
12 possession with the intent to distribute; correct?

13 A. Yes, sir.

14 Q. Okay. Around 4:00 it was a Thursday around 4:45 is
15 that accurate is when I guess Mr. Watson was first observed
16 by you and the officers in this area; correct?

17 A. I believe that's when Lieutenant Kennedy first - -

18 Q. Okay.

19 A. - - - saw him.

20 Q. And how close were you to Lieutenant Kennedy again?

21 A. When he spotted him?

22 Q. Yeah when he spotted the car - -

23 A. I was somewhere right in that area. We had been
24 saturating the Carowinds Boulevard area just because of the
25 complaints we had received. I was probably right there

1 right around him somewhere. I know he was not in that
2 parking lot. But I was probably up on the Boulevard or
3 coming across one of the gas stations or something.

4 Q. And the Plaza Hotel that's right there?

5 A. Yes, sir.

6 Q. You testified you were going to the Plaza Hotel at the
7 time?

8 A. Well what I had done is after Lieutenant Kennedy had
9 let us know what he had you know what he was looking at I
10 had gone and parked at the Plaza Hotel parking lot just to
11 blend in instead of moving around from here and there and
12 you keep seeing the same vehicle driving back and forth
13 kind of sticks out so. I just went over there and parked.

14 Q. Okay. And at some point you get information to start
15 watching a specific vehicle in the KFC parking lot;
16 correct?

17 A. When they left I was told to get on -- I say get on
18 but you know follow the Buick that was leaving.

19 Q. Okay. And did you watch the vehicle in the parking
20 lot at all?

21 A. I wasn't really able to because of where I was sitting
22 and just obstructions in the way. We already had one
23 person with good eyes on it. I wasn't gonna try to mess
24 myself up and get myself burnt - - -

25 Q. Okay.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

165

1 A. - - - trying to get another set of eyes on it.

2 Q. Okay. And the 2003 Buick exits the KFC and you were
3 following that vehicle at that point; correct?

4 A. Yes, sir, when it left the Kentucky Fried Chicken I
5 got on it.

6 Q. And you testified already that the vehicle you
7 followed the vehicle to Wells Fargo; right?

8 A. Yes, sir.

9 Q. And just for the jury Wells Fargo I guess a mile maybe
10 a little more than a mile from the Kentucky Fried Chicken
11 would that be accurate?

12 A. That's around about right yes, sir.

13 Q. Okay. And -- Wells Fargo that's a pretty big complex
14 over there; is that right?

15 A. Yes, sir.

16 Q. A lot of employees and a lot -- Big parking area?

17 A. Yes, sir, it's very rare that their parking lot looks
18 like that.

19 Q. Normally it's pretty full?

20 A. Yes, sir.

21 Q. Okay. And was it any different that day when you went
22 in there?

23 A. No, sir, it's Thursday afternoon at you know a little
24 after Five so.

25 Q. Right around Five o'clock and like you said I guess

1 that Wells Fargo it's different shifts so some people leave
2 at 5:00, 5:30, 6:30 so there's a lot of people coming and
3 going right?

4 A. Yes, sir.

5 Q. Okay. And you followed Mr. Watson into the back of
6 the I guess the parking lot so to speak is that right?

7 A. Yes, sir. Probably be the best way -- Not really the
8 back of the building but kind of like the side of the
9 building but as you're coming in the side of the building
10 is the back if that makes sense.

11 Q. Okay. And Officer Cantey he wasn't there yet he was
12 still in route?

13 A. No, sir. Office Cantey didn't make it there until
14 after I had already arrested Mr. Watson.

15 Q. Okay. And that's the same thing obviously from what
16 we've heard from Officer Kennedy as well?

17 A. Yes, sir, I believe so.

18 Q. Okay. And when you -- When Jerome Watson the Buick
19 comes in it parks in a parking space; is that correct?

20 A. Yes, sir.

21 Q. Okay. And how long would you say approximately the
22 car stayed parked in that parking space?

23 A. It couldn't have been very long. I mean it was about
24 Five o'clock when he left out of Kentucky Fried Chicken and
25 even though it's only a mile it's not -- It's kind of hard

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

167

1 to get from one place to another especially on Carowinds
2 Boulevard so it takes just a few minutes. So maybe there
3 about five minutes or so.

4 Q. During that time that he was sitting in the parking
5 space did he ever exit the vehicle?

6 A. No, sir, I don't believe so.

7 Q. Okay. And at that time - - Well you say you don't
8 think so. He didn't exit the vehicle did he?

9 A. Sir?

10 Q. He didn't exit the vehicle at - -

11 A. No, sir, I don't believe so no, sir.

12 Q. And no one approached the vehicle; right?

13 A. No, sir.

14 Q. Okay. And after you say about five minutes he moves
15 the car to the side of the building; is that right?

16 A. Yes, sir.

17 Q. Okay. And is he parked near a exit sign?

18 A. Yes, sir. He's parked next to one of the exit doors
19 right there in that area.

20 Q. Okay. And at that time when he was waiting near this
21 exit he didn't exit the vehicle; right?

22 A. No, sir.

23 Q. And no one that you observed the vehicle approached
24 the vehicle or got in the vehicle; right?

25 A. No, sir, that didn't happen.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

168

1 Q. Okay. And at some point you approach the vehicle;
2 correct?

3 A. Yes, sir, that's correct.

4 Q. Okay. And you later learned that he was parked where
5 he was parked at because his wife was getting out of work.
6 He was there to pick his wife up is that your
7 understanding?

8 A. Yes, sir, that's what he told us.

9 Q. Okay. And the car that he was driving you learned
10 that that car was registered to his wife; is that correct?

11 SOLICITOR EPTING: Your Honor, I am going to object.
12 I don't believe anyone has testified to that.

13 THE COURT: Well you can ask him a question about it
14 but not - -

15 BY MR. DELANEY:

16 Q. Did you have any information who the owner of the car
17 was?

18 A. When?

19 Q. The owner of the car Jerome Watson the owner of the
20 2003 Buick?

21 A. When did we -- I'm sorry. Are you trying to ask me
22 before I walked up to the car did I know who owned it?

23 Q. No. I guess just as a result of the investigation in
24 this case did you ever discover - - -

25 A. Yes, sir.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

169

1 Q. - - - who the owner of the car was?

2 A. Yes, sir. Oh yes, sir.

3 Q. And who did you discover who the owner of the vehicle
4 was?

5 A. I don't recall. I believe it was like you said his
6 wife the lady he was waiting to pick up from work.

7 Q. Okay.

8 A. I just don't remember her name.

9 Q. Okay. You get Mr. Watson out of the car; right?

10 A. Yes, sir.

11 Q. Okay. And at that point he gives you consent to
12 search his person; right?

13 A. Right.

14 Q. And as you testified you didn't find anything on him;
15 right?

16 A. That's correct.

17 Q. Okay.

18 A. Nothing illegal on him.

19 Q. And you then asked him for consent permission to
20 search his vehicle; is that right?

21 A. That's correct.

22 Q. Okay. And at that point when you are searching the
23 vehicle you say your attention goes to a Newport cigarette
24 box; is that right?

25 A. Yes, sir.

1 Q. Okay.

2 A. I had seen it when he -- When I was up there talking
3 to him at first.

4 Q. Uh-huh.

5 A. I tried to scan the vehicle when I'm up there talking
6 to him kind of looking all around in it and I just happened
7 to see that and it caught my eye when I was first up there
8 talking to him and you know whenever I went to start
9 searching the vehicle that's one of the places I checked.

10 Q. And you said the area of the cigarette pack where it
11 was found that's what drew your attention to it?

12 A. No, sir, not necessarily the area but the cigarette
13 pack itself. Cigarette packs we see a lot of drugs that
14 people keep in their cigarette pack because it's something
15 they always carry with them. You see what I'm saying? You
16 can close the top to it and you can conceal stuff in there.
17 It's kind of like one of those hiding places. I can't
18 explain why but it's just something that we find a lot.

19 Q. You say you can conceal -- One who has drugs on them
20 they can conceal drugs?

21 A. Yes, sir.

22 Q. You find in that cigarette pack powder -- Powder
23 heroin; is that correct?

24 A. Yes, sir.

25 Q. Heroin in powder form?

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

171

1 A. Yes, sir.

2 Q. And that type of heroin normally is put in one's nose;
3 is that correct?

4 A. That's the most common means for injection or
5 ingestion. I'm sorry.

6 Q. And a straw is not necessarily needed to get that
7 heroin in one's nose; right?

8 A. There are other means you can use that's correct.

9 Q. If someone wants that heroin in their nose bad enough
10 they can get it in there; right?

11 A. Oh yes, sir.

12 Q. And you've been around a lot of user's; is that right?

13 A. Yes, sir.

14 Q. And they will find a way a lot of times they will - -

15 A. Invent it.

16 Q. And once you heard from Mr. Watson was that that
17 heroin he got in that parking lot; right?

18 A. That's correct. That parking lot? You mean the KFC;
19 right?

20 Q. The KFC parking lot.

21 A. Okay.

22 Q. And he told you he was a user - -

23 SOLICITOR EPTING: Objection, Your Honor, that is self
24 serving hearsay.

25 THE COURT: Well the question is did he use so I will

1 allow the question.

2 A. Yes, sir, he told us that he would use.

3 Q. Okay.

4 A. That was part of whenever we were talking to him about
5 his dealings with heroin.

6 Q. All right. And when you were talking to him you
7 didn't have him write anything down on paper; is that
8 right?

9 A. No, sir.

10 Q. So there was no type of written statement obtained in
11 this case; correct?

12 A. No, sir, we didn't make him write anything out or ask
13 him to write anything out or anything like that.

14 Q. And you are trained as far as at the Academy as far as
15 getting written statements taking written statements from
16 defendants or witnesses; correct?

17 A. That's something that we do sometimes yes, sir.

18 Q. And that can be an important part of the
19 investigation; right?

20 A. Yes, sir.

21 Q. Okay. And you testified that you talked to Mr. Watson
22 at one of your field officers; is that right, at the Fort
23 Mill Police Department?

24 A. Yes, sir, that's the officer that our group's actually
25 based out of.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

173

1 Q. And there is no shortage in your office of recording
2 devices, video equipment; would that be accurate?

3 A. That's correct. We got two video cameras audio
4 recorders.

5 Q. And nothing was recorded as far as what Mr. Watson
6 said that night; correct?

7 A. No, sir, we didn't stop the interview to go get a
8 video camera and set it up in the corner and push the
9 button and start recording him.

10 Q. And you didn't stop to turn on a tape recorder; right?

11 A. No, sir, I didn't have one right there in the room
12 with me.

13 Q. Or to get him a pad of paper with a pen; right?

14 A. No, sir, didn't give him that.

15 Q. Okay. Mr. Watson's demeanor to you that night you do
16 not remember anything standing out to you as far as him
17 perspiring?

18 A. No, sir, nothing that just stands out to me as out of
19 the way no, sir.

20 Q. Anything about his eyes that night as far as?

21 A. No, sir.

22 Q. I guess what I'm getting at is it's your testimony
23 that when you were talking to him at the Fort Mill Police
24 Department he was not under the influence of any narcotics,
25 any drugs specifically heroin?

1 A. He didn't appear to be under the influence to me no,
2 sir.

3 Q. You said no pictures were taken of him that you can
4 recall.

5 A. That I am aware of myself no, sir. I don't believe
6 the Fort Mill jail takes a booking photo or anything so to
7 my knowledge they didn't.

8 Q. In a case where someone is arrested for possessing
9 drugs at some point a decision is made or could be made to
10 then charge someone with something more serious - a more
11 serious offense say possession with intent to distribute;
12 is that correct? There are certain factors that an
13 officer, a DEU officer to look for in making the decision
14 is this a possession case or is this possession with intent
15 to distribute?

16 A. Right. When we seize drugs.

17 Q. Right.

18 A. Yes, sir. Yes, sir.

19 Q. In a lot of cases initially when you arrest someone
20 you are arresting them for possession something either in
21 their car or on their person; right?

22 A. Right.

23 Q. And then things can be discovered, an investigation,
24 things can be found, witnesses can come forward that they
25 can change the charge like bump the charge up to a more

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

175

1 serious charge; correct? A possession with intent to
2 distribute first possession.

3 A. When we're first dealing with them?

4 Q. Right.

5 A. Yeah. Yes, sir.

6 Q. And when you decided to charge them with PWID versus
7 possession; correct?

8 A. Yes, sir.

9 Q. Okay. And one thing that you would look at would be
10 the amount of drugs found; correct?

11 A. Yes, sir.

12 Q. If someone had a very high amount a lot of weight on
13 them that can influence you charging that person with
14 possession or possession with intent to distribute;
15 correct?

16 A. Yes, sir.

17 Q. Or trafficking; correct?

18 A. Yes, sir. There's inferences.

19 Q. Which is very specific?

20 A. Yes, sir.

21 Q. Okay. In the incident report that you prepared in
22 this case you -- And that incident report you prepared;
23 correct?

24 A. This is a - -

25 Q. General Sessions Case File Summary?

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

176

1 A. Yes, sir. I kind of get confused sometimes because
2 this isn't really the incident report but - -

3 Q. Okay. It's the - -

4 A. The Summary.

5 Q. The Summary. The Summary that you prepared in this
6 case?

7 A. Yes, sir.

8 Q. You talk about two point three grams being recovered;
9 correct?

10 A. Yes, sir, approximately.

11 Q. And we heard from the warrant that was taken out on
12 this case two point three grams is what was in the warrant
13 indicates; correct?

14 A. Yes, sir.

15 Q. Now as the case agent sitting in here today you heard
16 the amount that was recovered in this case as far as what
17 was officially weighed and tested; correct?

18 A. Yes, sir.

19 Q. And that would be zero point three grams; correct?.

20 A. Yes, sir.

21 Q. Okay. How the drugs are packaged is a - one of the
22 indicators you look at; correct?

23 A. Yes, sir.

24 Q. (CANNOT UNDERSTAND AUDIO.)

25 A. Yes, sir, such as package for sale.

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

177

1 Q. And if someone -- For example if someone has an ounce,
2 a couple of ounces of marijuana on them if that couple of
3 ounces are all broken up to equal amounts in baggies that
4 could be something you look at; correct?

5 A. Yes, sir.

6 Q. Okay.

7 A. Yes, sir, that's one of those factors you take into
8 consideration.

9 Q. You don't have any idea how much was in each one of
10 these vindles; correct?

11 A. No, sir, I - Not exactly no, sir.

12 Q. Not exactly? You don't have any idea do you?

13 A. No, sir, I don't have an exact weight no, sir.

14 Q. You look for one of the factors you look for packaging
15 materials; right?

16 A. Yes, sir.

17 Q. Baggies, extra vindles laying around those type of
18 things?

19 A. Yes, sir.

20 Q. Okay. And it was no other packaging materials found
21 anywhere in this vehicle; correct?

22 A. No, sir.

23 Q. Okay. Scales that would be something that could be
24 looked for; correct?

25 A. That's correct.

1 Q. And scales is there is a lot of different kinds of
2 scales now days isn't there?

3 A. Yes, sir.

4 Q. Okay. The visual scales are very small; right?

5 A. Yes, sir.

6 Q. Very light; - - -

7 A. Yes,, sir.

8 Q. - - - correct? And in your experience as a DEU
9 officer it's not uncommon at all to find dealer's having
10 these scales on them or near them; correct?

11 A. That's correct. Sometimes we find them with scales.

12 Q. And no scales found in this case; correct?

13 A. No, sir.

14 Q. Okay. One of the things that can be found if someone
15 has thousands of dollars on them that can be something that
16 can be looked at; correct?

17 A. That's correct.

18 Q. Okay. The way the money is divided or how the
19 dominations are if there are a lot of twenties or a lot of
20 tens those are the things that you can look for as far as
21 analyzing this money; is that right?

22 A. Yes, sir.

23 Q. Okay. What an investigation can reveal as far as a
24 set up or controlled buy that would be factored in
25 potentially what you are hearing about the case can be

WALTON BECK: CROSS EXAMINATION BY MR. DELANEY

179

1 factored in whether or not someone is charged with
2 possession with intent to distribute; correct?

3 A. What do you mean?

4 Q. A prior investigation.

5 A. Like if somebody that we had information on was
6 dealing on?

7 Q. No I' guess more of a controlled type of situation a
8 controlled buy or something like that that can obviously if
9 someone found with drugs on them on their person after
10 being involved with a controlled buy that could be some
11 evidence that could be used considered by the officers when
12 they charge someone with intent to distribute; is that
13 right?

14 A. Yes, sir, it shows that they are a dealer.

15 Q. Okay. The Courts indulgence for one minute, Your
16 Honor.

17 THE COURT: All right.

18 (PAUSE.)

19 MR. DELANEY: No further questions.

20 Thank you, Officer.

21 SOLICITOR EPTING: No further questions.

22 THE COURT: You can step down to be excused unless - -

23 You can stay or go. We appreciate your time.

24 OFFICER BECK: I'll stick around. Thank you, sir.

25 THE COURT: All right. Call your next witness.

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

180

1 SOLICITOR HOLLAND: The State calls Marvin Brown.

2 (WHEREUPON: MARVIN BROWN, BEING
3 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 MARVIN BROWN BY SOLICITOR HOLLAND:

6 Q. Would you state your name for the record?

7 A. My name is Marvin Brown.

8 Q. Mr. Brown, where are you employed?

9 A. I work for the Sixteenth Circuit Solicitor's Office
10 but I answer to the Sheriff the Solicitor and the six
11 chief's in York County.

12 Q. And what is your title?

13 A. I'm the commander of the local drug unit.

14 Q. And what are your total years in law enforcement?

15 A. Thirty-four.

16 Q. And how many of those years have you been
17 investigating narcotic cases?

18 A. About, -- Actually worked in drugs about thirty years.
19 I did my first search warrant in 1977.

20 Q. Can you describe the formal training you have in the
21 area of illegal narcotics?

22 A. Yes, ma'am. I attended and graduated from the South
23 Carolina Criminal Justice Academy. I had Basic Narcotics
24 I, Basic Narcotics II, State Level Commander School,
25 Federal Commander School and several other schools

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

181

1 throughout the years.

2 Q. And do you have any experience as an instructor in
3 regards to narcotics?

4 A. Yes I've assisted DEA in instruction in the Federal
5 Commander School. I also have three one hour blocks of
6 narcotic training one is Basic Narcotics and one is Search
7 and Seizure and the other is Affiate and Forfeitures.

8 Q. And does your training include identifying narcotics?

9 A. Yes, ma'am, it does.

10 Q. Does it include drug paraphernalia and drug detection?

11 A. Yes, ma'am.

12 Q. Packaging of drugs?

13 A. Yes.

14 Q. Street value of drugs?

15 A. Yes.

16 Q. And the use of drugs?

17 A. Yes, ma'am.

18 Q. And that training does it relate to a certain a few
19 drugs or does it relate to all drugs?

20 A. Its all drugs.

21 Q. And can you give us kind of a list of the drugs that
22 you been involved?

23 A. Cocaine, heroin, crack, marijuana just main stream
24 illicit drugs and also we are involved in a lot of pill
25 cases now too.

1 Q. In your thirty four years of law enforcement have you
2 made narcotics arrest?

3 A. Yes, ma'am.

4 Q. Approximately how many?

5 A. Thousands. The Drug Enforcement Unit is twenty two
6 officers now with the drug unit and we make a couple of
7 thousand charges a year so thousands.

8 Q. And does your experience -- But does your experience
9 relate to the packaging value in dealing and using of
10 street level drugs?

11 A. Yes, ma'am. I was a supervisor I helped form the Rock
12 Hill Narcotics Unit back in 1987. When I left Rock Hill
13 Police Department in '96 I was a lieutenant in narcotics.
14 I came over to the Solicitors Office and we formed the
15 original drug unit in 1998 and I've been supervisor working
16 in the field the entire time.

17 Q. And can you describe the experience you've had
18 specific to heroin?

19 A. When I started narcotics back in the mid '70's heroin
20 was the drug of choice in Rock Hill. Through the early
21 '70's late '80's it was more heroin than anything else and
22 there was some marijuana involved and it evolved into
23 cocaine in the late '80's and '90's. Then '91 crack
24 started and here we are 2000 back to heroin again.

25 Q. And have you been qualified in the area of street

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

183

1 level narcotics?

2 A. I have.

3 Q. Approximately how many times?

4 A. Twice in federal court and half a dozen times in state
5 court.

6 Q. Your Honor, at this time we would offer Commander
7 Brown as an expert in the field of street level narcotics.

8 THE COURT: Any voir dire?

9 MR. DELANEY: No voir dire, Your Honor.

10 THE COURT: I find he is qualified.

11 BY SOLICITOR HOLLAND:

12 Q. In your years in law enforcement have you conducted
13 interviews with those suspected of using narcotics?

14 A. Thousands yes, ma'am.

15 Q. Okay. And have you learned about drug dealing and
16 drug use as a transaction?

17 A. I have.

18 Q. So as part of an interview. I apologize.

19 A. Yes, ma'am.

20 Q. Are you familiar with the street value of heroin?

21 A. Yes, ma'am.

22 Q. And are you familiar with the packaging of heroin?

23 A. I am.

24 Q. Based on your experience how is heroin generally
25 packaged for sale?

1 A. Street level heroin is sold either in balloons or
2 vindles and small amounts. A syringe is normally the way
3 that you use it but a balloon or a vindle is normally the
4 way it's sold on the street.

5 Q. Can you describe what a vindle looks like?

6 A. A vindle is a piece of paper where a small amount of
7 powder is placed into the vindle and its folded up kind of
8 like a BC powder smaller and a little bit different but
9 it's folded up to where you can detect the heroin that's
10 inside.

11 Q. And what is the street value of one vindle of heroin?

12 A. Heroin runs about three hundred dollars a gram. One
13 vindle is point two five grains and we normally -- It's
14 normally sold on the street for around twenty dollars.
15 Fifteen to twenty-five depending on where -- What level you
16 are at that point but twenty-five; twenty to twenty-five
17 dollars.

18 Q. And in your experience I think you just said but let's
19 clarify how is heroin contained in one vindle?

20 A. It's a quarter of a grain. Point two five grains.

21 Q. And what does one -- as heroin?

22 A. A vindle.

23 MR. DELANEY: We renew our objection, Your Honor.

24 THE COURT: Objection -- overruled.

25 A. One vindle.

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND

185

1 Q. One vindle - -

2 A. Yes, ma'am.

3 Q. And how is heroin -- how is heroin generally used?

4 A. Heroin can be snorted but normally it's used -- It's
5 injected by a needle. You put it in a spoon you add some
6 water you mix it up you heat it up and you put it into a
7 syringe and it's shot straight into the vein. You can
8 snort it but you loose some of the -- Some of the high.

9 Q. And how would you in your experience what would you
10 expect a general user of heroin what do they use?

11 A. Most heroin people use a syringe.

12 Q. And in your experience how much heroin would a user in
13 general have on him?

14 A. Heroin cost three hundred a gram which is three times
15 cocaine so a half a gram would run about a hundred and
16 fifty dollars. So a user would never have more than two or
17 three vindles on them at the time. If you bought it by the
18 vindle at twenty dollars it would cost you five hundred
19 dollars for twenty five vindles where you could go out and
20 buy the same amount for a hundred and fifty. So the user
21 is either going to buy it in bulk if you happen to run into
22 some money like a little baggie full where they will buy
23 one or two vindles at the time to shoot up. You would not
24 buy more vindles at the time because it's a gross waste of
25 money. Now another dealer would buy it from a dealer for

MARVIN BROWN: DIRECT EXAMINATION BY SOLICITOR HOLLAND
CROSS EXAMINATION BY MR. DELANEY

186

1 fifteen dollars a vindle and turn around and sell it for
2 twenty or twenty five a vindle so it's not unusual for a
3 dealer to deal in vindles but a user would not have
4 multiple vindles on them only two or three or they would
5 have a bulk.

6 Q. That's all the questions we have for you, Commander
7 Brown. If you could answer any questions Mr. Delaney for
8 Ms. Anderson may have.

9 A. Yes, ma'am.

10 CROSS EXAMINATION

11 MARVIN BROWN BY MR. DELANEY:

12 Q. So on September 24, 2009 you were not at Kentucky
13 Fried Chicken off Carowinds Boulevard; right?

14 A. That's correct.

15 Q. Not at the Wells Fargo; right?

16 A. That's correct.

17 Q. Not at the Fort Mill Police Department interview room
18 in this case; right?

19 A. That's correct.

20 Q. Did not look at any of the drugs that were taken in
21 this case; correct?

22 A. I did not.

23 Q. Okay. Did not look at the vindles in this case;
24 correct?

25 A. That's correct.

MARVIN BROWN: CROSS EXAMINATION BY MR. DELANEY

187

1 Q. You do not know how much were in the vindles in this
2 case; correct?

3 A. I know there was twenty-three vindles.

4 Q. But you didn't see the vindles. You have no idea what
5 was inside the vindles?

6 A. That is correct. I know it was twenty-three vindles
7 and I know how much total weight there was but I did not
8 look into each vindle themselves to see how much weight was
9 in them.

10 Q. What you know is you looked at a drug report in this
11 case that said point four three grams of heroin, correct?

12 A. And I know its twenty-three vindles.

13 Q. Right. No further questions.

14 SOLICITOR HOLLAND: That's all from the State we would
15 just ask that Commander Brown - -

16 THE COURT: You can step down to be excused. We
17 appreciate your time.

18 MARVIN BROWN: Thank you, Your Honor.

19 THE COURT: Call your next witness.

20 SOLICITOR EPTING: Your Honor, the State rest.

21 THE COURT: All right. Members of the jury panel the
22 State is indicating that they have presented their evidence
23 they intend to present. Under certain circumstances they
24 would have the right to present evidence at a later time
25 but for all purposes -- intent and purposes they have

1 presented their case. This is the point where I have to
2 let you go to the jury room. We will take our afternoon
3 break and also I have to take up some matters of law at
4 this stage of the trial. The trial is like a ball game
5 certain things happen in a series and one can't happen
6 until the other. Can't have the second half until you have
7 the first half and intermission so we've got to take a
8 little intermission while I do some things and then we will
9 start back with the other stage of the trial we will be in
10 at that time.

11 (JURY LEAVING COURTROOM.)

12 THE COURT: Anything from the State?

13 SOLICITOR EPTING: Nothing from the State, Your
14 Honor.

15 THE COURT: Defense?

16 MR. DELANEY: Your Honor, at this time we would just
17 renew any and all objections we made at this point and we
18 would also like to entertain a motion for a directed
19 verdict. The burden in this case is on the State and the
20 evidence is in the light most favorable to the State we
21 move for a directed verdict.

22 THE COURT: I deny the motion to a directed verdict. I
23 believe there is ample direct and substantial
24 circumstantial evidence in which a jury could conclude that
25 Mr. Watson possessed and possessed with intent the drug

1 heroin. I don't know what kind of ruling you want on when
2 you say your reserving the objection that's fine. There is
3 no ruling for me to make on that so I understand that's the
4 way you all's seminar told you to do it because I asked
5 somebody one time why you all did it but that's fine.

6 Now, Mr. Watson, can you hear me?

7 MR. WATSON: Yes, sir.

8 THE COURT: We've reached the point in the trial where
9 you have the right to present a defense if you wish. You
10 can call witnesses if you want and you can testify if you
11 want. If you present any evidence your -- If you don't
12 present any evidence your attorneys will have the right to
13 make what's called closing argument. If you present any
14 evidence either yourself or a witness and the State would
15 have the right to make the last closing argument. You have
16 the right to testify but you also have the right to remain
17 silent. If you testify the State will ask you questions
18 under oath about this event and you will have to testify
19 truthfully because you will be under oath. They can ask
20 you about certain offenses as Mr. Delaney and Ms. Anderson
21 have gone over offenses with which you could be asked
22 about.

23 MR. DELANEY: We have, Your Honor.

24 THE COURT: The State can ask you about that prior
25 record only regarding whether or not the jury should

1 believe you and I will tell the jury that and I will tell
2 the jury that if you testify and if you are asked about
3 those particular offenses which we discussed yesterday I
4 believe I will tell the jury that they cannot consider the
5 fact or any evidence that you committed this offense but
6 they can consider that only in context in determining
7 whether or not to believe you that is judge your
8 credibility. If you chose to exercise your constitutional
9 right to remain silent I will tell the jury that you done
10 that that you have exercised your constitutional right. I
11 will tell them they cannot use that against you I will tell
12 them they cannot discuss that in the jury room. I will tell
13 them they cannot factor that into their own deliberations.
14 I will tell them of course that they cannot use that in any
15 way and that you are presumed innocent and state that even
16 though you did not testify you are presumed innocent and
17 the State has the burden of proving your guilt beyond a
18 reasonable doubt. Do you understand all of that?

19 MR. WATSON: Yes, sir.

20 THE COURT: Do you have any questions about any of
21 that?

22 MR. WATSON: No, sir.

23 THE COURT: All right have you reached a decision as
24 to whether to testify or are you going to exercise your
25 right to remain silent?

1 MR. WATSON: I wish to testify.

2 THE COURT: All right we will take a break. That will
3 put us after Four o'clock so we will take a break.

4 Do you have that other witness you had somebody else?

5 MR. DELANEY: We do, Your Honor.

6 THE COURT: All right we'll do that and then if there
7 is any reply and then we'll do obviously the charge. Do
8 you have any request to charge? We've got our charge
9 together. We've got the lesser included and possession and
10 other than that if you have any other than the standard
11 boil plate charge just hand them up to Meghan.

12 (COURT IN RECESS.)

13 (BACK ON THE RECORD.)

14 THE COURT: Is the State ready?

15 SOLICITOR EPTING: State's ready, Your Honor.

16 MR. DELANEY: Defense is ready, Your Honor.

17 THE COURT: Bring in the jury.

18 (JURY ENTERING COURTROOM.)

19 THE COURT: Ms. Anderson.

20 MS. ANDERSON: Your Honor, defense would call Damita
21 Crockett.

22 THE COURT: All right have Ms. Crockett come in.

23 (WHEREUPON: DAMITA CROCKETT,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 DIRECT EXAMINATION

DAMITA CROCKETT: DIRECT EXAMINATION BY MS. ANDERSON

192

1 DAMITA CROCKETT BY MS. ANDERSON:

2 Q. If you would state your name for the record?

3 A. Damita Crockett.

4 Q. Do you know Jerome Watson?

5 A. I do yes.

6 Q. How do you know Mr. Jerome Watson?

7 A. He is my husband.

8 Q. And where do you work, Ms. Crockett?

9 A. Wells Fargo.

10 Q. And what location of Wells Fargo; where is that?

11 A. It's on State's View Boulevard.

12 Q. What city is that in?

13 A. In Fort Mill.

14 Q. Were you working at that Wells Fargo in September of
15 last year?

16 A. I was.

17 Q. Were you working at that Wells Fargo on September 24th
18 of 2009?

19 A. Yes.

20 Q. Do you recall what your hours were that day?

21 A. At that time we were working from 8:00 am to 5:00 pm.

22 Q. So you got off of work at 5:00 pm?

23 A. Yeah sometimes a little later you know but 5:00 pm is
24 normally the time we get off.

25 Q. How did you get home from work?

DAMITA CROCKETT: DIRECT EXAMINATION BY MS. ANDERSON

193

1 A. My husband he usually picks me up everyday.

2 Q. And do you recall if he was supposed to pick you up
3 that day?

4 A. Yes.

5 Q. Thank you. Please answer any questions the State
6 might have for you.

7 SOLICITOR HOLLAND: Your Honor, the State has no
8 questions for this witness.

9 THE COURT: All right. You can step down. Appreciate
10 your time thank you.

11 MS. CROCKETT: Thank you.

12 THE COURT: You can be excused if you wish or you can
13 stay.

14 Call your next witness.

15 MS. ANDERSON: The State calls Jerome Watson.

16 THE COURT: All right.

17 MS. ANDERSON: The Defense calls Jerome Watson.

18 THE COURT: Mr. Watson, please come up and be sworn.

19 (WHEREUPON: JEROME WATSON,

20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 JEROME WATSON BY MS. ANDERSON:

23 Q. And if you would just please state your name for the
24 record?

25 A. Jerome Elton Watson.

1 Q. How old are you?

2 A. Forty-nine.

3 Q. And where do you work?

4 A. I work at LA Dorton out of Rock Hill, South Carolina.

5 Q. And where do you live?

6 A. I stay at 313 Bonnum Avenue, Rock Hill, South
7 Carolina.

8 Q. Are you married?

9 A. Yes, ma'am.

10 Q. Who to?

11 A. Damita Crockett.

12 Q. And where does your wife work?

13 A. She works at Wells Fargo.

14 Q. And I'm going to ask you on September 24, 2009 do you
15 recall that day?

16 A. Yes, ma'am.

17 Q. And were you in the Wells Fargo parking lot that
18 afternoon?

19 A. Yes, ma'am.

20 Q. Why were you there?

21 A. Picking up my wife from work.

22 Q. And where were you in the parking lot?

23 A. We was at the last building at the back door there she
24 usually come out that door sometimes the front door. But
25 what the State states is basically true I was at the last

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON

195

1 building waiting right in there approximately right in
2 there waiting for her to come out.

3 Q. Okay. And you talked to an officer. Did an officer
4 come over and talk to you that day?

5 A. Yes he did.

6 Q. And did that officer ask to search you that day?

7 A. Well he knocked on the window and said he was
8 investigating broken cars in the parking lot which I found
9 kind of strange because I'm here every day. I mean a lot
10 of people picks their wives up and their family up from
11 work and I'm here every day. So then at that point he
12 asked me could he have my license and registration. So I
13 had registration to show him but I don't have no license,
14 officer. He said okay well then I have a right to search
15 the car do you mind? I said no I don't mind at all.

16 Q. And did he search your car?

17 A. Yes he searched my car.

18 Q. Now let me ask you were there illegal drugs in your
19 car?

20 A. Yes it was.

21 Q. What was in your car?

22 A. I had some heroin in my car which is for my use.

23 Q. Where was the heroin?

24 A. In the cigarette pack on the door -- right at reach
25 where you can get your cigarette from. I just stuff them

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON

196

1 in my cigarette pack and sat it right there.

2 Q. And you said heroin?

3 A. Yes, ma'am.

4 Q. Whose heroin was it?

5 A. It was mine.

6 Q. And why did you have the heroin?

7 A. I had it for the use for me for throughout the week.

8 I been a heroin user for over thirty years. Functioning
9 however so to speak something I'm not proud of but that's
10 how I act coming up around that all my life coming from off
11 Jersey and New York and you learn how to just function with
12 it. It is not for an intent to distribute it is for my use
13 and my use only.

14 Q. Did the officer arrest you there at Wells Fargo?

15 A. What's the question again?

16 Q. Did the officer arrest you - -

17 A. Yes he did. Yes he did.

18 Q. And where did he take you?

19 A. We went over to Fort Mill booking center I guess. I'm
20 not familiar with South Carolina booking cases.

21 Q. And let me ask you what was your state of mind?

22 A. I can't even recall. I was kind of intoxicated.

23 Q. What do you mean you were kind of intoxicated?

24 A. I had to use several bags that day. I had to use one
25 right then and there just before the officer had came and

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON

197

1 got me. As he stated I parked and which at that time I was
2 sniffing me a bag and then I came on out and I waited for
3 her. And that was the one inference bag that they claim
4 that they have I just used that one. So I really can't
5 claim my state of mind at that time.

6 Q. Okay. Do you remember talking to the officers at the
7 police department?

8 A. Somewhat.

9 Q. Now did you hear what the officers testified to in
10 court today about talking to you?

11 A. Yes, ma'am.

12 Q. Do you remember saying all of that?

13 A. No, ma'am.

14 Q. Do you recall what you were trying to tell the
15 officers?

16 A. Everything was going so fast at the time. I mean when
17 you are ashamed of something first of all when you are
18 ashamed of something it's kind of like it just starts you
19 right now to address this out to the open that I am a user.
20 It was something that I kept hidden for years. Its my
21 problem. I function man I take care of my family I works
22 every day so when they started talking thirty years and
23 give me something me being intoxicated give me something
24 you gonna do thirty years think of your family at this time
25 my head is just gone honestly. I mean I can't make heads

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON

198

1 or tails at that point on. I'm scared for my life I'm
2 scared for my wife and my family. I'm scared for these
3 thirty years they keep saying you gonna do thirty years you
4 don't give me nothing you gonna do thirty years. I can't
5 tell that from tails spinning.

6 Q. Do you remember telling them you do use?

7 A. Yes, ma'am.

8 Q. Now, Jerome, let's talk about a few things. Do you
9 admit that you were convicted of a felony back in 2000?

10 A. Yes, ma'am.

11 Q. And you admit that you were convicted of unlawful
12 concealment of goods and larceny in 2005?

13 A. Yes, ma'am.

14 Q. And you admit you were convicted of a misdemeanor in
15 2006?

16 A. Yes, ma'am.

17 Q. Now you've told this jury that you've been using
18 heroin and how long did you say you been using heroin?

19 A. Over thirty years.

20 Q. What type of heroin do you use?

21 A. The powder substance.

22 Q. How do you use powder heroin?

23 A. You sniff it. You pour it out your little bag on a
24 piece of paper and you just sniff it. I don't use needles.
25 I sniff and I use it.

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON

199

1 Q. Okay. And when you are talking about how you use
2 heroin do you use anything to snort heroin?

3 A. Not all the time. I mean there's creative ways. Like
4 the officer said I mean you can roll you up a dollar bill
5 sniff it. You can just pour it out on a piece of paper and
6 just -- I mean its just so little its nothing to it. So
7 many just to get a buzz.

8 Q. Do you recall how you would use the heroin you said
9 you would use in the parking lot?

10 A. I poured it out on a piece of paper and I just sniff
11 it you know.

12 Q. How often were you using?

13 A. I use heroin every day.

14 Q. And how much heroin did you over a period of time did
15 you use?

16 A. In what you mean in grains or grams? I'm not
17 understanding that question on how much.

18 Q. Just explain how much heroin did you use? How much
19 did you use?

20 A. Approximately seven, six bags a day throughout the
21 course of the day. When you wake up you sniff you a bag
22 basically you take it in the morning and its just
23 throughout that day just help me function you work better
24 you up on your gaffels and you working and you work better.
25 I mean its hard to explain you know you really you know.

JEROME WATSON: DIRECT EXAMINATION BY MS. ANDERSON
CROSS EXAMINATION BY SOLICITOR EPTING

200

1 So yes it's a lot throughout the course of the day and
2 throughout the course of the week yes it is.

3 Q. And the last question. Did you possess heroin on
4 September 24?

5 A. Yes, ma'am.

6 Q. Thank you. Please answer any questions the State may
7 have for you.

8 CROSS EXAMINATION

9 JEROME ELTON WATSON BY SOLICITOR EPTING:

10 Q. All right, Mr. Watson, I know you are from New Jersey.
11 I'm from South Carolina I speak with a little bit of an
12 accent so if I say something that you don't understand
13 because of the way I speak you stop me because I don't want
14 there to be any mis-communications.

15 A. Yes, sir.

16 Q. All right. You got up here and testified that Officer
17 Beck -- you related a lot of things he said happened. He
18 was in the back of the Wells Fargo parking lot; correct?

19 A. I mean he pulled up behind me. I don't know where he
20 was at until he came up behind me.

21 Q. You were there?

22 A. Yes, sir, I was there.

23 Q. And you were there to pick up your wife - - -

24 A. Yes, sir.

25 Q. - - - from work? Was heroin in your car?

JEROME WATSON: CROSS EXAMINATION BY SOLICITOR EPTING

201

1 A. Yes, sir.

2 Q. In a Newport cigarette pack; right?

3 A. Yes, sir.

4 Q. How much heroin?

5 A. Twenty-four, twenty-five bags.

6 Q. How much did you pay for that heroin?

7 A. A hundred and fifty dollars.

8 Q. A hundred and fifty dollars?

9 A. A hundred and fifty dollars.

10 Q. And you got that heroin in the KFC parking lot;
11 correct?

12 A. Yes.

13 Q. And that's in York County; correct?

14 A. Yes.

15 Q. You purchased it?

16 A. Yes.

17 Q. And the officer came over and talked. You claimed you
18 were high. You claimed that you had just snorted one of
19 bags; correct?

20 A. That's what I did.

21 Q. And how did you do that?

22 A. Poured it out on a piece of paper and I sniffed it.

23 Q. Did you get it all? Nothing left? That's the most
24 sufficient way of doing heroin?

25 A. I mean there's nothing left.

1 Q. And you've seen other people who do heroin; correct?

2 A. Yes.

3 Q. You know what people do?

4 A. Do I know what people do that do heroin?

5 Q. Sure.

6 A. Throughout my forty-nine years I came across some
7 people who do heroin yes.

8 Q. Including yourself?

9 A. Including myself.

10 Q. You heard Marvin Brown testify; correct?

11 A. Yes.

12 Q. And you been doing heroin all the time for how long?

13 A. Over thirty years.

14 Q. Over thirty years?

15 A. Yes.

16 Q. And in all that time it's been pure use?

17 A. It's been what?

18 Q. Pure use.

19 A. Yes.

20 Q. Just you using it never selling it?

21 A. Since in the south yes.

22 Q. Since you been in South Carolina?

23 A. Yes. I may have one conviction up Jersey intent to
24 distribute just like you all indicate intent to distribute
25 it was just how you all write the charges up so.

JEROME WATSON: CROSS EXAMINATION BY SOLICITOR EPTING

203

1 Q. So you got a contempt to distribute in New Jersey?

2 A. Yes so to speak.

3 Q. Aren't there more effective ways to doing heroin than
4 actually snorting it up? Isn't it more effective to inject
5 it into your arm?

6 A. That's also more dangerous. I mean that's up to the
7 one who is actually involved in this activity. I mean
8 that's more risky to me to inject the needle in my arm is
9 more dangerous.

10 Q. And there - -

11 A. You don't get the full effect like they do when they
12 inject needles.

13 Q. And there - -

14 A. That's why you have to do so many.

15 Q. And there are plenty of there aren't there that will
16 provide you with clean syringes so you don't have to worry
17 about getting dirty syringes; correct?

18 A. I mean provide those who shoot?

19 Q. Uh-huh.

20 A. I guess so. I'm not a syringe user I wouldn't know.

21 Q. But would you agree or not agree that's a more
22 effective use? You get more high.

23 A. You get more high up I have heard you get more high up
24 yes.

25 Q. And you stated that you can't really remember speaking

1 with the officers entirely because you were high when you
2 spoke with them; correct?

3 A. Yes.

4 Q. Because you had just used in the Wells Fargo parking
5 lot?

6 A. Yes I did.

7 Q. Right then? Well what did you do with that bag?

8 A. I put it right back in the cigarette pack.

9 Q. Okay. So that was not -- The bag that you used you
10 put it right back in the cigarette pack?

11 A. Yes.

12 Q. That is the bag that you would swear on the Bible that
13 you used in the Wells Fargo parking lot?

14 A. Yes, sir.

15 Q. And then you were arrested and then they talked to
16 you. Do you remember some of what they said but not all;
17 correct?

18 A. I mean from the arrest point I remember basically all.
19 I mean at this point the effect had not started taking a
20 hold of me yet and the scaryness of the -- Your life is
21 over, thinking of your family I mean it's like a - -

22 Q. Well could you stand up, Mr. Watson.

23 (WITNESS STOOD.)

24 Q. You been using heroin for thirty years?

25 A. Yes, sir.

JEROME WATSON: CROSS EXAMINATION BY SOLICITOR EPTING

205

1 Q. How much do you weigh, sir?

2 A. Two twenty-five.

3 Q. You can sit back down. How much?

4 A. Two twenty-five.

5 Q. Two twenty-five. And how tall are you?

6 A. Six one.

7 Q. Look pretty healthy for a heroin addict don't you?

8 A. I said function addict. I mean I been gifted to have
9 a strong wife in my corner. Some of them just recently
10 found out of my addiction dealing with that twenty eight
11 years. Again I'm a functioning addict I do work everyday.

12 Q. And just so we're clear this bag that you just bought
13 from the KFC you admit that; right?

14 A. Not the bag.

15 Q. You testified earlier that you bought some bags in the
16 KTC parking lot?

17 A. Yes.

18 Q. Just one of those bags?

19 A. Yes.

20 Q. And you used it. You poured it out on a piece of
21 paper?

22 A. Uh-huh.

23 Q. And you sniffed it right then and there. After you
24 were arrested and you were booked do you remember being
25 questioned about somebody regarding things like if you had

JEROME WATSON: CROSS EXAMINATION BY SOLICITOR EPTING

206

1 medical problems or if you have any medication in your
2 system or anything like that?

3 A. It's a possibility. I mean its normally for seizures.

4 Q. One other question they asked you on intake before
5 they issued a blue suit and make sure there is not going to
6 be no problem if and when the last time you used drugs.

7 A. Uh-huh.

8 Q. I'm handing you a copy of the triage sheet that was
9 taken after your arrest and booked. If you would would you
10 read the subjects name at the bottom?

11 A. Jerome Elton Watson.

12 Q. Would you read the arresting officer's name?

13 A. Richard L. -- Richard L. - -

14 Q. The arresting officer above that. Would it be W.
15 Beck?

16 A. W. Beck.

17 Q. Okay.

18 A. Okay.

19 Q. And if you would please read Line Five and then the
20 line below it?

21 A. "It is for a history of this person being under the
22 influence of drugs or alcohol recently. If yes explain."

23 Q. Okay. And then below that.

24 A. "Has this person been - -

25 Q. "Is or has this person been under the influence of

JEROME WATSON: CROSS EXAMINATION BY SOLICITOR EPTING

207

1 drugs or alcohol recently?"

2 A. "Yes."

3 Q. "If yes explain." What does that say? Can you read
4 that?

5 A. "Heroin."

6 Q. "Used heroin on the morning of 9/24/09."

7 A. Okay.

8 Q. But you just testified that you just sniffed heroin
9 right before Beck arrived at Five O'clock at night?

10 A. I used heroin all that day that's what I testified - -

11 Q. You just testified here in court, sir, after placing
12 your hand on the Bible that you just did a line of heroin
13 right before Beck came up while you were waiting for your
14 wife.

15 A. No it wasn't right before Beck came up. I was -- It
16 was in the parking space. Then we moved again and then
17 that's when he came up.

18 Q. And in that time - -

19 A. The officer testify I sniffed heroin all that day.

20 Q. Was any of that time from when you entered that Wells
21 Fargo parking lot to when you were arrested any of that
22 time in the morning?

23 A. No.

24 Q. No further questions, Your Honor.

25 MS. ANDERSON: I have nothing further, Your Honor.

1 THE COURT: You can step down and have a seat with
2 counsel.

3 Call your next witness.

4 SOLICITOR HOLLAND: State rest, Your Honor.

5 THE COURT: Anything in reply?

6 MR. DELANEY: Can we have just a second, Your Honor.

7 THE COURT: Yes, sir.

8 (PAUSE.)

9 MR. DELANEY: No reply.

10 THE COURT: All right members of the jury panel you
11 now have received all of the evidence the next stage will
12 be the arguments of the attorneys and the charge on the
13 law. I have to take up some matters outside of your
14 presence its already after Four so I'm not going to give
15 you this case this late in the day. We will start back in
16 the morning at 9:30 and the first order of business should
17 be the arguments of the attorneys and then my charge and
18 then I will have the case in your hands for consideration.
19 You are not yet in a position to make up your mind you are
20 not yet in a position to discuss the case among yourselves.
21 You are not yet in a position to find out about any of
22 these issues outside of this courtroom. And you cannot
23 discuss the case as I told you with anyone and you are to
24 report back to me if anyone discusses the case with you.
25 Have a pleasant evening and report back to the jury room
26

1 downstairs at 9:30 and we will bring you up and get
2 started.

3 (JURY LEAVING COURTROOM.)

4 SOLICITOR EPTING: Nothing from the State, Your Honor.

5 THE COURT: Defense?

6 MS. ANDERSON: Your Honor, we would renew our prior
7 motion for a directed verdict at this time. I do have a
8 copy of the State's request to charge.

9 THE COURT: We are going to address that in a moment
10 but I deny those motions. Before I start discussing this
11 purchase issue I think I need to see the indictment
12 unamended; that is the indictment that was presented to the
13 Grand Jury.

14 SOLICITOR EPTING: Okay. I believe that should be -

15 MADAME CLERK: We only bring an amended one in here.
16 It's true billed.

17 SOLICITOR HOLLAND: It is true billed.

18 MADAME CLERK: Then we should have it. It's not in
19 here.

20 THE COURT: Do you not have a copy I can look at?

21 MS. ANDERSON: Your Honor, I do have.

22 THE COURT: Let me have a copy to look at while we get
23 the original.

24 (PAUSE.)

25 THE COURT: My concern is changing the -- amending it.

1 I'm concerned that it added a charge which was not true
2 billed and I know you arraigned him but not direct
3 indictment. Its going to the jury as a true bill
4 indictment its not a direct indictment. I'm looking that's
5 why I'm studying the language of the pre-amended and
6 amended. You've added "the purchase in front of or right
7 after his name Jerome L. Watson. True in the general
8 language pre-amendment you had the "or otherwise aid abet
9 attempt to conspire to manufacture distribute dispense
10 deliver or purchase heroin". That language is still in
11 there so you've got him charged in two different places
12 with the purchase and the way the unamended reads -- We're
13 getting into partial sentences but that reads as if he was
14 charged with possession with intent to distribute or
15 otherwise aid, abet, attempt, or conspire to and then it
16 list these things purchase heroin. There is no evidence to
17 support that he did aid, abet, attempt to conspire, to
18 manufacture, to distribute, to dispense, deliver or to
19 purchase. So I'm not sure that the amendment I allowed it
20 to be made and I'm not sure that I should have. I'll be
21 glad to hear from the State and I'm not trying to make a
22 defense argument. I was real concerned that you've added a
23 whole different charge but that really came to light when I
24 started trying to figure out how the verdict form -- You
25 all got one indictment one count but to follow the State's

1 theory at this point they can find him guilty under one or
2 both or two different crimes. One purchasing and one
3 intent to distribute.

4 SOLICITOR EPTING: We did an amended indictment. It
5 was true billed by the grand jury and the only change we
6 would make to the second amended indictment should have
7 been the numbers. But the purchase language shouldn't have
8 been changed up.

9 THE COURT: But that's not what I got because I got
10 the one that's got purchase in it but it doesn't have it
11 like you got it on the one - -

12 SOLICITOR EPTING: May I approach, Your Honor.

13 THE COURT: They both have purchase. The new one
14 hadn't been added twice.

15 SOLICITOR EPTING: This one is the original - -

16 THE COURT: Where is the - -

17 MADAME CLERK: This is the original one.

18 THE COURT: Well I need something apparently this is
19 the third indictment. Can you see it?

20 SOLICITOR EPTING: There was an amended indictment
21 that was true billed by the grand jury.

22 THE COURT: I'm not arguing I want to see it. You're
23 telling me something I want to see it that's very simple.

24 SOLICITOR EPTING: Your Honor, if I could could I run
25 to my office and print off a copy of it? We do have it

1 scanned in.

2 THE COURT: Yes.

3 SOLICITOR EPTING: I will be right back.

4 (PAUSE.)

5 THE COURT: All right let's see. I'm trying to keep
6 from getting into -- I'm not trying to make a defense
7 argument I'm trying to get this pieced together. The
8 indictment that I have if I've got the right one he's being
9 tried on has the -- It says that "on or about September 24th
10 2009 in York County, South Carolina the Defendant Jerome
11 Elton Watson did purchase or possess with intent to
12 distribute" and that's the one he's being tried on?

13 SOLICITOR EPTING: Yes, sir.

14 THE COURT: The original indictment didn't have that
15 first did purchase?

16 SOLICITOR EPTING: That's correct.

17 THE COURT: This amended indictment in which he's
18 being tried has on it that it was true billed on March 25th
19 2010. That is the date that the original indictment was
20 true billed. The middle indictment was true billed on
21 4/22/10 so you didn't amend the true bill that's been
22 before the grand jury you amended the true bill indictment
23 from the first time it was true billed. You follow me?

24 SOLICITOR EPTING: If I understand what you are saying
25 we have the original indictment true billed before the

1 grand jury.

2 THE COURT: Well listen again. Right now true bill on
3 the original indictment 3/25/10. Skip Number Two go to
4 Number Three. Action of the grand jury 3/25/2010 true
5 billed R. B. Best. Same date as the original. The
6 indictment that you handed me in the middle is the one you
7 said has been amended and is now what I call Number Three
8 has on it that it was before the grand jury it has the
9 3/25/2010 and true bill typed and then it's got the
10 signature of Mr. Best on April 22, 2010. So the indictment
11 that went before the grand jury is not the indictment that
12 I allowed you to amend.

13 SOLICITOR EPTING: So the wrong indictment was brought
14 in here that we amended.

15 THE COURT: I don't know. All I can tell you is that
16 I allowed you to amend the indictment that I have in my
17 left hand which was true billed according to it on March
18 25th 2010 which is the date of the original indictment. I
19 have in my right hand the middle indictment and it was true
20 billed on April 22nd 2010 and that had the did purchase on
21 it. The amendment - -

22 SOLICITOR EPTING: And we should have been amending
23 the one on the left.

24 THE COURT: Yes you should have. So what's he being
25 tried on?

1 SOLICITOR EPTING: Our position is he's being tried on
2 the April indictment.

3 THE COURT: Well that's not amended then he's being
4 tried for having a quantity of cocaine because that's not
5 amended. You're trying him on September 24th 2009
6 purchasing a quantity of cocaine.

7 SOLICITOR EPTING: I'm a little bit at a loss right
8 now, Your Honor, on what the proper remedy would be on my
9 end. If I could beg the court's indulgence to allow me to
10 amend the later indictment the April indictment?

11 THE COURT: All right let me hear from the Defense.
12 I'm making an argument I guess. Somebody's argument. I'm
13 just concerned that - -

14 SOLICITOR EPTING: And this is entirely my fault, Your
15 Honor, I do apologize to all - -

16 MS. ANDERSON: And, Your Honor, our position I'm
17 trying to follow to make sure; I don't have all three
18 copies in front of me so I'm trying to make sure.

19 THE COURT: I'm going to hand them down to the Clerk
20 and I think they are all there and I will let everybody
21 gather around and go through them.

22 MS. ANDERSON: I think my question would be to which
23 one actually you announced and read to the jury is
24 initially - -

25 THE COURT: It's Number Three I got a sticky that says

1 Number Three on it.

2 (PAUSE.)

3 MS. ANDERSON: There is a clear indication Number
4 Three is the one that's been in the courtroom.

5 THE COURT: Number Three is the one he's on trial for.

6 (PAUSE.)

7 THE COURT: I have some real concern with the grand
8 jury true billing an indictment against somebody with
9 possessing cocaine with intent to distribute when there is
10 no way any evidence presented to the grand jury to that
11 effect. That bothers me. I will let both sides adjourn
12 and start back at Nine in the morning and let everybody chew
13 on this over night and see where we are in the morning.

14 MS. ANDERSON: Yes, Your Honor.

15 THE COURT: Thank you.

16 MR. DELANEY: Judge, just before we go off the record
17 I've advised Mr. Watson that I've explained to let him out
18 and I have explained to him that once the jury was sworn
19 that that can change and has changed. Now he would ask me
20 to allow him to allow me to ask you if - -

21 THE COURT: You can ask but I'm not going to let him
22 out now. He's not only on trial he's also testified that
23 he -- Its up to the jury to find him guilty but he
24 testified under oath that he in fact possessed heroin which
25 in and of itself is against the law. But anyway I have to

1 have him remain incarcerated.

2 (COURT IN RECESS FOR THE DAY.)

3 (BACK ON THE RECORD.)

4 THE COURT: Is the Defense ready?

5 MR. DELANEY: The Defense is ready, Your Honor.

6 THE COURT: All right. We've had an in chambers
7 meeting and gone over the issues we discussed yesterday and
8 also imposed a verdict form. I'm going to let each side
9 put on the record whatever they wish. The bottom line for
10 the court's discretion is that the indictment that will be
11 submitted to the jury the indictment on which this case has
12 proceeded which is the amended indictment. I'm still not
13 sure I got the right one. This says amended indictment and
14 this is the one that you accepted and clarified for me but
15 then it referred back to being true billed on March. I
16 need the indictment that was true billed in April the 22nd.

17 SOLICITOR EPTING: Your Honor, we believe that that
18 would be prepared, my secretary typed and she copied the
19 wrong date of true bill.

20 THE COURT: But these are important records. We can't
21 just willy nilly say somebody typed something wrong and the
22 court -- I mean this was presented as the indictment. I
23 mean we can correct verbiage and stuff like that but I
24 can't amend or assume the action of the grand jury being
25 anything other than what's on the indictment.

1 SOLICITOR EPTING: And I don't know if they were
2 typing back to the original - -

3 THE COURT: I don't care and I don't know. I'm just
4 telling you where we are. We got an indictment that he is
5 being tried on that does not reflect being true billed and
6 this is the indictment that we've been proceeding on.

7 SOLICITOR EPTING: So the typed number on the amended
8 -- on the amended indictment Number Two that's March?

9 THE COURT: 3/25/2010 is true billed R. B. Bess,
10 B-e-s-s.

11 SOLICITOR EPTING: Your Honor, I think certainly the
12 intent of the State when that was being typed up was to
13 reference the one - -

14 THE COURT: But it doesn't. I'm just telling you that
15 when this gets up on appeal and this is part of the record
16 I don't think this case is going to last very long. I may
17 be wrong but look at the true bill indictment and it was
18 amended but supposedly there has been another true bill
19 indictment intervening on that and this was true billed on
20 4/22/2010 and this is the one that says cocaine.

21 SOLICITOR EPTING: It of course again is my fault but
22 all parties understanding was that we were making our
23 motion to amend and it was to amend the April grand jury
24 indictment.

25 MS. ANDERSON: And, Your Honor, we were just -- I know

1 the court granted the amendment prior to but there are so
2 many problems now with these indictments we have just every
3 time we turn around the state trying to change again and by
4 my understanding we don't even have the April true bill
5 indictment.

6 THE COURT: Well but maybe we do. I said earlier when
7 I was talking just in general about all the dates I've been
8 looking and continue to look at where it says action of
9 grand jury. But in the body of the indictment it says
10 Court of General Sessions convened on April 22nd 2010 the
11 grand jury presented upon their oath. And I do have
12 admittedly it is a copy -- I'm sorry it's the original of
13 that indictment that does reflect the true bill so I am
14 going to find that the operative indictments are these two.
15 That is the one that has been amended by the court to
16 specify heroin instead of cocaine that would be presented
17 to the jury. But it has to be examined in along with the
18 true billed indictment of 4/22/10 and so that's -- I'm not
19 going to send the 4/22/10 to the jury. I am just going to
20 send them the one that does not have that date on it but I
21 -- Together I find that even with the amendments that the
22 defendant has -- these are notice documents a little
23 confusing but I think its no question that Mr. Watson has
24 been on notice at least prior to the trial and at least
25 during the trial that he is on trial for possession of

1 heroin with intent to distribute that he used and purchased
2 and the purchase of that controlled substance and that he
3 knew the charge knew what he had to defend and could
4 determine from the charge what penalty he could expect to
5 receive. So we are going to go forward with those two
6 indictments being the operative indictments but only one
7 and that is the amended one the heroin as opposed to
8 cocaine being sent to the jury. Now that's the charge
9 going to the jury. All right I am going to hear from the
10 State and the Defense. The State has handed up a request
11 to charge and Number One I'm going to charge that but I
12 understand it's been changed it's going to be objected to I
13 plan to charge that and the only one handed up. I have
14 prepared a verdict form which I think clarifies where we
15 are as far as the charges. And if anyone has a better
16 suggestion on the verdict form I will be glad to look at it
17 before we send it to the jury but that's the one I plan to
18 use. And with all that said I think I am ready to hear
19 anything else from the State?

20 SOLICITOR EPTING: Nothing from the State, Your Honor.

21 THE COURT: Anything from the Defense?

22 MS. ANDERSON: Your Honor, the Defense has a number of
23 arguments, motions we wish to place on the record at this
24 time. Your Honor, first we would object to any amended
25 indictment and we would make a motion to quash the

1 indictment and incorporate into that we would move for a
2 directed verdict motion incorporating the fact that the
3 indictment that was presented to the court that Mr. Watson
4 is being tried on that cocaine cited the incorrect statute
5 that being incorrect citing 44 53 375 and reference to
6 distribution not being authorized by law and none of the
7 States testimony presented in front of your -- met any of
8 those elements and on that case we move for a directed
9 verdict again on the grounds the State has not proved the
10 elements in the body of the indictment. Traditionally,
11 Your Honor, the facts that the State alleged or the State
12 has presented to the April grand jury what was presented in
13 an amended indictment an amended indictment on the prior
14 indictment true billed by the grand jury on March 20th 2010
15 as the indictment true billed by the grand jury in March of
16 2010 did not contain any reference to cocaine to 44 53 375
17 which is distribution. It would be our contention that
18 this is not in fact an amended indictment that being
19 incorrect we again move to quash the indictment.

20 Your Honor, the second motion would be that - -

21 THE COURT: Let's take them one at a time. I deny
22 that motion. Well what relief are you seeking? You went
23 through a long litany of concerns but what is the relief
24

25 MS. ANDERSON: Your Honor, - -

1 THE COURT: Wait just a minute let me get it on the
2 record so I will know what you are responding to. What
3 relief are you seeking based on that litany of concerns?

4 MS. ANDERSON: Your Honor, we would move for the
5 quashing of the indictment for directed verdict

6 THE COURT: Both of those motions are denied.

7 MS. ANDERSON: Your Honor, secondly we opposed the
8 State's proposal to recharge Number One on the ground that
9 it is -- Essentially constitutes a comment on the facts.
10 It reads I think it is a misrepresentation of the facts by
11 isolating certain language from the statute and essentially
12 creating a sentence based on the fact that they started at
13 the beginning of the statute and sort of list these and
14 then point to a clause within the statute it is essentially
15 misrepresents the statute as a whole a statute where
16 construction should be taken reading the language as a
17 whole and in reading a full understanding of that our
18 position would be that the appropriate charge in this case
19 would be to charge the statute in whole and not the State's
20 jury charge Number One that it is isolated
21 misrepresentation of the statute and it is also amounts to
22 the court a comment on the facts by isolating out the
23 purchasing language and we would oppose the State's jury
24 charge.

25 THE COURT: All right. Again we have a change in and

1 I am going to charge the entire statute as you indicated,
2 Ms. Anderson, that you or should so I am going to charge
3 the entire statute but then break it down into elements of
4 possession with intent to distribute and the purchasing so
5 I am going to charge Number One, State's Number One. And
6 also might as well put it on the record I think we did
7 yesterday I will also charge the lesser included offense of
8 simple possession of heroin.

9 MS. ANDERSON: Your Honor, - -

10 THE COURT: You don't object to that?

11 MS. ANDERSON: No, Your Honor, I do not object to the
12 charge of simple possession. We would request that simple
13 possession be charged also in regard to purchasing. I
14 think this will sort of go into my argument regarding the
15 purchasing charge the State has now requested. Your Honor,
16 our position that one that -- Let me see if I can couch
17 this in the correct way. First that the State should not
18 be allowed now to proceed on a legal theory to purchasing.
19 We would also move at this time to preclude the State from
20 making any legal arguments in closing as to a period of
21 purchasing.

22 THE COURT: That motion is denied.

23 MS. ANDERSON: And, Your Honor, if I could just put on
24 the record then my basis for posing this purchasing
25 essentially would be to charge in the verdict form. Your

1 Honor, first - -

2 THE COURT: Let's take it one step at a time. You
3 appear to ask that simple possession be a lesser including
4 of purchasing in addition to a lesser included possession
5 with intent to distribute. I find that it is not. Simple
6 possession is not the lesser included of purchasing. I am
7 not going to give that option. I am not going to give the
8 jury that option regarding purchasing.

9 MS. ANDERSON: And, Your Honor, my motion rolls into
10 my position on the purchasing. My position would be that
11 should the State proceed on a purchasing theory it would be
12 a purchasing with intent to distribute and that would be
13 the basis of the lesser included charge that just for the
14 possession with intent to distribute the defendant would be
15 entitled to a charge of lesser included. It's our position
16 that any purchasing theory or purchasing offense under 44
17 53 378 1 would in fact be a purchasing with intent to
18 distribute charge.

19 THE COURT: All right what do you request? Somebody
20 from your group?

21 MS. ANDERSON: And prior to that we would request that
22 the verdict form reflect that the jury could find -- If the
23 purchasing language is going to be on the verdict form it
24 would be purchasing with intent to distribute or a lesser
25 -- With a lesser included option to simple possession of

1 heroin.

2 THE COURT: All right that motion is denied.

3 MS. ANDERSON: Your Honor, next as to the State theory
4 or the offense of purchasing of heroin in this case. Your
5 Honor, I first would state that no where does the as far as
6 the State in chambers conference but the cases presented to
7 the jury as a charge of possession with intent to
8 distribute heroin. To my knowledge no second charge was
9 read to the jury and the jury has never announced loud that
10 they were considering two charges against Mr. Watson. The
11 State in it's opening also said the case is possession with
12 intent to distribute heroin the State presented witnesses
13 arguing as to intent to distribute heroin and at no point
14 until now has the jury been told they are considering a
15 charge of purchasing heroin. I disagree, Your Honor, with
16 the State regarding that the indictment put Mr. Watson on
17 notice for a period of purchasing heroin. The indictment
18 is titled on it's face with possession with intent to
19 distribute heroin it is titled on the bottom possession
20 with intent to distribute heroin. Why the purchasing
21 language is included in there there is no separate
22 indictment there is no reference to an offer of purchasing
23 heroin only one warrant in this case is out against Mr.
24 Watson. That warrant supports the possession with intent
25 to distribute heroin the body of that warrant contained no

1 references to a charge being made on purchasing nor did any
2 of the discovery or any of the incident reports prepared by
3 the officer in this case makes a reference to a charge for
4 purchasing heroin. Your Honor, it's my position the State
5 has essentially read in isolation a few words from the
6 statute and essentially created a charge. There is no case
7 law on purchasing offense there is no -- in any of the
8 legal books I've reviewed in reference to a statutory
9 offense case law in connection to purchasing heroin. Your
10 Honor, by my understanding of the court's reading and the
11 State's reading they are reading the language from 44 53
12 370 A 1 essentially the last clause that states for
13 purchasing a controlled substance or a controlled substance
14 -- as being the sort of grant for that charge. Your Honor,
15 it's my position that this can't be this clause can't be
16 read in isolation from the rest of the statute that the
17 statute is actually read that the language purchase of a
18 controlled substance or a controlled substance analog
19 pertains back to the previous clause which beings or
20 possess with the intent to manufacture, distribute,
21 dispense, deliver; or purchase a controlled substance or
22 controlled substance analog. If the State's reading of
23 viewing purchasing a controlled substance then isolation is
24 no relation to - clause then that statute merely reads
25 possess with intent to manufacture, distribute, dispense,

1 deliver with no object of what it is that the charge is.
2 Or no object of material what item what substance the
3 statute describes being with intent to manufacture,
4 distribute, dispense, deliver. I think the State in
5 reading takes a few words out of context I think reading it
6 in the whole that contains back to that prior clause that
7 statute actually read correctly can give the options for
8 the State to present someone possess with intent to
9 manufacture a controlled substance possess with the intent
10 to distribute a controlled substance possess with the
11 intent to dispense a controlled substance possess with the
12 intent to deliver a controlled substance or possess with
13 intent to purchase a controlled substance. I don't think
14 you can read those words in isolation and essentially the
15 State creates a new charge. Additionally, Your Honor, I
16 think reading in the context of the statute the statute in
17 this case is generally dealing with sort of I think a
18 colloquial stating of dealing in drugs. And if you look at
19 the other actions further in that statute the statute is
20 prescribing the behavior either in the distribution or the
21 dissemination in the public illegal substances or
22 preventing future dissemination into public illegal
23 substances which would be covered by the concept of
24 possessing with intent to distribute. In that case if you
25 look at sort of the relationship of parties the person

1 charged under the statute would be a person who is either
2 had or believed to be or future pushing essentially for
3 lack of a better word disseminating illegal drugs out into
4 society and the legislature described the penalties of that
5 because of that going out into society. By the State's
6 theory of purchasing even if it is purchasing for own use
7 if the State's I believe the State's argument does not
8 matter what the basis is for you see an opposite reaction
9 essentially you have to read it that way would be to have
10 the legislature prescribing to the same penalties someone
11 who is on the receiving end of illegal drugs in this case
12 which is completely differs from the rest of the action
13 prescribe in the statute. Your Honor, we further point to
14 the definition section of 44 53 110 the legislature's
15 definition manufacture is manufacture at 44 53 370 A
16 specifically says it is not for one's own use while there
17 is the definition of purchase in that section. I think
18 again you can read intent in the statute the legislature's
19 intent is to ----- behavior that is involved in the
20 narcotics being introduced outward into society rather than
21 a purchasing which is the inward movement from the
22 receiving end. I think as well, Your Honor, in reading
23 that the legislature has a penalty for possession simple
24 possession as a lesser offense the State's reading of a
25 purchasing argument is essentially virtually eradicates the

1 charge of possession of a controlled substance in this
2 State based upon the fact that a majority of the time it is
3 not every time a person who comes into possession of a
4 controlled substance will if in fact purchase it in some
5 way. I think ----- sort of the extreme ---- that means
6 that the only person who would be eligible for possession
7 charge would essentially be the first person to grow
8 marijuana in genesis to receive the marijuana or any
9 illegal substance for any subsequent action would be palced
10 by the State's theory under a purchasing theory under a
11 higher penalty range I think that's an illogical result of
12 what the legislature intended.

13 THE COURT: And that's based on the logic of the
14 legislature.

15 MS. ANDERSON: I think, Your Honor, that is in reading
16 the factor - -

17 THE COURT: I was being a little facetious.

18 MS. ANDERSON: Yes, Your Honor.

19 THE COURT: Even though it's on direct that may be a
20 -- Well I won't say it. Go ahead.

21 MS. ANDERSON: I think, Your Honor, despite that there
22 may be as Your Honor point out a drama tical issue with the
23 construction of the statute I think there has to be an over
24 arching look at the statute as a whole look at the scheme
25 and sort of you know application for lack of a better term

1 common sense logical thinking out what is in fact the true
2 intent of the statute. Your Honor, also it would be our
3 position that the State is essentially creating a sort of
4 strict liability offense under this.

5 THE COURT: Well the State does have some strict
6 liability in an incident involving a sixteen year old to
7 buy beer.

8 MS. ANDERSON: And I understand there are certain
9 strict liability offense, Your Honor. My point would be
10 there is no case law designating a purchasing charge to
11 strict liability offense. Instead we have the case of
12 State versus Ferguson 302 SC 269 395 S. E. 2nd 182 cited by
13 the Supreme Court in 1990 specifically held that
14 distribution of cocaine is not a strict liability offense.
15 Again you have an offense coming from the same subsection
16 44 53 370 A 1 that was the Supreme Court and Appellate
17 Court said it is not a strict liability offense. Again I
18 think this has to be read in light of the other offenses in
19 the other actions within this Sub Section to glean sort of
20 the results in this case. And, Your Honor, that would be
21 my motion as to the charge of purchasing itself. I oppose
22 any charge to the jury of purchasing being a viable option
23 that they can choose over that. I have a few other motions
24 over that as well. That would also be a motion to extend
25 and Your Honor I anticipate the defense would object to any

1 mentioning in closing. We can do that or if Your Honor
2 wishes if we just reserve that one objection rather than
3 objecting every time. We would be moving to preclude any
4 mention of a purchasing legal theory in closing. We object
5 to any of the State's arguing as to that. I didn't want to
6 sort of turn the closing into - -

7 THE COURT: I deny the motion and I find that the
8 continuing objection and my ruling will be continuing. And
9 I find that you protected the record and you do not have to
10 continue making that motion and object each time we are
11 purchasing or that that particular charge is referred to in
12 closing by the State if it is.

13 MS. ANDERSON: Thank you, Your Honor.

14 THE COURT: All right. Next.

15 MS. ANDERSON: Your Honor, the next motion would be as
16 to I understand the court is going to charge that the
17 verdict form reflect basically that sort of A which would
18 be the possession with intent to distribute. And B which
19 would be the purchasing charge we would request that Your
20 Honor charge that basically the jury cannot find Mr. Watson
21 guilty of both but would have to elect one or the other on
22 the ground that to convict him on both would constitute a
23 violation of the double jeopardy charge. Essentially, Your
24 Honor, the State both of the State's arguments to those
25 charges would involve one item drugs. There has been no

1 testimony that additional controlled substance was taken
2 into evidence in this case. The only drugs presented in
3 this case is a point three grams of heroin taken into
4 evidence and which were admitted as State's Exhibit Number
5 Two. Your Honor, it is our contention that the State's
6 theory of convicting of both would be a double jeopardy
7 because it involves the same action the same or narcotics
8 in this case and essentially expose Mr. Watson to two
9 penalties identical penalties for the same course of action
10 same transaction in this case. And that its our position
11 one that the State should have to elect as it wishes to
12 proceed if the State is not required to do so that Your
13 Honor charge the jury they must elect whether to convict
14 him or either or neither but not that the jury convict Mr.
15 Watson on both of possession with intent to distribute
16 heroin and purchasing heroin in this case.

17 THE COURT: I deny the motion. I find that he was not
18 -- does not violate double jeopardy that it's not a
19 situation where he either or neither nor but that there are
20 two distinct defenses purchasing heroin is a violation of
21 the statute and that's even for your own use as I read the
22 statute that the crime is purchasing. Those are a separate
23 distinct defense possessing it with intent to distribute
24 so I deny your motion.

25 MS. ANDERSON: Your Honor, those would be the defenses

CLOSING: BY MR. DELANEY

232

1 motions.

2 THE COURT: All right. Thank you.

3 Anything else?

4 SOLICITOR EPTING: Nothing from the State, Your Honor.

5 THE COURT: Does the Defense require the state to
6 open?

7 MR. DELANEY: No, Your Honor.

8 THE COURT: All right. Well we been in here about
9 forty minutes and so before we get the jury in let's take a
10 refresher couple of minutes break. Mr. Watson can go use
11 the facilities if he needs to and let's take about -- I've
12 got about eight after Ten let's be back at a quarter after
13 Ten and be ready to go. A quarter after Ten that's fifteen
14 minutes after Ten for those - -

15 (COURT IN RECESS AT 10:08 AM.)

16 (BACK ON THE RECORD.)

17 THE COURT: All right is the State ready?

18 SOLICITOR EPTING: State's ready, Your Honor.

19 MR. DELANEY: Defense is ready, Your Honor.

20 THE COURT: Defense is ready.

21 All right bring in the jury.

22 (JURY ENTERING COURTROOM.)

23 THE COURT: We now have the closing arguments of the
24 attorneys, and then I will charge you the law which you are
25 to apply so I will turn it over to the attorneys at this

CLOSING: BY MR. DELANEY

233

1 time.

2 Mr. Delaney.

3 MR. DELANEY: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. DELANEY: Good morning, ladies and gentlemen. As
6 you've already heard or you've been told and told again
7 before you are done your role is important. The power to
8 render a fair and a just verdict a verdict that speaks
9 justice is taken away from the defense attorney. It's
10 taken away from the solicitors. Its taken away from the
11 judge and that power to deliver a verdict of justice, that
12 speaks justice that power is given to you. As a defense
13 attorney after this case the reality is I will have other
14 cases to go to. Other cases that are waiting on me for
15 court other trials in the future. Same thing with the
16 solicitor's judges here on the bench.

17 But this day is the most important day of this man's
18 life. Jerome Watson is not a drug dealer. He is not a
19 drug dealer. Jerome Watson is guilty he did something
20 wrong he broke the law. He is guilty of possession. He is
21 a drug user a drug addict. He is not a drug dealer. You
22 will have this back in the deliberation room it's the
23 heroin the powder that was taken out of these vials that
24 you heard about in this little baggy here and you will see
25 it back there. This powder in this baggy it wasn't going

CLOSING: BY MR. DELANEY

234

1 -- Intended to go to white people. It wasn't intended for
2 any type of sale. He wasn't going to sell those drugs to
3 anybody. He was going to take that powder what he had left
4 and continue to put it in his nose. That's not a drug
5 dealer. That is not a drug dealer. That's what he's
6 charged with. He is charged with being a drug dealer. He
7 is charged with possession with the intent to distribute
8 heroin. He is guilty he is guilty of possessing heroin
9 simple possession. He had no intent, ladies and gentlemen,
10 to give, to sell, to deliver these drugs to anybody else.
11 An addict can't do that. You heard him. You heard him on
12 this stand. He needs that that's what made him feel
13 normal. Not high. He didn't say high. An addict comes in
14 he'll take drugs to make him feel normal. And you heard
15 from him this is a long time issue. It wasn't just getting
16 high a quick fix it was he needed it. Does it make it
17 right? No. Under the law he is guilty of possession.
18 He's not a drug dealer. And what you are going to have to
19 ask yourselves at the end of this case in a few minutes the
20 solicitor will come up here and speak to you just as I
21 have. After that Judge Hayes will instruct you as to the
22 law that you heard in this case. The law that you must
23 apply to the facts. And what you will hear is and you
24 heard a little bit in opening about this burden the State
25 has the burden. They have the burden of proof you have to

CLOSING: BY MR. DELANEY

235

1 hold them to their burden. And what is their burden?
2 Beyond a reasonable doubt. Beyond a reasonable doubt.
3 You must be convinced beyond a reasonable doubt that Jerome
4 Watson possessed point four three grams of heroin, six
5 point six three grains he possessed that with the intent to
6 distribute. You must be convinced beyond a reasonable
7 doubt to find him guilty.

8 What is a reasonable doubt? You will be instructed,
9 you will hear the Court has determined to say that a
10 reasonable doubt is the kind of doubt that would leave a
11 reasonable person hesitant to act. Hesitant to act. The
12 Court's have also defined it as the kind of doubt that
13 would leave a reasonable person not firmly convinced. If
14 you are hesitant to act if you are not firmly convinced you
15 cannot find him guilty of possession with intent to
16 distribute heroin.

17 Now we told you and Ms. Anderson came up here in the
18 very beginning and I've already said it a number of times
19 you are going to be convinced and I am telling you he is
20 guilty of possession. You are not going to have to decide
21 are you convinced beyond a reasonable doubt are you firmly
22 convinced are you without hesitation are you not hesitant
23 to act find him guilty of possession. You are not going to
24 hesitate you are going to be firmly convinced he is guilty
25 of possession. But firmly convinced are you firmly

CLOSING: BY MR. DELANEY

236

1 convinced he's a drug dealer? Its my contention, ladies
2 and gentlemen, you cannot be firmly convinced from what you
3 heard in this case.

4 Some of may have been involved in civil court in the
5 past. In civil court the standard is not beyond a
6 reasonable doubt in civil court. In civil court it's the
7 mere preponderance of the evidence what is more likely than
8 not. And if you can picture an old set of scales and in a
9 civil case you take all of the evidence presented by the
10 plaintiff all the evidence presented by the defendant and
11 you weigh the evidence. And if the scales tip ever so
12 slightly in favor of the state or the plaintiff in a civil
13 case they've met their burden. But here those scales have
14 got to tilt that's the burden that they have. Now the
15 scales have got to tip to leave you firmly convinced and
16 not hesitant to act. And another example I can use or I
17 will use is to remember going to a fair and the game with
18 the big hammer that you have and you take that hammer and
19 you swing it as hard as you can. And there is a little
20 contraption down at the bottom and depending on how hard
21 you hit it the ball goes to the top. In criminal court
22 that ball has to go all the way to the top. The scales
23 have to go off. In a civil case just a little more than
24 half way up. That's the difference, ladies and gentlemen,
25 in terms of where we're at the standard of what we have in

CLOSING: BY MR. DELANEY

237

1 this court and the burden that they have to meet that
2 standard and prove to you beyond a reasonable doubt that
3 Jerome Watson is a drug dealer.

4 You heard Jerome, Officer Beck in this case the case
5 agent and he testified as the case agent. He has to be
6 aware of everything that's prepared in the case as far as
7 incident report, documents, to get the warrant out. And
8 you heard testimony that in the warrant that was taken out
9 in this case against Mr. Watson it listed an amount of
10 heroin as two point three grams. In the warrant that they
11 took to a judge two point three grams. In the incident
12 report or the case summary that was prepared in this case
13 two point three grams. Five times more, nearly five times
14 more than what we got in that bag. And obviously and you
15 heard some questions I asked the officer as far as things
16 that they consider when they charge someone with
17 possession. Originally when someone is caught with drugs
18 in their possession there is a check list that an officer
19 will have or factors that they will look for in determining
20 whether this is a more serious drug offense. Are we
21 dealing with a drug dealer here or are we dealing with a
22 user one who possesses drugs for their own personal use.
23 And they said the things they look at is the amount, the
24 weight of the drugs. And a lot less than what they had
25 what they thought they had when making the decision to

CLOSING: BY MR. DELANEY

238

1 charge Mr. Watson. So what does the State do? They bring
2 in the commander of the Drug Enforcement Unit. And I will
3 contend, ladies and gentlemen, this is their version of
4 manufacturing. They bring in the commander of the Drug
5 Enforcement Unit who had no involvement in this subsequent
6 investigation whatsoever. None. Other than at some point
7 in looking -- Never looked at the drugs, never saw him that
8 night afterwards. This is seven months later. Still never
9 looked at the drugs. It is for the past seven months after
10 this case had no involvement in this investigation this
11 past seven eight months. And when was this originated? It
12 originated in September of 2009. It is the day of Mr.
13 Watson's trial he comes in here and talks to you about
14 dosage unit and how much things go for on the street those
15 kind of things. This is possession.

16 And I expect that you are going to hear in a few
17 minutes some more desperation by the State. You are going
18 to hear I expect but you heard ladies and gentlemen, you
19 heard Mr. Watson take that stand and say he purchased the
20 heroin at the gas station -- At the Kentucky Fried Chicken.
21 He purchased it you heard him say that. You heard the
22 officer came in and said it he bought it. And do you know
23 what do you know what they are going to tell you? I expect
24 them to get up here and tell you because he purchased it if
25 you believe he purchased it you must convict him, you must

CLOSING: BY MR. DELANEY

239

1 find him guilty under the same statute that charges him as
2 a drug dealer. That's not justice. That's desperation on
3 the part of the state. They get up here and make that
4 argument to you that's desperation and that is not justice.
5 Because that would contradict everything that you heard
6 from the state in terms of their portrayal of Mr. Watson
7 that he's a drug dealer that he intended to distribute that
8 heroin because I expect them to get up here and say it. If
9 you think from what you've heard that he purchased these
10 drugs that he bought this heroin even if you don't think he
11 intended to distribute essentially even if it was for his
12 own personal use even if it was for his own personal use
13 they will get up here and say you must convict him of
14 purchasing. Which again it's under the laws of attempt to
15 distribute. You heard with intent to distribute. You
16 heard me speak to one of the state's chemist who came up
17 here she came up on that stand I asked her a few questions.
18 She testified as to the amount in the bag point four two
19 grams what she got out of -- off of the vindals the point
20 four three. And I asked her was an equal packet sweet and
21 low packet has a gram and she said yes it has a gram in it.
22 And you heard her say that the equivalent of what's in this
23 bag is a little half a little under a half of what's in a
24 sweet and low or equal packet.

25 SOLICITOR EPTING: Your Honor, I object to this kind

CLOSING: BY MR. DELANEY

240

1 of - -

2 THE COURT: There was testimony to that effect.

3 SOLICITOR EPTING: The equal packet itself is what I'm
4 objecting to.

5 THE COURT: I over rule your objection.

6 SOLICITOR EPTING: Thank you, Your Honor.

7 MR. DELANEY: This is a gram as you heard in this
8 Equal packet. Now I'm going to take a little not even half
9 here. As what they are saying he was intending to
10 distribute that is the amount that they are saying is going
11 to white people. This amount here. As I said earlier that
12 is for him that is going up his nose. Still is
13 possession. You cannot be firmly convinced he intended to
14 distribute this heroin. You don't let the state get away
15 with all of a sudden at the last minute here and you heard
16 nothing from these officers other than we believe he
17 intended to distribute this nothing about the purchasing.
18 And if you believe he purchased it you should find him
19 guilty of being a drug dealer. I'm asking, ladies and
20 gentlemen, find him not guilty of purchasing. Find him
21 guilty of simple possession of heroin. Find him guilty of
22 possession of heroin that's what he's guilty of. Thirty
23 years functional addict. An addict and we all know from
24 our drug users and we know from our college experiences in
25 life they come in all shapes, sizes, colors, ethically

CLOSING BY: MR. DELANEY
SOLICITOR EPTING

241

1 gender, and to have Mr. Watson stand up and say he's six
2 one two twenty five you look pretty healthy in fact they
3 case say he doesn't look like an addict. He doesn't look
4 like a user. That's what they --

5 This system always perfect. Now this system isn't
6 always perfect but it is the best legal system in the
7 world. There's not one close. And this system demands
8 better demands more. And Jerome Watson he deserves better.
9 He's not a drug dealer. He's a drug user. And again,
10 ladies and gentlemen, I would ask to find him guilty of
11 what he is guilty of simple possession of heroin. Thank
12 you.

13 SOLICITOR EPTING: May it please the court.

14 THE COURT: Yes, sir.

15 SOLICITOR EPTING: Ladies and gentlemen, all the
16 evidence is in. You've heard all the evidence that you are
17 going to hear from that witness stand. You've seen all the
18 exhibits that you are going to see. They all are going
19 back with you to consider. Jerome Watson will be sentenced
20 when I am done with my speech. I'm sure you all will not
21 be sorry about that. You won't have to hear people talk
22 any more but I promise I will try to be as brief as
23 possible.

24 Mr. Delaney and I agree on several matters. Our
25 system is the best. The very best but not perfect but the

CLOSING: BY SOLICITOR EPTING

242

1 best. The burden is on the state and its to prove this
2 case beyond a reasonable doubt. He is correct one -- of
3 beyond a reasonable doubt is hesitate to act. But don't
4 think that because you hesitate to act in this matter you
5 must find this defendant guilty. And it is an important
6 matter and Mr. Delaney tells us it is an important matter
7 and it is more important to the State than anybody. And
8 any important matter you don't rush into. You gonna buy a
9 house you don't just run out there and flop down money you
10 need to make sure you made the right choice if you can pay
11 the monthly payment. If you are getting married you better
12 believe that you are very careful to make sure to know that
13 you are making that right decision. You hesitate to act
14 there. I'm sure you all have noticed in the jury room
15 there are chairs for you to sit in so that you can sit down
16 and deliberate and discuss the evidence. You can hesitate
17 to act. The firmly convinced standard is still the same.

18 Let's talk a little bit about what beyond a reasonable
19 doubt it. It is not beyond any doubt -- Not beyond any
20 doubt. If that was so the state could never convict a
21 single person in this courtroom ever. There are very very
22 very few things in life that you can know with no doubt
23 whatsoever. We are not held to that. To acquit this
24 defendant your doubt must be reasonable. And since we bear
25 the burden -- Well go back a little bit. You are the fact

CLOSING: BY SOLICITOR EPTING

243

1 finders in this case the sole fact finders. The judge is
2 the master of the law we make our argument you all are the
3 sole fact finders in this case. You all determine what
4 happens and you all determine what happens by what you hear
5 on that stand what you see admitted into evidence. You use
6 your common sense in that and your good judgment. You are
7 not here to determine if the defendant is a good or bad
8 person. That's not reasonable doubt. You are to put from
9 your mind what happened should you find him guilty or not
10 guilty anything past that is not for your consideration.
11 That's the judges problems. Your sole task is to determine
12 -- Is to determine what happened on September 24th of last
13 year.

14 The burden is on me I admitted that and Mr. Delaney
15 said that. What do I have to prove? What does the law say
16 I have to prove? Well under the statute as he is charged
17 there are two ways to find him guilty. First is to find
18 beyond a reasonable doubt the defendant got this heroin
19 with intent to distribute. There are several ways we can
20 look at that because until the technology improves we can't
21 peer inside somebody's mind to tell what they intended to
22 do. We have to look at other clues other factors. We look
23 at weight. Mr. Delaney made a very big deal about how this
24 drug doesn't look like a whole lot. Most of you all
25 probably have never dealt with heroin and probably have

CLOSING: BY SOLICITOR EPTING

244

1 never seen it and maybe some of you have never heard of it.
2 It doesn't look like a whole lot people know nothing about
3 heroin. But it's been weighed by a chemist a professional
4 chemist. We know how much it weighs it weighs six grams.
5 And our legislature has said they accept what is called an
6 inference level on different types of drugs. Or they say
7 if you possess up to this amount then juries are allowed to
8 but not required to infer that that amount is being dealt
9 with for selling. There is a different amount for crack a
10 different amount for cocaine. The amount here is two
11 grains. The fact six grains two grains is a third of that.
12 Our legislature said that you can infer that that was being
13 held for sale. We have three times the inference level
14 here. It doesn't look like a lot but its three times the
15 inference level.

16 What else do we know? We look at how it's packaged.
17 Marvin Brown got up and testified that people who have it
18 for personal use generally keep theirs in one bag one
19 bunch. But what do they need all these vindles for? You
20 know they're not handing it out to anybody they just want
21 theirs in one bag. As a matter of fact if they buy it in
22 one day they get a better deal. Marvin Brown wasn't a Hail
23 Mary addict he was out expert to educate you guys about it.
24 One vindle Marvin Brown said is one hit. He even gave us a
25 little point two five of a grain. The defense made a very

CLOSING: BY SOLICITOR EPTING

245

1 big deal about you know no one can say for sure how much
2 was in each vindle officers couldn't do simple math. Point
3 two five grains is one intoxicating dose one hit is enough
4 to get you high. We had twenty three vindles that we know
5 ----- It's only three times point two five. Five
6 point seven five. A little bit short some of those vindles
7 had more in them than others did but right about there we
8 know that approximately one intoxicating dose was in each
9 vindle that and some paraphernalia. He didn't have a
10 syringe. Marvin Brown testified that most people who use
11 this drug particularly after a long time uses a syringe.
12 They get more bag for their buck. You would think the
13 defendant a thirty year heroin addict would know that. He
14 would want to conserve money but he's scared of needles.
15 He's not scared to put heroin in his body but he's scared
16 of needles. Okay. He got up on that stand and placed his
17 hand on this Bible and he testified that right before those
18 officers arrived he had just taken one of those bags lifted
19 it up and poured it down his nose.

20 What else do we have? What did Officer Beck testify
21 to? When he was going through the vindles and looking at
22 them the chemist testified when she was going through the
23 vindles looking at them one of those vindles was empty not
24 sealed. He told the people when he was being booked in
25 when he was being triaged that he had used heroin earlier

CLOSING: BY SOLICITOR EPTING

246

1 that day in the morning not in the afternoon. And you got
2 to ask yourself if he gets up there on that stands and lies
3 about one thing what else can you believe? What else can
4 you believe that comes out of his mouth?

5 The defendant's story about -- He loves his wife and
6 he's going to pick her up in his car. But you know he says
7 that that's what makes him normal. That's what makes him
8 normal. That's what makes him normal that's what makes him
9 right. Was he right when he went to speak with the
10 officers? Do you all remember him testifying about that?
11 He can't remember he was so high. He can't remember what
12 exactly they talked about. He can remember some things
13 that helped him like he told them he used drugs but he
14 can't remember if he told them he was a dealer or he can't
15 remember the comment about the empty vindle. About selling
16 to people he can't remember that but this is a drug that
17 just makes him right.

18 What else did Marvin Brown say besides the fact that
19 it would not be a good deal for a user and he was a
20 suspected long time user if you noticed if you buy in
21 vindles because it would cost more. He would never expect
22 for any kind of pure user more than three vindles but the
23 defendant has twenty-three. And of course all of this is -
24 his confession to the officers where he confessed to being
25 a drug dealer and he made those comments about the empty

CLOSING: BY SOLICITOR EPTING

247

1 vindle. That's why his customers might have - And about
2 how he liked to sell to white people because they won't
3 bring somebody to the deal, somebody who might tell on him,
4 somebody they don't know. You are to judge his sole
5 credibility in this case.

6 Only you all can decide who's telling the truth on
7 that stand and who's not. And then you ask yourselves who
8 has the motive to lie? Jerome Watson. He has plenty of
9 motive to claim that he's just a user but not a dealer
10 because he doesn't want to be punished as a dealer. Those
11 officers what motives did they have to lie? The defense
12 counsel asked them several times they don't know Jerome
13 Watson they never heard of him before. They got a lot of
14 cases to work on. Are they going to get up there on that
15 stand and jeopardize their careers for Jerome Watson that
16 they've never heard of? They can jeopardize their freedom
17 by risking a perjury charge. They have all the reason in
18 the world to tell the truth, ladies and gentlemen. Look
19 into what he was found with and look at his statements to
20 the police which we are not coerced but freely and
21 voluntarily given; look at where the drugs were found and
22 how much -- The absence of paraphernalia and the package.
23 Ladies and gentlemen, that's over whelming evidence. That
24 is over whelming evidence of intent to sell. He says I am
25 a drug . Unless we catch him on tape it doesn't get much

CLOSING: BY SOLICITOR EPTING

248

1 better than that.

2 But I told you there's two ways to find this man
3 guilty under the statute. Look at the desperation that Mr.
4 Delaney mentioned. Mr. Delaney he is not the master of the
5 law in the courtroom today. Judge Hayes is. Judge Hayes
6 will instruct you on the law and listen very carefully to
7 what he has to say. You can find that Mr. Watson possessed
8 with intent to distribute or or or that he purchased heroin
9 in York County. It's all under the same statute. You will
10 receive a verdict form that reflects that guilty or not
11 guilty of purchasing heroin.

12 Well what evidence do we have he purchased heroin?
13 Officer Beck and Officer Kennedy saw it passed off in the
14 case in the parking lot and their training and experience
15 they had a good hunch of what had happened. Sure enough
16 when they approached the defendant and searched what did
17 they find? Drugs. And sure enough when they speak with
18 this

19 defendant what did he say? Also about being a dealer he
20 said I bought those drugs in the KFC parking lot. On the
21 stand under oath what did he say? I asked him where did
22 you get the drugs?

23 I bought them.

24 In the KFC and he said yeah. How much did you pay for
25 them? I can't remember the number but he said he paid cash

CHARGE

249

1 for it. That is just as good as PWID under our law. That
2 is still guilty as charged. And the judge will instrcut yo
3 uon that and once again listen very carefully. Ladies and
4 gentlemen, they are asking you to find him guilty of
5 possession. Don't discount justice. All that you've seen
6 here today all the testimony you've heard all this stuff
7 right here which has been expounded upon by our experts to
8 show what it really is. It shows that he was a heroin
9 dealer. Don't find him innocent find him guilty that's
10 what he is. Ladies and gentlemen, find him guilty of
11 purchasing because the clear evidence of PWID. Ladies and
12 gentlemen, don't compromise. Send the right message to
13 find him guilty as charged. Guilty of possession with
14 intent to distribute heroin and guilty of purchasing heroin
15 in York County. We eagerly await your verdict.

16 THE COURT: Members of the jury panel I appreciate
17 your attention that you've given to the witnesses to the
18 attorneys and to myself. I am not going to ask you to give
19 me your attention while I charge you the law that you are
20 to apply to the facts in this case. You are of course the
21 judges of the facts.

22 The indictment charges Mr. Watson with possession of
23 heroin with intent to distribute and purchasing heroin.
24 The indictment which you will have in the jury room with
25 you is not evidence it is simply the charges against Mr.

CHARGE

250

1 Watson it contains the charges it is the paperwork by way
2 of which this case is processed through our court system.

3 And, Madame Forelady, I will tell you more about this
4 later, it will be ultimately where the jury's verdict will
5 be -- unanimous verdict will be enrolled.

6 The fact that Mr. Watson was arrested the fact that he
7 was charged the fact that he was indicted the fact that he
8 is on trial is not evidence in this case and cannot be
9 considered by you as evidence. It does not create any
10 presumption or inference of any guilt. This fact that he
11 is on trial that he has been charged and he has been
12 indicted is simply the way our system works. When the
13 state believes someone has committed an offense this
14 process is implemented but it is ultimately up to you the
15 jury in this case to determine whether the state has proven
16 his guilt beyond a reasonable doubt. Mr. Watson as would
17 be anyone charged with any offense in our system is
18 presumed innocent of this charge. This presumption of
19 innocence is a substantial right it is not a mere legal
20 theory or a mere legal phrase. It is a substantial right
21 which inheres to his benefit and attached to him at the
22 time of his arrest and remains with him as his case is
23 processed through our court system remains with him through
24 the trial remains with him at this moment. In fact the
25 presumption of innocence remains with him as you

CHARGE

251

1 deliberate. The presumption of innocence in Mr. Watson's
2 favor is removed if and when and only if and when you as
3 the trial jury in this case determine that the state has
4 proven his guilt beyond a reasonable doubt.

5 Now the state is not required to prove his guilt
6 beyond all or beyond every doubt but beyond a reasonable
7 doubt. A reasonable doubt has been defined by our court as
8 the kind of doubt that would cause a reasonable person to
9 hesitate to act. Proof beyond a reasonable doubt is proof
10 that leaves your firmly convinced of someone's guilt.
11 There of course are very few things in our world that we
12 can know with absolute certainty and that is not required.
13 If based on your consideration of the evidence you are
14 firmly convinced that Mr. Watson is guilty of the charge
15 you must find him so. On the other hand if you think there
16 is a real possibility that he is not guilty you would give
17 him the benefit of that doubt and find him not guilty.

18 In cases such as this there are generally two types of
19 evidence presented direct and circumstantial evidence.
20 Direct evidence is testimony of a person who claims to have
21 actual knowledge of a fact. It is evidence which
22 immediately establishes the fact sought to be proven.
23 Circumstantial evidence is proof of a chain of facts and
24 circumstances which indicate the existence of a fact.
25 Circumstantial evidence is evidence which immediately

CHARGE

252

1 establishes collateral facts from which the main fact may
2 be inferred. Circumstantial evidence is based on inference
3 and not on personal knowledge or observation. Our law
4 makes absolutely no distinction between the weight or value
5 to be given direct as opposed to circumstantial evidence.
6 Nor is a greater degree of certainty required of
7 circumstantial evidence than is required of direct
8 evidence. What you should do in this case is weigh all of
9 the evidence. After weighing all of the evidence if you
10 are not convinced of Mr. Watson's guilt beyond a reasonable
11 doubt you would find him not guilty.

12 I remind you that I am the sole judge of the law in
13 this case and you must take accept and apply the law as I
14 charge it. This is true even if you think I charge the law
15 in error or even if you think the law should be different.
16 Your oath requires you to take accept and apply the law as
17 I charge it. You are not to infer from anything I have
18 said or done or anything I now say or do as indicating an
19 opinion of mine on the facts. Our law does not allow a
20 trial judge to formulate or express to a jury any opinion
21 on the facts that is solely your job. It is solely up to
22 you to examine the evidence and to give to the evidence the
23 effect the value the weight and the truth you believe it
24 should have. In doing this you may believe one witness as
25 opposed to several several witnesses as opposed to one you

CHARGE

252

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2 be inferred. Circumstantial evidence is based on inference
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10 are not convinced of Mr. Watson's guilt beyond a reasonable
11 doubt you would find him not guilty.

12 I remind you that I am the sole judge of the law in
13 this case and you must take accept and apply the law as I
14 charge it. This is true even if you think I charge the law
15 in error or even if you think the law should be different.
16 Your oath requires you to take accept and apply the law as
17 I charge it. You are not to infer from anything I have
18 said or done or anything I now say or do as indicating an
19 opinion of mine on the facts. Our law does not allow a
20 trial judge to formulate or express to a jury any opinion
21 on the facts that is solely your job. It is solely up to
22 you to examine the evidence and to give to the evidence the
23 effect the value the weight and the truth you believe it
24 should have. In doing this you may believe one witness as
25 opposed to several several witnesses as opposed to one you

CHARGE

253

1 may believe all or part or none of a witnesses testimony.
2 In analyzing the evidence use your common sense your sense
3 of logic your sense of reason and your experiences in life.
4 As judges of the facts you necessity must judge the
5 credibility that is the believability of the witnesses who
6 have testified. In assessing the believability the
7 credibility use the things I've just talked about. Use the
8 things that you find in your day to day life as being
9 indicative of truthfulness. And you can use certain
10 evaluators how a witness acts on the stand are they
11 hesitant or straight forward? Their demeanor are they
12 consistent or inconsistent is their testimony consistent or
13 inconsistent? Do they have any bias or prejudice that is
14 do they wish to help or hurt one side or the other? You
15 can consider the opportunity a witness had to actually know
16 those things about which the witness testified.

17 You've heard evidence in this case that Mr. Watson has
18 committed prior offenses. That is evidence which can be
19 considered by you only regarding what belief you will give
20 to his testimony. That is his prior criminal record can be
21 considered by you only as to his credibility. It cannot be
22 considered by you as any proof regarding whether or not he
23 committed this offense.

24 We've had testimony here by someone qualified as an
25 expert a chemist. Generally an individual can only testify

CHARGE

254

1 as to something they've sensed with one of their five
2 senses. Generally it's something somebody's seen or heard
3 but it could be taste touch or smell. However where an
4 individual has certain qualifications based on their
5 experience training and education those individuals can
6 take facts and from those facts render an opinion. The
7 opinion of experts are allowed into evidence to assist you
8 they are not binding on you. You consider the experts
9 testimony consider the expert testimony just as you
10 consider the testimony of all the other witnesses. In
11 addition as to an expert you can consider their
12 qualifications that is whether or not you believe they have
13 the qualifications. I qualified them as an expert but it
14 is ultimately up to you to determine whether you believe
15 they were an expert in the field in which they testified.
16 And also you can take into consideration the reasons they
17 gave for reaching the opinion that they did. Again their
18 opinions are allowed in evidence to assist you they are not
19 binding on you and you may accept or reject in whole or in
20 part the testimony of an expert.

21 I have also allowed into evidence a statement by Mr.
22 Watson. However before you as a jury in this case can
23 consider this statement as evidence you must decide beyond
24 a reasonable doubt first that Mr. Watson did in fact make
25 the statement. Second: That he made it freely voluntarily

CHARGE

255

1 knowingly and intelligently. Third: That he made the
2 statement without fear, coercion, promise or hope of reward
3 or any reward. You must consider whether or not prior to
4 making the statement he was advised of his rights that is
5 his right to remain silent that any statement he made could
6 be used against him at trial. His right to counsel, his
7 right to have an appointed counsel if he could not afford
8 one. His right to answer questions or stop answering at
9 any time that he wish. And you must find that he freely
10 voluntarily knowingly and intelligently waived those
11 rights. If you decide that Mr. Watson in fact made this
12 statement and that it was freely voluntarily and knowingly
13 and intelligently made and you must determine that beyond a
14 reasonable doubt. And then you determine to what degree
15 you wish to consider that statement that is you may just
16 like any other testimony accept it in whole or in part or
17 reject it in whole or in part.

18 Mr. Watson is charged under a code section of our law
19 that is a section of law that was enacted and adopted by
20 our legislature and made into the law of this state. That
21 law says it shall be unlawful for any person to possess
22 with intent to distribute or to purchase a controlled
23 substance. I tell you that heroin is under the laws of our
24 state a controlled substance. As to the charge of
25 purchasing heroin I charge you that this code section

CHARGE

256

1 states that it shall be unlawful for any person to purchase
2 a controlled substance and I tell you again heroin is in
3 fact a controlled substance. Additionally the indictment
4 charges Mr. Watson with possessing heroin with intent to
5 distribute. Here the state must prove beyond a reasonable
6 doubt that Mr. Watson possessed heroin and that he
7 possessed it with intent to distribute it. To prove
8 possession the state must prove beyond a reasonable doubt
9 that he had both the power and intent to control the
10 disposition or use of the heroin.

11 Possession may be either actual or constructive.
12 Actual possession means that the heroin was in his actual
13 physical custody. Constructive possession means that the
14 defendant had dominion and control or the right to exercise
15 dominion or control over either the heroin itself or the
16 property under which the heroin is found. The mere
17 presence at the scene where drugs is found is not enough to
18 prove possession. Actual knowledge of the presence of the
19 heroin is strong evidence of a defendant's intent to
20 control its disposition or use. A defendant's knowledge
21 and possession may be inferred when a substance is found on
22 property under the defendant's control. However this
23 inference is simply an evidentiary fact to take into
24 consideration by you along with the other evidence in the
25 case and it is to be given the weight if any you determine

CHARGE

257

1 it should have.

2 The state must prove beyond a reasonable doubt not
3 only that Mr. Watson possessed the heroin but that he
4 possessed it with the intent to distribute it. Distribute
5 means to deliver the drug either with or without
6 consideration. Intent may be shown by acts and conducts of
7 the defendant and other circumstances from which you may
8 naturally and reasonably infer intent. In determining
9 whether Mr. Watson had the intent to distribute heroin you
10 may consider the circumstances surrounding his alleged
11 possession. You may consider the amount of the substance
12 alleged to have been possessed. You may consider the
13 manner in which it was possessed and other factors which
14 you consider to be important. You must find in order to
15 find Mr. Watson guilty of possessing heroin with intent to
16 distribute that he did not possess it solely for his own
17 use.

18 Our legislature has set inference levels. They have
19 determined and I charge you that under the laws of our
20 state possession of more than two grains of heroin creates
21 an inference that a possession of the heroin was with the
22 intent to distribute. This inference does not relieve the
23 state from proving beyond a reasonable doubt that Mr.
24 Watson if you find he possessed the heroin had the intent
25 to distribute it. It is simply an evidentiary fact to be

CHARGE

258

1 taken into consideration by you and all the other evidence
2 in the case and should be given such weight as you
3 determine it should have.

4 Now if you find that the state has failed to prove
5 beyond a reasonable doubt that Mr. Watson is guilty of
6 possession of heroin with intent to distribute you may
7 consider whether the state has proven beyond a reasonable
8 doubt that he is guilty of simply possessing heroin.
9 Simple possession does not require the intent to
10 distribute. I have already told you what actual and
11 constructive possession means. That is I told you those
12 definitions and they apply equally to this lesser included
13 charge of simple possession that is possession of the drug
14 without the intent to distribute it. The state must prove
15 beyond a reasonable doubt in order for you to convict Mr.
16 Watson of this lesser included offense that Mr. Watson did
17 possess knowingly and intentionally heroin. And the state
18 must prove the lesser included if you determine that they
19 have not proven the charge but they must prove the lesser
20 beyond a reasonable doubt before Mr. Watson could be
21 convicted of that lesser included offense.

22 Now I am going to go over the verdict form with you in
23 just a moment. Your verdict must be unanimous all twelve
24 jurors must agree. Your verdict cannot be based on
25 passion, prejudice, sympathy, public opinion or matters

.CHARGE

259

1 outside of this record.

2 While you are deliberating if you have any questions,
3 Madame Forelady, please knock on the door and -- Well write
4 them down and knock on the door and give them to the
5 bailiff and the bailiff will bring them to me. I will
6 confer with the attorneys I may be working on some other
7 work so it may be a few minutes before I can respond. It
8 may be that I can write an answer to any question you have
9 on the note itself. It may be that I will have to bring
10 you back here in the courtroom and answer it here in the
11 courtroom. You can have testimony replayed if you wish. If
12 you do wish to have testimony replayed try to tell us
13 exactly what you want so we can isolate it it does take a
14 little while to do that. In South Carolina we do not send
15 in to the jury a written charge on the law. However if you
16 wish for me to go over any part or all of the law send out
17 a note and I will bring you back out here and charge you
18 whatever part of the law or all of it that you wish me to
19 charge. When you've reached a verdict knock on the door
20 tell the bailiff the bailiff will come and get us. Again I
21 may be doing some work but we will send for you as promptly
22 as we can. As I said once you've reached a verdict knock
23 on the door and tell the bailiff. If we go to a point to
24 where you think you are going to work through the lunch
25 hour send us a note and ask us to order you some lunch and

CHARGE

260

1 we will do that. You can take breaks while you are
2 deliberating if you wish but if you take a break you are
3 all on break since your verdict must now be a unanimous
4 verdict. If you want to take a break that's fine. But
5 either all of you are working or all of you are on break
6 and if any of you smoke you can take a smoke break and the
7 bailiff will take you out to accommodate you. But before I
8 go over the verdict form when you first go into the jury
9 room do not start deliberating and do not get too
10 comfortable because I have to go over my charge with the
11 attorneys. If I have made an error I will have to bring
12 you back in and correct it. If not I will send in the
13 exhibits and the verdict form and the indictment and the
14 bailiff will tell you to start deliberating.

15 Mr. Bear, and Mr. Byrd, you all will remain here in
16 the courtroom; you all have been the alternates and you all
17 will not participate any further in the case so you all
18 just remain in here when the jury exits in just a moment.

19 Madame Forelady, of course you will preside over the
20 jury's deliberation and sign the verdict form on behalf of
21 the jury as they have unanimously agreed upon. There is an
22 A and a B and you have to address each. The first says "as
23 to the charge of possession of heroin with intent to
24 distribute". That's A and under there there are three
25 options. The order they are in is of no importance. I

CHARGE

261

1 have to put them in some order so I always put them in this
2 order but the fact that one precedes the other does not
3 mean it is worthy of any greater consideration than the
4 other. They are only for putting them. The first says "we
5 the jury find the defendant guilty". You put a check or an
6 x in front of that line if you find that the state has
7 proven beyond a reasonable doubt Mr. Watson guilty of
8 possessing heroin with intent to distribute. If you find
9 the state has not proven that beyond a reasonable doubt but
10 has proven the lesser included of simple possession of
11 heroin you would mark the second line. It simply says "we
12 the jury find the defendant guilty of the lesser included
13 offense of simple possession of heroin". If you find that
14 the state has not proven his guilt as to either of those
15 beyond a reasonable doubt you would use the third line that
16 says "we the jury find the defendant not guilty".

17 B has only two options. It says as to the charge of
18 purchasing heroin the first line says "we the jury find the
19 defendant guilty" if you find him guilty Mr. Watson of
20 purchasing heroin you would simply put an x or a check in
21 front of that line. The second line says "we the jury find
22 the defendant not guilty" and you would use that line if
23 the state has failed to convince you beyond a reasonable
24 doubt that Mr. Watson purchased heroin.

25 There is a place for you to sign and a place for you

CHARGE

262

1 to date, Madame Forelady, and today's the 28th. So I'm
2 going to let all of you go to the jury room while I confer
3 with the attorneys except for the two alternates. And you
4 will hear from me in a moment but don't start deliberating.

5 (JURY LEAVING COURTROOM.)

6 THE COURT: All right anything from the state?

7 SOLICITOR EPTING: Nothing from the State, Your Honor.

8 THE COURT: Anything from the Defense?

9 MS. ANDERSON: Yes, Your Honor. Just for the record
10 and out of the abundance of caution I renew my prior
11 objection to the charge that was given. I would also
12 request two additional charges. The request to charge that
13 the jury is not to consider anything regarding back to Mr.
14 Watson charged with multiple charges. That is not to be
15 considered against him and that they must be satisfied
16 basically of the burden on each individual charge. I would
17 also request a charge on general requirement of criminal
18 intent. As all the charges under the law requires him to
19 be found to be a -- criminal intent and that neither of
20 these charges are -- designated under our case law.

21 SOLICITOR EPTING: The state's position is he was
22 charged under the right charge. So far as to that charge
23 but in the end was charged.

24 THE COURT: Well I charged intent as to the intent to
25 distribute. I believe the purchasing does not require

CHARGE

263

1 criminal intent. It just makes it illegal strictly illegal
2 to purchase heroin and so I will not charge -- recharge on
3 that. I will bring them in and tell them about the fact
4 that and I should have done that but I will tell them the
5 fact that they are multiple or the charges are to be
6 examined independently of each other.

7 You all just remain seated if you don't mind and bring
8 the jury back in.

9 (JURY ENTERING COURTROOM.)

10 THE COURT: I need to tell you members of the jury
11 that the fact that this is broken down in two charges is of
12 no importance. That is the fact that there are more than
13 one charge under the A and B that I've given you is not
14 evidence that Mr. Watson is guilty of either. I've just
15 simply broken it down that way and the fact that there are
16 two charges is not to be considered as any evidence that he
17 committed either one. And you must as to each consider
18 each separate. You would find -- Make a determination as
19 to A that is possession of heroin with intent to distribute
20 you would examine the evidence as to that and make a
21 decision solely on the evidence that you find relates to
22 that offense. Independent of the evidence as to B
23 purchasing heroin you would consider the evidence as to
24 that purchasing heroin independently also. That is each
25 stands alone and each is a separate offense and each must

1 be proven by the state beyond a reasonable doubt and your
2 verdicts do not -- What you find on one is not indicative
3 to what or controlling as to what you find on the other
4 because they both stand independently. All right I'm going
5 to let you go back. Don't start deliberating yet.

6 (JURY LEAVING COURTROOM.)

7 THE COURT: Anything from the state?

8 SOLICITOR EPTING: Nothing from the state?

9 THE COURT: Anything further?

10 MS. ANDERSON: No that's all from the defense.

11 THE COURT: All right if you will check the exhibits
12 and the verdict form and the indictment and we will send
13 them back.

14 And, Mr. Bear and Mr. Byrd, you can call back, you can
15 leave or you can stay but you can call back tonight after
16 Seven and you will receive instructions as to what they
17 want to do. Call to report. Thank you.

18 All right I will be in my chambers and let's - -

19 (COURT IN RECESS.)

20 (BACK ON THE RECORD.)

21 (WHEREUPON: COURT'S EXHIBIT NUMBER TWO MARKED AND
22 ENTERED INTO EVIDENCE.)

23 THE COURT: I understand we have a verdict.

24 Is the State ready?

25 SOLICITOR EPTING: The state is ready, Your Honor.

VERDICT

265

1 THE COURT: Defense ready?

2 MR. DELANEY: Yes, Your Honor.

3 THE COURT: Bring in our jury.

4 (JURY ENTERING COURTROOM.)

5 THE COURT: Madame Forelady, I understand the jury has
6 reached a verdict.

7 MADAME FORELADY: Yes, sir, we have.

8 THE COURT: Hand it to the bailiff the bailiff will
9 hand it to me.

10 You have to get her to sign the original.

11 MADAME CLERK: In 20010-GS-46-1381 the State of South
12 Carolina versus Jerome Elton Watson as to the charge of
13 possession of heroin with intent to distribute we the jury
14 find the defendant guilty.

15 As to the charge of purchasing heroin we the jury find
16 the defendant guilty.

17 Ladies and gentlemen of the jury, if this be your
18 verdict please say so by you all raising your right hand.

19 Let the record reflect all jurors affirmed this
20 verdict.

21 THE COURT: All right anything from the state before
22 the jury is dismissed.

23 SOLICITOR EPTING: Nothing from the state, Your Honor.

24 THE COURT: Anything from the defense?

25 MR. DELANEY: At this time no, Judge.

1 THE COURT: Okay. Members of the jury panel you are
2 to call back tonight after Seven.

3 Madame Forelady, you need to sign the indictment if
4 you will step up here. I don't require the jury to stay
5 for sentencing but if you would like to hear this
6 gentleman's record this is actually his third offense which
7 you will hear if you come but you are welcome to come in
8 and go around the bailiff will assist you and you can come
9 sit in the back. I am going to do the sentencing but I
10 don't require you to stay for that because it takes a few
11 minutes for me to hear his record and that sort of thing.
12 But call back tonight after Seven and you receive
13 instructions. So you can leave but if you want to come
14 around and listen to the sentencing procedure you can do
15 that.

16 (JURY LEAVING COURTROOM.)

17 THE COURT: Not from the jury but he is charged in the
18 documents so if you will just write the word guilty and
19 sign and date and each of those where indicated.

20 MADAME FORELADY: Do I need to specify both?

21 THE COURT: No. Just the word guilty will be enough.

22 MADAME FORELADY: Thank you.

23 THE COURT: Thank you so much.

24 Before we have the sentencing anything from the state?

25 SOLICITOR EPTING: Nothing from the state, Your Honor.

1 THE COURT: Anything from the defense?

2 MS. ANDERSON: Yes, Your Honor. At this time we would
3 renew -- preserve for the record all previous motions and
4 objections. Your Honor, our position we request to just
5 move the completed verdict form into the record as Court
6 Exhibit I think it will be Court Exhibit Number Two. And
7 we would also further make the motion to set aside the
8 verdict to both the verdicts on the ground that conviction
9 for both possession and intent to distribute heroin and
10 purchasing heroin on the same indictment has the same
11 statute for all the reasons previously argued by the
12 defense in violation of double jeopardy and that the
13 sentencing of Mr. Watson on both of those charges would be
14 a violation of - -

15 THE COURT: Well after the later I deny those motions
16 just as I did that were made earlier in the trial at the
17 directed verdict stage and the exception of evidence. As
18 far as the verdict form for the record it's my
19 understanding it's part of the record. We will make sure
20 that it's a condition of being part of the record we will
21 make it a court's exhibit also. I've never done that
22 before but - -

23 MS. ANDERSON: I would just like to make sure it
24 didn't get lost. I know the content of it has been made a
25 part of the record but I would like the actual format and

1 the original document being preserved.

2 THE COURT: It's supposed to. If its not then
3 somebody's in trouble. It should be but we will make an
4 extra copy and make it a court's exhibit but it should also
5 be part of the record.

6 Is that not right, Madame Clerk?

7 MADAME CLERK: Yes, sir.

8 MS. ANDERSON: Thank you, Your Honor.

9 THE COURT: All right. Do you want to bring Mr.
10 Watson around?

11 Right there will be fine.

12 Do you have the sentencing sheet?

13 SOLICITOR EPTING: I do, Your Honor. I placed it in
14 the file and the clerk should have a copy of the tracking
15 sheet as well. And, Your Honor, at this time if I could

16 - -

17 THE COURT: Wait just a minute.

18 (PAUSE.)

19 THE COURT: Mr. Epting.

20 SOLICITOR EPTING: Your Honor, at this time I would
21 like to pass forward to the court certified copies of the
22 defendant's prior convictions. I have previously provided
23 a copy of this to the defense and with Your Honor's
24 permission I would like to read his record; his criminal
25 history into the record.

SENTENCING

269

1 THE COURT: All right.

2 SOLICITOR EPTING: In 2005 Mr. Watson was convicted of
3 possession of crack cocaine first offense; excuse me, that
4 was 2006. In 2005 he was convicted of unlawful concealment
5 of goods in an attempt to steal baby formula. In 2000 he
6 was convicted of possession with intent to distribute a
7 controlled substance which turned out to be heroin within
8 one thousand feet of a school. In 1994 he was convicted of
9 a theft charge as well as a possession of heroin charge.
10 And in 1991 he pled guilty to a conspiracy charge for which
11 was related to two companion charge for distribution of
12 heroin and distribution of heroin within proximity of a
13 school.

14 THE COURT: Mr. Delaney, I will be glad to hear from
15 you now.

16 MR. DELANEY: Thank you, Your Honor, may it please the
17 court. As you heard earlier in the case Damita Crockett
18 that is Jerome Watson's wife of twenty eight years she is
19 in the courtroom Ms. Anderson has spoken with her but I do
20 not think she wishes to address the court.

21 THE COURT: She does or does not?

22 MR. DELANEY: Does not. But I've been able to spend a
23 little bit of time with her and I know she loves her
24 husband a lot. They have a fourteen year old at home a
25 girl. They told me she is diabetic so she does require

SENTENCING

270

1 some - a little extra attention. Jerome had some older
2 children that are no longer in the house. Jerome as Your
3 Honor may have heard in the trial he is from New Jersey and
4 came down here in 2004. His wife was down here a few years
5 earlier and she's been at Wells Fargo working. He's been
6 at LA Darling for I think going on about four years. He's
7 on and off there he does get laid off at times and gets
8 hired back on but he does have a job he's basically been
9 at.

10 And obviously with this system you know I respect the
11 jury's verdict. Do I agree with it? No. I believe James
12 is an addict is a user. I do not believe, Judge, he is a
13 drug dealer. And you heard his record.

14 THE COURT: I heard his record and you did too and
15 he's been involved in dealing. You may think he's not a --
16 You may think he's not in the business now but he's
17 certainly had -- he's had an epiphany because he's
18 certainly been in the business in the past.

19 MR. DELANEY: Judge, I do not believe he's in the
20 business now or in September or any time since he's been in
21 South Carolina has he been in the business. That is what
22 Jerome has told me from the beginning. And Jerome did tell
23 me that in the '90's in the early '90's that he did at
24 times sell heroin sell drugs to support his use. Yes he's
25 said he's done that in the '09's and that's where you know.

SENTENCING

272

1 in the early '80's early '90's. I'm no drug dealer, Your
2 Honor. I never have been a drug dealer to be you know
3 facing this much time. Just did things to just try to take
4 care of my family and to take care of my wife twenty-eight
5 years, Your Honor. Have mercy on me.

6 THE COURT: Well the only way to get drugs off the
7 street is to get the dealers off the street and you haven't
8 convinced me and you didn't convince the jury that you are
9 not a distributor. The statements of the police indicate
10 that you like to sell and have sold. The sentence of the
11 court is thirty years.

12 SOLICITOR EPTING: Thank you, Your Honor.

13 THE COURT: I'll give you credit for any time you
14 already served and that's the maximum. I think you
15 deserve it with your history. Thank you.

16 SOLICITOR EPTING: Thank you, Your Honor.

17 (WHEREUPON: COURT'S EXHIBIT NUMBER TWO MARKED AND
18 ENTERED INTO EVIDENCE.)

19 -- END OF TRANSCRIPT OF PROCEEDING. --
20
21
22
23
24
25

SENTENCING

271

1 You heard his record that I would argue to Your Honor is a
2 record that is of a user. He's got a proximity charge of
3 heroin and again we're not disputing that he's a user. And
4 he's got a possession crack charge he's got a couple of
5 shoplifting type offenses and again nothing violent against
6 this man, Judge. I'm asking for mercy; you know fifteen
7 years. The most time he's ever done was four years and
8 that was a while ago. I don't know if he served anywhere
9 actually near the four. If what Your Honor can do is show
10 him the most mercy you can. That's fifteen years and I
11 would ask Your Honor to show him that.

12 He's forty-nine-years old he would not be getting out
13 of prison until he's in his sixties. I think that's a
14 pretty good message to send, Judge, and the chances of him
15 to serve that time and him getting back out there he can't
16 say -- I can't say he's not going to use again I can't say
17 but he is an addict but him getting back out there and
18 being some drug dealer which again I don't think he is but
19 I think the chances of that happening when he's out when
20 he's sixty is slim. So we would ask Your Honor to give him
21 the minimum in this case.

22 THE COURT: Mr. Watson, anything you want to say?

23 MR. WATSON: Basically with what my lawyer has said I
24 would ask the court Your Honor to have mercy on me. Truly,
25 Your Honor, I wasn't doing no drugs. I mean small dealing

CERTIFICATE:

I, THE UNDERSIGNED WANDA NELSON, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE SIXTEEN JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 26th, 27th, 28TH DAYS OF APRIL, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Wanda Nelson

WANDA NELSON, CVR
OFFICIAL COURT REPORTER
NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA
DATE: 12-4 / 2010

MY COMMISSION EXPIRES: 12/10/2010

2014 CP46 0274

FORM 5

STATE OF SOUTH CAROLINA

FILED-RECEIVED

COUNTY OF YORK SC

2014 JAN 30 PM 2:53

IN THE COURT OF COMMON PLEAS

Jerome WatsonC.C.C.P. & S.S.
YORK COUNTY, SC

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCCERTIFIED TRUE COPY
2014 FEB -4 AM 10:150INSTRUCTIONS - 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 fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence YORK COUNTY 1625 YORK HIGHWAY
3. Name(s) of co-defendant(s) (if any) N/A 29745-7422
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) INDICTMENT NUMBERS 2010-95-46-1381 FOR
 - (b) POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
 - (c) 3RD OFFENSE AND PURCHASING HEROIN
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) APRIL-28-2010 SENTENCES TO 30 YEARS
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Court of Appeals Dismissed Denied _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 16 - 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Small, 364 S.C. 343, 346-47, 613 S.E. 2d 754, 756
- ii. 2005 Citation - State v. Guthrie, 352 S.C. 103, 111, 572
- iii. S.E. 2d 309, 314 Ct. App. 2002 Citation // State v. Sheppard
54 S.C. 178, 180, 325 S.E. 146 147 - 1999
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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 TRIAL COUNSEL
- (b) LACK OF SUBJECT MATTER JURISDICTION
- (c) CONFLICT OF INTEREST

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) VIOLATION OF 5TH 6TH AND FORTY-SEVENTH
- (b) PROSECUTOR'S MAKING IT IMPOSSIBLE FOR APPLICANT
- (c) TO ENJOY THE RIGHT TO A FAIR TRIAL

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. DIRECT APPEAL
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. YORK COUNTY
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. NA

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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. All

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Direct Appeal

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) NA

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ERIK D. DELANEY Assistant Public Defen
MOSS JAIL CENTRAL 1675-1E YORK Highway
- (b) your trial, if any? N P.O. Box 691 YORK SC 29745
- (c) your sentencing? SAME
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? MARILYN H. HUDGINS Appellate Defender
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. N/A
- ii. _____
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. N/A
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

COPEL OF SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

N/O

STATE OF SOUTH CAROLINA

County of YORK

VERIFICATION

I, Jul, 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.

Deanna Watson # 317794

SWORN to and subscribed before me this 27
day of Jan, 2014

Eugene (L.S.)
Notary Public

My Commission Expires: April 4, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JW, 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.

Jerome Watson # 317794
Applicant

SWORN or affirmed to and subscribed before me this
27 day of Jan, 2014

Eugene Fecor
Notary Public

My Commission Expires: Apr. 14, 2016

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Jerome Watson, #317794,

2014-CP-46-0274

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on January 30, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the April 2010 term of the York County Grand Jury for Possession with Intent to Distribute (PWID) Heroin (2010-GS-46-1381). Erik Delaney, Esquire, represented him. On April 28, 2010, the Applicant proceeded to a jury trial pursuant to which he was found guilty. The Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for PWID Heroin, 3rd offense.

A notice of appeal was filed on the Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Watson, Op. No. 2013-UP-312 (filed July 3, 2013). The Remittitur was issued on July 19, 2013.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel"
2. "Lack of Subject Matter Jurisdiction"
3. "Conflict of Interest"
 - a. "Violation of 5th, 6th and Fourteenth Amendments making it impossible for Applicant to enjoy the right of a fair trial."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. 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). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

The Respondent submits the York County Grand Jury returned a True-Bill indictment on April 22, 2010. Therefore, this allegation should be denied.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

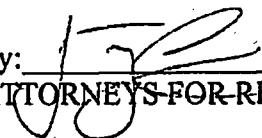
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 19, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2014-CP-46-0274

JEROME WATSON, 317794

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

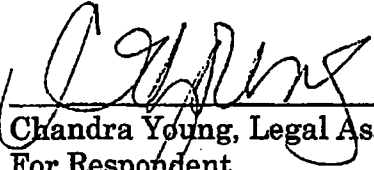
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

W. Michael Hemlepp, Esquire
3027 S. Paraham Rd.
York, SC 29745

DATED this 19th day of May, 2014.


Chandra Young, Legal Assistant
For Respondent

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(D)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Jerome Watson, Appellant.

Appellate Case No. 2010-159988

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2013-UP-312
Heard June 4, 2013 – Filed July 3, 2013

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General William M. Blich, Jr., all of Columbia;
and Solicitor Kevin Scott Brackett, of York, for
Respondent.

PER CURIAM: Jerome Watson was convicted of possession of heroin with intent to distribute (PWID heroin). He appeals, arguing the trial court erred in (1) permitting the State to proceed on an indictment that had not been presented to the grand jury and another indictment that reflected cocaine-related offenses instead of heroin-related offenses, (2) charging the jury and submitting a verdict form reflecting PWID heroin and purchasing heroin as two separate offenses, and (3) admitting expert witness testimony from an employee of the solicitor's office concerning how much heroin a dealer, as opposed to a user, would likely possess. We affirm.

1. First, Watson asserts the trial court erred in permitting the State to proceed against him using one amended indictment that reflected PWID cocaine instead of PWID heroin and a second amended indictment that had not been presented to the grand jury. We disagree.

Generally, "[n]o person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury." S.C. Code Ann. § 17-19-10 (2003). An indictment is a "notice document," the primary purpose of which is "to put the defendant on notice of what he is called upon to answer, *i.e.*, to appraise him of the elements of the offense and to allow him to decide whether to ple[a]d guilty or stand trial." *State v. Smalls*, 364 S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005) (citation and quotation marks omitted).

A trial court may amend an indictment if it finds "any variance between the allegations of the indictment and the evidence offered in proof thereof [at trial], . . . if such amendment does not change the nature of the offense charged." S.C. Code Ann. § 17-19-100 (2003). "The appropriate analysis is whether the amendment to the indictment changed the nature of the offense charged, not whether the amendment in any way surprised or prejudiced appellant." *State v. Guthrie*, 352 S.C. 103, 111, 572 S.E.2d 309, 314 (Ct. App. 2002) (citation and quotation marks omitted). A motion to quash an indictment falls within the sound discretion of the trial court. *State v. Sheppard*, 54 S.C. 178, 180, 32 S.E. 146, 147 (1899).

Here, the State prepared three versions of the indictment against Watson. The original indictment alleged Watson "did possess with intent to distribute . . . a quantity of Heroin," in violation of section 44-53-370 of the South Carolina Code. The first amended indictment added the offense of purchasing. Although the title of the first amended indictment referenced heroin, the description of the offense erroneously alleged Watson "did purchase, or possess with intent to distribute, . . .

a quantity of cocaine," also in violation of section 44-53-370.¹ A grand jury true-billed both the original and first amended indictments.

Immediately before trial, the trial court approved additional amendments to the original indictment,² thereby creating the second amended indictment, which alleged Watson "did purchase or possess with the intent to distribute" a quantity of heroin in violation of section 44-53-370. The second amended indictment was not presented to a grand jury.

We find the trial court did not err because the nature of the offense with which Watson was charged remained the same. All versions of the indictment notified Watson he was charged with violating section 44-53-370 with regard to heroin, even if the first amended indictment erroneously recited statutory language concerning cocaine. The offense of purchasing, which appeared in both the first and second amended indictments, was criminalized under the same statute and was subject to the same punishment as PWID heroin. Consequently, the trial court's amendments did not change the nature of the offense charged.³

2. Second, we find no error in the jury verdict form prepared by the trial court. Subsection 44-53-370(a)(1) of the South Carolina Code (Supp. 2012) states it is unlawful for any person to "purchase . . . or possess with the intent to . . . distribute . . . a controlled substance," including heroin. Furthermore, a person who "knowingly or intentionally" possesses more than two grains of heroin "is prima facie guilty of violation of subsection (a)." S.C. Code Ann. § 44-53-370(c), (d)(4) (Supp. 2012). The trial court's instructions and verdict form accurately represented the jury's options. As the trial court explained, the indictment against Watson alleged both PWID heroin and purchasing heroin, but the jury also could have found Watson guilty of the lesser-included offense of simple possession. PWID

¹ Subsections 44-53-370(d) and (e) of the South Carolina Code (Supp. 2012) describe offenses involving heroin and cocaine. The first amended indictment also referenced section 44-53-375, which describes offenses involving crack cocaine. S.C. Code Ann. § 44-53-375 (Supp. 2012); *see also* S.C. Code Ann. § 44-53-110 (Supp. 2012) (stating "cocaine base" is another name for crack cocaine).

² At the time, the trial court was unaware of the first amended indictment, which was not in the court's file.

³ Nevertheless, as the State conceded at oral argument, the assistant solicitor's handling of the amendments to Watson's indictment was, at best, sloppy.

heroin contains all of the elements required to prove simple possession; purchasing heroin does not. *See State v. Drafts*, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986) ("A trial [court] is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater."); *State v. Burton*, 356 S.C. 259, 264, 589 S.E.2d 6, 8 (2003) (holding one offense is "a lesser included offense of another if 'the greater of the two offenses includes all the elements of the lesser offense'" (citation omitted)); *Hope v. State*, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997) ("If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater." (citation and quotation marks omitted)). Consequently, South Carolina law regards simple possession as a lesser-included offense of PWID heroin but not of purchasing heroin. By requiring the jury to address PWID heroin and purchasing heroin separately, the trial court ensured the jury (1) understood the lesser-included relationship existed only between simple possession and PWID heroin and (2) examined the evidence of purchasing heroin separately.

3. Finally, we find Watson failed to preserve for appellate review the issue of whether the trial court erred in admitting expert witness testimony from an employee of the solicitor's office concerning how much heroin a dealer, as opposed to a user, would likely possess. A party may not argue one ground on appeal after arguing a different ground to the trial court. *State v. Haselden*, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); *see also State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (stating an issue not raised to and ruled upon by the trial court is not properly before the appellate court). The record reflects Watson made three objections during the in camera examination of Commander Brown, namely, that the trial court should not qualify the commander as an expert witness because he (1) was not disclosed as a witness prior to trial, (2) had no personal involvement in this case, and (3) had no demonstrated expertise in heroin. Before the jury, Watson renewed his objection only when Commander Brown testified regarding the quantity of heroin one might expect to find in a "vindle." He was silent when, three questions later, Commander Brown addressed the quantity of heroin a user or a dealer might possess. In this context, we find Watson grounded his renewed objection on Commander Brown's expertise in street packaging of heroin. Watson did not raise to the trial court his argument concerning the number of "vindles" one might find on a user versus a dealer or his contention an average juror would know this information. Accordingly, the challenges he makes to this testimony on appeal are unpreserved for our review.

For the foregoing reasons, the decision of the trial court is

AFFIRMED.

FEW, C.J., LOCKEMY, J., and CURETON, A.J., concur.

1 STATE OF SOUTH CAROLINA

2 -----x

3 JEROME WATSON,

4 Petitioner,

5 Case No.

6 -against-

2014-CP-46-00274

7 State,

8 Respondent.

9 -----x

10 November 14, 2014

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE ALISON RENEE LEE

15

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

17 MICHAEL HEMLEPP, Esquire

18 Attorney for the Petitioner

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for Respondent

22

23 Aileen Butler

24 Official Court Reporter

25

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
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3	Jerome Watson			
4	Mr. Hemlepp	6		
5	Mr. Johnson		20	
6				
7	Eric Delaney			
8	Mr. Johnson	23		36
9	Mr. Hemlepp		31	
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11	Ashley Anderson			
12	Mr. Johnson	38		
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Letter		13

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MR. JOHNSON: The next case is Jerome Watson.

THE COURT: Yes, sir.

MR. JOHNSON: May it please the Court, Your Honor. This is the case if Jerome Watson versus the State of South Carolina. Case number 2014-CP-46-0274.

Mr. Watson was indicted by the April 2010 term of York County Grand Jury for possession with intent to distribute heroin. Eric Delaney and Ashley Anderson represented him.

On April 28, 2010, he proceeded to a jury trial pursuant to which he was found guilty. The Honorable John C. Hayes, III, sentenced him to confinement for thirty years for possession with intent to distribute heroin, 3rd offense. A notice of appeal was filed on his behalf. An appeal was perfected. The South Carolina Court of Appeals affirmed the applicant's conviction and sentence. A remitter was thereafter issued on July 19, 2013. He filed a timely PCR application January 30, 2014. The State filed its return May 19, 2014 and he is represented here today by Mr. Michael Hemlepp.

THE COURT: And it was an unpublished opinion?

MR. JOHNSON: Yes, ma'am. And I believe the issue of the appeal was concerning the amendment of the

1 indictment.

2 THE COURT: Okay. And I don't think I have a copy
3 of that.

4 MR. JOHNSON: Let me see if I have an extra copy,
5 Your Honor.

6 THE COURT: Because when I read it I was totally
7 confused about the amendment of the indictment.

8 MR. HEMLEPP: This is isn't an official copy, but
9 it is one I just printed out if you would like a copy.

10 THE COURT: That's fine.

11 (Whereupon, a document given to the Court).

12 MR. JOHNSON: I do apologize, Your Honor, for not
13 having it in your packet.

14 THE COURT: That is all right. I didn't realize I
15 didn't have it until later on.

16 There are copies of the indictment, but I don't
17 know which one. I have I three separate copies of the
18 indictment and I don't know which one is which. I
19 don't know that is an issue.

20 MR. JOHNSON: And that would be our argument, Your
21 Honor, because it was dealt with on direct appeal it
22 is not an issue for PCR, but will I try to figure out
23 which is which.

24 THE COURT: Are you ready?

25 MR. HEMLEPP: I am ready. I wanted give the Court

1 time.

2 THE COURT: I kind of skimmed it.

3 MR. HEMLEPP: Thank you, Your Honor. May it
4 please the court.

5 THE COURT: Yes, sir.

6 MR. HEMLEPP: I would call the applicant to the
7 stand, Mr. Jerome Watson.

8 JEROME WATSON, called as a witness, having been
9 duly sworn by the clerk, was examined and testified as
10 follows:

11 THE COURT: If you please state your full name for
12 the record.

13 THE WITNESS: Jerome Watson.

14 THE COURT: Thank you.

15 MR. HEMLEPP: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. HEMLEPP: Thank you.

18 DIRECT EXAMINATION

19 BY MR. HEMLEPP:

20 Q Mr. Watson, would you please tell us your full name?

21 A Jerome Elton Watson.

22 Q And how old are you Mr. Watson?

23 A Fifty-three.

24 Q Okay. And where do you currently reside?

25 A In Rock Hill, South Carolina.

1 Q Okay. Now are you in the Department of Corrections?

2 A Yes.

3 Q And when did you go to the Department of Corrections?

4 A 2010, April 28th I believe it was.

5 Q Okay, and that was the result of a sentence, was it
6 not?

7 A Yes.

8 Q What was that sentence?

9 A I was under the impression it was 15 with the max
10 sentence, but on trial I received 30. I had no knowledge other
11 then me getting 15.

12 Q Okay. You received a thirty-year sentence?

13 A Yes.

14 Q And what county did you get that from, York County?

15 A York County.

16 Q Okay. And was that the result of a guilty plea or a
17 trial?

18 A A trial.

19 Q And there was a jury involved?

20 A Yes.

21 Q Was was the charge upon which you were convicted and
22 then sentenced?

23 A Possession with intent.

24 Q And what drug?

25 A Heroin.

1 Q You were accused of?

2 A Heroin.

3 Q When did you get arrested for that charge?

4 A 2009. I don't know exactly when it was. In 2009.

5 Q And when you got served with the warrant did you go to
6 jail? You went to the detention center?

7 A Yes. Yes.

8 Q Were you ever bonded out?

9 A Yes.

10 Q Okay. How much time did you serve in the detention
11 center do you remember?

12 A I think it was ten months I think it was. Something
13 like that.

14 Q Did you have the occasion to obtain a lawyer to
15 represent you?

16 A I was appointed one from the county. From the courts.

17 Q Was that while you were in detention center or after
18 you got out?

19 A While I was in detention center.

20 Q And was that a public defender?

21 A Yes, it was.

22 Q Who was that?

23 A Eric Delaney.

24 Q Eric Delaney. Now Mr. Watson, I am going to interrupt
25 you at this point. This is a really big courtroom and your

1 testimony is very important for the Court, as well as Mr.
2 Rutledge Johnson with the Attorney General's office has to hear
3 you. I will ask that you speak up at about as loud as I am.
4 Can I do you that?

5 A Yes.

6 Q Are you nervous today?

7 A Yes, very nervous.

8 Q Who was your lawyer again? State that again.

9 A Eric Delaney.

10 Q Okay. And Mr. Delaney represented you on this charge.

11 Did you have any other lawyers?

12 A He had an associate. I can't remember her name right
13 now. I can't remember her name. I know it is a female that
14 worked with him.

15 Q Okay. Do you know Ashley Anderson?

16 A That sounds like her name.

17 Q That's her name?

18 A Yes.

19 Q Did she ever meet with you at the jail?

20 A No.

21 Q When was the first time you met it her?

22 A When I came up here to the Moss Justice Center to meet
23 them in the office.

24 Q Did Mr. Delaney meet you at the jail?

25 A I think I met him once in the jail. I think I met once

1 in jail.

2 Q Did you discuss your case?

3 A Well, he told me that he would be my lawyer and things
4 like that to that nature. That was it.

5 Q Did you talk to him about any possible defenses you
6 might have?

7 A No.

8 Q Did you talk to him about how the process would work?

9 A No.

10 Q Okay. At what point -- now you got bonded out after
11 about ten months?

12 A Yes.

13 Q Do you remember about what date that was; what month
14 and year?

15 A No, I can't remember right off my head. I can't
16 remember right off.

17 Q Okay. When you got out of the detention center did you
18 have the opportunity to met with Mr. Delaney?

19 A Yes.

20 Q You testified at least one time you went to his office?

21 A No, I been up to the office about twice. May be about
22 twice. He was discussing the case and advising me that we had
23 to basically be -- they could only charge me with possession,
24 which all it was was possession. The State offered me ten years
25 and I advised Mr. Delaney why would I take ten years when 15 is

1 the max. He said he understood. He would go talk to the
2 solicitor and see if they could come up with a better deal. At
3 this time the deal was going up. He come back with 12. Again I
4 said to him why would I take 12 if 15 is the max. From that
5 point on we went straight to trial.

6 Q And going to trial was your decision?

7 A Excuse me, sir.

8 Q You made the decision to go to trial?

9 A Yes.

10 Q And you went to trial. Were you represented by both
11 Mr. Anderson and Miss Delaney. I mean, Mr. Delaney and Miss
12 Anderson?

13 A Yes.

14 Q We are going to get to the trial in a moment. At the
15 end of the trial when you were convicted and you were sentenced,
16 what was the sentence?

17 A Thirty years.

18 Q Okay. Did that surprise you?

19 A Yes, it did surprise me.

20 Q Why?

21 A Because I was under the impression that 15 was the max.

22 Q Had you ever talked to Miss Anderson at all about what
23 the max on this? What the sentence range on this was?

24 A Neither one of them ever told me what the max was.

25 Q I'm sorry?

1 A Neither one of them told me was the max was. Again
2 when I advised him why would I a take ten or 12 when 15 is the
3 max. I was truly under the impression that 15 was the max. So
4 to receive the 30 just blew my mind.

5 Q Had you known that the maximum was thirty --

6 A I would have took the ten.

7 Q You would have plead guilty?

8 A I would have plead guilty, yes.

9 Q Okay.

10 A In all honesty.

11 Q I hand you a document that has not yet been marked.

12 MR. HEMLEPP: May I approach the witness?

13 THE COURT: Yes.

14 Q Can you tell us -- don't tell us what it says. Just
15 tell us what is that?

16 A This is about a letter I had wrote to Mr. Delaney.

17 Q Is that your signature at the bottom?

18 A Yes, it is.

19 Q And what is the date?

20 A It is on the 20th date of July, 2010.

21 Q Okay. Thank you.

22 MR. HEMLEPP: Your Honor, I would move to admit
23 as applicant's 1?

24 THE COURT: Any objection?

25 MR. JOHNSON: Just give me a moment, Judge, this is

1 the first time I've seen this document.

2 No objection. It says basically what he he just
3 testified to.

4 THE COURT: Then I will admit it.

5 MR. HEMLEPP: Thank you, Your Honor.

6 (Applicant's Exhibit 1, Letter, received in
7 evidence as of this date.)

8 Q How long after your trial did you write that letter?

9 A About a week after. Two weeks after.

10 Q Okay. If I were to tell you that your trial was April
11 28th and that was dated in July, would you agree with that?

12 A Yeah, I would agree with that.

13 Q And what was the reason that you wrote that letter?

14 A Because I just wanted some understanding of the time
15 that I received and actually I wrote it in intention of getting
16 relief from my appeal, to my appeal lawyer. I was improperly,
17 you know, advised of the time that I could get. If I would have
18 been probably advised of the time I could receive going to trial
19 and lose trial and just like I stated I would have taken the
20 plea.

21 Q You would have taken the 10 years?

22 A The 10 years or the 12.

23 Q All right. Either the ten or 12 that was offered?

24 A Either or.

25 Q Were those the only two offers that were made to you?

1 A Sitting on trial I think Mr. Delaney said they had 14
2 on the table, which also I just couldn't grasp to understand at
3 the time. I'm looking like, 15 is the max and you're saying 14
4 is on the table. We're in the middle of trial. Like again, I
5 said I am not taking it. You know, not knowing the law, not
6 knowing what was going on. I'm just confused. Confused.

7 Q You were confused about why the offer was going up?

8 A Yes.

9 Q I want to make something clear for the Court. Mr.
10 Delaney was your appointed counsel; is that correct?

11 A Yes.

12 Q And were all of your discussions with regards to pleas
13 with Mr. Delaney?

14 A Yes.

15 Q Did you ever have discussions with regards to pleas or
16 offers -- did you ever discuss that with Miss Anderson? Was she
17 involved in that part of the case?

18 A He was the leading attorney in it. I mean, she sat on
19 occasion there with him but my discussions were basically with
20 Delaney.

21 Q Okay, now, lets go to -- well, actually if I can
22 withdraw.

23 On the issue of your decision to go forward because you
24 believed that the charge carried 15 years and did not know that
25 it carried 30, is there anything else that you believe on that

1 issue that Judge Lee needs to know in making her decision?

2 A No more than the fact if I understood if I was facing
3 30 years, Your Honor, I truly would have took the 10 years. On
4 that issue that is all I can say about it.

5 Q Okay. Okay. Let's go to the trial itself. Do you
6 remember the circumstances of the trial?

7 A Vaguely.

8 Q And you had an opportunity to read your transcript?

9 A Yes.

10 Q And did you talk to your appellant counsel?

11 A No.

12 Q No?

13 A No.

14 Q The appeal was handled on the record?

15 A On the record.

16 Q You never talked to your appellant counsel?

17 A Never met them.

18 Q All right. But you were aware an appeal had been
19 filed?

20 A Yes.

21 Q And you are aware that appeal had been decided by the
22 Court of Appeals?

23 A Yes.

24 Q Okay. One of the issues that was raised on appeal --

25 MR. JOHNSON: Objection, Your Honor. I have to

1 move to strike anything about ineffective assistance
2 of appellant counsel. That was not raised in the
3 application and therefore it is not proper in this
4 Court.

5 MR. HEMLEPP: I am not raising it on ineffective
6 assistance of counsel. I do want to refer to what was
7 decided by the Court of Appeals.

8 THE COURT: That is fine.

9 Q In the decision, one of the issues that was raised was
10 the issue about expert testimony by somebody who works for the
11 solicitor's office. Do you recall that portion of the trial?

12 A Yes, I do.

13 Q Okay. What was that about?

14 A They allowed an employee of the State to come in and
15 testify as expert witness in the field of heroin versus how much
16 a user is suppose to have versus a dealer suppose to have. I
17 feel as though it went against me because you are not a user. I
18 mean, for you to say as being a narcotic's officer you have to
19 be a dealer with that amount of drugs on you. It's just not
20 true. It's just not true. A user would go out and purchase his
21 drugs for the week, for the month or whatever, so he don't have
22 to be in the streets in that type of environment.

23 Q Were you an addict?

24 A Yes, sir.

25 Q For how long?

1 A Years. Years.

2 Q And was the drug -- was your addiction heroin?

3 A Yes, sir.

4 Q And did you in fact use heroin on a regular basis?

5 A Yes, sir.

6 Q The quantities that were being discussed in your trial,
7 is that a quantity that you personally used in the past?

8 A Yes, or more.

9 Q Okay. And you recognize that's illegal?

10 A Yes.

11 Q And that's possession of illegal drug?

12 A Yes.

13 Q So the testimony that was provided by a member of the
14 solicitor's office, which is reflected in the transcript, do you
15 believe that was accurate?

16 A No, it wasn't.

17 Q His opinion was accurate?

18 A No, it wasn't. My intent wasn't to sell it. It was
19 just like I thought as we was going forward with Delaney on just
20 possession. How intent came in into foreplay I couldn't
21 understand that because it truly was just possession.

22 Q Now, are you familiar with the law regarding -- are you
23 a lawyer?

24 A No.

25 Q How far did you go in school?

1 A Twelfth grade.

2 Q Twelfth grade?

3 A Yes, sir.

4 Q Did you graduate?

5 A Yes, sir.

6 Q High school?

7 A Yes.

8 Q So you have a high school diploma from where?

9 A Central High in New Jersey.

10 Q And did you have any schooling after that?

11 A No, sir.

12 Q What was your profession?

13 A Construction.

14 Q You worked construction?

15 A Yes.

16 Q Your whole life?

17 A Yes.

18 Q So, do you have any training in the law?

19 A No, sir.

20 Q Are you familiar with the law regarding what is an
21 expert and what isn't an expert?

22 A No, sir.

23 Q And did you rely on your attorneys to raise the issue
24 before the Court?

25 A I relied on my attorneys to do everything for me

1 because I don't know the law. I am relying on you right now on
2 to know the law.

3 Q Right. Have you read the opinion by the Court of
4 Appeals that was issued by the Court of Appeals? Was that sent
5 to you?

6 A I can't recall right now. I can't recall.

7 Q Okay. Now, the issue about being informed of the
8 maximum sentence and the issue regarding the expert testimony in
9 Court, are there other issues that you believe that Judge Lee
10 should consider in ruling on your application for post
11 conviction relief? And Mr. Watson before you answer, I know
12 there was an issue regarding the indictment. That has been
13 dealt with by the Court of Appeals.

14 A I was just thinking on that. That is what I was going
15 to say next, I can't think of anything else right off hand other
16 then the stuff that I have sent to your office for that to be
17 amended. Like I'm quoting cases because I am no lawyer, but I
18 have been in the law library doing things that I put on
19 paperwork that I sent to you.

20 Q And /-FRBG the Court is aware of the law. I am talking
21 about any factual issues with regard to your representation by
22 Mr. Delaney or Miss Anderson?

23 A No, I don't have any.

24 Q Thank you Mr. Watson. Answer any questions that the
25 Attorney General may have or the Court may have?

1 MR. JOHNSON: Just briefly Your Honor.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 MR. JOHNSON:

5 Q Mr. Watson, your testimony as many that you are you
6 don't have any training in the law and so you relied on your
7 attorney because you don't know the law, correct?

8 A Yes..

9 Q But you do no that drugs are illegal?

10 A Yes.

11 Q And possession of heroin is not legal?

12 A Yes.

13 Q And possession of bindles of heroin is illegal?

14 A Yes, that is just possession not intent.

15 Q But you do admit that were you in possession of heroin?

16 A Yes, I do admit I was in possession.

17 Q And you have been convicted before of possession with
18 intent to distribute heroin?

19 A Yes.

20 Q And possession of heroin and possession of crack,
21 correct?

22 A Yes.

23 Q And conspiracy relate to heroin, correct?

24 A Correct.

25 Q So there is absolutely no doubt you were in possession

1 of heroin that day?

2 A There is no doubt I was in possession of heroin that
3 day.

4 MR. JOHNSON: That's is all I have Your Honor.

5 MR. HEMLEPP: I have nothing, Your Honor. Thank
6 you Mr. Watson.

7 THE COURT: I am thinking. Mr. Watson when you
8 had conversations with your attorney about the charges
9 was there any discussion about how your criminal
10 history, your prior convictions would impact
11 sentencing.

12 MR. WATSON: No, ma'am. In all honesty I was under
13 the impression I was still under the first offense
14 down in South Carolina. I didn't know that my record
15 coming from New Jersey would enhance it to the third.

16 THE COURT: So your prior convictions were not in
17 South Carolina?

18 MR. WATSON: No, ma'am.

19 THE COURT: That is all I have. Anything further?

20 MR. JOHNSON: Nothing from the State.

21 MR. HEMLEPP: No Your Honor.

22 THE COURT: Thank you.

23 (Witness excused.)

24 THE COURT: Any further witnesses.

25 MR. HEMLEPP: Your Honor, before the applicant

1 rests if we could make sure that the record is
2 complete with the Court.

3 THE COURT: Yes, sir.

4 MR. HEMLEPP: The Court should have of course the
5 transcript of the hearing.

6 THE COURT: Yes.

7 MR. HEMLEPP: The appellant's application for post
8 conviction relief.

9 THE COURT: Yes, I have that.

10 MR. HEMLEPP: The sentencing Order of Judge Hayes.

11 THE COURT: I have that.

12 MR. HEMLEPP: April 28th.

13 THE COURT: And I have the verdict form that was
14 sent to the jury.

15 MR. HEMLEPP: Yes, Your Honor.

16 THE COURT: Signed by them as well as all three
17 copies of the indictments.

18 MR. HEMLEPP: Yes, Your Honor.

19 THE COURT: And then of course what has been
20 handed to me this morning is the opinion of the Court
21 of Appeals.

22 MR. HEMLEPP: Yes, Your Honor. I don't know that
23 we have actually made that any kind of exhibit. I
24 would ask the Court to consider making it a Court
25 Exhibit because it is important for our case.

1 THE COURT: It is something I would look at
2 regardless, so I don't think it needs to be a made an
3 exhibit. But usually I either look at it or I will
4 refer to it at some point before I make a final
5 decision just to see exactly what issues were raised
6 before the Court of Appeals.

7 MR. HEMLEPP: And there is some issues I would
8 like to raise from that opinion before we close this
9 hearing.

10 THE COURT: Okay.

11 MR. HEMLEPP: With that Your Honor -- and the
12 letter that has been admitted.

13 THE COURT: And the exhibit.

14 MR. HEMLEPP: Thank you. With that the applicant
15 would rest.

16 MR. JOHNSON: The State would Eric Delaney.

17 ERIC DELANEY, called as a witness, having been duly
18 sworn by The Clerk, was examined and testified as
19 follows:

20 THE COURT: State your full name.

21 MR. DELANEY: Eric Delaney.

22 DIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Good morning Mr. Delaney?

25 A Good morning.

1 Q Can you tell the Court how long you have been
2 practicing criminal law?

3 A Approximately -- criminal law for approximately eight
4 eight and a half years.

5 Q And how did you become involved with this case?

6 A I was appointed to represent Mr. Watson.

7 Q Do you remember when you were appointed?

8 A Looking at his file he had an initial appearance was
9 scheduled for October the 26th of 2009. So it would have been
10 just prior to that. A couple months prior to that. He had a
11 date of arrest of September 24th. So end of September 2009.

12 Q And where would that meeting have taken place?

13 A Where would the meeting have taken place?

14 Q Yes.

15 A It would have been -- I believe all my meetings with
16 Mr. Watson took place at the office.

17 Q At some time later he bonded out?

18 A Yes. Yes.

19 Q And did you file a Rule 5 Brady, Discovery motion in
20 this case?

21 A Yes, sir.

22 Q And you received all that from the solicitor's office?

23 A I did.

24 Q And did you discuss all that with Mr. Watson?

25 A I did.

1 Q And did he seem to engage in those conversations?

2 A Yes, that is correct.

3 Q And originally what was the first charge that he was
4 charged with?

5 A The charge that we dealt with initially was the
6 possession with intent to distribute the heroin.

7 Q And did you do any research into his prior criminal
8 history?

9 A Yes, from the NCIC report that we got -- it was pretty
10 early on -- it was a situation where looking at his prior record
11 it was going to be a third offense.

12 Q And did you explain that to Mr. Watson?

13 A From what I recall yes that was discussed with Mr.
14 Watson.

15 Q And did he seem to understand that conversation?

16 A Yes.

17 Q And as far as the sentencing range was concerned what
18 would have been the maximum penalty for this charge?

19 A Maximum penalty to this charge 30 years.

20 Q And was there a minimum?

21 A Minimum ten years.

22 Q And did you explain that to Mr. Watson?

23 A From the best that I can recall in this case that, yes,
24 this was something that was discussed between myself and Mr.
25 Watson. I know his wife at the time she was present during some

1 of these conversations that we had had. But best that I can
2 recall, especially when we were getting close to a decision
3 having been made and trial on the horizon, that is something
4 from what I remember my advice to Mr. Watson was that he should
5 take the deal that was being offered because of his exposure,
6 potential exposure should things go bad at trial.

7 Q And as he testified there was a few offers that the
8 State provided. One ever 12 years, one ever 10 years?

9 A Yeah, that is correct, and I think as we went through
10 the process the offer would go up a little bit. I think Mr.
11 Watson had mentioned a 14-year offer and that was an offer that
12 from my best recollection was made in the middle of trial. So
13 we had an offer of I believe a ten years was the best offer that
14 we had and that was before trial.

15 Q And whose decision was it to reject those offers and
16 pursue a jury trial?

17 A That would have been ultimately Mr. Watson's decision.

18 Q And to the best of your recollection he made that
19 decision with the knowledge that he was exposed to 30 years?

20 A Yes, sir.

21 Q What if any defenses or trial strategy did you have in
22 this case?

23 A I think Mr. Watson had testified to some of this, but
24 our main strategy was that he was a user. He was not a seller,
25 a dealer. This was a possession case. I believe that was our

1 strongest argument going in to trial. But in trial we ran into
2 complications with that, with the whole purchasing indictment
3 and charge and what that charge carried. That was one of the
4 problems we had.

5 Q And in that trial -- correct me if I am wrong -- was
6 there evidence that there was a hand-to-hand transaction in the
7 parking lot between two cars?

8 A Yes.

9 Q And then Mr. Watson was ultimately found with 24 bindle
10 of heroin on his person?

11 A That's correct.

12 Q And so the jury would have had his testimony saying
13 that he is a bad addict verses a dealer, correct?

14 A Yeah, I guess that is a correct summary.

15 Q And that is a factual issue for the jury to decide,
16 right?

17 A Yes.

18 Q And ultimately the jury decided that he was actually
19 possessing with the intent to distribute?

20 A They did, yes.

21 Q Now Mr. Watson's testimony is that if he knew the max
22 was 30 he would have plead guilty. But your testimony is that
23 he knew the max was 30?

24 A The best that I can recall from the conversations that
25 we had in my office that he was, you know, that is something

1 that I made him aware of and that was one of my main concerns
2 going into trial was his exposure in this case.

3 Q Is it in your typical practice to advise your clients
4 of the maximum penalties they face?

5 A It is.

6 Q Jumping a head to the trial and the specific allegation
7 about the expert testimony by the employee of the solicitor's
8 office, you did in fact object to that person being qualified as
9 an expert?

10 A From what I can recall, yes, there was a basic
11 objection made to that.

12 Q So a general objection?

13 A Yes.

14 Q And the Court of Appeals found that the specific
15 objection concerning that expert was unpreserved as to the issue
16 of -- the basic argument about the individuals a user versus
17 dealer, correct?

18 A Correct.

19 Q Is there any reason why you wouldn't have objected to
20 that?

21 A No.

22 Q And you tried cases before in front ever Judge Hayes,
23 correct?

24 A That's correct.

25 Q And even if you had made that objection do you think

1 Judge Hayes is going to let that testimony in?

2 MR. HEMLEPP: Your Honor, I object. That is
3 speculation.

4 MR. JOHNSON: Just basing it off of prior his prior
5 experience in front of Judge Hayes, Your Honor.

6 MR. HEMLEPP: We know what happened in this case,
7 Your Honor, that the judge did let it in, but what he
8 would do in other cases is speculation.

9 THE COURT: I would have to sustain the objection.

10 Q Did you feel that the general objection would have
11 covered that testimony?

12 A Yeah, I think at the time. Looking back, you know, do
13 I wish things would have been done a little differently, sure.

14 Q In your professional opinion, do you think the expert's
15 testimony outweighed all the other evidence in the case?

16 A No. It had an impact but I don't think it outweighed
17 everything else.

18 Q So it didn't change the outcome of this trial?

19 MR. HEMLEPP: Objection, Your Honor, again
20 speculation.

21 MR. JOHNSON: I will rephrase the question.

22 THE COURT: Rephrase.

23 Q Mr. Watson was caught with 24 bindles of heroin,
24 correct?

25 A Correct.

1 Q And that is more then a typical user based on an expert
2 testimony would have?

3 A I don't know if I agree with that.

4 MR. HEMLEPP: Your Honor, again, I object. The
5 question here is was that expert testimony objected to and
6 preserved for the record which we know was not because the Court
7 of Appeals said it was not. Now whether that expert testimony
8 was true or not true if ruled upon -- Mr. Delaney's opinion on
9 that is irrelevant. The question is, was that objection
10 preserved for appellant review and the Court of Appeals said in
11 their opinion no, it was not.

12 THE COURT: I think he can testify as to in the
13 course of representing Mr. Watson what his thought was
14 in terms of the testimony -- the evidence that was
15 available against Mr. Watson and how he would have
16 reacted to that evidence, and so I think he can give
17 based upon his view what he believed the strengths and
18 weaknesses were and what he was prepared to defend.
19 So, that is the way I will answer that objection.

20 MR. HEMLEPP: Thank you, Your Honor.

21 Q So your answer to that question is, you don't think it
22 changed the outcome of the case?

23 A The expert testimony by?

24 Q Not objecting to that specific expert testimony? I
25 withdraw that question.

1 A That's a tough question for me to answer honestly.

2 MR. JOHNSON: That is all the questions I have of
3 this witness, Your Honor. Please answer anything Mr.
4 Hemlepp may ask.

5 MR. HEMLEPP: May it please the court.

6 THE COURT: Yes, sir.

7 MR. HEMLEPP: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HEMLEPP:

10 Q You have been with the public defender's office and if
11 I get this wrong, I apologize.

12 You say you have been with the public defender's office
13 between eight, eight and a half years?

14 A Yes, that is about right.

15 Q Here in York County the whole time?

16 A York until about the last three years. I have been in
17 Union County for a little over three years now, so same Circuit.

18 Q Same circuit. You still work for Mr. Dest?

19 A Yes, sir.

20 Q And this occurred while you were in York?

21 A That is correct.

22 Q Or did you come from Union?

23 A I was working at the York office at that time.

24 Q What was your average case load here in York?

25 MR. JOHNSON: Objection to relevance.

1 MR. HEMLEPP: I'm laying a foundation, Your Honor.

2 THE COURT: I will overrule the objection.

3 A Honestly, I don't recall what our case load was. It
4 was -- I wouldn't say it was a light case load. It was heavy.

5 Q And during your time here in the York County Defender's
6 Office did you have occasion to try a lot of cases?

7 A Yeah, quit a few.

8 Q A guess, what would quite a few be? More than a dozen,
9 more than 100?

10 A I would say 20.

11 Q Okay. Okay. How many of those -- what percentage --
12 and this is a guess, I know, how many of those were drug cases?

13 A I probably tried -- I would say ten, maybe close to a
14 dozen drug cases.

15 Q Okay. What about drug case that is were handled either
16 through another disposition? Just drug cases that were assigned
17 to you?

18 A Quite a few. I had a quite a long drug -- I guess you
19 could say rotation. I had a quite a few drug cases here in
20 York.

21 Q And I am really just asking this because I don't know
22 how this works and Judge Lee is not from York County and may not
23 either.

24 When you say drug rotation what does that mean? Is that
25 within your office? Do you have certain designated defenses

1 that you handle?

2 A Yes. We are paired up. The way in works in York we
3 were paired up with certain solicitors and if that solicitor had
4 a drug case rotation and we take that and work those cases with
5 them.

6 Q Okay. When you were handling drug cases here in York
7 County for the public defender's office during that drug
8 rotation and you would negotiate with the solicitor?

9 A That's correct.

10 Q Did the solicitor's office also have rotation? Did you
11 have the same solicitor every time or was it always different?

12 A No, I was paired up to normally the same two, three
13 solicitors.

14 Q Okay. And you kept a file?

15 A Yes.

16 Q Could you tell us in your file how you noted discussing
17 to Mr. Watson the possible sentences he was -- does your file
18 reflect that?

19 A No, it doesn't.

20 Q And in direct examination I believe you said, "From
21 what I can recall"; "The best I can recall"; "From what I can
22 remember", "But as I recall", you said that about five or six
23 times?

24 A I did.

25 Q So you don't have actually a notation in your file that

1 you had that discussion?

2 A No, sir.

3 Q Okay. And you had many clients?

4 A I did.

5 Q Do you remember receiving -- and I don't know that you
6 have seen that. Do you remember receiving this letter that has
7 been marked as Applicant's Exhibits One? Do you remember
8 receiving that letter?

9 A No.

10 Q Okay. Do you get a lot of letters from the Department
11 of Corrections?

12 A Yes. Yes.

13 Q Okay. Could you have received that letter and you just
14 simply forgotten?

15 A I could have.

16 Q Okay. Thank you. You testified on direct examination
17 that your main concern -- well, rather that the strategy of the
18 case was that this was a possession case and not a PWID case?

19 A Yes.

20 Q Your argument to the jury would be he didn't intend to
21 distribute, he intended to use it?

22 A Yes.

23 Q Okay. And Mr. Johnson, the attorney general, brought
24 up the issue that there was a hand-to-hand that law enforcement
25 testified about a hand-to-hand deal? Was he identified in that

1 hand-to-hand deal, your client?

2 A Yeah. From what I can recall, yes.

3 Q And the transcript can speak for itself?

4 A Right. Right.

5 Q But he was also caught with drugs?

6 A Yes.

7 Q So in that deal he was the purchaser?

8 A That is what our argument was yes. Yes.

9 Q Okay. Well, there is no evidence that he was not the
10 purchaser in this case was there?

11 A I don't think so.

12 Q After the deal he had the drugs?

13 A Sure, yes.

14 Q So after the deal if he had the drugs then he was the
15 one that purchased them?

16 A I agree.

17 Q Do not all users purchase?

18 A I agree with that.

19 Q Okay. So, the fact that somebody testified on an
20 opinion, somebody who works for the prosecution testified their
21 opinion that the only reason somebody would have those drugs was
22 to distribute them to someone else, that is a material fact;
23 would it not be?

24 A Sure.

25 Q So the idea that it wouldn't effect the outcome of the

1 trial when the whole strategy of the trial was that it wasn't a
2 PWID, but it was actually possession, you are in effect asking
3 the jury to find a lesser included offense of possession. That
4 could change the outcome of the trial. It wouldn't change the
5 outcome of the trial to a not guilty, but it could change the
6 outcome of a trial to a lesser included offense, could it not?

7 A I don't disagree.

8 MR. HEMLEPP: May I have a moment, Your Honor?

9 THE COURT: Yes, sir.

10 MR. HEMLEPP: Mr. Delaney, thank you so much for
11 your cooperation. Your Honor, I have no further
12 questions for this witness.

13 THE COURT: Any redirect?

14 MR. JOHNSON: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Delaney, you remember the trial itself?

18 A I do.

19 Q And there was Jackson v Denno Hearing in this case?

20 A Yes.

21 Q And so there was testimony that Mr. Watson admitted to
22 selling heroin, is that not correct?

23 A I think that's what the -- I don't think Mr. Watson I
24 think through his testimony he never agreed with that and
25 through my meeting with him he never agreed to those statements,

1 but those were statements that narcotic officers were making,
2 yes.

3 Q And that's the statement that the jury would have
4 heard?

5 A I believe so, yes.

6 Q And there is also a statement that he would rather sell
7 to white people because he did not want to take the chance of
8 getting robbed. Is that another statement that he would have
9 given -- that the jury would have heard from law enforcement?

10 A That is what law enforcement testified to, yes.

11 Q And there is an identification of Mr. Watson doing a
12 hand-to-hand transaction, correct?

13 A That's what I don't recall, whether it was an actual ID
14 of doing a hand-to-hand, but there was an officer that was
15 sitting in the packing lot that were observing these two cars
16 next to each other and obviously you heard what they found in
17 Mr. Watson's possession. But I don't recall an actual truly a
18 hand-to-hand, but I could be mistaken with that.

19 MR. HEMLEPP: Your Honor, I would like to object
20 at this point. This is a bench trial and not a jury
21 trial, but I would object. This is not true redirect.

22 THE COURT: I will overrule. I think it is
23 related to the issues that were raised on cross.

24 MR. HEMLEPP: Thank you, Your Honor.

25 MR. JOHNSON: That's all I have Your Honor.

1 THE COURT: I don't have any questions you may
2 step down.

3 MR. DELANEY: Thank you.

4 (Witness excused.)

5 MR. JOHNSON: The State would call Ashley Anderson.

6 ASHLEY ANDERSON, called as a witness, having been
7 duly sworn by the clerk, was examined and testified as
8 follows:

9 THE COURT: State your full name please.

10 MS. ANDERSON: Ashley Anderson.

11 DIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q Good morning Miss Anderson. Do you remember becoming
14 involved in this case?

15 A Yes.

16 Q And how so?

17 A I was basically recruited as what we would say a term
18 of second chair, so assisting with the trial. I worked with
19 this case on the trial but I don't recall prior to that. I
20 don't think I met with Mr. Watson prior to sort of final trial
21 preparation.

22 Q Were you involved in any of the discussions that Mr.
23 Watson would have had with Mr. Delaney?

24 A No.

25 Q So as far as whether or not Mr. Delaney would have

1 advised Mr. Watson of the maximum penalty you have no knowledge
2 of that?

3 A I have no knowledge. I have my, sort of, trial notes
4 file. I include in the file that I spoke with Mr. Watson at
5 some point. I believe from the transcript I did the direct
6 examination of him. So I have some notes in there that at some
7 point I talked to him, but it looks to be about the content of
8 his testimony and I don't believe I had any sort of penalty
9 offer discussions and I know I did not met with him prior to the
10 trial preparation.

11 Q Did you take part in objecting to the expert's
12 testimony?

13 A I can look to see. I believe Mr. Delaney did the
14 actual cross examination. What I do recall from this case and I
15 think I am correct going on this is that it was sort of a
16 surprise I would say as to Mr. Brown sort of coming in to the
17 case. My recollection is he was not on the initial State's
18 witness list and thus was not subject to the sequestration
19 order. This was a trial. I do remember there were a lot of
20 unusual things happening. Some surprises. The creation or
21 addition of the purchasing charge.

22 My recollection is that at some point during the State's
23 case I believe after several of the officers had testified the
24 State essentially called Mr. Brown up and wanted at that point
25 to add him to this witness list and admit him as expert. I

1 think this is the case that I recall walking into the courtroom
2 and seeing several of the officers who had already testify
3 speaking with Mr. Brown at that point. I think he got a copy of
4 the drug report. So I will say it was complete sort of surprise
5 that Mr. Brown was going to be involved in the case at all. So
6 it did put us in sort of difficult position in the middle of
7 trial and everything going on having to sort of having to adjust
8 to the fact that this was a witness we had know notice of. We
9 had no notice of the content of his testimony. He hadn't been
10 subject to sequestration. So, our intent was certainly to
11 object to that and try to sort of object to that, but I will say
12 the context of that is this was a very sort of unexpected
13 occurrence.

14 MR. JOHNSON: That is all the questions I have for
15 this witness. Thank you, Miss Anderson. Please
16 answer anything Mr. Hemlepp has.

17 MR. HEMLEPP: May I have a moment, Your Honor.

18 THE COURT: Yes.

19 MR. HEMLEPP: Your Honor, I have no questions.

20 THE COURT: I don't have any questions. You may
21 step down. Thank you.

22 (Witness excused.)

23 MR. JOHNSON: The States has no further witnesses.

24 THE COURT: Any rebuttal?

25 MR. HEMLEPP: No, thank you, Your Honor.

1 THE COURT: Is there any argument at this time?

2 MR. HEMLEPP: In making the Court's decision of
3 course the credibility of the witnesses in the
4 testimony before the Court I think is important on the
5 issue of the knowing -- the decision to go to trial
6 rather than take a plea. I believe that we met our
7 burden. That my client was here to testify
8 affirmatively that he did not know what the maximum
9 penalty was. And in fact not long after confirmed in
10 writing he did not know what the maximum penalty was.
11 I think his credibility is solid on that and it would
12 have changed the outcome of the trial -- the outcome
13 of this proceeding in that he would have plead guilty
14 to the offers that were made to him had he known that
15 the maximum was thirty. I would ask the Court to the
16 take everything into consideration of that.

17 With regards to the expert testimony, I would ask
18 the Court to read carefully the opinion by the Court
19 of Appeals. The issue was not ever ruled upon by the
20 Court of Appeals because the Court of Appeals
21 specifically said we find Watson failed to preserved
22 for appellant review the issue of whether the trial
23 court erred in admitting expert testimony.

24 Whether they have preserved it or not it isn't
25 important. This is a case where pretty much everybody

1 who has testified has admitted that Mr. Watson's
2 defense, his argument to the jury was not that he was
3 not guilty, but that he was guilty of a lesser
4 included offense of possession. So the expert
5 testimony, a person from the solicitor's office, one
6 of the parties to the action, getting on the stand and
7 making testimony that only a user would use this much.
8 Only a dealer would use this much. That's a critical,
9 critical piece of testimony when the jury is trying to
10 make the decision of whether or not this is a
11 possession case or whether this was an intent to
12 distribute case.

13 I would ask the Court to consider all of this
14 carefully and rule on it.

15 THE COURT: From the State.

16 MR. JOHNSON: Yes, Your Honor. The State's
17 position is to go first to the credibility of
18 witnesses. I do believe that Mr. Delaney is more
19 credible than Mr. Watson in explaining that he, not
20 only has some recollection of explaining that this is
21 a thirty-year max based on his prior criminal history.
22 He said he ran NCIC report. He found that he had many
23 prior convictions in New Jersey and advised him this
24 would be a third offense.

25 I had specifically asked Mr. Delaney what is the

1 maximum penalty? He said thirty years. I said did
2 you explain that to your client? He said to the best
3 of my recollection, yes. Just because he doesn't have
4 any specific notes is not credible testimony that he
5 didn't explain that to him.

6 Mr. Watson has been in the criminal justice system
7 before. He has heroin with possession with intent to
8 district heroin and our position is that Mr. Delaney
9 would be more credible on that issue than Mr. Watson.

10 As to the expert, as the Court of Appeals states
11 it was unpreserved. They didn't object to that.
12 That's not an issue of contention. What the real
13 issue is whether or not that objection would change
14 the outcome of the trial. If you look at all the
15 evidence presented to the jury the State's position
16 there is overwhelming evidence of Mr. Watson's guilt
17 in this case.

18 Number one, he admits that he had the 24 bindles of
19 heroin. Not only at the trial but also on the stand
20 here today.

21 Number two, if you look at the Jackson v. Denno
22 Hearing and the testimony that comes in, not only is
23 there observation of Mr. Watson transaction with
24 another individual, whether it be buying, selling, but
25 there is an observation by officers. He then,

1 according to law enforcement, gives a statement that
2 admits to selling heroin and admits that he would
3 rather sell to Caucasian individuals because he does
4 not want the risk of being robbed. That is in the
5 transcript. That is in part of the record.

6 The State would ask you to look at that and take
7 all the testimony here and the trial testimony and see
8 there is overwhelming evidence that Mr. Watson is
9 guilty of possession with intent to distribute heroin
10 and we would ask you to deny his application.

11 MR. HEMLEPP: If I may make one brief argument for
12 the record?

13 THE COURT: Yes, sir.

14 MR. HEMLEPP: Of course the Court is aware that
15 Jackson versus Denno motion, the hearing which is
16 conducted by the Court is to determine the
17 admissibility of a statement. Not the accuracy of a
18 statement, and in fact Mr. Watson according to his
19 lawyer's testimony denied ever making those statements
20 which would make that an issue in fact, a factual
21 issue for the jury to decide.

22 The fact that the judge ruled that they were
23 admissible does not make them factual. That's an
24 issue for the jury.

25 MR. JOHNSON: And just in rebuttal, Your Honor. I

1 completely agree with Mr. Hemlepp. That is a
2 credibility issue for the jury to decide. They
3 decided that issue. They found that statement that
4 came in at trial was credible and that's not an issue
5 for this Court to determine whether or not the jury
6 believed in it.

7 MR. HEMLEPP: Well, that's assuming that they
8 didn't make their decision based upon the expert
9 testimony. We don't know that they found that
10 statement to be credible.

11 THE COURT: Well, really the question is whether
12 there is evidence to support what the jury did.

13 MR. JOHNSON: Correct.

14 THE COURT: And I did have the opportunity to read
15 the transcript. Now that I heard the arguments I can
16 go back and focus in on portions.

17 I was under the impression that there was an
18 objection as to the qualification of Officer Brown as
19 an expert. But as I stated in light of the arguments
20 and the discussions here today I would like to have
21 some additional time to review the opinion of the
22 Court of Appeals.

23 I will go back and review those particular
24 provisions and then I will make a decision based upon
25 things that have been raised.

1 MR. HEMLEPP: Thank you, Your Honor.

2 MR. JOHNSON: Thank you, Your Honor.

3 (END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 18th day of November, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 21, 2015

A. Butler

JEROME WATSON #317794
B.R.C.I. MONTICELLO # 183
4460 BROADRIVER Rd.
Columbia, S.C. 29210

July 27, 2010

Mr. Eric D. Delanie, esq:

Re: Sentencing Agreement.

Mr. Delanie esq:

On April 28th, 2010, we spoke briefly prior to trial about the recommendation offered by the state.

As counsel, you inform me that the first offer was twelve (12) years, 85%. At that time I believe, 'why take this plea when fifteen is the max'. Next you stated the state offered a ten (10) year sentencing.

You as my counselor never advised me that fifteen (15) was not the max punishment if I decided to take the trial.

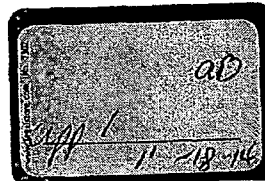
If you recall our conversation. You had admitted that I was not fully inform and that I was given the wrong impression. Therefore, I 'm writing you in and of good faith towards my concern of the sentence I receive, my age and, my family that has also effected throug the lack of effective counsel.

Mr. Delanie, I am now on behalf of our conversation asking that you would prvide me something in writing, that you, as counsel, did not properly inform me, thereforth, you would have coducted the true penalty and consequence if I did not take or except the agreement offered by the state. Also this would assist me in future proceeding (post-conviction relief) in which your office provided me with an application.

Thank you in this matter,

I am,

Jerome Watson
JEROME WATSON # 317794



On the 28th day of July, 2010
Susan J. Johnson

My Commission Expires
March 5, 2018

FILED-RECEIVED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF YORK 2015 JUL 14 AM 9:29) SIXTEENTH JUDICIAL CIRCUIT

Jerome Watson, #317794,

DAVID W. HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

Case No. 2014-CP-46-00274

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief. Applicant filed the application on February 4, 2014. The State made its Return and moved to dismiss the application on May 19, 2014. A hearing was convened November 18, 2014 at the York County Courthouse. Applicant was present at the hearing and was represented by counsel, W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Rutledge Johnson. 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 denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the April 2010 term of the York County Grand Jury for Possession with Intent to Distribute Heroin. Erik Delaney, Esquire, represented Applicant on his charges. On April 28, 2010, Applicant proceeded to a jury trial before the Honorable John C. Hayes III. Applicant was found guilty and sentenced to confinement for thirty years for Possession with Intent to Distribute Heroin, 3rd Offense. A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. *See State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013). The Remittitur was issued on July 19, 2013.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of ineffective assistance of counsel. Applicant also

argues that the trial court lacked subject matter jurisdiction and that there was a conflict of interest.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from trial counsel, Erik Delaney and Ashley Anderson. This Court had before it Applicant's trial transcript, the records from the York County Clerk of Court regarding the subject conviction, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant is 53 years old and graduated high school. He was arrested for Possession with Intent to Distribute Heroin in 2009, incarcerated, and released on bond after approximately ten months. While incarcerated, Delaney was appointed to represent him, with Anderson assisting, although he did not ever discuss the case with Anderson. Delaney and Applicant met once while he was in jail, but they did not discuss the case in detail.

After Applicant was released on bond, he testified that he went to Delaney's office twice. Applicant stated he was offered pleas of 10 and 12 years, both of which he rejected, and decided he wanted to proceed to trial. Prior to trial, he was offered a plea of 14 years, which he again rejected. Applicant testified that he was under the impression that 15 years was the maximum sentence that could be imposed, and that he was very surprised when he was sentenced to 30 years imprisonment. Applicant stated that neither of his attorneys ever told him the maximum sentence, and that if he knew it was 30 years, he would have taken the plea offer of 10 years.

Applicant presented at the hearing a letter he wrote to Delaney on July 28, 2010, which was admitted as Applicant's Exhibit 1. Applicant stated he wrote this letter because he did not understand why he was sentenced to 30 years. The letter states that he was under the impression that 15 years was the maximum sentence that could be imposed and Delaney never advised him otherwise. The letter also states that Delaney admitted to Applicant that he was not fully informed of the possible consequences. The letter requests Delaney to send Applicant something in writing stating that he did not properly inform him of the possible penalty. Applicant also had an issue during his trial regarding the State's use of expert testimony by an employee of the Solicitor's Office. Applicant testified that this person testified about various quantities of heroin and what quantities a user generally possesses, but the witness was not a user of heroin.

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Applicant acknowledged on cross examination that he has prior convictions for Possession with Intent to Distribute Heroin, Possession of Heroin, Possession of Crack Cocaine, and Conspiracy related to heroin. Applicant never had any discussion with counsel about how his prior convictions would impact sentencing. This offense was his first in South Carolina, and he did not think his prior record from New Jersey applied for enhancement purposes.

Delaney testified that he has been practicing criminal law for approximately eight years and was appointed to represent Applicant between September 24, 2009 and October 26, 2009. He received all discovery in the case and discussed it with Applicant. Delaney researched Applicant's prior criminal history, was aware the charge was a 3rd Offense, and explained that to Applicant. He stated that to the best he could recall, he explained to Applicant that the minimum sentence was 10 years and the maximum sentence was 30 years for his charge; therefore, he advised Applicant he should take the plea deals offered.

At trial, Delaney's main strategy was to establish that Applicant was a user, not a seller or dealer. Delaney objected to the State's witness being allowed to testify and being qualified as an expert. He acknowledged he did not object specifically to testimony regarding the amounts associated with Possession with Intent to Distribute Heroin and Possession of Heroin, which the South Carolina Court of Appeals said in its Order was not preserved. Delaney testified that at the time, he thought his general objection would cover the issue. Delaney acknowledged that the expert's testimony had an impact on the jury, but he did not think it outweighed other testimony presented, and he did not know if it changed the outcome of the case.

On cross examination, Delaney stated that he now works in the Union County Public Defender's office. He could not recall the number of cases he had at the time of Applicant's trial, but he admitted his case load was heavy. While at the York County Public Defender's office, he tried approximately 20 cases, with approximately 10 to 12 of those cases being related to drugs. He admitted his file did not reflect any notations of talking with Applicant about potential sentences. He did not recall receiving Applicant's Exhibit 1, Applicant's letter. He acknowledged that the expert's testimony was a material fact at the trial, and his entire defense was that Applicant was a user, not a seller. 2nd
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Anderson testified that she only assisted Delaney, who was appointed counsel, at Applicant's trial. She did not meet with Applicant before trial preparations. She did meet with Applicant at some point, likely about the content of his testimony. Anderson recalled being

surprised that the State was going to present expert testimony because the witness was not on the State's original witness list. The Defense's intent was to object to the expert being called because of the lack of notice and the fact that the expert had not been subject to sequestration.

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, pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant submits Delaney rendered ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 (1984). Claims of ineffective assistance of counsel are evaluated under a two-prong test. See *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Id.* at 117, 386 S.E.2d at 625. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler, supra*. The Applicant must overcome this presumption to receive relief. *Cherry, supra*. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

Applicant testified that he did not know the maximum sentence for his charge was 30 years. Delaney testified he explained the Applicant the possible sentences. This Court finds the testimony of Delaney more credible than the testimony of the Applicant on this issue. Applicant also testified at trial before the jury that the police told him multiple times he was "gonna do thirty years." Transcript of Record at 197-98 (April 26-28, 2010). Therefore, the Applicant was fully informed of the possible sentences that could have been imposed and his plea options, this

Court finds that Counsel's performance did not fall below the standard required and denies the application on this basis.

Applicant also alleges Delaney was ineffective in that he did not appropriately object to the State's expert testimony regarding how much heroin a dealer, as opposed to a user, would likely possess. The testimony was provided by a witness who was the commander of the local drug unit. This witness was totally unrelated to the transaction and was offered at trial by the State to serve purely as an expert witness based upon his experience in narcotics cases. The Court of Appeals stated in its Opinion that Applicant failed to preserve this issue for appellate review because, while he did object at other times to the expert's testimony, he was "silent when...[the expert] addressed the quantity of heroin a user or a dealer might possess." *State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013). This Court finds that Delaney's failure to object does not constitute ineffective assistance of counsel. Delaney did object multiple times to the admission of the expert testimony, specifically, to the fact that the witness was not on the State's witness list, that he had no personal involvement in the case, and that he should not be qualified as an expert. Delaney testified at the hearing that he intended for his objections to cover all aspects of the testimony, including the testimony about the quantity of heroin a dealer, as opposed to a user, might possess. This Court finds that Delaney's performance was reasonable given the numerous objections he made; therefore, it was not deficient. Additionally, the testimony the expert witness provided was appropriate. Expert testimony is allowed to establish how drugs are packaged and used. *See generally State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) *aff'd as modified*, 410 S.C. 519, 765 S.E.2d 564 (2014) (allowing similar expert testimony).

Furthermore, sufficient evidence was presented at trial to establish Applicant's guilt. S.C. Code Ann. § 44-53-370 provides that possession of more than two grains of heroin is prima facie evidence of guilt of possession with intent to distribute heroin, and the evidence presented at trial established that Applicant had more than two grains of heroin in his possession. Additionally, the arresting officers testified that they were patrolling an area known for drug transactions. They testified that Applicant's behavior, specifically the way he situated his parked car and the fact that he was at a restaurant but not purchasing any food, was consistent with the behavior of someone who is dealing drugs. Finally, the officers testified that they saw an interaction in the parking lot between Applicant and another man that could have been a hand to

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hand transaction. See Transcript of Record at 98-100 (April 26-28, 2010). Therefore, even if Delaney's performance was deficient for failing to object, it was not prejudicial. This Court finds that Counsel's performance did not fall below the standard required and denies this application on this basis.

Applicant also argued in his application that the trial court lacked subject matter jurisdiction. The South Carolina Supreme Court has established that "[t]he court of general sessions has subject matter jurisdiction to try criminal cases." *State v. Smalls*, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005). The case law is clear that the trial judge had subject matter jurisdiction over Applicant's case. To the extent that Applicant's argument is related to issues raised at trial regarding his indictments, the South Carolina Court of Appeals addressed these issues in its Opinion. See *State v. Watson*, Op. No. 2013-UP-312 (filed July 3, 2013).

Applicant's last basis in his Application was that there was a conflict of interest. This issue was not raised or discussed at the hearing; therefore, this Court finds that it was abandoned.

CONCLUSION

Based on all of the foregoing, this Court finds 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 is 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.

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ORDER**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.


ALISON RENEE LEE
Presiding Judge

July 7, 2015
Columbia, South Carolina

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WITNESSES

DEU/Cantey

rk

ARREST WARRANT NUMBER

Amended indictment re: J-168854

ACTION OF GRAND JURY

03-25-2010 True Bill

/s/ R. B. Vess

TRUE BILL

Foreperson of Grand Jury

422.P

VERDICT

Guilty

Foreperson of Petit Jury

Date:

9/28/2010

AMENDED DOCKET NO. 2010-GS-46-01381

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 22, Term 2010

THE STATE

vs.

JEROME ELTON WATSON

Indictment for

POSSESSION OF HEROIN WITH
INTENT TO DISTRIBUTE

SC Code: § 44-53-370
CDR Code: 0185

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.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

2014 JAN 31 AM 9:37

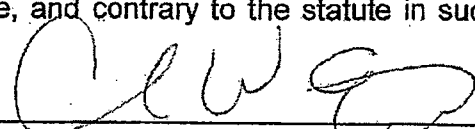
DAVID HAMILTON

At a Court of General Sessions convened on March 25, 2010, the Grand Jurors of York County present upon their oath

POSSESSION OF HEROIN WITH INTENT TO DISTRIBUTE

That on or about September 24, 2009, in York County, South Carolina, the Defendant, Jerome Elton Watson, did possess with intent to distribute, dispense, or deliver a quantity of Heroin, a controlled substance under provisions of Section 44-53-370, et seq., Code of Laws of South Carolina (1976), as amended, or did otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase Heroin, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR