

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable William P. Keesley, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEO ABNEY

APPELLANT

APPELLATE CASE NO. 2016-000314

RECORD ON APPEAL

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1 State of South Carolina

Court of General Sessions

2 County of Saluda

3
4
5 State)

6)
7 v.)

Transcript of Record

16-GS-41-0054

8 Leo Abney)

9 Defendant.)

10 February 9 - 11, 2016

11 Saluda, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge; and a
15 jury.

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

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Attorney for the State

19 Erik J. Drylie, Assist. Public Defender
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22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1 You've been brought in on a charge; I've read
2 the charge to you. I've told you that Mr. Abney is
3 presumed to be innocent, and that the indictment is
4 not evidence. So now we're in a position where the
5 case will be presented to you. And I truly
6 appreciate your service to the Court.

7 All right. I think I've said everything I have
8 to say. I invite your close attention.

9 Mr. Maye, you're recognized.

10 **MR. MAYE:** Please the Court, Your Honor. Thank
11 you.

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

13 OPENING STATEMENT

14 **MR. MAYE:** Ladies and gentlemen, Judge Keesley
15 told you briefly who I am when we started this
16 process. My name is Ervin Maye and I'm an Assistant
17 Solicitor. And I work for your elected Solicitor,
18 Mr. Donnie Myers, who is mainly based out of
19 Lexington, but Solicitor Myers is the Solicitor for
20 Lexington, McCormick, Edgefield and Saluda Counties.
21 I've been working for Solicitor Myers for, I guess,
22 about 23 years now. And I've been helping him take
23 care of McCormick, Edgefield and Saluda County for
24 almost all of the time that I've worked for him.

25 It's my privilege today to be here representing

1 the State of South Carolina, and that's exactly what
2 I'm doing in this case. But this is a crime against
3 the defendant in this case, Mr. Leo Abney, who's
4 seated over there in kind of the striped shirt over
5 there with the defense lawyers at the other table.
6 The crime that we're talking about that the State
7 has got the burden of proving in this case is a
8 crime against the State.

9 The Judge has already talked with you about the
10 indictment in this case and he went through some of
11 the information, and he told you it's for
12 distribution of crack cocaine.

13 The State's got the burden of proof in this
14 case and we welcome it because I submit to you this
15 is not a complicated case. It's a little bit
16 unusual, but it's not complicated at all.

17 Seated with me here at the State's table is a
18 law enforcement officer, right now he's the Chief of
19 the Salley Police Department. That's about a
20 one-man or a two-man police department over in
21 Salley. But the dates that we're talking about and
22 the events that led to Mr. Leo Abney being charged
23 with distribution of crack cocaine occurred back in
24 June of 2014.

25 Now, Chief Goldman came, before law

1 enforcement, from the United States Marine Corps.
2 He got into law enforcement after he was a Marine,
3 and he was a one-man police force in the town of
4 Ridge Spring back in June of 2014. And you can
5 imagine the varied responses and things that the
6 Chief at the Town of Ridge Spring, I think some of
7 them even checked water meters sometimes in the
8 past, but Chief Goldman is the one-man police force
9 there.

10 Now, he worked pretty closely with other
11 agencies with the sheriff's department that assisted
12 him, but he was it. That's law enforcement in Ridge
13 Spring.

14 As a Marine, even though he was a one-man
15 police force, he didn't just sit back and respond to
16 calls. He tried to look around at the things that
17 he knew that he needed to address there in the town
18 of Ridge Spring, which the one thing that the 12 of
19 you have in common in this case that are going to go
20 back and deliberate as the judges of the facts in
21 this case is y'all are all from here in Saluda
22 County and so the kind of interworkings of the towns
23 and the areas of Saluda County are things that y'all
24 are familiar with.

25 Ridge Spring's kind of a tight-knight, pretty

1 small community. One of the things that the Chief
2 recognized in this case is they had a drug problem
3 there. There were people selling drugs and it was
4 impacting the people in Ridge Spring. He had a
5 can-do attitude and he wanted to do something about
6 it, but it's tough in Ridge Spring because people
7 know each other.

8 And from watching TV and all the things that
9 you know about, you know, all of the work about
10 trying to catch people as drug dealers, well, you
11 know, the Chief wearing his uniform can't go out and
12 buy drugs; they've got to get informants. It's just
13 one of the things in the history of trying to combat
14 unlawful narcotics.

15 They always said J. Edgar Hoover kept the FBI,
16 he didn't want them to work informants. He thought
17 that was a seedy business. And the FBI didn't do
18 that for years and years. They said that's one of
19 the things they think that let the drug problem get
20 as bad as it was until they started doing this..

21 The precursor of the DEA, the Drug Enforcement
22 Administration, they're the ones that kind of
23 started initially using informants to do it, because
24 it's the only way you can do it. You've got to get
25 somebody that knows the game, they've got to go

1 undercover for you and they got to go out and buy.

2 Ridge Spring is a small place; people know each
3 other. If anybody's doing anything like that, it is
4 hard, hard to keep a secret in Ridge Spring.

5 Back just prior to June of 2014, Chief Goldman
6 was walking on the street and it just kind of fell
7 in his lap. He needed somebody that could get in
8 there and make purchases from people on the street
9 in Ridge Spring to help him combat the problem. As
10 he was walking down the street, his phone rang. He
11 got a call from a young man that lived there in
12 Ridge Spring that was known to people there, and it
13 was a person that had a pretty serious crack
14 problem. He was reaching out for help.

15 And I told you the Chief of the Town of Ridge
16 Spring wears a lot of hats. And on that day, he was
17 called to kind of be a social worker in this case
18 because Timothy Erving, the young man that's going
19 to come forth and testify in this trial, he had a
20 serious crack problem and he needed help. He
21 reached out to Chief Goldman and he said, Look, I've
22 got a crack problem. It's out of control. I can't
23 deal with it myself. I need help. I need to go to
24 rehab. I need to get out of here. I need to do
25 something to address my crack problem.

1 Well, Chief was not a social worker, he's a law
2 enforcement officer, but he was certainly mindful
3 and cognizant of trying to help somebody that
4 reached out to him and needed help. So he told
5 Timothy Erving, You help me clean up the streets
6 here in the town of Ridge Spring, I'll help you.
7 And that's exactly what they set out to do.

8 Timothy Erving, he met with the Chief. He came
9 in. He talked with him, talked about the people
10 that he could buy from, gave him a list of people,
11 told him what he could do.

12 Now, the Chief, in a one-man department, he's
13 got to reach out for cooperation sometimes with the
14 sheriff's department. And in working with Timothy
15 Erving, he did work with the sheriff's department,
16 but he also reached out to the primary assisting
17 agency for all municipalities and sheriff's
18 departments in South Carolina, which is the South
19 Carolina Law Enforcement Division.

20 SLED does many things. They wear many hats.
21 They run the crime labs, they do most of the testing
22 for most of the little small agencies. A one-man
23 police department like in Ridge Spring, they're not
24 going to have crime laboratories like you see on
25 television. The South Carolina Law Enforcement

1 Division has chemists, they have forensic
2 laboratories, but they also have agents that are
3 assigned a variety of different things, arson,
4 drugs, which was at issue in this case.

5 So he reached out to the South Carolina Law
6 Enforcement Division to their narcotics unit and
7 said, Look, I've got somebody that I can use as an
8 informant. He's not working off charges like most
9 people, because that's usually what happens with
10 confidential informants. Usually somebody gets
11 caught and they got the specter of going to jail
12 hanging over their head and they want to work those
13 charges off and try to get some assistance. This is
14 a little bit unusual.

15 He said, I've got an informant that's addicted,
16 he needs help and he's willing to help us. So two
17 agents from the South Carolina Law Enforcement
18 Division came and began to help him work with
19 Timothy Erving. One of them's name is Omri Mota and
20 the other one's name is Charles Miles.

21 Now, they were narcotics agents that, at
22 various times, go all over the state of South
23 Carolina and assist and sometimes run their own
24 investigation in the world of combatting unlawful
25 narcotics.

1 So on June 19th of 2014, as they had debriefed
2 and talked with Timothy Erving about who he could
3 buy from in this case, they met in Ridge Spring
4 during the daytime. It was a Thursday, June 19th of
5 2014. They got together in the town of Ridge
6 Spring.

7 But as you will hear in this case, they've got
8 to kind of do this outside the light of day because
9 Ridge Spring, such a small close-knit community,
10 they needed to get outside of town a little ways.
11 So they went off and they met with Timothy Erving
12 off at kind of a secure location that was just
13 outside of the edge of town.

14 Now, in working with him as an informant, quite
15 obviously, they've got to search him and make sure
16 that he didn't have any drugs or anything on him, he
17 didn't have any controlled substance or anything
18 else on him. They searched him. They put an audio
19 transmitter, a wire, on him to record what they were
20 doing and they talked with him. And you'll hear it.
21 It's already, actually, in evidence in this case.
22 It's the audio recording of the device that he was
23 wearing that they wired him up with. And he talks
24 to them about it. He tells them he's going to go
25 buy and he can buy from Leo Abney. He identified

1 him.

2 Now, you'll hear also he talked about a brother
3 in this case, D.J. Abney. But he tells them -- and
4 the Chief knew Leo Abney in this case and knew where
5 he lived. He knew that on Merritt Avenue right down
6 from the -- just right around the corner, in fact,
7 from the police department at 212 Merritt Avenue, he
8 knew that Leo and D.J. lived in this little duplex
9 apartment over here on this end {indicating} in the
10 upstairs of it. He knew who they rented for --
11 from. I mean, he knew. He worked the beat in Ridge
12 Spring. He knew folks. He knew that Leo and D.J.
13 lived there.

14 So they wired him up; they got him ready.
15 They're riding in the car, and you'll hear the audio
16 recording, and he's talking about that he thinks he
17 can buy from Leo on that day. And they take him
18 down, just down Main Street down to the church. If
19 you go by -- if you're coming from Batesburg going
20 back towards Edgefield, that direction, go right by
21 the police department just beyond the end of
22 Junipers and all, the church is there. Well, that's
23 where they stopped and let him out at because he was
24 going to walk back up to Merritt, which is just
25 around the corner there.

1 So he's wearing that wire. The agents in this
2 case, Mota, Miles, and Chief Goldman that was
3 working with them, they were trying to help keep an
4 eye on things and make sure that he was safe and
5 monitor the transmission that was being recorded on
6 the wire. They let him out there at the church so
7 people won't see and he walks back down the alleyway
8 there behind the police department and all the
9 buildings there on Main Street -- or right off of
10 Main Street in Ridge Spring, right back up walking,
11 coming in this direction back up to this duplex
12 apartment.

13 Now, they position themselves over kind of
14 behind the bank building where they still have a
15 view of the front yard of the place to keep an eye
16 on what's going on in this case.

17 Now, Timothy Erving, wearing the wire, walks up
18 there, and D.J. Abney, who, at that time, was on
19 crutches, a guy named Montez Quattlebaum and a
20 couple of other guys are just standing out here in
21 the front yard in this kind of sandy area here.
22 Timothy walks up to them, and what you'll hear is a
23 lot of street talk about drugs in this case.

24 But they go up, and you can hear him. And you
25 can actually hear when he's walking down the street,

1 he's making conversation with people as he's getting
2 there as he spies people as he's walking. But he
3 gets up there on Montez and D.J. out in the yard and
4 he starts talking to them. But what he wants is to
5 buy from Leo Abney, which is what he believed that
6 he could do that day and so he starts engaging in a
7 conversation with Montez.

8 Now, you'll hear this street talk about drugs,
9 and I'll ask Timothy, he's going to get up on the
10 stand to testify, they start talking about a doub.
11 And a doub's either, from the street talk, I think
12 the evidence will show in this case, they're talking
13 about \$20. And that's kind of interchangeably, the
14 \$20 that you give somebody to get a rock or two of
15 crack cocaine or the crack cocaine that they give
16 you back for 20 bucks worth, kind of interchangeably
17 the street talk for that is a doub, I want a doub.

18 And you'll hear him talking with Montez and
19 he's telling Montez there -- Leo's not standing in
20 the front yard at that point in time, but his
21 brother is and Montez are. And they go back and
22 forth with this street talk about drugs about, I
23 want a doub and I want it from Leo, is what
24 Timothy's telling in this case. And you'll hear
25 Montez and him bickering back and forth about this

1 case.

2 And ultimately Montez tells him in this case,
3 and you'll hear on the wire, he tells him, I want my
4 drugs; I want Leo Abney's stuff; I want Leo's stuff.
5 And he says, Well, I'm going to give you Leo's
6 stuff, same thing -- is what he tells him in this
7 case. Give me the doub. And they bicker back and
8 forth.

9 Now, he didn't want to and he argues with him a
10 little bit there, but he ultimately gives the \$20 to
11 Montez Quattlebaum right there in the front yard.

12 Now, the officers are off at a vantage point
13 where they can kind of see this, but when he gives
14 him the 20 bucks, the crowd kind of scatters in this
15 case because a drug transaction's taking place.
16 He's giving him \$20 in documented funds that they'd
17 given him for the undercover purchase of crack.

18 Well, you can also hear in this case, even
19 though they're trying to be surreptitious with what
20 they're doing with Timothy Erving, they already
21 think that he might be working for the police. And
22 it's hard to keep a secret in Ridge Spring because
23 you can even hear Montez accuse Timothy in this
24 case, You're the police, aren't you? And they're
25 kind of leery of him in this case.

1 But, you know, greed being what it is, even
2 though he's a little bit leery of him and they're
3 already a little bit suspicious that he might be
4 working for the police, Montez is still willing to
5 take the 20 bucks from him and he does. And that's
6 exactly what happens. Timothy, when he's unable to
7 deal directly with Leo there, even though he's in
8 Leo's front yard, he gives the 20 to Montez.

9 Now, Montez walks up to the front of the duplex
10 here to the steps and goes upstairs to Leo's
11 apartment. Now, D.J. scattered at that point in
12 time. He's not in the apartment.

13 He goes up to the apartment in this case, and
14 Timothy Erving trails behind. And he goes up to the
15 front door, to the screen door, and stands down here
16 at the bottom of the screen door. Montez goes
17 upstairs to Leo's apartment in this case. Timothy's
18 standing down here at the door. He opens the door
19 and enters.

20 And you'll hear the witnesses in this case or
21 Timothy will tell you when you go into the door here
22 and you open up the screen door, there's a stairway
23 that goes up to the duplex apartment on the second
24 floor. He stood down there in the bottom of the
25 stairwell as Montez took his \$20 up to get the crack

1 from Leo Abney, the defendant in this case.

2 Timothy Erving's going to tell you, as he stood
3 down there, Leo Abney came out of the top. After
4 Montez went in the apartment for just a second, he
5 comes back out followed by Leo Abney in this case
6 and that he comes down the stairwell with him. At
7 that point in time, he sees Leo Abney hand the crack
8 in this case to Montez. He's right in his presence.
9 But he hands it to Montez, Montez hands it to
10 Timothy Erving and Timothy's got the crack that he
11 gave him the \$20 for.

12 So you're going to hear in this case, I submit
13 to you, Timothy Erving is going to get up, he's
14 going to tell you what he saw.

15 Now, the officers in this case are looking from
16 across the street. They obviously can't see up into
17 the stairwell from there. And we'll tell you up
18 front, Timothy Erving's going to tell you who the
19 crack cocaine came from.

20 And the State's got both Montez Quattlebaum
21 charged in this case -- because the Judge, at the
22 conclusion of all of the testimony and evidence that
23 you'll hear in this case, is going to charge you
24 with what the law is in this case. But in South
25 Carolina, one of the doctrines of law is the hand of

1 one is the hand of all.

2 And if you're involved in a transaction, you
3 don't des -- I mean, you don't directly have to hand
4 somebody something, but if you're distributing, even
5 if it's going through a go-between, even if somebody
6 else takes the money and even if one person's
7 standing in another's presence and hands it from one
8 to another in this case, it's still distribution.

9 And both of them, both Montez Quattlebaum and
10 Leo Abney, the defendant in this case, are both
11 charged with distributing that crack cocaine that
12 was the subject of the controlled transaction that
13 the South Carolina Law Enforcement Division and
14 Chief Goldman were supervising and overseeing on
15 that day.

16 Now, at that point in time, Timothy Erving
17 takes the crack that he's gotten for the 20 bucks in
18 documented money that he got from the law
19 enforcement officer and he walks back and he gets
20 picked up.

21 Now, Agent Miles goes through all the
22 procedures. He searches Timothy Erving at that
23 point in time. They take into custody the crack
24 cocaine.

25 Agent Mota, at that time, takes the crack

1 cocaine. They bag it up in what's called a BEST kit
2 or a BEST evidence. They seal it up. It's got a
3 number on it. He then takes that down to the South
4 Carolina Law Enforcement Division's drug laboratory,
5 and the next day he turns it over to them. He's
6 receipted for it. So they make sure the substance
7 that they believed that was crack that came from Leo
8 to Montez and then Timothy and to them goes to SLED
9 and then it's tested.

10 And I submit to you the State's got the burden
11 of proof in this case and one of the things that
12 we've got to prove is the substance there that Leo
13 gave to Montez and Montez gave to Timothy is, in
14 fact, crack cocaine. So we have a chemist with a
15 lot of degrees that's going to come in here and he's
16 going to tell you that he did a scientific test on
17 the little rocks of white substance they believed
18 was crack and was given by Leo to ultimately Timothy
19 is crack. That's one of the things we've got to
20 prove, so we're going to bring a chemist in here.
21 We're going to show the chain of custody on how it
22 went to SLED, that what was handed to Timothy that
23 day was, in fact, crack. And this chemist is going
24 to come in here and tell you what the substance is.

25 As I told you, it's not a complicated case.

1 Nobody's going to try to oversell in this case.
2 Timothy Erving is the one that saw Leo come down the
3 stairs. He was the one that had eyeballs on him and
4 saw him hand it to Montez in this case. And that's
5 going to be the State's case.

6 You're going to hear from Timothy Erving.
7 You're going to hear what he did. You're going to
8 hear the audio transmission that they recorded in
9 this case. You'll see the evidence that went to
10 SLED and was tested, and you'll hear the officers
11 talk about what their role was and what they did and
12 saw and observed on that day. And that's the
13 State's case.

14 At the conclusion of all the evidence in this
15 case, all that we're going to ask that the 12 of you
16 do is go back in that jury room and deliberate and
17 reach a verdict. And the word verdict means speaks
18 the truth -- to speak the truth. So all that we ask
19 in this case is y'all come back with a verdict that
20 speaks the truth in this case that does justice for
21 everybody involved. Thanks for your close
22 attention.

23 **THE COURT:** Thank you, Mr. Maye.

24 Mr. Drylie, you're recognized for your opening
25 statement.

1 **MR. DRYLIE:** Thank you, Your Honor. May it
2 please the Court.

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

4 **MR. DRYLIE:** Where's Leo? Where's Leo? That's
5 the question that you're going to hear Timothy
6 Erving ask on this audio recorded statement, and
7 that's the question that I want you to keep in your
8 mind throughout this trial.

9 Now, the Judge just talked to you about a few
10 things and Mr. Maye talked to you about a few
11 things, but up until I got up to talk to you right
12 now, you've only heard one side of the story, and
13 it's the side of the story that they have the burden
14 of proving.

15 Now, what I say is not evidence, what Mr. Maye
16 says is not evidence. You're going to hear evidence
17 from that witness stand right there. There's going
18 to be some pictures. And you're going to hear an
19 audio recorded statement, and that audio recorded
20 statement is the singular most important piece of
21 evidence that we have in this case because it is
22 what it is. It doesn't change. It can't change
23 based off of people's memories, motives or biases.
24 It's simply there. We can't add from it. We can't
25 detract from it. And I want you to keep in your

1 minds as you listen to that statement, where's Leo?

2 On June 19th, 2014, you just heard Solicitor
3 Maye say that Timothy Erving went and met with three
4 law enforcement officers, they wired him up and they
5 sent him out on a mission, and that mission was to
6 buy crack cocaine from Leo Abney.

7 Now, after they wire him up, Timothy's walking
8 along in Ridge Spring. He's saying hi to everyone
9 he meets on the way, and you're going to hear that.
10 He gets to 212 Merritt.

11 Now, Merritt Avenue, two -- 200 Merritt Avenue
12 is a house that's out in front. 212 is part of a
13 duplex. There's 210. There's 212. There's a bunch
14 of trailers off to the side. And there's people
15 milling and standing around in that yard all the
16 time.

17 Timothy gets there and he talks to Montez
18 Quattlebaum. He says, Where's Leo? Where's Leo? I
19 want Leo.

20 Leo's not there. The evidence is going to show
21 that Leo's not there.

22 Now, he gives Montez Quattlebaum money. Montez
23 walks into an apartment, comes back, gives Mr.
24 Erving crack cocaine. Mr. Erving leaves, goes and
25 meets with the law enforcement officers. Where's

1 Leo?

2 Now, at its most basic and fundamental point,
3 this case is quite simple. They allege that Leo
4 Abney was there, that he walked down those steps and
5 he gave crack cocaine to Tim Erving. Tim Erving is
6 going to tell them that that's what Leo Abney did.
7 We allege that he didn't. We state that he didn't.
8 Leo Abney states that he did not distribute crack
9 cocaine on that day, he didn't give it to Montez
10 Quattlebaum, he didn't give it to Timothy Erving.

11 I want to talk to you for a minute about your
12 role as jurors and your role in this case. Now, my
13 wife and I, when we're at home, we'll be watching
14 TV, we'll see a story about a politician, a famous
15 person or some other crime story, and it's human
16 nature, so often we rush to judgment. You know, we
17 see something on the news and you think it's true.
18 I do it all the time myself. All I'm asking you to
19 do in this case is have an open mind, listen to the
20 evidence and ask, where's Leo? Don't rush to
21 judgment.

22 Each of you come in here with your own life
23 experiences, your own opinions, your own beliefs and
24 your own backgrounds. And I want to let each of you
25 know that each of you are just as important as the

1 person you're sitting next to. Your votes all count
2 the same. No one's vote counts more, no one's
3 opinion counts more or less. Listen to the evidence
4 and evaluate the evidence, see if what they're
5 saying adds up. It doesn't.

6 Now, this is Leo Abney's day in court and it's
7 one of the most important days of his life. He's a
8 father, a hard worker. And he didn't distribute
9 crack cocaine on that day. He didn't sell crack
10 cocaine. He didn't give crack cocaine to anyone.

11 At the close of this case, after you've heard
12 all the evidence and you walk back into that jury
13 room right there and the Judge is going to tell you
14 that finally, finally you're able to talk about the
15 case, as you deliberate, we're going to ask for a
16 verdict that speaks the truth. We're going to ask
17 for a verdict of not guilty. Listen to the
18 evidence, ask yourself, where's Leo? Thank you.

19 **THE COURT:** Thank you, Mr. Drylie.

20 Solicitor, call your first witness, please.

21 **MR. MAYE:** State will call Timothy Erving.

22 TIMOTHY ERVING,

23 having been duly sworn, testified as follows:

24 **THE COURT:** Have a seat up here, please. Speak
25 into that microphone and state your name.

1 **THE WITNESS:** Timothy Erving.

2 **THE COURT:** Answer Mr. Maye's questions,
3 please.

4 DIRECT EXAMINATION

5 BY MR. MAYE:

6 **Q** Mr. Erving, talk over here where the ladies and
7 gentlemen of the jury -- speak up where they can
8 hear you. Introduce yourself to them, tell them who
9 you are.

10 **A** My name is Timothy Erving.

11 **Q** Mr. Erving, where are you originally from?
12 Where did you grow up and all?

13 **A** In Ridge Spring, South Carolina.

14 **Q** Okay. Let me ask you this: As of right now,
15 where are you employed?

16 **A** At McDonalds in Aiken.

17 **Q** Are you working there full time at McDonalds?

18 **A** Yes, sir.

19 **Q** Okay. Let's go back to summertime, June of
20 2014. Without embarrassing you, but getting
21 directly to it, you had a pretty significant crack
22 cocaine problem back in June of 2014, didn't you?

23 **A** Yes, sir.

24 **Q** Did you take the opportunity to reach out to
25 Chief Goldman, who is the chief of police, to try to

1 get some help with your crack cocaine problem
2 sometime prior to June of 2014?

3 **A** Yes, sir.

4 **Q** Okay. What did you do to try to get some help?
5 What did you -- what did you say to him when you
6 contacted him?

7 **A** To make a long story short, I was using one
8 night and -- and I decided to call someone to help
9 me and I didn't know who to turn to because I had --
10 I had -- to be honest, sir, I didn't have no one
11 left because the ones that tried to help me, they
12 tried and I failed, and I didn't have no one to help
13 me. So I decided to call -- I don't even know him,
14 the chief of police, and I decided to call and I
15 asked him could he help me.

16 **Q** Okay. In the conversation that you had with
17 him, did he indicate, without going into directly
18 what he said, did he indicate that he could help
19 you?

20 **A** Yes, sir.

21 **Q** Okay. Did you agree to help him combat the
22 drug problem there in the area of Ridge Spring in
23 exchange for him helping and assisting you with
24 dealing with your drug problem?

25 **A** Yes, sir.

1 Q Okay. Did you agree to basically wear a wire
2 and to try to identify the people who were selling
3 and make purchases from people that you could as a
4 result of, I guess, the deal that you struck with
5 the Chief in order to try to get some help?

6 A Yes, sir.

7 Q Okay. Now, you didn't have any criminal
8 charges at the time that you were working off or
9 anything. You just wanted help with your drug
10 problem; is that correct?

11 A Yes, sir.

12 Q Okay. Let's go specifically to June the 19th
13 of 2014. Did you have an opportunity to meet with
14 the Chief here and agents from SLED, Agent Mota and
15 Agent Miles, on that day in June?

16 A Yes, sir.

17 Q Okay. Do you remember about where y'all got
18 together with -- or what was involved in you getting
19 together with them that day?

20 A Yes, sir.

21 Q Okay. Tell the ladies and gentlemen of the
22 jury about when you got together with them and the
23 events that took place on that particular day in
24 June.

25 A Um --

1 Q Where did you first meet them at that day?

2 A At town hall.

3 Q You met them at the town hall originally?

4 A Yes, sir.

5 Q Okay. Where did y'all go once y'all left town
6 hall or what happened?

7 A You said where did we --

8 Q Where did you go -- once you met at town hall,
9 did they search you? Did they wire you? What did
10 they do to get you ready to go for what happened on
11 that day in June?

12 A Oh, they searched me.

13 Q Okay.

14 A And they wired me.

15 Q Okay.

16 A And --

17 Q Who had you indicated to them that you thought
18 that you could purchase from that day?

19 A I named a few.

20 Q Okay.

21 A And I told them that a few of the guys wouldn't
22 even serve me because they already had my name in
23 the streets stating that I worked with the police.

24 Q Okay.

25 A And I told them I know one specific guy that

1 probably would serve me.

2 **Q** Who was that?

3 **A** And that was Leo Abney.

4 **Q** And you told the cops there that day?

5 **A** Yes, sir.

6 **Q** Did you know Leo? Did you know where he lived
7 and hung out?

8 **A** Yes.

9 **Q** Okay. Once they wired you and searched you, do
10 you remember about where it was they dropped you off
11 at?

12 **A** Yes, sir.

13 **Q** Where did they drop you off at?

14 **A** Beside of the church in Ridge Spring on Main
15 Street.

16 **Q** Okay. Once they dropped you off there wearing
17 the wire, what was the next thing? What did you do?
18 Just tell them step-by-step what you did. Once you
19 got to the church and they dropped you off, where
20 did you go then?

21 **A** I walked to Leo Abney's house, his mother's
22 house.

23 **Q** Okay. How were you able to get there? How do
24 you have to walk -- going from the church to get to
25 the duplex where he lives, how do you have to go and

1 walk?

2 A The direction I went?

3 Q Yeah.

4 A I walked around the church and I -- I walked on
5 the sidewalk on Main Street.

6 Q Okay.

7 A And then I made a left turn by the post office.

8 Q Okay.

9 A And the house was right on the right, right
10 behind the laundry mat.

11 Q All right. Let me show you, in this case,
12 what's marked State's 5 already in evidence in this
13 case. Take a look at that. Do you see his
14 residence there where Leo lived?

15 A Yes, sir.

16 Q Okay. Come down off the stand, if you would,
17 and point it out to the ladies and gentlemen of the
18 jury and show them where it is on this photograph,
19 which is State's 5.

20 A (Witness leaves the witness stand.)

21 Q Where is the duplex that Leo lived in?

22 A Right here {indicating}.

23 Q Right here?

24 A Uh-huh.

25 Q Did he live on the upstairs or the downstairs?

1 **A** Upstairs.

2 **Q** Upstairs. Which is the doorway -- I'm going to
3 show you State's 4 in this case. Point out which is
4 the doorway that you go into to get into the
5 upstairs one.

6 **A** Right here {indicating}.

7 **Q** Is it down on the end here on State's 4?

8 **A** Uh-huh.

9 **Q** Okay. Go back and retake the stand.

10 **A** (Witness resumes the witness stand.)

11 **Q** Once you got there to 212 Merritt Avenue there,
12 to that duplex, who did you see and what did you
13 encounter when you first got out there in the yard?
14 What happened?

15 **A** I seen a few guys in the yard.

16 **Q** Name them. Who did you see all in the yard?

17 **A** I seen Lucious O'Conner, known as L.J.

18 **Q** Okay. Who else did you see?

19 **A** I seen Montez Quattlebaum. I seen Derrick
20 Cyrus.

21 **THE COURT:** What Cyrus?

22 **THE WITNESS:** Derrick. I seen his brother
23 D.J., D.J. Abney.

24 **BY MR. MAYE:**

25 **Q** Okay. So what happened once you walked up

1 there? Who do you engage in conversation or what
2 happens when you walk up on this group of people
3 there initially?

4 **A** I walked up and I was questioning the guys
5 about -- I asked them specifically, Where was Leo
6 Abney?

7 **Q** Okay.

8 **A** And the guy stated that he was upstairs.

9 **Q** Okay.

10 **A** And I asked the guys to tell him to come down
11 because I want to purchase a 20 dollar crack.

12 **Q** Okay. What's the street name for that? Help
13 me with that --

14 **A** The street name --

15 **Q** -- what did you call it?

16 **A** Merritt Street.

17 **Q** No. Let me ask you this: Not the street name
18 of the location.

19 **A** Okay.

20 **Q** But if you want to go out -- help the ladies
21 and gentlemen of the jury. If you're going to go
22 buy crack, you don't go up and say, please, give me
23 crack, sir --

24 **A** That's right. That's right.

25 **Q** What do you ask for --

1 **A** I asked them for a doub.

2 **Q** A doub. Okay. What's that mean? What's a
3 doub mean? What's that term? Help us with that.

4 **A** A doub either -- a doub can be 20 dollar crack
5 or just \$20, period.

6 **Q** Okay.

7 **A** A doub stands for \$20. That's the street
8 terminology of the cash or the drugs.

9 **Q** Okay. What conversation did you have from your
10 end with Montez there as you're talking to him about
11 making that purchase?

12 **A** Well, he was going to serve me -- well, I asked
13 him, I asked him for Leo Abney. He said -- okay.
14 He walked up to me and I told him to go get Leo. I
15 said, I do not want to purchase their garbage. And
16 he said -- all the guys -- the majority of the guys
17 that was out there, they walked off from me. They
18 practically ran.

19 And so Montez stood there and we was engaged in
20 a conversation and I told him I didn't want his
21 garbage. So he was teasing me saying he had it.
22 And I said, I don't want your garbage. I want Leo's
23 because I don't want garbage. I want the real
24 thing. And so he said, Well, I'm going to get Leo.
25 So he said, Give me the money. And so I told him --

1 I said, No, I'm not giving you my money. I said, I
2 want to buy from Leo.

3 Q Yes.

4 A So he said -- he said -- okay. He said,
5 well -- I said, Well, man -- he said, No, no, I'm
6 not -- he said, I'm not giving you the money because
7 you the d-a-m police. That's what he called me.

8 Q Okay.

9 A I said, Man, stop playing with me. I said, I'm
10 not no police. He said, Well, everybody saying
11 you're the police.

12 Q Okay.

13 A And so he finally took the money. He went
14 upstairs --

15 Q Where did he go then? You gave him the
16 money --

17 A Yes, sir.

18 Q -- where did he go to?

19 A He went inside Leo residence.

20 Q Okay. How did he have to go to get to Leo's
21 duplex? How did he go from there?

22 A He went --

23 Q Which door did he go in? On State's 4 here,
24 come down here and show them, how he went to go...

25 A (Witness leaves the witness stand.)

1 He went in this door {indicating}. He went
2 upstairs.

3 **THE COURT:** Every time y'all do that, you're
4 blocking out about half the jury.

5 **MR. MAYE:** Sorry.

6 **THE WITNESS:** He went to this door.

7 BY MR. MAYE:

8 **Q** On this end {indicating}?

9 **A** Yes, sir.

10 **Q** Okay. Where did you originally encounter them
11 all at in front of the place?

12 **A** Right here {indicating}.

13 **Q** In the sandy area?

14 **A** Yes, sir. He was standing right there.

15 **Q** When he took your \$20 and went to the second
16 door here to go upstairs to Leo's apartment, where
17 did you go? Go back and take the stand.

18 **A** Okay.

19 (Witness resumes the witness stand.)

20 **Q** Where did you go when he started up to Leo's
21 with the \$20?

22 **A** I walked to the end of the door to wait on him
23 to bring it down.

24 **Q** Okay. Where did he go once he went in that
25 bottom door? How is it laid out?

1 **A** He walked upstairs. It's like the door he went
2 into is two doors.

3 **Q** Okay.

4 **A** It's one door that's on the outside. It's
5 another door upstairs. Once you reach the last
6 step, it's another door.

7 **Q** Okay.

8 **A** So he walked inside of the door with my \$20.

9 **Q** Okay.

10 **A** And he took so long to come back --

11 **Q** Yes.

12 **A** -- I was going to stand there in the yard and
13 wait on him until I just knew -- I felt like he
14 wasn't going to come back, so that's when I stepped
15 inside of the door.

16 **Q** Okay. You stepped into the bottom door?

17 **A** Yes, sir.

18 **Q** Okay. What happened next after you stepped
19 into the bottom into that alcove in the stairway
20 there?

21 **A** He brought my crack back. He brought it back
22 to me.

23 **Q** Okay. Who did you see and who brought you the
24 drugs? Exactly how did that take place?

25 **A** I see both of them. I seen Leo Abney at the

1 end of the door, the second door. He did not come
2 outside.

3 Q Okay.

4 A Montez came to the door.

5 Q With Leo Abney?

6 A Yes, sir. Leo did not bring me any crack.

7 Montez brought it to me.

8 Q Who did you see Montez get the crack that he
9 handed you from?

10 A From Leo. From Leo Abney.

11 Q You're positive about that?

12 A I'm positive.

13 Q Okay. Did you see him actually hand him the
14 crack rocks there --

15 A Yes.

16 Q -- in the stairwell?

17 A Yes.

18 Q Okay. Let me ask you this: Without going into
19 total detail in this case, do you know Leo Abney?

20 A Yes, sir.

21 Q Is he present here in the courtroom today?

22 A Yes, sir.

23 Q Could you point him out for the ladies and
24 gentlemen of the jury and tell where he's seated and
25 what he's wearing?

1 **A** Oh, yes, sir. He's wearing -- he's right there
2 {indicating}. He's wearing a blue collared shirt, a
3 striped shirt.

4 **MR. MAYE:** Your Honor, I just ask that the
5 record reflect he's identified the defendant, Leo
6 Abney, in this case.

7 **THE COURT:** So noted.

8 BY MR. MAYE:

9 **Q** You could see? There was enough light in there
10 for you to see it was Leo?

11 **A** Oh, yes.

12 **Q** Okay. Was this daytime or nighttime?

13 **A** Day. It was bright daylight.

14 **Q** Okay. And so you're absolutely certain that
15 you saw Leo Abney hand the rocks of crack cocaine to
16 Montez?

17 **A** Yes, sir.

18 **Q** Who brought them down the stairs to you?

19 **A** Montez.

20 **Q** Okay. Once you got those rocks of crack in
21 this case, what did you do? Where did you then go
22 next?

23 **A** I walked back to the designation where I got
24 dropped off from the police officer.

25 **Q** Okay. All right. Did you turn over what you

1 had purchased, the crack that you had purchased in
2 this case? Did you turn it over to the SLED
3 officers at that time?

4 **A** Yes, sir.

5 **Q** Did they search you again and did that conclude
6 y'all's transaction --

7 **A** Yes, sir.

8 **Q** Okay. This is going to sound kind of silly,
9 but I'm going to ask you this: The place where you
10 got the crack cocaine from Leo and Montez, what town
11 was that in?

12 **A** Ridge Spring.

13 **Q** What county is that in?

14 **A** Saluda County.

15 **Q** In Saluda County. Okay.

16 Are you absolutely certain that the person that
17 you got the crack cocaine from ultimately in this
18 case was Leo Abney?

19 **THE COURT:** Hold on a second.

20 Yes.

21 **MR. DRYLIE:** I withdraw.

22 **THE COURT:** You may answer the question.

23 BY MR. MAYE:

24 **Q** Are you certain that the crack cocaine that you
25 got and was handed to Montez came from Leo Abney?

1 **A** Yes, sir.

2 **Q** Let me ask you this: When you got through
3 helping law enforcement in total, did they help you
4 go to rehab?

5 **A** Yes, sir.

6 **Q** Okay. How did they assist you in going to
7 rehab and do you remember which one that you went
8 to?

9 **A** Yes, sir.

10 **Q** Okay. What did they do to help you out and to
11 assist you once you got through helping them do what
12 you could?

13 **A** The only thing they did was gave me -- they
14 gave me a bus ticket.

15 **Q** Okay.

16 **A** And --

17 **Q** Did the Chief help you in going down and
18 getting on the bus and all?

19 **A** Yes, sir.

20 **Q** Did they help you find and identify a
21 rehabilitation place to go to?

22 **A** Yes, sir.

23 **Q** And they gave you transportation and bought you
24 a bus ticket?

25 **A** Yes, sir.

1 Q Okay. Mr. Erving, again, not to embarrass you,
2 but as you sit here today testifying for the jury,
3 are you clean and are you working now?

4 A Oh, yes, sir.

5 Q Did it help get your life back in order?

6 A Yes, sir.

7 Q Is everything that you've told the ladies and
8 gentlemen of the jury up here today is it the truth?

9 A Yes, sir.

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

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. DRYLIE:

15 Q Good morning.

16 A Good morning.

17 Q How are you doing today?

18 A I'm wonderful.

19 Q Tim, you're a pretty friendly guy, aren't you?

20 A Yes, sir.

21 Q You know, when you were walking to Merritt
22 Avenue, did you say hi to anybody?

23 A Yes, sir.

24 Q Do you remember how many people?

25 A No.

1 Q Do you generally say hi to people when you see
2 them?

3 A Excuse me?

4 Q Do you generally say hi to people when you see
5 them?

6 A Yes.

7 Q You're pretty friendly; right?

8 A I'm very friendly.

9 Q When did you say hi to Leo?

10 A Excuse me?

11 Q When did you say hi to Leo on June 19th?

12 A When did I?

13 Q Uh-huh.

14 A I don't remember.

15 Q Okay. You wanted to go to rehab; right?

16 A Yes.

17 Q And that was really important to you?

18 A Very important.

19 Q You wanted to do a good job so they would help
20 you out?

21 A Repeat that, sir.

22 Q You wanted to do a good job so they would help
23 you out, didn't you?

24 A I called him to ask him to help me for rehab,
25 that was it.

1 Q But the day of June 19th, you told them that
2 you could buy crack cocaine from Leo Abney; correct?

3 A I told them I could buy crack from any guy that
4 was on the street. I said, but they have -- it
5 wasn't directly pointing at Leo Abney. I wasn't
6 specifically pointing at Leo Abney.

7 I specifically wanted help and I had wanted to
8 do what they asked me to do to get help. And it
9 just came to a point where that I felt I could
10 purchase from Leo Abney. It was not I was directing
11 towards Leo Abney.

12 Q So you're stating now that you could have
13 purchased from anyone on the street and you weren't
14 specifically trying to purchase from Leo Abney?

15 A No, I wasn't. I wanted -- the point is I
16 wanted help to go to rehab and I told the guys that
17 -- the guy told me, he said, if he help me -- if I
18 can help him, he will help me. So I felt like -- it
19 wasn't directed towards Leo Abney for me to just go
20 after him. I wanted to do what I had to do to do
21 what I needed to do.

22 Q Okay. So -- but you wanted to do a good job
23 for them, didn't you?

24 A I wanted to do a good job for me as well.

25 Q But for them too?

1 **A** Well, I guess.

2 **Q** And you told them you were going to buy from
3 Leo Abney, did you not?

4 **A** Yes, I did.

5 **Q** Okay. And you get to Merritt Avenue; correct?

6 **A** Yes.

7 **Q** And who do you talk to in the yard?

8 **A** I talked to a few guys in the yard.

9 **Q** Who's the main guy you talked to in the yard?

10 **A** Montez Quattlebaum.

11 **Q** And who did you give money to?

12 **A** Montez Quattlebaum.

13 **Q** And who gave you crack cocaine?

14 **A** Montez Quattlebaum brought it to me.

15 **Q** Okay. Now, do you remember writing a statement
16 right after this happened? (Pause)

17 Do you remember someone writing a statement for
18 you?

19 **A** Yes, I do.

20 **Q** You didn't write this statement?

21 **A** I didn't write it. It was wrote. I was there
22 when it was written. After he was finished writing
23 -- after he finished writing it, I signed it. I
24 signed it.

25 **MR. DRYLIE:** Beg the Court's indulgence for

1 just a moment.

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

3 (Pause.)

4 BY MR. DRYLIE:

5 **Q** I'm going to pass you up something and I'm
6 going to ask you if you recognize it?

7 **A** Yes.

8 **Q** What is that?

9 **A** It's a written statement.

10 **Q** It's a written statement. Who wrote that
11 statement?

12 **A** I don't remember who wrote it, but I remember
13 signing it.

14 **Q** You don't remember who wrote it, but you just
15 remember signing it?

16 **A** I remember the statement. I don't remember the
17 guy who wrote it.

18 **Q** Is there anything different from what you
19 testified to today than what's in that statement?

20 **A** No.

21 **Q** In that statement, do you or do you not --

22 **MR. MAYE:** Your Honor, I'm going to ask him --
23 the statement's not into evidence. If he's going to
24 publish parts of the statement in this case, we're
25 going to have to do that in a different way. I

1 would object to him doing that -- asking him to
2 publish a statement that's not into evidence. He
3 can ask him if it refreshes his recollection, but I
4 would object to the fashion in which he's
5 cross-examining him.

6 **MR. DRYLIE:** I'll reword it.

7 **THE COURT:** Okay.

8 BY MR. DRYLIE:

9 **Q** Did you, after you met with the law enforcement
10 officers, tell them that Leo Abney handed you crack
11 cocaine?

12 **A** Excuse me?

13 **Q** Did you, when you met with the law enforcement
14 officers, tell them that Leo Abney handed you crack
15 cocaine?

16 **A** I did not say Leo Abney handed me crack
17 cocaine.

18 **Q** Okay. I'm going to pass this up to you and ask
19 if it refreshes your recollection?

20 **A** Yes. It doesn't say that I said Leo passed me
21 crack cocaine.

22 See that part right there where it say, He
23 took. "He" is actually speaking of Montez
24 Quattlebaum. That's who passed me crack cocaine.

25 **Q** "He's" referring to Montez Quattlebaum?

1 **A** Yes. I never once said Leo passed me crack
2 cocaine. I gave Montez Quattlebaum \$20 to purchase
3 the crack cocaine. He took it to Leo. The other
4 guys in the yard would not serve me. They
5 practically ran from me. That's what I said for the
6 third time.

7 He took it to Leo; Leo gave it to him; Leo
8 stepped in the doorway. I'm standing in the -- I
9 was standing in the screen door. I was standing --
10 matter of fact, it's not a screen door on the door,
11 it's just a door.

12 **Q** There's not a screen door there?

13 **A** No, sir. It's a door.

14 **Q** In this statement that you just read, you
15 state, Leo returned to the door with crack.

16 **A** Apparently, if I took -- if Montez passed me
17 crack when he was standing upstairs where I could
18 clearly see him give it to him.

19 **Q** The next line you state, He handed it to me?

20 **A** I did not say he handed it to me. I said
21 Montez Quattlebaum handed it to me.

22 **Q** Read it again.

23 **A** I read --

24 **MR. MAYE:** Your Honor, it's asked and answered.

25 **THE COURT:** Overruled.

1 **THE WITNESS:** And for the record, I did not
2 write that. I told you I signed it.

3 BY MR. DRYLIE:

4 **Q** You signed it -- you signed your name to
5 something you didn't write; correct?

6 **A** Yes. I read it before I signed it. I read it
7 clearly before I signed it. That'd be like two
8 years ago, I can remember.

9 **Q** Okay. Would you read this line right there
10 {indicating}, the third line down?

11 **A** He took it to Leo and Leo returned to the door
12 with the crack.

13 **Q** What's next?

14 **A** He handed it to me.

15 As in Montez Quattlebaum. That's what I told
16 you. "He" is not Leo Abney. "He" is Montez
17 Quattlebaum.

18 **MR. DRYLIE:** Beg the Court's indulgence.

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

20 (Pause.)

21 **MR. DRYLIE:** No further questions.

22 **THE COURT:** Redirect?

23 **MR. MAYE:** Nothing else. Thank you.

24 **THE COURT:** Thank you, sir. You may step down.

25 All right. Ladies and gentlemen, we'll take a

1 ten-minute break. I'll get you back out here.
2 Don't discuss the case. Follow the bailiff. Thank
3 you.

4 (The jury retires to the jury room.)

5 **THE COURT:** Mr. Abney, you remember what I told
6 you yesterday about the trial continuing?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Make sure you're in the courtroom
9 every time that I indicate everybody needs to be
10 back from the break, all right?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Thank you.

13 Court's at ease for ten minutes.

14 (Brief Recess.)

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

16 **MR. MAYE:** Yes, sir.

17 Do y'all want to take that up in camera?

18 **MR. DRYLIE:** We do.

19 **MR. MAYE:** Your Honor, the agent is no longer
20 employed with SLED and they want to take up in
21 camera any possibility of impeaching him based on
22 him not being at SLED any longer, but I would like
23 to do that outside the presence of the jury.

24 **THE COURT:** Where is he?

25 **MR. MAYE:** Omri Mota. I'll have someone get

1 him.

2 **MR. DRYLIE:** Judge, briefly, Mr. Maye just came
3 up to us -- just informed us that Agent Mota is no
4 longer with SLED, that he had been fired, and we're
5 not sure why, but from what Mr. Maye tells me, it's
6 insubordination. We're just finding out about this
7 right now and we don't know if there's anything
8 impeachable in his file or not.

9 But I'm concerned because we have a jury in
10 there and we're supposed to be moving forward with
11 this case, that we're going to need his personnel
12 file. And I want to make the Court aware of that
13 now because, quite frankly, I'm just finding out
14 about this on the break that there could be
15 impeachable evidence.

16 Another attorney who's in the courtroom told me
17 that several cases he had with him were dismissed.
18 And I want to know what's in his personnel file as
19 far as impeachable evidence goes since he's been
20 fired. And it's not here.

21 And, Your Honor, I think -- Mr. Maye is saying
22 he's found out about this at the 11th hour. But I
23 -- I think this is a potential Brady violation here
24 since Brady does cover impeachable evidence.

25 **THE COURT:** You want to put him on the stand

1 and ask him questions?

2 **MR. DRYLIE:** Yes, Your Honor.

3 **THE COURT:** Would you come around, please, sir?

4 OMRI MOTA,

5 having been duly sworn, testified as follows:

6 **THE COURT:** State your name, please.

7 **THE WITNESS:** Omri Mota.

8 **THE COURT:** Thank you, sir. Will you answer
9 questions for Mr. Drylie? Just have a seat right
10 there.

11 **THE WITNESS:** Sure.

12 EXAMINATION

13 BY MR. DRYLIE:

14 **Q** Good morning.

15 **A** Good morning.

16 **Q** Mr. Mota, how long did you work at SLED?

17 **A** From January 2nd, 2014, to November 5th, 2014.

18 **Q** And were you terminated from that employment?

19 **A** My probationary period was ended, yes,
20 termination.

21 **Q** Okay. Were you fired?

22 **A** The letter said termination.

23 **Q** Okay. What incidents gave rise to the
24 termination?

25 **A** Clarify your question for me.

1 **Q** Were you terminated for insubordination?

2 **A** I was terminated for failure to obey a direct
3 order.

4 **Q** What was that direct order?

5 **A** That's a good question. And I'm not aware of
6 when it was a direct order, when it happened. If
7 you'll allow me to further explain, I can. I can't
8 just answer that with a one-liner.

9 **Q** Go ahead.

10 **A** So they started an investigation -- me being a
11 narcotics agent, my job was to find narcotics. And
12 I was working out at a gym. At the time, I was a
13 power lifter. And they -- there were some
14 individuals at the gym that were potentially using
15 some substances that were -- could have been
16 considered illegal, I was not sure, and so I
17 inquired about it. Later, there was a complaint
18 filed with SLED saying that I was searching for
19 narcotics at a gym. And they said, We're going to
20 investigate this further; don't talk to anybody
21 about it.

22 Me being a recent law enforcement officer and
23 the background that I have with being a religion
24 teacher and -- my reputation is very important to
25 me, so I wanted to find out where the source of this

1 complaint had come from in my -- at the gym that I
2 used to go to. And then I just went to the gym that
3 evening and I started to speak to different people
4 who I associated with saying, you know, somebody's
5 out there trying to tarnish my reputation and impact
6 my job. And that was as far as it went. But there
7 was no official direct order.

8 They later said that the direct order was don't
9 speak to anyone, which baffles me because I think
10 that we all have a right to defend ourselves, that's
11 why we're here. Wouldn't you agree with that?

12 Q Well, I'm not answering any questions right
13 now.

14 A Okay. No problem.

15 Q Were you ever accused of lying about this?

16 A Not formally, no. Nothing went to courts of
17 that level.

18 Q I'm not asking about the court, but at SLED,
19 were you accused of being dishonest about this
20 investigation? And I'm not saying you did, I'm just
21 asking if you were accused, if you're aware.

22 A There was some information that I had clarified
23 for them and they said that that was an accusation
24 of truthfulness based on their -- on their policy,
25 but that is also very elusive.

1 **Q** Were there ever any accusations of you
2 tampering with evidence?

3 **A** Never, no.

4 **MR. DRYLIE:** I don't have any further
5 questions, Judge.

6 **THE COURT:** Do you wish to ask any questions of
7 him at this point, Mr. Maye?

8 **MR. MAYE:** No, sir, Your Honor. And like I
9 said, I'll leave it to the Court's discretion in
10 this case. He doesn't have any -- he certainly
11 doesn't have any criminal convictions in this case.

12 I don't think the rules of impeachment would
13 allow them to go into -- I mean, as it would for any
14 witness if you were fired from any job. I just
15 don't have any criminal history on this witness and
16 I don't have anything that I think is exculpatory
17 evidence in this case. I don't have any information
18 from SLED that anything involved any case that he
19 worked on or that there was anything involving any
20 allegation of dishonesty involving any of the case
21 work or anything.

22 To my knowledge, we've certainly never
23 dismissed any case because Agent Mota was involved
24 in it, and this is the first time I've ever called
25 him as a witness, but we've certainly not dismissed

1 any cases because Mota was involved in it. He's
2 basically in the chain of custody here, Your Honor.
3 He took the drugs to SLED in this case and was
4 present during the portion of the buy in this case,
5 Your Honor.

6 And I offer it to the Court. That's all I know
7 about it. And I don't think under the rules of
8 impeachment, they should be allowed to ask him about
9 specific instances that resulted in him being
10 terminated from SLED in this case. I just don't
11 think it's relevant evidence in this case and would
12 object to that. So I just wanted to take that up
13 now.

14 **THE COURT:** Mr. Mota, would you step back
15 wherever they had you sequestered for me, please?

16 **THE WITNESS:** Sure.

17 **THE COURT:** Thank you.

18 **THE WITNESS:** Thank you.

19 (Witness leaves the courtroom.)

20 **THE COURT:** Mr. Maye, contact SLED, see how
21 soon they can have his personnel file over here for
22 me to review, please.

23 **MR. MAYE:** Okay. I will.

24 **THE COURT:** And try to do that and let me know
25 so I can tell the jury about breaking for lunch.

1 **MR. MAYE:** Okay. Thank you, Your Honor.

2 **THE COURT:** We're at ease.

3 Would y'all tell the jury it's going to be a
4 little while before I can get back to them?

5 (Brief Recess.)

6 **MR. MAYE:** Judge, I can move forward with
7 witnesses. I talked to SLED and I told them that
8 you wanted it.

9 **THE COURT:** Do you have a different witness?

10 **MR. MAYE:** I do.

11 **THE COURT:** Are you ready for the jury?

12 **MR. MAYE:** I'm ready if they are.

13 **MR. DRYLIE:** Can I get Mr. Casto real quick,
14 Your Honor?

15 THE COURT: Yes, sir.

16 (Pause.)

17 **THE COURT:** Is the defense ready for the jury?

18 **MR. DRYLIE:** We are, Your Honor.

19 **THE COURT:** Bring in the jury, please.

20 (The jury returns to the courtroom.)

21 **THE COURT:** Call your next witness, Solicitor.

22 **MR. MAYE:** State would call Charles Miles.

23 *****

24 . * * * *

25 * * * *

1 CHARLES MILES,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MAYE:

5 Q Agent Miles, if you will, introduce yourself to
6 the ladies and gentlemen of the jury.

7 A Charles Miles, South Carolina Law Enforcement
8 Division.

9 Q Okay. Agent Miles, if you would, tell the
10 ladies and gentlemen of the jury about your
11 background in law enforcement, how long you've been
12 working for SLED, what your area of expertise in
13 SLED is or what area you've worked in.

14 A Yes, sir. I have six years with the Department
15 of Probation, Parole and Pardon Services. I've been
16 with SLED a total of ten years, and I've been a
17 narcotics investigator for all of those ten years.

18 Q Okay. Let me ask you this: Back in June of
19 2014, June the 19th of 2014, were you asked to
20 assist, I guess, the sheriff's department in Saluda
21 County and Ridge Spring in an ongoing narcotics
22 investigation in the town of Ridge Spring involving
23 an informant named Timothy Erving?

24 A Yes, sir.

25 Q Okay. What did you do to assist Chief Goldman

1 at Ridge Spring there in that investigation?

2 **A** Well, when I came in with his request and with
3 other investigators, my task was just to come in and
4 watch, search and wire the confidential informant
5 for information gathering and safety purposes.
6 That's what I did when I got there.

7 **Q** On June the 19th of 2014, do you remember about
8 where it was that you encountered Timothy Erving,
9 the informant in this case, or what did you do to
10 search him and what's the purpose of that? And tell
11 the ladies and gentlemen of the jury what you did.

12 **A** We met at a predetermined meeting location at
13 the direction of the Chief. And he was searched
14 because, of particular, we don't like for any
15 informant to take anything into a transaction simply
16 because we -- a defense attorney or someone can say
17 that it was planted or something. So he's searched
18 very thoroughly, pockets turned out, shoes taken
19 off, you know, make sure they didn't take any
20 weapons or any other contraband. And the wiring is
21 for just their safety so we can hear what's going on
22 during the transaction.

23 **Q** Okay. Did you search and wire Timothy Erving
24 that day?

25 **A** I did. I searched and wired him with audio

1 equipment.

2 Q Okay. Once you got him wired, did you monitor
3 the live feed and all while he was wearing the wire
4 and going to make the transaction?

5 A Yes, sir, I did.

6 Q Okay. Have you since had a chance -- you heard
7 it live that day back in June of 2014?

8 A Yes, sir.

9 Q And have you had a chance to go back through
10 and listen to the audio recording of the buy that
11 was made on June 19th, 2014?

12 A I have, sir.

13 Q Okay. I'm going to show you an audio CD that's
14 marked and already in evidence in this case as
15 State's 2. I will ask you is this audio recording,
16 does it fairly and accurately reflect the audio
17 portion that was recorded by the wire that you
18 installed on Timothy Erving on June the 19th of
19 2014?

20 A Yes, sir.

21 Q Okay.

22 MR. MAYE: Your Honor, it's already in evidence
23 at this point in time. I'm going to ask that we be
24 allowed to publish the audio recording to the jury.

25 THE COURT: Yes, sir.

1 **MR. MAYE:** Thanks.

2 (Whereupon, State's Exhibit Number 2 was
3 played for the jury.)

4 **BY MR. MAYE:**

5 **Q** Once Timothy Erving in this case returned back
6 to the vehicle in this case, what steps do y'all go
7 through with an informant once they return back, I
8 guess, after the time that the tape shuts down and
9 y'all get him back to the location of where y'all, I
10 guess, make contact with them again after you send
11 them out and make a buy?

12 **A** Once they return back to the car, we
13 immediately have what you call a SLED BEST kit and
14 we have them drop that -- the evidence in that BEST
15 kit as soon as they get into the car. We take that
16 right out of their hands. Once we do that, whoever
17 is going to seal -- document the evidence, they take
18 it and put it in the BEST kit and do all the
19 sealing. Once we get back to a safe location --

20 **Q** Let me just stop you now that you brought the
21 BEST kit up. I'm going to show you State's 1 that's
22 been marked for ID. Is that the BEST kit that the
23 drug evidence -- the drugs that were returned to
24 you, or what you believed to be crack cocaine at
25 that time, is that the BEST kit or the number for

1 the BEST kit for the rocks that were turned over
2 from Timothy Erving to y'all there when he returned?

3 A Yes, it is, sir.

4 Q Okay. And you're certain that's the same BEST
5 kit number and you've reviewed that?

6 A Yes, sir.

7 Q Okay. Did you, in fact, I guess post-testing,
8 pick that up at the South Carolina Law Enforcement
9 Division laboratories?

10 A Yes.

11 Q When did you pick those up?

12 A I picked that up yesterday afternoon.

13 Q Okay. Post-testing, you picked it up yesterday
14 afternoon?

15 A Yes, sir.

16 Q And you brought it with you back here to the
17 courthouse?

18 A Yes, sir.

19 Q Did -- at any point in time, both at the scene
20 when you took the items from -- you and Mota were
21 there, both at the scene there from the time that it
22 was sealed up or at any point in time that you've
23 had that, did you change or alter it in any way?

24 A No.

25 Q Okay. And is the rock substance, other than

1 what was done with it in testing, did you do
2 anything at all to that after you got it from Erving
3 and prior to y'all sealing it up?

4 **A** No, sir.

5 **Q** Okay. So it's in the same condition --

6 **A** It is.

7 **Q** -- absent any testing that was done on it?

8 **A** Exactly, yes, sir.

9 **Q** Okay. Did you actually take that down, the
10 BEST kit, to SLED or did another agent take that to
11 SLED?

12 **A** Special Agent Mota did.

13 **Q** He took that to SLED?

14 **A** He took that to SLED, yes, sir.

15 **Q** Okay. Do you know when he took that to SLED
16 and when he returned it in?

17 **A** The very next day. As far as the chain of
18 custody --

19 **Q** Okay.

20 **A** -- the very next day.

21 **Q** So it was sealed on the 19th?

22 **A** It was sealed. It'll have the seal date on it
23 and who sealed -- 6/19, yes, sir.

24 **Q** Okay. So it was sealed in your presence?

25 **A** Yes, sir.

1 Q Okay. And it was subsequently transmitted to
2 SLED the next day on the 20th?

3 A Yes, sir.

4 Q Okay. Agent Miles, you came to Ridge Spring as
5 an assisting agency in this case?

6 A Yes, sir.

7 Q Okay. Did you have -- did you know any of the
8 parties that were involved or had you encountered
9 any of them prior to coming on the 19th?

10 A None of them.

11 Q So your role was purely as security and
12 assistance to --

13 A Yes, sir.

14 Q -- the Chief in this case?

15 A Yes, sir.

16 MR. MAYE: Okay. Answer any questions the
17 defense has for you.

18 THE WITNESS: Yes, sir.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR CASTO:

22 Q Officer Miles, how are you?

23 A I'm good. And yourself?

24 Q I'm well. And just to back up, you and Officer
25 Mota are -- your role, as you said, is assistance in

1 this case; right?

2 **A** Yes.

3 **Q** And, ultimately, y'all's main work space, I
4 guess, is in Columbia; is that right?

5 **A** Yes. We operate out of an annex off of Bush
6 River Road.

7 **Q** Okay. And the reason y'all came to Ridge
8 Spring was to help Officer Goldman; is that right?

9 **A** Yes. Upon his request, we're assisting agency,
10 yes, sir.

11 **Q** Now -- and that assistance -- turning to the
12 date, that Thursday June 19th of 2014, there was a
13 meeting held that afternoon; right?

14 **A** Yes.

15 **Q** Before Mr. Erving's sent out, there was a
16 meeting held that afternoon; right?

17 **A** Yes.

18 **Q** I believe those present were yourself; right?

19 **A** Uh-huh.

20 **Q** Officer Mota?

21 **A** Yes, sir.

22 **Q** Officer Goldman?

23 **A** Yes, sir.

24 **Q** And Timothy Erving; right?

25 **A** Yes, sir.

1 Q I believe, in the report, the meeting was held
2 at 4:44 P.M.; is that right?

3 A That's approximate, yes, around that time.

4 Q You are the one -- the role that you play is
5 you actually search Mr. Erving; is that right?

6 A Yes.

7 Q And then after you're done with your search, I
8 believe at 4:50, you wire him up with audio
9 recording equipment; right?

10 A Yes, sir.

11 Q Okay. And really -- let's talk about that.
12 You're searching Mr. Erving to see, you know, if he
13 has anything on him that he shouldn't have; right?

14 A It's common procedure to make sure that they're
15 not taking anything contrary into the drug
16 transaction.

17 Q Okay. Not just drugs, but money or something
18 else?

19 A Money, someone showing up with knives. So we
20 take all that. No weapons, no nothing.

21 Q Okay. And I believe it's Officer Mota that
22 writes the report in this case; right?

23 A He's the case agent. He wrote the incident
24 report, yes, sir.

25 Q Okay. And I believe -- did you write any

1 report or supplemental report in this case?

2 A I wrote the statement from Mr. Erving.

3 Q Okay. And, at any time, did you take any notes
4 in this case?

5 A I didn't take any notes.

6 Q Yes, sir.

7 A Mota was in charge of taking notes. And if
8 you're -- the only notes that we take on a drug deal
9 are the timeline. It's what you call a surveillance
10 note, exactly what you just said: At 4:50, he was
11 wired, at 4 -- and that's all the notes we take.
12 There's no other.

13 Q Right. At 4:44, he's searched --

14 A Exactly. Those are --

15 Q -- at 4:50, he's wired up.

16 A -- those are the notes.

17 Q And, you know, going back to the search that
18 occurred -- performed by you at 4:44, I mean, you're
19 looking for everything to make sure he doesn't have
20 anything inappropriate on him so that he couldn't be
21 sent out by you all with hidden drugs on him and
22 come back to law enforcement and say, here, I found
23 this, you know, this person sold it to me?

24 A Or just have something in his pocket from a
25 previous date. I mean, not necessarily we would

1 hide anything or just you would leave money in --
2 just like you would leave money or something. So we
3 just make sure that all of that is taken care of
4 beforehand.

5 Q Yes, sir. And in this particular case, we're
6 talking about .12 grams of a substance; right?

7 A Uh-huh.

8 Q A very small, you know, piece or quantity of
9 this stuff; right?

10 A Uh-huh.

11 THE COURT: Speak your answer, please.

12 THE WITNESS: Yes.

13 BY MR. CASTO:

14 Q She has to take down everything you say.

15 A I understand. I didn't know you were finished.

16 Q Now, something like that small -- I mean, it
17 could be hidden anywhere in somebody's clothing or
18 on their person; right?

19 A It could have.

20 Q You know, and you're the one that did the
21 search. I mean, you're -- you're checking, in
22 particular, the pants; right?

23 A Yes, sir.

24 Q Specifically, their pockets?

25 A Yes, sir.

1 Q Specifically, the contents maybe that they
2 could have had in their pockets?

3 A Yes, sir.

4 Q Which may or may not include a wallet?

5 A Yeah, we search all of that.

6 Q Cell phones?

7 A I don't think he had a cell phone, but, yes, if
8 they had a cell phone, we will most likely if not --
9 if they're not using it for safety issues because
10 sometimes we will call. But I get what you're
11 saying, yes, sir.

12 Q You know, any other contents in their pockets;
13 right?

14 A Uh-huh.

15 Q Also move on to the shirt. Let's say they have
16 a shirt with pockets or something like that, also
17 look in there; right?

18 A Yes.

19 Q Additionally, you know, inspect any type of
20 jewelry or anything they have around their neck,
21 watches, rings, anything like that?

22 A Yes.

23 Q Moving down to socks and shoes. Take socks
24 off?

25 A All of that.

1 Q Take shoes off?

2 A All of that.

3 Q Look in the shoes?

4 A All of that.

5 Q Take out the -- I don't know if you take out,
6 you know, the piece in the shoe, the sole or the --

7 A The tongue.

8 Q -- sock line or anything like that. I don't
9 know that that was done in this case; is that right?

10 A It's depending on what type of shoe it is
11 whether we -- or if they're going to be out of our
12 scope for a particular time if we're going to go
13 that in depth because, I mean, you have to do a lot
14 of manipulating that we could possibly hear and
15 would probably investigate afterwards to do
16 something like that.

17 Q Do you recall if that was done in this case?

18 A Yes.

19 Q Okay. And was it done in this case?

20 A Yes. We didn't -- not the sole, but the shoe,
21 you take the tongue, you put it -- but going that in
22 depth, you would have to have -- and obviously I was
23 never outside of the scope of our vantage point, so,
24 you know. And I will say that just because of how
25 we knew beforehand our meeting of how it was going

1 to operate, that I did not go in the tongue, but we
2 could, but -- I mean, that's -- I searched the shoe,
3 look under the tongue, shoe strings and all that,
4 but you would have to be real -- out of our scope to
5 -- for you to reach down, take the shoe off the
6 tongue, and like I said, that's -- that's not
7 common.

8 Q It could have done it, but in this case did
9 not; is that right?

10 A Very likely -- unlikely.

11 Q And, you know, further question, you know,
12 Timothy Erving, with something that small, he wasn't
13 strip searched or anything like that in this case;
14 right?

15 A You wouldn't do a strip search, just like you
16 said, anywhere you could put something, but we were
17 quite confident -- I've done a lot of these. We
18 were quite confident that he did not take anything
19 into a deal. We tell them when they come beforehand
20 to not bring anything with them like, i.e., jewelry
21 stuff like that. Anything that they need, we will
22 provide. That's what we tell them.

23 Q Okay. But the answer to my question, he wasn't
24 strip searched that day; right?

25 A A strip search for this particular deal would

1 be a little extreme. I just -- but, no, he wasn't
2 strip searched.

3 Q It wasn't done though; right?

4 A No, not strip searched.

5 Q Well, you -- you wire, you place the audio
6 recording equipment on Mr. Erving yourself; right?

7 A Yes, sir.

8 Q And that's after you'd searched him for those
9 six minutes; is that correct?

10 A Yes, sir.

11 Q And during this time, was Timothy Erving, was
12 he given the 20 dollar bill?

13 A Yes. That bill would have to come from Special
14 Agent Mota. It was his case and normally he
15 documents his own money. So, yes, at some point in
16 time whenever it's listed, he would -- once I
17 finished my wire, he would be given the money to
18 complete the transaction.

19 Q Okay. And normally standard operating
20 procedure, the serial number on the bill is recorded
21 somewhere?

22 A Yes.

23 Q And, you know, that's so you can keep track and
24 you'd know that that's the bill that you gave the
25 CI; right?

1 **A** Exactly.

2 **Q** You can tell it apart from any other bill;
3 correct?

4 **A** Yes, sir.

5 **Q** So that if law enforcement wanted to, they
6 could give a 20 dollar bill to somebody, they could
7 go, you know, into a home or something, pay for
8 drugs, come out, and law enforcement, if they wanted
9 to, could storm in the house. And if they found the
10 person with that 20 dollar bill on them, that could
11 be evidence against them; right?

12 **A** It could, yeah.

13 **Q** But now y'all didn't storm in the house that
14 day; right?

15 **A** No.

16 **Q** Okay. And --

17 **A** And another reason we do it is just in case
18 something happens, you know, that's -- it's
19 evidentiary, you know, whoever, you know, again,
20 they'll have it on them and stuff like that, not
21 necessarily the same, you know, but, yes.

22 **Q** All right. And y'all didn't -- y'all didn't
23 make an arrest that day. Y'all didn't storm in the
24 house as I understand?

25 **A** No, sir.

1 Q And that 20 dollar bill, that wasn't recovered,
2 was it?

3 A No.

4 Q Shifting gears and speaking about, you know,
5 informants and confidential informants, I mean,
6 you've heard of cases, you might have worked cases
7 where the informant has been less than truthful with
8 law enforcement; isn't that right?

9 A At sometimes.

10 Q And, you know, I mean, for instance, just lying
11 to officers or maybe even stealing drugs or not
12 turning in all the drugs that they have; right?

13 A It has happened, but in my case and in my
14 experience, if you are up front with them like we
15 are and explain the rules in the beginning, that's
16 less likely to happen. So it can, but I control or
17 we, as law enforcement, control the contractual
18 source and let them know up front, this is what
19 you're facing. We make them sign an agreement
20 saying, if you do these things, you could be locked
21 up by us. And so that's -- it could be, but if
22 you're up front, we just don't rush out willy-nilly
23 and do it. He knew this beforehand.

24 Q But you would agree with me that's something
25 that can happen; correct?

1 **A** It can. In my ten years of experience, I
2 hadn't had that because of the way that we like to
3 operate. That's just the way I was trained and
4 that's just the way it has been done. But in this
5 particular case, it wasn't -- he was well aware of
6 what his -- he was given specific instructions on
7 what to do and how to conduct himself.

8 **Q** Well, in light of that issue, in light of
9 safety, I mean, that's why often times these things
10 are recorded or the person's monitored; isn't that
11 right?

12 **A** Yes, sir.

13 **Q** Okay. And in this case, we only have an audio
14 recording; right?

15 **A** Yes, sir.

16 **Q** All right. Just to be specific, no -- we don't
17 have a video of anything, do we?

18 **A** We don't. It was technical difficulties with
19 the video. We would love to, i.e., we -- but it was
20 some malfunction. So we have audio. And for years,
21 that's how we conducted our business. For years,
22 we've conducted audio and that's all we had to use
23 was audio, and so -- that's why you do two backups,
24 you do a video and you do an audio particularly for
25 that particular reason.

1 Q Well, you know, specifically, in this case,
2 though, you don't have video in this particular
3 case, do you?

4 A No, sir.

5 Q And it would have been possible to get another
6 video in in this particular case; right?

7 A Say that again.

8 Q SLED would have a backup at the home office in
9 Columbia of course; right?

10 A Yeah, but not in the middle of, you know, a
11 deal or something -- I mean, we were already
12 conducting our deal.

13 Q But you had -- you had had the meeting all
14 beforehand; right?

15 A Yes.

16 Q And you had encountered those technical
17 difficulties at some time --

18 A Of course, we could have gotten -- yeah, yeah.

19 Q There weren't as I understand -- there weren't
20 any still pictures taken that day, were there?

21 A Still pictures?

22 Q Just normal camera pictures that day; right?

23 A Not to my knowledge. I can't remember.

24 Q And you'd agree with me that SLED has, you
25 know, these type of body cameras where somebody, you

1 know, can be wired up with, like you said, audio and
2 visual cameras. SLED has those; right?

3 A They can. We have them. We don't like to
4 disclose all that we have, but we have some.

5 Q Well, I'm not going to ask you for a specific
6 number, but, yes, they do have that; right?

7 A Yes.

8 Q Okay. And -- but one of those was not used in
9 this case. That's not -- we don't have that video
10 in this case?

11 A No.

12 Q Okay.

13 A We attempted to use a video; it just didn't
14 work.

15 Q Okay.

16 A And, again, I don't want to disclose what we --
17 but it just didn't work. So we have to lean on the
18 audio, and that's not -- that's not farfetched.
19 We've done that in the past.

20 Q Well, let me ask you this: Did anyone --
21 you're in the car with the other officers that day.

22 A I am.

23 Q Did you or Officer Mota or Goldman, did any of
24 y'all have just a normal -- a video camera of any
25 sort in the car with you all?

1 **A** No, we didn't have a video.

2 **Q** And obviously, again, I mean, SLED has all that
3 equipment too; right?

4 **A** Yes.

5 **Q** All right. And what about just normal regular
6 cameras? Did y'all have one of those in the car
7 with you that day at all either?

8 **A** We did, and -- and I guess it's basically,
9 because of the mal -- we were leaning more on that
10 video, and, of course, we did. But my function that
11 particular day was on the CI, and that was my --
12 when I do these things, that's how I like to operate
13 because there is a specific level of danger, and so
14 my main concern was where I -- my eyes was on the
15 confidential informant.

16 Now, what the other agents, what they were
17 doing, you know, I couldn't -- if they had a camera,
18 I don't know or anything, but I was specifically
19 focused on him, that was my equipment, that's my --
20 I was listening to him to make sure, and I was
21 looking at him from a vantage point where I could
22 see to make sure he was safe.

23 **Q** And correct me if I'm wrong, you're saying that
24 y'all did have a camera, but you were doing
25 something --

1 **A** All of that was accessible. I guess what
2 you're looking for and what I can tell you, we were
3 leaning, and this is a -- all of this is a learning
4 curve. So now we were leaning more toward on the
5 technical support that we have. But like all --
6 like my cell phone, they all go awry sometimes, and
7 so that was this particular case where it just
8 didn't work.

9 **Q** Well, speaking of cell phones now, you had two
10 cell phones on you that day; is that right?

11 **A** Me?

12 **Q** Yes, sir.

13 **A** Yes, I had two...

14 **Q** Either one of those phones have a camera on it?

15 **A** Yes, camera and video function.

16 **Q** The other officers, did they have their cell
17 phones, if you know?

18 **A** I would suspect they had, yes, sir.

19 **Q** And ultimately, out of everything that was
20 used, as far as from a technology standpoint, we
21 just have this audio recording from that day; right?

22 **A** Yes, sir. And, again, it's not like we didn't
23 try to get any other video. Without disclosing what
24 we use, that was -- an attempt was made, but,
25 unfortunately, it did not record what we wanted it

1 to. That's basically it.

2 Q Let me ask you this: When -- you're driving
3 this vehicle; is that right?

4 A I was.

5 Q And you're seated in the driver's seat
6 obviously. Where are the other officers, Officer
7 Mota and Officer Goldman, where are they seated in
8 position to you?

9 A I can't remember what -- each one of them is --
10 may be in the passenger seat and one of them in the
11 back, I can't remember one, but I think it was
12 Officer Goldman that was in the front being -- it
13 was a Durango, so he had to have room.

14 Q All right. Well, from your vantage point, how
15 far from, say, where you were sitting in your car
16 seat there to the front door at 212, approximately
17 how far do you think that was?

18 A It wasn't far, matter of a couple yards maybe.
19 Maybe from here to the other side of the window.
20 I'm looking at something white right now through
21 this window, maybe to that point.

22 Q Okay. And then once this has happened, Timothy
23 Erving comes back to the vehicle and he hands -- as
24 I understand it, he hands the substance to Officer
25 Mota; is that right?

1 **A** Yes. We have the BEST kit right there; he'd
2 just drop it in.

3 **Q** Do you remember how that substance was packaged
4 that day?

5 **A** I don't. I don't.

6 **Q** Okay. And in the recording, it's -- Timothy
7 Erving is still wired up; right?

8 **A** In the recording, yes.

9 **Q** And he's still wired up in the car; correct?

10 **A** Yes, sir.

11 **Q** And I believe it's your voice that we hear
12 telling Timothy Erving, you know, to be quiet;
13 right?

14 **A** Exactly.

15 **Q** And the reason is that if he speaks, it could
16 appear he had some type of vendetta against who
17 he's --

18 **A** That's exactly --

19 **Q** -- you know, claiming gave him the drugs;
20 right?

21 **A** Exactly.

22 **Q** Okay.

23 **MR CASTO:** I beg the Court's indulgence.

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

25 (Pause.)

1 BY MR CASTO:

2 Q But just real quick, in your report, it wasn't
3 stated at all that there was any type of video
4 malfunction; right?

5 A No, it wasn't.

6 Q And you didn't see Leo Abney yourself that day,
7 did you?

8 A No. Now, we wouldn't find out if there was any
9 video -- now we have the capability to download on
10 the spot, but that particular day, it would have to
11 be taken back to Columbia to our tech guys and they
12 would download it. I think it was at that point
13 that it was determined there was a malfunction.

14 Q The report was done after the fact. And in the
15 report, it doesn't mention any type of video
16 malfunction, does it?

17 A In the incident report?

18 Q Yes, sir.

19 A No.

20 MR CASTO: No further questions.

21 THE COURT: Redirect?

22 MR. MAYE: Just a couple.

23 REDIRECT EXAMINATION

24 BY MR. MAYE:

25 Q He asked you about, you know, getting the

1 serial numbers --

2 A Yes, sir.

3 Q -- off the money and then taking somebody down
4 immediately after a buy; right?

5 A Yes, sir.

6 Q Y'all call that a buy-bust; is that right?

7 A Yeah, that is.

8 Q And so the CI goes out, give them the money,
9 they do the transaction, then you go hit them and
10 get your money back?

11 A Yes, sir.

12 Q Is that correct?

13 But once you do a buy-bust, the CI's burned,
14 it's all over?

15 A Yes, sir.

16 Q Because there's no question as to who did them?

17 A Exactly, sir.

18 Q And, in this case, y'all had an ongoing
19 operation involving Timothy Erving. You were doing
20 as many people as you could in Ridge Spring?

21 A Yes, sir.

22 Q And sometimes as many times as you could?

23 A Yes, sir.

24 Q Okay. So, in this case, y'all did not take
25 them down there and you did not try to get your

1 money back?

2 A That's not something we had in plan. No, sir,
3 we did not.

4 Q And your purpose was to continue with an
5 ongoing operation?

6 A Continue -- yes, sir.

7 Q Okay. Let me ask you this: You were asked a
8 lot of questions about, you know, did you strip
9 search him, you know, did you go through all these
10 things. This was unusual, you had eyes on this guy?

11 A Yes, sir.

12 Q Y'all were able to, from concealed vantage
13 points, keep your eyes on him from the time he left,
14 coming back; right?

15 A Yes.

16 Q Y'all could actually see the grassy area in
17 State's 5 here showing the duplex and all, couldn't
18 you?

19 A Yes, sir.

20 Q Okay. So if you can keep eyes on him, you're
21 not real worried about him doing anything or hiding
22 drugs or anything else because you're watching him;
23 right?

24 A That's what I told him. It's very contrary
25 that he -- he mentioned the sole. That's -- it

1 would take a lot of time and we had eyes on him.

2 Q You were watching him?

3 A Yes, sir.

4 Q And he obviously was not aware of when you had
5 eyes on him and when you did not?

6 A No. He didn't know where we were and we do
7 that for a reason.

8 Q Okay. But you, in fact, did watch him go to
9 212 Merritt; correct?

10 A We did.

11 Q All right. You watched him encounter Montez
12 Quattlebaum and the other individuals in the front
13 yard?

14 A In the front yard.

15 Q Okay. And you actually watched him go to the
16 door that he's talking about in this case, the end
17 door, at 212 Merritt?

18 A Yes, that was one of my main concerns when I
19 was watching him that when you -- when they reach
20 the door, the antennas go up because, again, that's
21 an element of safety and secure -- concern. And so,
22 yes, I did see him approach.

23 Q So you saw him go to the door --

24 A Yes, sir.

25 Q -- and go inside and you lost sight of him at

1 that point --

2 **A** At that point.

3 **Q** Okay. But y'all were monitoring the wire?

4 **A** Yes, we were monitoring the audio. We could
5 still hear.

6 **Q** Okay. And after some fashion, he did return
7 back out of the door?

8 **A** Yes, sir.

9 **Q** Okay. And y'all had eyes on him as he came
10 back towards y'all?

11 **A** Yes, sir.

12 **Q** Okay.

13 **MR. MAYE:** Thank you very much.

14 **THE COURT:** Recross?

15 **MR. CASTO:** Just briefly.

16 RECROSS-EXAMINATION

17 BY MR CASTO:

18 **Q** You couldn't see what was going on inside that
19 house that day; right?

20 **A** No. Once he got to the door, yes, we lost
21 vantage.

22 **THE COURT:** Thank you, sir. You may step down.

23 **THE WITNESS:** Thank you.

24 **THE COURT:** Do you want to call another witness
25 or break for lunch?

1 **MR. MAYE:** Your Honor, if we can break for
2 lunch now, it would probably be a pretty good time.
3 The next witness would probably be one that we
4 wouldn't get through before the hour of one o'clock.
5 Thank you.

6 **THE COURT:** Ladies and gentlemen of the jury,
7 we're going to break for lunch now. You're going to
8 be on your own for lunch. I'm going to give you
9 somewhat of an extended lunch break because I think
10 there may be some issue I have to address.

11 **MR. MAYE:** May it please the Court, Your Honor.
12 May we approach briefly?

13 **THE COURT:** Sure.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury, but out of
16 the hearing of the jury.)

17 **THE COURT:** Okay. Well, just be back here,
18 please, in the jury room at two o'clock. That's an
19 hour and 15 minutes. Thank you. Don't discuss the
20 case.

21 (The jury was excused for lunch.)

22 **THE COURT:** Be careful that you don't have any
23 contact with a juror. It's best if you wait a
24 little bit and let them clear out. You cannot
25 assume that the jurors have left the building

1 because some people don't eat lunch, some people
2 just kind of hang around. If you go to a local
3 restaurant, there's a good chance there's going to
4 be a juror or more than one juror in that
5 restaurant, so make sure you don't say anything that
6 might be overheard by a juror that relates to the
7 case in any way, and make sure you don't have any
8 contact with jurors, please.

9 Court's in recess till 2:00 P.M.

10 **MR. MAYE:** Thank you, Your Honor.

11 (Whereupon, there was a luncheon recess.)

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

13 **MR. MAYE:** State's ready, Your Honor. Thank
14 you.

15 **THE COURT:** Defense?

16 **MR. DRYLIE:** Defense is ready.

17 **THE COURT:** Bring the jury in, please.

18 (The jury returns to the courtroom.)

19 **THE COURT:** Call your next witness, please.

20 **MR. MAYE:** State would call Special Agent Larry
21 Zivkovich with the South Carolina Law Enforcement
22 Division.

23 ****

24 ****

25 ****

1 LAWRENCE ZIVKOVICH,
2 having been duly sworn, testified as follows:

3 **THE COURT:** State your name, please, and spell
4 your last name.

5 **THE WITNESS:** Lawrence Zivkovich,
6 Z-i-v-k-o-v-i-c-h.

7 DIRECT EXAMINATION

8 BY MR. MAYE:

9 **Q** Agent Zivkovich, if you would, tell the ladies
10 and gentlemen of the jury where you're employed and
11 what your area of specialty is at your place of
12 employment.

13 **A** I'm currently employed at South Carolina Law
14 Enforcement Division, commonly known as SLED. And
15 my specialty is in controlled substances in the drug
16 ID lab.

17 **Q** Agent Zivkovich, let me ask you this: Is your
18 particular area of expertise with SLED, what you
19 commonly do, the identification of substances to
20 determine whether or not they are narcotics? Is
21 that one of your primary roles at SLED?

22 **A** Yes, sir.

23 **Q** Okay. What specialized training do you have
24 that qualifies you as basically a scientist in order
25 to test materials that come in to determine whether

1 or not they're controlled substances?

2 **A** I received a Bachelor's of chemistry from the
3 University of South Carolina. And then when I was
4 hired on at SLED, I went through a six-month
5 forensic science course. And I've received seminars
6 from the Drug Enforcement Agency and also West
7 Virginia University.

8 **Q** How many times have you been qualified as an
9 expert witness, say, in the area of drug
10 identification in the courts of the State of South
11 Carolina?

12 **A** Thirty-three.

13 **Q** Thirty-three times today?

14 **A** Yes, sir.

15 **MR. MAYE:** Your Honor, at this point in time,
16 I'm going to offer Agent Zivkovich as an expert
17 witness in the area of drug or narcotics
18 identification, offer him to the defense for them to
19 cross-examine or voir dire him regarding his
20 qualifications as an expert or whether -- I would
21 request or inquire if they'd be willing to
22 stipulate, but I offer Agent Zivkovich as an expert
23 witness in that area.

24 **MR. DRYLIE:** Without objection.

25 **THE COURT:** You said drug analysis or did you

1 say chemistry? What did you say?

2 **MR. MAYE:** Drug analysis and identification is
3 what I would offer him.

4 **THE COURT:** All right. He is so recognized.
5 BY MR. MAYE:

6 **Q** Agent Zivkovich, I'm going to hand you what's
7 marked State's 1 for identification at this point in
8 time and ask you if, pursuant to your duties of
9 being a chemist with the drug labs at SLED, if you
10 were provided with materials contained inside of
11 that sealed envelope for possible identification?

12 **A** Yes, sir, I was.

13 **Q** Okay. Could you tell me, from the records that
14 you have, when that first came to SLED and whose
15 hands it went through prior to it coming to you for
16 testing?

17 **A** On June 20th, 2014, Omri Mota deliver --

18 **Q** How do you spell that? It's an odd name.

19 **A** O-m-r-i M-o-t-a.

20 **Q** Okay.

21 **A** He delivered the drugs to our forensic
22 technician, Doris Yarbrough, who then logged them
23 into SLED.

24 **Q** When did she log them into SLED and on what
25 date?

1 **A** She logged them on June 20th, 2014.

2 **MR. DRYLIE:** Your Honor, at this point, we
3 would object to hearsay.

4 **MR. MAYE:** It's a regularly reported --

5 **THE COURT:** You wish to be heard?

6 **MR. MAYE:** -- business record. I will lay a
7 foundation, but I will maintain merely that it's --
8 I can ask the witness, are the records that he's
9 referring to regularly recorded business records at
10 the South Carolina Law Enforcement Division?

11 **THE COURT:** Wish to be heard on this?

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

13 **THE COURT:** Lay your foundation.

14 BY MR. MAYE:

15 **Q** Do you keep, in the regular course of business,
16 a chain of custody, in the regular course of
17 business with SLED, with all items that come in for
18 testing with your agency?

19 **A** Yes, sir. When an item is brought in for SLED
20 analysis, the person that brings it in takes it to a
21 forensic technician who gives it a unique SLED lab
22 number which also has a barcode on it. And from the
23 point it enters until the point the outside agency
24 picks it up, whenever it transfers custody, it's
25 scanned into custody of the person holding it which

1 records it into the chain of custody.

2 Q Let me ask you this: Was that same procedure
3 or was that chain identified or generated in
4 conjunction with the sample that you have before you
5 now?

6 A Yes, sir. The barcode I'm referring to is on
7 the top of the evidence and it has the unique lab
8 number that's given to it and the barcode, which is
9 scanned each time the evidence transfers.

10 Q In your capacity at the drug labs of the South
11 Carolina Law Enforcement Division, are you a
12 custodian of the records or do you have access to
13 those records? Are you able to print them out? And
14 are the records you brought with you ones that were
15 generated in the regular course of business by the
16 South Carolina Law Enforcement Division in
17 association with the drug evidence that you have
18 before you there marked as State's 1 for ID?

19 A Yes, sir. This is the chain of custody for
20 this evidence.

21 Q Okay.

22 MR. MAYE: Your Honor, I'm going to offer them
23 as a regularly recorded business record of the South
24 Carolina Law Enforcement Division and ask that he be
25 allowed to give testimony in that regard.

1 **THE COURT:** Do you wish to be heard?

2 **MR. DRYLIE:** Judge, I think we have a matter of
3 law.

4 **THE COURT:** All right. Ladies and gentlemen, I
5 have to ask you to step in the jury room. Don't
6 discuss the case, please.

7 (The jury retires to the jury room.)

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

9 **MR. DRYLIE:** Judge, I think the Solicitor's
10 trying to offer the chain in completely through this
11 witness, and we'd object to the chain being offered
12 in its entirety through this witness. He can
13 testify that the log says that, but I don't think he
14 -- I don't think it relieves them of their burden of
15 proving the entire chain of custody.

16 Your Honor, the Solicitor -- Mr. Maye and I had
17 a conversation about whether Ms. Yarbrough was
18 needed to come testify. We stated that we did not
19 need Ms. Yarbrough as a member of the chain, that we
20 would stipulate to that, but any further pieces of
21 the chain that are missing, we think that they
22 should be required to come and testify.

23 **THE COURT:** Anything else?

24 **MR. DRYLIE:** No, Your Honor.

25 **THE COURT:** All right. Well, the chain issue

1 and the hearsay issue are two different matters. I
2 don't know what he's intending to offer at this
3 point.

4 Solicitor, do you want to make any comment?

5 **MR. MAYE:** Your Honor, I think that it does --
6 I think his objection basically kind of is gray.
7 It's in between chain and -- under State versus
8 Hatcher, all I'm asking is if they have a regularly
9 recorded business record of who handled it.

10 I think -- all I've ever done is brought in the
11 lab person, Ms. Yarbrough, who I offered to bring in
12 and they indicated they didn't want her or required
13 me to do so, that she -- I would have offered her
14 that she received it. SLED, has a regularly
15 recorded business record, their internal chain of
16 custody, that basically just shows who handled it,
17 that it was logged in by Ms. Yarbrough, that it went
18 here to this step to this step. I was going to
19 offer the regularly recorded business records to
20 identify the individuals that handled it at the
21 South Carolina Law Enforcement Division and what the
22 records were.

23 Then under State versus Hatcher, Your Honor, I
24 think that it basically provides that we don't have
25 to have every single person that's in the chain

1 testify, that it's a matter -- the admission of the
2 evidence is a matter of discretion for the Court in
3 this case. And at the conclusion of the testimony
4 that I intend to get from the agent that is on the
5 stand here before you, Your Honor, we intend to
6 establish the progression of the evidence as it came
7 to the South Carolina Law Enforcement Division and
8 as it ended up with Agent Zivkovich. I intend to
9 ask him whether or not it was tampered with or it
10 was an intact BEST kit when he tested it, Your
11 Honor.

12 So I think some of that objection is a little
13 bit premature. The only thing that I'm asking is
14 that -- I think that they're objecting to him
15 testifying from any internal documentation that they
16 had at SLED as hearsay as to when it came in. I'm
17 asking under the -- a hearsay exception, the
18 regularly recorded business records to be allowed to
19 have this agent testify to that information.

20 (Pause.)

21 **THE COURT:** Anything else need to be on the
22 record?

23 **MR. DRYLIE:** Judge, just briefly. I don't
24 believe that Agent Zivkovich is a proper custodian
25 of the business records exception rule of the

1 records for SLED.

2 **THE COURT:** On hearsay or on the chain of
3 custody?

4 **MR. DRYLIE:** On the hearsay business records
5 exception. I realize -- I looked over the issue and
6 I apologize for that, kind of knew where he was
7 going based on what's happened this morning.

8 **THE COURT:** Well, what has happened this
9 morning? You had Agent Mota get on the stand in
10 camera and I ordered that his personnel file be
11 brought. What's happened?

12 **MR. DRYLIE:** Your Honor, Mr. Maye has made a
13 statement to me that I don't believe he plans to
14 call Agent Mota anymore. And so I believe he's
15 trying to get around calling Agent Mota by getting
16 the chain in through this witness.

17 **THE COURT:** Has the personnel file gotten here
18 yet?

19 **MR. DRYLIE:** Not that I know of.

20 **MR. MAYE:** Shortly, Your Honor.

21 **THE COURT:** Well, why couldn't he bring it?

22 **MR. MAYE:** He didn't know to bring it, Your
23 Honor. Agent Zivkovich was out sick, Your Honor,
24 and came in directly to us, Your Honor. And Frank
25 O'Neil at SLED is sending it. And it may be here

1 now, Your Honor, but I just haven't been out of the
2 courtroom to find out. They were sending it.

3 **THE COURT:** First -- all right. If there's a
4 hearsay exception, it would have to be to something
5 he has testified about in a contemporaneous
6 objection.

7 The lady who logged it into SLED, my
8 understanding is there is no challenge to that. So
9 when he talked about her name being on there as the
10 person who received the BEST kit, I don't think
11 that's even being raised, if I'm hearing you all
12 correctly. There was one mention to Mota giving it
13 to her and then there was an objection, and I told
14 them to raise a foundation -- to establish a
15 foundation and he asked the witness questions about
16 the process.

17 As far as the hearsay exception under 803
18 subsection (6), if that's the objection, it's
19 overruled.

20 It's premature for me to rule on the chain of
21 custody issue because I don't know what he's going
22 to say.

23 The other agent, Agent Miles, testified in some
24 regard about how the evidence was placed into the
25 BEST kit bag. And my notes from that, again I'm

1 getting ahead of myself, was that it was sealed on
2 June the 19th in the presence of Mr. Miles,
3 transmitted to SLED on the 20th by Agent Mota, that
4 Agent Miles picked up the BEST kit from SLED
5 yesterday and brought it to court. It was not
6 changed or altered in any way. It was in the same
7 condition except for the testing.

8 Now, he also said on cross, if I remember
9 correctly, Mr. Miles, that he does not remember how
10 the drugs were packaged when they were received back
11 in the car or wherever they met back up. And he
12 hasn't testified about any numbers that would
13 identify the BEST kit.

14 I don't remember, it's been so long since I've
15 tried one of these cases, I don't remember if the
16 bags have separate numbers on them or not. I know
17 they're assigned numbers once they get to SLED,
18 which is what he just said. So I don't know -- I
19 mean, obviously, the Hatcher case deals with
20 establishing that you don't have to have every
21 essential -- you don't have to have every witness
22 who touched the drug in order to establish a chain
23 of custody, you don't have to have those people come
24 and testify in court, but you have to produce a
25 chain in a manner that's as best as practicable.

1 So, again, I think I'm getting ahead of myself
2 if I'm ruling on the chain right now. Now, it may
3 be that the jury's only in here a couple of minutes
4 and I send them back out again, but I don't know.
5 All right?

6 **MR. DRYLIE:** Yes, Your Honor.

7 **MR. MAYE:** Thank you, Your Honor. We're ready.

8 **THE COURT:** Bring in the jury.

9 (The jury returns to the courtroom.)

10 **THE COURT:** All right. You may continue,
11 Solicitor.

12 BY MR. MAYE:

13 **Q** Agent Zivkovich, from the records that you have
14 there prior to testing it, again I'll ask you, drugs
15 were received on what date and who got them?

16 **A** The drugs were received from Mr. Omri Mota on
17 June 20th, 2014, and delivered to our forensic
18 technician, Doris Yarbrough, on the same date.

19 **Q** Okay. Will they accept items of drug evidence
20 in a BEST kit if the seal is tampered or it is
21 broken in any way at the intake in SLED?

22 **A** Not to my knowledge, no, sir.

23 **Q** Okay. Let me ask you this: Could you identify
24 the BEST kit number, State's 1 that is for ID in
25 this case, the BEST kit number that was provided by

1 Agent Mota to Doris Yarbrough?

2 **A** The -- the BEST kit number is B243856, and the
3 SLED lab number that was assigned to that case is
4 L14-07742.

5 **Q** Okay. I'll ask you this: In State's 1 that is
6 marked for ID, that's the same BEST kit number in
7 this case?

8 **A** Yes, sir.

9 **Q** Okay. Where did it go, prior to you testing
10 it, internally in SLED?

11 **A** Once Ms. Yarbrough logged in the evidence,
12 assigned it the number, she put it in the evidence
13 intake storage, which is where they put all the
14 evidence in a secure location until the person that
15 it's assigned to comes to pick it up. And on June
16 23rd, Jennifer Aycock, A-y-c-o-c-k, pulled the
17 evidence out of storage at my request, and I went
18 down and picked it up from Jennifer Aycock.

19 **Q** At the time that you received that BEST kit,
20 was it -- was the tamper-resistant seal on it? Was
21 it intact at that time?

22 **A** It was. When I pick up the evidence and take
23 it upstairs to my work area, I examine the evidence
24 to make sure that the tamper-evident seals, which
25 there's writing all around three edges, and on the

1 top where the officers place the evidence into the
2 bag, there's a glue, and if any of it's tampered
3 with, then it does become evident because the glue
4 will tear or the markings will not match up anymore.

5 Q Was there any evidence that that BEST kit that
6 was provided to you for testing with the numbers
7 that you have identified so far, was there any
8 evidence that it had been altered or tampered with
9 in any way at the time you opened it?

10 A There wasn't. I annotated on the actual BEST
11 kit that the seal was intact and dated it June 23rd,
12 2014, with my initials.

13 Q If you receive something that has -- the tamper
14 seal is broken on it, will you perform any testing
15 on it at all?

16 A Only at the request of my lieutenant. If
17 anything's been tampered with, I take it straight to
18 the lieutenant who takes it to the director of the
19 lab.

20 Q And that was certainly not the case in this
21 case at hand. You saw no evidence that it had been
22 tampered with?

23 A No, sir.

24 Q Okay. What did you do once you broke the seal
25 on it? Please tell the ladies and gentlemen of the

1 jury how you go through -- what steps you go through
2 to determine whether or not that an item that's
3 presented to you is a controlled substance and what
4 test did you, in fact, perform on the items that
5 were contained in the BEST kit.

6 **A** Well, the first thing we do is we check the
7 items to make sure that it is what the submitting
8 agency said it is. And once that happens, then I'll
9 go ahead and open the test kit, do a visual
10 examination of the evidence, and then depending on
11 what type of evidence it is, if it's
12 pharmaceuticals, we'll look it up in literature
13 before we test it.

14 And if it's something besides pharmaceuticals,
15 usually the first course of action is to do a
16 preliminary test, which is a spot test, and,
17 basically, that's using chemicals that change colors
18 to give you an idea of what type of drug it may or
19 may not be. And then once the preliminary test has
20 been done, then we run it on our instrumentation for
21 confirmation.

22 **Q** Okay. Please tell the ladies and gentlemen of
23 the jury, as you performed those tests on the
24 substance that was proffered to you as possibly
25 being a controlled substance, what tests did you do

1 and what were the results.

2 **A** I performed a preliminary spot test on it which
3 indicated the presence -- possible presence of crack
4 cocaine. And then I ran it on the instrumentation
5 and confirmed the actual presence of crack cocaine.

6 **Q** Okay. Did you have a weight of the crack
7 cocaine? Were you able to weigh it at that point in
8 time and determine the weight of the substance that
9 you determined was crack cocaine?

10 **A** Yes, sir. I weighed it to be 0.12 grams.

11 **Q** Let me ask you this: To a reasonable degree of
12 scientific certainty, do you have an expert opinion
13 as to what the items, I guess, of white, rock-like
14 substance that were submitted to you, do you have an
15 expert opinion as to what those are?

16 **A** Yes, sir. I determined it to be cocaine base,
17 commonly known as crack.

18 **Q** That is crack cocaine your -- to a reasonable
19 degree of scientific certainty, that's your expert
20 opinion?

21 **A** Yes, sir.

22 **Q** Okay. Did you generate a written report of the
23 results of your finding? And if so, did you bring
24 it with you?

25 **A** I did bring it with me.

1 **Q** Do you have it here today?

2 **A** I do.

3 **Q** Okay.

4 (State's Exhibit Number 6, SLED report,
5 marked for identification.)

6 **MR. MAYE:** I'm going to offer this as evidence
7 as State's 6 at this point in time. I'll show it to
8 the defense. It had previously been provided. I'm
9 going to offer the report of the chemist on his
10 expert opinion in this case, Your Honor, into
11 evidence.

12 **MR. DRYLIE:** No objection, Your Honor.

13 **THE COURT:** Without objection, mark it in
14 evidence.

15 (State's Exhibit Number 6, SLED report,
16 admitted into evidence.)

17 BY MR. MAYE:

18 **Q** What has now been marked as State's 1 for
19 identification in this case, Agent Zivkovich, is
20 this the sealed up sample that was tested on that
21 date that is the subject of your report that is now
22 in evidence as State's 6?

23 **A** It is. On the bag that I sealed the evidence
24 in, I wrote the lab number with my name, with my
25 initials on it. And then the heat-sealed bag, which

1 contains the BEST kit and the evidence, I dated and
2 initialled it and then placed a heat seal on top of
3 my date and initials. It's dated June 23rd, 2014.

4 **Q** And it's still in a sealed condition here
5 today?

6 **A** It is.

7 **MR. MAYE:** Your Honor, at this point in time, I
8 offer State's 1 that was previously marked for
9 identification into evidence in this case.

10 **MR. DRYLIE:** We'd object based on the chain.

11 **THE COURT:** All right. Ladies and gentlemen, I
12 need to ask you to step back in the jury room.
13 Don't discuss the case.

14 (The jury retires to the jury room.)

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

16 **MR. DRYLIE:** Your Honor, looking at the State
17 v. Hatcher case, it states, It is unnecessary that
18 the police account for every hand-to-hand transfer
19 of the item. It is sufficient that the evidence
20 demonstrates a reasonable assurance the condition of
21 the item remains the same from the time it was
22 obtained until its introduction at trial.

23 But the -- here, we've got testimony from Agent
24 Miles stating he didn't remember how it was
25 packaged. We've got, allegedly, Agent Mota putting

1 it into the BEST kit package and then taking it up
2 to SLED that day. So we have a big gap in the chain
3 here where -- we're not asking him to account for
4 every hand-to-hand that happened while it was in
5 SLED, but the person who takes the crack cocaine
6 from the CI and then puts it into SLED's possession
7 hasn't testified, and he's readily available.

8 **THE COURT:** Solicitor.

9 **MR. MAYE:** May it please the Court, Your Honor.
10 The -- Agent Miles that testified, Your Honor,
11 he identified state -- as 1 for ID at that point in
12 time, he identified that as the BEST kit. He
13 indicated that the items of drug evidence that were
14 taken from the confidential informant, that the bag
15 was sealed in his presence.

16 I think that they're confusing the question in
17 this case -- he was asked on cross-examination, How
18 was it packaged? He was not asking him how was the
19 BEST kit -- the items that went in the BEST kit
20 packaged. He was asking him how it was packaged
21 from the CI as he received it from the purported
22 defendants in this case, Your Honor.

23 That agent clearly testified that the BEST kit,
24 that is the same BEST kit number that the officer
25 testified. He didn't identify the BEST kit, but he

1 looked at the number and he said, This is the BEST
2 kit. And he talked about the initials and all and
3 the date that was on it. He said it was sealed in
4 his presence, that no one altered or tampered with
5 the evidence in any regard prior to it being sealed
6 in the bag. He identified that same BEST kit which
7 has the same number that the agent indicated is the
8 BEST kit that came to him.

9 And like I said, the question involving
10 packaging went to how it came from the confidential
11 informant to them, not as to -- the agent was
12 testifying, I don't know how the BEST kit was
13 packaged up or I don't know how it was sealed up.
14 He very clearly testified to that.

15 I think under Hatcher, Your Honor, we've
16 identified the item as coming into the possession of
17 agents of the South Carolina Law Enforcement
18 Division, it being sealed in that same BEST kit,
19 Your Honor.

20 We have evidence that was, prior to objection
21 in this case, that Omri Mota, the same agent that
22 Agent Miles testified sealed it in his presence,
23 Your Honor, delivered it to SLED, that Doris
24 Yarbrough got it on the 20th, that the
25 tamper-resistant seal would not have been -- that it

1 would not have been accepted if the tamper-resistant
2 seal was not intact.

3 We have it coming from Mota to Doris Yarbrough
4 at SLED. Jennifer Aycock handled it SLED, we've
5 identified that. Agent Zivkovich testified that it
6 went from drug ID to Aycock to him, the
7 tamper-resistant seal was intact when he got it and
8 tested it in this case, Your Honor. He indicated
9 that it was that same BEST kit that we have here
10 today that he looked at, Your Honor.

11 I don't think that there's any real or genuine
12 possibility, Your Honor, that this was tampered with
13 or that the item that is present before us here in
14 the courtroom that's -- now we're offering as
15 State's 1 is not the same substance that was taken
16 from Timothy Erving on June the 19th here in Saluda
17 and that that same substance was tested by this
18 officer.

19 I note that it is in the discretion of the
20 trial court, Your Honor, as to the admission of
21 evidence. We would maintain that we have
22 established every link of the chain and that there's
23 no real possibility that the evidence was tampered
24 with in any way by anyone, and we know exactly how
25 it came from the scene when Timothy Erving turned it

1 over to it sitting here in the courtroom now, Your
2 Honor. Because the -- Agent Miles even testified
3 that he picked it up at SLED in that condition
4 yesterday and brought it here to court today.

5 **THE COURT:** Anything else?

6 **MR. DRYLIE:** Your Honor, just looking at
7 Hatcher a little more, you know, it says, Whether
8 the chain of custody has been established as far as
9 practicable clearly depends on the unique factual
10 circumstances of each case.

11 Well, here we've got a pretty unique set of
12 facts, that the agent who supposedly put the crack
13 into the BEST kit bag is sitting over there and they
14 don't want to call him. And so they're trying to
15 establish the chain without using the first person
16 from law enforcement who took possession of the
17 drugs.

18 **THE COURT:** All right. Anything else?

19 First of all, I didn't understand Mr. Miles to
20 be saying that there was an issue with the BEST kit.
21 I understood what he was talking about when he
22 stated, he did not recall how the drugs were
23 packaged, to be what they were in when they were
24 handed by the CI to be put in the BEST kit.

25 The notes I have is that when the CI returns,

1 they immediately have the CI drop the evidence into
2 a SLED BEST kit. Then he said something about
3 taking it directly from the CI, which dropping it in
4 the BEST kit and handing it to somebody who then
5 drops it in the BEST kit are two different things,
6 but that was never really clarified.

7 My notes indicate that Agent Miles testified
8 that the confidential informant returned the items
9 that are in State's Exhibit 1 for identification,
10 that they were not -- that he picked up that BEST
11 kit from SLED and brought it to court, Agent Miles,
12 and that he did not change or alter it, it was in
13 the same condition, except for the testing, as it
14 was in.

15 Now, the difficulty in -- the word's escaping
16 me, give me a second -- reconciling -- the
17 difficulty in reconciling his testimony on direct
18 and on cross is that it's difficult for him to say
19 that it's the same thing in the BEST kit if he can't
20 remember how it was packaged.

21 He did not testify about a BEST kit bag. He
22 did testify that the BEST kit was sealed in his
23 presence.

24 And, you know, the obvious issue, if it were
25 some question of whether some sinister act is taking

1 place, the obvious question is whether Agent Mota
2 had a different BEST bag and took it to SLED with
3 something else in it. Because once Agent Mota had
4 it, the next time anybody else saw it was when it
5 was whatever was delivered to SLED.

6 But there's a quote in Hatcher that proof of a
7 chain of custody need not negate all possibility of
8 tampering so long as the chain of possession is
9 complete. And they're talking in Hatcher about
10 identifying the people in the chain.

11 And it is a really unique situation. I have a
12 SLED agent, who's been terminated, who was
13 apparently under subpoena and has been sitting here
14 for a day and a half. And when he got on the stand
15 in camera, I ordered that his records be provided by
16 SLED. And he's the one who took the drugs to SLED.

17 So the question that I have to have answered
18 is, one, whether the chain of custody has been
19 established as far as is reasonably practicable.
20 Well, my difficulty there is, as far as practicable,
21 does that just refer to identifying the people in
22 the chain or actually having an agent testify who's
23 sitting, presumably, outside that door?

24 And what the court -- the Supreme Court stated
25 is that -- that the trial judge can make a

1 determination that not every witness in the chain
2 has to testify if there are -- these are my words --
3 sufficient indicia of reliability. In their words,
4 they're quoting Cochran, C-o-c-h-r-a-n, We will
5 uphold the chain of custody if the safeguards
6 instituted ensure the integrity of the evidence even
7 if every person associated with the procedure is not
8 personally identified. And it states other courts
9 are in accord.

10 And it states from Cochran, Whether the chain
11 of custody has been established as far as
12 practicable clearly depends on the unique factual
13 circumstances of each case. A mere suggestion that
14 substitution could possibly have occurred is not
15 enough to establish a break in the chain of custody.

16 And it cites a Mississippi case, Turner versus
17 State, 3 So. 3d 742, also a Vermont case, State
18 versus Tester where a nurse had failed to keep
19 records of each step of collecting the evidence.

20 It's a matter of discretion for the trial court
21 is the way I'm reading it. And I also have kind of
22 a unique situation here because he's already
23 testified about the contents of what's in that bag
24 being crack cocaine.

25 The court in Hatcher said, The ultimate goal in

1 the chain of custody requirements is to ensure that
2 the item is what it is purported to be.

3 And the record in Hatcher where they reversed
4 the Court of Appeals' decision, which it reversed
5 the trial judge allowing that into evidence, states
6 that the record in Hatcher indicates that the drugs
7 received for testing were, in fact, those taken from
8 Hatcher without any alteration, tampering or
9 substitution.

10 So what I've got -- well, I would prefer to
11 take the ruling under advisement. I don't know if
12 it's fair to do that, so I'll just make a ruling.

13 What I've got is I've got a SLED Agent Miles
14 who testified that the drugs were placed into the
15 BEST evidence kit, the evidence was sealed in his
16 presence. He testified that they have not been
17 tampered with. And he testified -- he identified
18 who took them to SLED. And this witness has also
19 identified who transported them to SLED. The BEST
20 evidence kit was not tampered with when it was
21 received. And there is an inconsistency in his
22 testimony, but it's not enough, in my view, to
23 warrant exclusion of the evidence. So my ruling is
24 that under State versus Hatcher, State's Exhibit
25 Number 1 can come into evidence.

1 Mark it in evidence, Madame Court Reporter.

2 (State's Exhibit Number 1, bag of crack
3 cocaine, admitted into evidence.)

4 **MR. DRYLIE:** Your Honor, we would just object
5 for the record.

6 **THE COURT:** Sure. Well, you may be a hundred-
7 percent right. I've got to make a call and that's
8 the call I've got to make. And depending about what
9 we find out when we get that SLED agent's personnel
10 file --

11 **MR. MAYE:** Your Honor, I can check on that
12 right now. We were looking for it momentarily.
13 While the jury is out, I can look and see if we have
14 it. Be happy to. Beg the Court's indulgence.

15 **THE COURT:** You can stay where you are, but if
16 you want to step down, you may. You just can't
17 discuss your testimony with anybody.

18 We're at ease.

19 (Brief Recess.)

20 **THE COURT:** During the break, I was handed the
21 personnel file of Agent Mota, and I've reviewed it.
22 I have not decided exactly what I'm going to do
23 about it.

24 Looks like there were two grounds for a
25 dismissal or termination of the probationary period,

1 which was testified to previously in open court.
2 One of the grounds may be subject to disclosure.
3 The other one is less clear. It may be just
4 impeachment on a collateral matter. I'm going to
5 have to try to look up some stuff about -- some law
6 about impeachment on a collateral matter.

7 But one of them, the one that was testified
8 about, was for failing to follow a direct order.
9 And I think the gist of it has already been
10 testified about. It's just a lot more detail in
11 here.

12 I think what we probably should do is to finish
13 with this witness and then break for the day, but
14 I'll have the attorneys stay with me and see if I
15 can make some sort of ruling and give this material
16 to the defense and to the prosecution so they'll
17 have it overnight. A lot of this deals with they
18 talked to this person, they talked to that person,
19 and those names need to be blacked out because
20 there's things about insinuations or suspicions and
21 things like that that clearly don't have any place
22 in any dissemination and don't matter to this
23 particular case.

24 The only issue that does appear to be probably
25 relevant is being given a direct order, violating

1 it, being given a direct order by SLED to follow a
2 certain protocol, not doing it, and then not telling
3 the truth about it initially.

4 So if there's nothing else that y'all need to
5 put on the record right now, my suggestion is to
6 finish with the chemist, but I'm going to need that
7 agent, former agent, to stay on the subpoena.

8 **MR. MAYE:** Yes, sir, Your Honor.

9 Your Honor, I do have one other law enforcement
10 witness other than him and --

11 **THE COURT:** Oh, you can finish another witness.

12 **MR. MAYE:** Yes, sir. And I would like to go
13 ahead and do that.

14 And, you know, as to whether or not this person
15 is going to be a witness or not, I may not call him,
16 we may rest, and it may negate that unless they
17 intend to call him as a witness for the purpose of
18 impeachment.

19 **THE COURT:** They're going to have to make a
20 decision about whether -- I was back there most of
21 the time -- of course, it took me a while to read
22 through this file. I was back there most of the
23 time thinking about whether I should reverse my
24 prior ruling or not about admitting State's Exhibit
25 1.

1 If I stick with the ruling, which is what I
2 plan to do right now, and the State does not call
3 Agent Mota, then the defense is going to have to
4 make a decision, which is obviously not their first
5 choice, as to whether to call him and to argue to
6 the jury that he was here, he was subject to being
7 called and the State intentionally didn't call him
8 because they're trying to hide something from you.
9 But that's a decision they're going to have to make,
10 if he's not called by the State.

11 But, again, I think they should have the
12 benefit, and you should have the benefit, Mr. Maye,
13 of seeing what I'm talking about before you make a
14 decision as Solicitor whether to call him or not and
15 whether -- and certainly before the defense is put
16 in the position of having to make a decision about
17 whether to call him or not. And I don't know what
18 he does for a living now. Like I said, he's been
19 here two days.

20 **MR. MAYE:** He's in Massachusetts. He's a plant
21 manager of a plant, my understanding, in
22 Massachusetts. We flew him here. He's supposed to
23 fly out tomorrow morning. We bought him tickets.

24 Like I said, in our analysis, he was not much
25 more than a chain witness. The primary

1 investigating officer, in our estimation, was this
2 one, so -- and like I said, this is -- I never have
3 talked to this officer or viewed him prior to
4 picking him up at the airport Monday night. I
5 talked to him for the first time about this case,
6 this matter, all of this yesterday afternoon. I
7 certainly wanted to put it on the record today so
8 that we could air all of this out, but it was a
9 matter of first impression for me.

10 I knew that he was no longer at SLED. I didn't
11 know all the specifics of why he was not at SLED,
12 Your Honor. I made some inquiries yesterday. But
13 like I said, it was my first opportunity to talk to
14 him after we broke court yesterday and that's why I
15 brought it up today so that we could certainly air
16 it out.

17 And it was no -- certainly no intent on the
18 part of the State to conceal anything involving his
19 separation. I just really didn't know the details
20 and don't really know all of the details now.

21 **THE COURT:** Well, I can tell you both of you
22 know the gist of it.

23 Go ahead.

24 **MR. DRYLIE:** Judge, I have a little bit of an
25 issue with him saying that he was no more than a

1 chain witness because the only report I have in the
2 file, the only report from law enforcement was
3 written by Agent Mota. And his own people testified
4 this was his case. He was the case agent on it. He
5 got the warrant. He did the prelim. He's the only
6 report that I have in the file. And, obviously,
7 that puts us in a hard place. So I find it very
8 hard to believe that their position is that he was
9 the -- only a chain witness.

10 **THE COURT:** Can we proceed with this witness?

11 **MR. DRYLIE:** We can.

12 **THE COURT:** Both sides ready for the jury, I
13 assume?

14 **MR. MAYE:** Ready.

15 **THE COURT:** Bring the jury in, please, ma'am.

16 (The jury returns to the courtroom.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 I'm sorry for the length that took, but we've been
19 working the whole time.

20 You may continue if you have anything further.

21 **MR. MAYE:** Agent Zivkovich, please answer any
22 questions --

23 **THE COURT:** Oh, I'm sorry. State's Exhibit 1
24 is in evidence.

25 **MR. MAYE:** Thank you, Your Honor.

1 Agent Zivkovich, please answer any questions
2 the defense has for you.

3 **THE COURT:** Cross?

4 **MR. DRYLIE:** No questions.

5 **THE COURT:** Thank you, sir. You may step down.
6 You're free to go.

7 Call your next witness.

8 **MR. MAYE:** The State would call Chief Jared
9 Goldman to the stand.

10 **THE COURT:** Come around, please.

11 JARED GOLDMAN,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MAYE:

15 **Q** Chief Goldman, if you would, introduce yourself
16 to the ladies and gentlemen of the jury.

17 **A** Okay. My name is Jared Goldman. I'm currently
18 the Chief of Police in Salley, South Carolina,
19 formerly the Chief of Ridge Spring, worked as a
20 deputy in Saluda County for a while. And I began my
21 law enforcement career in the town of Salley. Prior
22 to that, I was a U.S. Marine, Iraq veteran.

23 **Q** Chief, let me ask you this: When did you start
24 working as Chief in the town of Ridge Spring?

25 **A** In August of 2013.

1 **Q** Okay. Did you prioritize it to try to address
2 the drug problem after becoming familiar with the
3 law enforcement challenges in the town of Ridge
4 Spring?

5 **A** I did that, that became my priority once I took
6 office.

7 **Q** Okay. Chief, was it difficult to develop
8 informants and to -- I guess, due to the close-knit
9 community in Ridge Spring, was it -- did you find
10 that that would be a difficult task for you?

11 **A** It was very difficult to form any informants
12 because it's a close-knit community, everybody knows
13 everybody. And usually when you have informants,
14 they want to work off charges. They're usually
15 charged with something.

16 This presented a special case for me because
17 somebody actually called me and wanted help and not
18 to work off charges, not trying to get out of
19 trouble. They wanted to get off drugs and get
20 straight. And it was a strange opportunity for me,
21 and I was glad to accept it.

22 **Q** Okay. What did you ask him to do? Did you
23 agree that you would try to help him and assist him
24 with getting off drugs?

25 **A** Yeah. I asked him what kind of help he wanted.

1 And he said he'd been using, he'd been using crack,
2 and he wanted to get off drugs and get his life back
3 together the way it used to be. And I told him, I
4 said -- or I asked him, Was there any issue with
5 drugs that he knew of in Ridge Spring? And he said
6 that was mostly --

7 **MR. DRYLIE:** Objection; hearsay.

8 **THE WITNESS:** I'm sorry. That's hearsay.

9 BY MR. MAYE:

10 **Q** What did you ask him to do to help you?

11 **A** I asked him to give me information on people
12 that were selling narcotics inside of Ridge Spring
13 and provide a list to me of people that were selling
14 drugs that he knew of.

15 **Q** Okay. Let me ask you this: How many people
16 are in the police department at Ridge Spring or how
17 many were when you took office and when you left
18 office?

19 **A** It was just me.

20 **Q** Okay. Who did you reach out to for help? You
21 had previously been a sheriff's deputy; correct?

22 **A** That's correct. I contacted Lieutenant
23 Padgett, which is a narcotics investigator at the
24 sheriff's office here in Saluda. And due to
25 jurisdictional issues with some of them being in

1 Aiken County, we contacted SLED because they have
2 statewide jurisdiction, and that's how SLED got
3 involved with that. And Lieutenant Padgett was not
4 on this case with us, on this particular case.

5 Q Okay. Let me ask you this: Did you know Leo
6 Abney, the defendant, in this case?

7 A I did.

8 Q Okay. Did you have actual knowledge of where
9 he resided in the town of Ridge Spring?

10 A Yes, I did. I knew he stayed at 212 Merritt
11 Avenue.

12 Q Okay. And I'm going to show you State's, I
13 guess, 5, 4 and 3. Use those to, if you would,
14 explain to the ladies and gentlemen of the jury
15 about that structure there and where it's located.

16 A Okay. This is 212 Merritt Avenue. It's a
17 duplex apartment. The door here to the left is for
18 the downstairs area. The door to the right is a
19 stairwell that goes to the upstairs area.
20 Mr. Abney, Leo Abney, and his brother, D.J., stayed
21 in the door on the right, which was an upstairs
22 apartment.

23 Q Okay. Let me ask you this --

24 MR. MAYE: I'm going to mark this for
25 identification only at this point in time.

1 (State's Exhibit Number 7, aerial
2 photograph, marked for identification.)

3 Q I'm going to show you State's 7 that's for ID
4 at this point in time. Does that fairly and
5 accurately -- is that an aerial of the town of Ridge
6 Spring? If you could take a look at it.

7 A It is.

8 Q Okay. And does it fairly and accurately
9 reflect the areas of Ridge Spring and the city
10 limits of the town?

11 A It does.

12 MR. MAYE: Okay. That's 7 for ID. I'm going
13 to move to admit this into evidence, I've laid a
14 foundation, if there's no objection.

15 MR. DRYLIE: Without objection.

16 THE COURT: Mark it in evidence, please, ma'am.

17 (State's Exhibit Number 7, aerial
18 photograph, admitted into evidence.)

19 BY MR. MAYE:

20 Q I want you to come down off the stand and take
21 this pen, if you would, help orient the ladies and
22 gentlemen of the jury as to where this is in the
23 town.

24 A (Witness leaves the witness stand.)

25 Q Show them where the police department is and

1 show them the sites that are at issue in this case
2 on State's 7.

3 A Okay. This green line actually circumscribes
4 my jurisdictional area in the town limits of Ridge
5 Spring. This is Highway 23 that runs through Ridge
6 Spring. That way would be to Batesburg. This way
7 would be to Ward. The police department would be
8 right in this area of town square, that building
9 right there actually.

10 This is Merritt Avenue. At Merritt Avenue,
11 there's the laundry mat here, there's a house here.
12 And 212 Merritt would be that two-story duplex that
13 I showed you the picture of earlier, which would be
14 right here.

15 Q Okay. Will you take the stand. I'm going to
16 show you another...

17 A (Witness resumes the witness stand.)

18 (State's Exhibit Number 8, blowup
19 photograph, marked for identification.)

20 Q I'm going to show you State's 8, a blowup here.
21 Can you tell me what State's 8 is?

22 A Yeah. It's a blowup of Highway 23 and Merritt
23 Avenue and the roof tops of those buildings.

24 Q Okay. Does it fairly and accurately reflect
25 the roof top view of that little small section of

1 the town of Ridge Spring?

2 **A** It does show that block.

3 **MR. MAYE:** I'm going to move to admit this into
4 evidence, 8, if there's no objection.

5 **MR. DRYLIE:** Without objection.

6 **THE COURT:** Mark it.

7 (State's Exhibit Number 8, blowup
8 photograph, admitted into evidence.)

9 BY MR. MAYE:

10 **Q** I want you to come down, if you will, and show
11 us the location of where this place is.

12 **A** (Witness leaves the witness stand.)

13 All right. This is Highway 23. That way is
14 Batesburg. This way would be Ward. This is the
15 post office. This is Merritt Avenue. This is the
16 laundry mat in Ridge Spring. That would be 200
17 Merritt. This is 212, which is the two-story duplex
18 right off of Merritt.

19 **Q** And those are the ones in State's 4 and 5.
20 This is the 212 Merritt; correct?

21 **A** That's correct.

22 **Q** Okay. If you would, during the course of your
23 observation of the later parts -- or of him actually
24 going there and doing the buy, where did y'all park
25 and sit?

1 **A** We parked at First Citizens Bank, which would
2 be this building right here. We pulled in this
3 parking lot and parked in this parking spot right
4 there, which had a direct line of sight to 212
5 Merritt right here.

6 **Q** Okay. All right. Go back and retake the
7 stand.

8 **A** (Witness resumes the witness stand.)

9 **Q** On June 19th of 2014, did you ask for SLED's
10 assistance in attempting to make a controlled
11 purchase of narcotics within the city of limits of
12 the town of Ridge Spring?

13 **A** I did.

14 **Q** Okay. Did y'all gather together some time
15 prior to the hour of five o'clock in the afternoon
16 on that Thursday?

17 **A** Yes, we did. We met at a -- well, I gave them
18 a call and I contacted Special Agent Miles that day,
19 and he met with me at a predetermined location
20 outside the jurisdiction of Ridge Spring. So we met
21 in that way because any time somebody new comes into
22 town, everybody knows; it's a small town. So we met
23 outside of town at a different location so nobody
24 would know that there was any law enforcement
25 working at that time.

1 **Q** Did you -- were you present when he was
2 searched and wired and all of those by Agent Miles
3 and all?

4 **A** I was. I was present when we picked the CI up
5 and I was present all the way through the whole
6 transaction until he was dropped back off at the
7 conclusion of the purchase.

8 **Q** So you were there for all of it?

9 **A** For all of it, yes, sir.

10 **Q** Okay. Tell the ladies and gentlemen of the
11 jury what you saw and observed there based on your
12 involvement in the controlled purchase of narcotics
13 in this case.

14 **A** Okay. We met Mr. Erving, which is the CI. We
15 picked him up, brought him back to the location.
16 Agent Miles searched him, searched his person,
17 turned his pockets inside out. It's just a sweep
18 for any drugs that he may have on him that he may
19 not have known he had on him, if he had some left
20 over, narcotics or firearms. You don't want any
21 kind of weapons. You know, sometimes they get --
22 the CIs get scared and they want to carry a gun or
23 whatever. So you have to make sure they don't have
24 any of that before they go in.

25 And Agent Miles searched him for all that,

1 wired him up with a electronic recording device, and
2 we then placed him in the car. We talked with him,
3 figured out where he could go, who he could buy
4 from, as far as we want him to go to a certain
5 location and buy. Like I told him before, it
6 doesn't matter who he buys it from, but we don't
7 want him to go two blocks around where we don't have
8 visual eye contact for his safety. So that's why we
9 kind of figure out where he wants to go. Didn't
10 matter who he bought from, we just need to keep eye
11 contact on him for his safety.

12 **Q** Chief, did you really care, if somebody was
13 selling in the town, who he bought from or who was
14 involved? Did it matter to you who it was?

15 **A** It didn't matter as long as we could figure out
16 who it was, identify them and, you know, make sure
17 that the CI was safe most of all because he was
18 working for us.

19 **Q** Okay. What happened once y'all let him out?
20 What was the very next thing that happened? Tell
21 the ladies and gentlemen everything you saw there.

22 **A** Okay. We dropped the CI off at the First
23 Baptist Church in Ridge Spring. As soon as he
24 started walking, we pulled around, kind of trailed
25 him down the side road till we pulled into the bank

1 parking lot. We followed him and we had eyes on him
2 till he got to the house. We watched him walk up to
3 the house and interact with the three males in the
4 yard and then --

5 **Q** Did you know Montez Quattlebaum? Did you have
6 any --

7 **A** I am familiar with Montez, yes.

8 **Q** Okay. Did you know D.J.?

9 **A** And I'm also familiar with D.J. The other
10 person in the yard we were not familiar with.

11 He then entered the house and you know --

12 **Q** Okay. Let me stop here. What happened, from
13 your observation, once Timothy Erving went up to
14 those individuals in the yard? Could you see him
15 engaging those individuals that were in the yard?

16 **A** He was interacting with Montez Quattlebaum back
17 and forth. And like I said, we had a clear line of
18 sight from where we had parked in the bank parking
19 lot.

20 **Q** Okay. Once he and Montez talked, how about the
21 other guys? Did they go in the house? Did they
22 leave? Where did they go once he got up with
23 Montez?

24 **A** The other ones in the yard left. They
25 immediately left.

1 Q So none of them went upstairs or went in the
2 house but Montez?

3 A That's correct. They walked off. And like I
4 said, Montez went in. Timothy stayed out there for
5 a minute and -- or a couple minutes, and then he
6 walked in the house too, which kind of raised our
7 radar because we don't like to lose sight of who
8 we're working for and their safety. But we did have
9 him monitored. We had a radio receiver in the
10 vehicle. We were monitoring what they were saying,
11 so we were able to pick that up.

12 And soon after that, he left out of there,
13 returned back -- he walked back down Main Street
14 down the sidewalk, returned to the church, the First
15 Baptist Church in Ridge Spring on Main Street. And
16 we then picked him up, took him back to the
17 location. He handed us -- well, as soon as he got
18 in the car, he handed Agent Mota the drugs. He
19 placed -- let's see. He gave Mota the rock and it
20 was immediately placed into a BEST kit.

21 Q Let me ask you this: I'm going to show you
22 State's 1 that's in evidence at this time, this BEST
23 kit. Tell them about sealing up the paperwork
24 inside the bag and how that's significant from the
25 way they used to do it and how you are trained and

1 how it was done in this case.

2 **A** Okay. This is the BEST kit. And this one has
3 writing on the outside. You do write on the outside
4 like this {indicating}. But on the inside, there's
5 a yellow sheet of paper. You fill out, it's a -- I
6 don't know the name of the paper that you print
7 through, you can write through one copy and it goes
8 -- transfers out to the other.

9 You take the yellow sheet of that once you put
10 the defendant's information and who you received it
11 from, all that goes on a sheet of paper. The yellow
12 copy goes inside the BEST kit. The white copy stays
13 out and that gets logged through evidence, that's
14 how they log it in. So the defendant's information,
15 where they got it from, who they received it from,
16 all that would be inside of this BEST kit.

17 So when it's sealed with this tamper-proof
18 seal, once it's opened, you know, nothing be change
19 -- you know it's been opened because the letter and
20 the glue tears.

21 **Q** Now, Chief, let me ask you this: Were you
22 present when the BEST kit was actually sealed up and
23 that piece of paper documenting the transaction and
24 the information was sealed up inside? Was that done
25 in your presence?

1 **A** I was. I was with both agents when it was
2 sealed.

3 **Q** Okay. So is there any doubt in your mind that
4 the item that you believed to be crack cocaine that
5 Timothy got, that that was the same thing that was
6 sealed up inside that BEST kit there in your
7 presence?

8 **A** To the best of my belief, I believe so.

9 **Q** Okay. Did you see that? Did you view it with
10 your own eyes?

11 **A** I did see that with my own eyes.

12 **Q** Okay. Did you see the paperwork go inside
13 there and be sealed up inside --

14 **A** I did.

15 **Q** -- the BEST kit as well?

16 **A** Yes.

17 **Q** Okay. And that is to avoid any allegations or
18 anything else that it's tampered with or not the
19 same BEST kit when it goes to SLED, isn't it?

20 **A** Right. Because, you know, anything can happen.
21 If the BEST kit got wet or some kind of ink, the ink
22 could run on the outside, and you not know what case
23 it belongs to or who it belongs to, that's why the
24 paper goes on the inside.

25 **Q** And if it's not in there, SLED will return it,

1 won't they?

2 **A** They will reject it.

3 **Q** They will not even test --

4 **A** They will not accept it.

5 **Q** Okay. Let me ask you this: What
6 identification of an individual did Timothy Erving
7 make to you immediately upon returning back to the
8 vehicle as to the -- of the initial source of the
9 crack cocaine?

10 **MR. DRYLIE:** Objection; hearsay.

11 **MR. MAYE:** Your Honor, it's under 801(d)(1)(C).
12 Identification of a person made after perceiving the
13 person would be the exception that we would rely on
14 under the Rules of Evidence 801(d)(1)(C).

15 **THE COURT:** Bare with me a moment.

16 (Pause.)

17 **THE COURT:** Your question was what?

18 **MR. MAYE:** I asked him if Timothy Erving had
19 made an identification of a person that was the
20 source of the crack cocaine upon returning to the
21 vehicle.

22 And it's -- it's on the tape that's already
23 into evidence. That test -- I mean, that same
24 statement is on the tape, Your Honor. If it assists
25 the Court in any regard, that's already into

1 evidence on the audio on State's 2.

2 **THE COURT:** Anything else?

3 **MR. DRYLIE:** No, Judge.

4 **THE COURT:** Objection is overruled.

5 BY MR. MAYE:

6 **Q** Who did he tell you was the source of that
7 crack cocaine?

8 **A** I asked him who he received it from and he
9 stated, Leo. And that would be Leo Abney.

10 **Q** Okay. Did you actually see his interaction in
11 the yard on Montez?

12 **A** I saw the interaction between Timothy Erying
13 and Montez.

14 **Q** Okay. And you actually knew that that
15 apartment actually that he went up into, that you
16 saw him go in the door was -- whose apartment was
17 that?

18 **A** That was Leo Abney and D.J. Abney.

19 **Q** Okay. And you saw D.J. Abney there in the yard
20 as well?

21 **A** That is correct.

22 **Q** But at the time that Montez went upstairs and
23 the confidential informant went into the stairwell,
24 which direction did D.J. go?

25 **A** D.J. went facing the house. He went right back

1 toward 23. They all left out the yard.

2 **Q** Okay. Based on the results of the controlled
3 purchase of narcotics there in this case, who all
4 did y'all make the decision to charge in this case
5 or what charges did y'all make the decision to have?

6 **A** We chose to charge both Montez Quattlebaum and
7 Leo Abney in distribution of crack cocaine.

8 **Q** Okay. Let me ask you this: After Timothy
9 Erving got done doing all the work that he did for
10 y'all as an informant in this case, what did you do
11 to assist him in addressing his drug problem?

12 **A** We lined up a rehab center for drug addiction
13 for him to go to, which I believe, if I'm not
14 mistaken, was Home With a Heart in Liberty. We also
15 bought him a bus ticket out of our drug enforcement
16 and equipment money. And I picked him up personally
17 and carried him to the bus station and made sure he
18 got on the bus to Liberty and also called and
19 verified at Home With a Heart that he was checked in
20 and in rehab.

21 **Q** Beg your indulgence, Chief.

22 **A** Okay.

23 **Q** Did y'all actually document the expenditure of
24 funds from the narcotics account of buying him a bus
25 ticket?

1 **A** Yes, we did. There was a copy of the bank
2 statement from the Town of Ridge Spring Drug
3 Enforcement Fund that showed the ticket that we
4 bought through Greyhound lines.

5 **Q** Did you do anything else for Timothy Erving
6 other than...

7 (State's Exhibit Number 9, First Citizens
8 Bank record; marked for identification.)

9 **Q** Let me show you State's 9 in this case. Does
10 that basically document the expenditure of the funds
11 from your narcotics account to buy him a bus ticket?

12 **A** It does.

13 **MR. MAYE:** Okay. I'm going to move to admit
14 this in evidence, if there's no objection.

15 **MR. DRYLIE:** No objection.

16 **THE COURT:** Mark it in evidence.

17 (State's Exhibit Number 9, First Citizens
18 Bank record, admitted into evidence.)

19 BY MR. MAYE:

20 **Q** So Timothy Erving, when he was all done, you
21 bought him a 75 dollar bus ticket, you took him to a
22 bus station and you sent him to rehab?

23 **A** That's correct.

24 **Q** Okay. And he's working now in this case. Do
25 you know of your own knowledge where he's working?

1 **MR. DRYLIE:** Objection; relevance.

2 **THE COURT:** Hold on just a minute.

3 Yes. Your objection is is it's not relevant
4 where he's working?

5 **MR. DRYLIE:** That's correct, Your Honor.

6 **THE COURT:** I think it's already been in the
7 record.

8 If you know the answer, you may answer the
9 question.

10 **THE WITNESS:** Yes, sir. He's working at
11 McDonalds. I went by and saw him, actually, Monday.

12 **MR. MAYE:** Answer any questions the defense has
13 for you. Thank you, Chief.

14 **THE WITNESS:** Thank you.

15 **THE COURT:** Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. DRYLIE:

18 **Q** Good afternoon, Chief.

19 **A** Good afternoon.

20 **Q** How are you doing?

21 **A** Good, sir.

22 **Q** Now, when were you the Chief of Ridge Spring
23 exactly?

24 **A** From August of 2013 until April of 2015.

25 **Q** Okay. And like you've gone over with the

1 Solicitor, not a big police department?

2 A No, sir.

3 Q Just you working there?

4 A Just me, yes, sir.

5 Q All right. Now, being the Chief of Ridge
6 Spring, you were fairly familiar with the town;
7 correct?

8 A That's correct.

9 Q And Merritt Drive, there's a little common area
10 in between the houses; correct?

11 A There is.

12 Q And people are usually milling about there,
13 hanging out?

14 A Yeah, depending on the houses, depending on the
15 location.

16 Q There's a lot of foot traffic in that area?

17 A Yes.

18 Q Okay. People sitting around in the yards?

19 A Yes, sir.

20 Q Now, I realize Ridge Spring is a small
21 department, but do you ever have any body cams that
22 you use on confidential informants?

23 A We don't have any kind of monitoring equipment,
24 that's why we have a mutual aid and drug agreement
25 with Saluda County. Lieutenant Padgett helps us

1 with all our -- or did help us with all our drug
2 informant stuff.

3 Q And that's also why you went to SLED to get
4 some help; correct?

5 A That is correct.

6 Q Because they have more monitoring equipment?

7 A Right.

8 Q Now, does Ridge Spring Police Department have
9 any cameras?

10 A The only thing we had was a -- until I bought
11 the new car, we -- our camera was malfunctioned in
12 the car. We had a in-car camera in the new vehicle
13 I bought in September of '14.

14 Q Well, not even an in-car vehicle -- or in-car
15 camera, did you have any cameras?

16 A We had a still camera, yes.

17 Q You had a still camera. Did you have a video
18 camera?

19 A Not for the police department, no.

20 Q Okay. You didn't use your camera in this case?

21 A No, sir.

22 Q Didn't take any pictures when you were there?

23 A I did not.

24 Q Okay. Now, you stated you parked in that last
25 spot at the bank; right?

- 1 **A** I believe it was the second to last.
- 2 **Q** The second to last spot?
- 3 **A** Yes.
- 4 **Q** Okay. Did you -- when you stated you had line
5 of sight, did you have line of sight just on the
6 yard or on the door?
- 7 **A** I had all the way to the door.
- 8 **Q** You can see the door to 212 from that second to
9 last spot?
- 10 **A** That's correct.
- 11 **Q** Okay. Now, in this case, did you do a report?
- 12 **A** I did not do a report on this.
- 13 **Q** Did you take any notes?
- 14 **A** No, sir. This is -- I let SLED handle all of
15 that.
- 16 **Q** Okay. SLED -- Agent Mota was the chief officer
17 in this case, would you say?
- 18 **A** I think he was probably going to be the agent
19 in charge for this one.
- 20 **Q** Okay. So he was the one doing the report. You
21 didn't do any reports?
- 22 **A** That's correct.
- 23 **Q** And you didn't take any notes?
- 24 **A** I did not.
- 25 **Q** Now, when you're investigating a case, do you

1 normally do a report?

2 **A** If I'm investigating it personally, I usually
3 do, yes.

4 **Q** Okay. If you're investigating the case with
5 someone else, do you normally do a report?

6 **A** Usually if it's to supplement where I'm
7 involved directly in some kind of enforcement
8 action, yes. Because I was there with them, I was
9 there more of a support role, picking out who was
10 where, where to go -- because they're not familiar
11 with the town -- where to go, where the places were.
12 And if we had any incidents arise, I had direct
13 contact with the sheriff's department.

14 **Q** But this was your CI; right?

15 **A** He was not my CI. I've never signed him up.

16 **Q** Okay. So you just sent him straight on to
17 SLED?

18 **A** I sent him to Saluda County first. Like I
19 said, Lieutenant Padgett -- he worked with us on
20 several other cases. Lieutenant Padgett, from the
21 sheriff's office, was not able to be there this day,
22 so SLED had him signed up also as an informant, but
23 I had not signed him up as an informant. He did not
24 work for me directly.

25 **Q** So you didn't do a report because, in your

1 mind, this was SLED's informant and SLED's case?

2 **A** That's correct.

3 **MR. DRYLIE:** Beg the Court's indulgence.

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

5 (Pause.)

6 BY MR. DRYLIE:

7 **Q** Did you see Leo Abney give any crack cocaine to
8 Montez Quattlebaum?

9 **A** I did not directly see that, no.

10 **Q** Before Tim Erving got in the car and you asked
11 him, Did you buy from Leo or D.J., did you know who
12 he bought from?

13 **A** Before he got in the car?

14 **Q** Yes.

15 **A** No.

16 **Q** So the only information you have that Leo Abney
17 gave crack cocaine to Montez Quattlebaum is from Tim
18 Erving?

19 **A** That's correct.

20 **MR. DRYLIE:** No further questions.

21 **THE COURT:** Redirect?

22 REDIRECT EXAMINATION

23 BY MR. MAYE:

24 **Q** Chief, y'all were also monitoring the
25 conversation in between Montez Quattlebaum and

1 Timothy Erving in this case; correct?

2 **A** Correct.

3 **Q** Okay. The audio is in evidence in this case
4 involving the conversation between the two of them?

5 **A** Correct.

6 **Q** Okay. And who was the source of the crack
7 cocaine that was indicated by Montez Quattlebaum and
8 who was Timothy Erving's -- whose crack was he
9 asking to get on there?

10 **MR. DRYLIE:** Objection.

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

12 **MR. DRYLIE:** Your Honor, I think that
13 question's speculative, as well as the audio's in
14 evidence and it speaks for itself.

15 **THE COURT:** Sustained, the last part.

16 **MR. MAYE:** Nothing else. Thank you.

17 **THE COURT:** Recross?

18 **MR. DRYLIE:** Nothing, Your Honor.

19 **THE COURT:** Thank you, sir. You may step down.

20 **THE WITNESS:** Thank you.

21 **THE COURT:** Ladies and gentlemen, an issue has
22 come up that I need to address and it's going to
23 take some time. So rather than have you wait here,
24 I'm going to ask you to come back in the morning at
25 10:00 A.M. We're going to stay here and work, and

1 wanting, Solicitor?

2 **MR. MAYE:** Your Honor, basically, just how far
3 they would be able to go into. We would certainly
4 maintain that -- we would maintain that it's not
5 relevant to the issue of his termination and all.
6 It's not involving this case. It's a collateral
7 matter.

8 We think that they would attempt to ask him
9 some specific details. Under Rule 608, Your Honor,
10 we would maintain that it's more prejudicial than
11 probative to go into any of it.

12 Like I said, under Rule 403 and 611, the court
13 has got control over this matter as to how far
14 they're able to go into, Your Honor. I just didn't
15 want to call this witness to the stand, have them
16 ask him, isn't it true that you were fired from
17 SLED, and object then and have them hear that. I
18 can't unring the bell.

19 So I was asking to proffer, basically, if they
20 intended to ask him about the firing, Your Honor, we
21 would certainly maintain that it would be limited to
22 -- in any role, we don't think that it passes a 403
23 test asking about it at all given the circumstances
24 of it, Your Honor.

25 I don't think there is any issue involving this

1 officer's truthfulness in this case, Your Honor. I
2 think it is just the CI, but we wanted to go into
3 how far that that could go in camera, Your Honor.

4 We would certainly maintain that beyond saying
5 that he was fired for failure to obey a direct order
6 and truthfulness, that that would absolutely be the
7 limits of it, Your Honor. And I wanted to do that
8 outside the presence of the jury.

9 And I apologize, I know we've talked about a
10 lot of things in between there, but that was my
11 intent was for us to call him to the stand and take
12 up that issue outside the presence of the jury.

13 **THE COURT:** Do you have anything on that issue?

14 **MR. DRYLIE:** Judge, looking at Rule 608,
15 Specific instances of conduct, They may, however, in
16 the discretion of the court, if probative of
17 truthfulness or untruthfulness, be inquired into on
18 cross-examination of the witness.

19 Your Honor, if you want to -- I have no problem
20 telling you how far I plan to go with this, it's not
21 very far at all, and that might alleviate some of
22 the questions that we have here. I plan to ask
23 Agent Mota that he was terminated for dishonesty and
24 he's no longer working at SLED. Beyond that, I
25 don't think I'll get into any of the specific

1 instances that are alleged in the file.

2 **THE COURT:** Do you want to be heard on that,
3 Solicitor?

4 **MR. MAYE:** Your Honor, if it goes into that he
5 can respond to that without opening the door, if he
6 can say that he was terminated for failure to obey a
7 direct order and truthfulness not related to any of
8 the case work that he, you know, strictly related to
9 a personnel matter and not related to any cases and
10 not this case, I don't have any objection to that.
11 I think to allow them to ask him that in a vacuum,
12 Your Honor, and to insinuate that it's somehow
13 involving truthfulness involving this case at hand,
14 I think would be misleading to the jury, Your Honor,
15 and I think would be beyond.

16 If we can get -- if that's the question and
17 that's the response, we can put him on the stand and
18 develop that. I don't want to go into what the
19 response would be for a witness, but if that's as
20 far as we're going, we can limit that, Your Honor.
21 They can ask him if he was terminated from SLED and
22 he can respond that he was terminated for failure to
23 obey a direct order and truthfulness, but not in any
24 matter related to this case or involving any of the
25 case work at SLED. I'm satisfied with that.

1 **THE COURT:** Anything else?

2 **MR. DRYLIE:** Judge, I think he's kind of
3 opening the door when he says that to some of the
4 other instances. Specifically, you have a narcotics
5 officer alleged -- either conducting an
6 off-the-books narcotics investigation or trying to
7 engage in performance enhancing drugs and I think if
8 he goes farther than yes or no, then he might be
9 opening the door.

10 **MR. MAYE:** And, Your Honor, that's exactly why
11 I think it does a survival 403 balancing test in
12 this case, Your Honor. We just would maintain it's
13 more prejudicial than probative because the
14 insinuation is going to be -- if he asks him that,
15 the insinuation before the jury is going to be that
16 he was fired for dishonesty involved in this case,
17 Your Honor.

18 And I just don't think -- I think that is
19 wildly prejudicial and not at all probative of the
20 issues -- of the issues of credibility that are at
21 issue in this case, Your Honor, which I don't think
22 there's anything involving the issue of credibility
23 involving this officer. All the acts that he did,
24 other than take the drugs to SLED, were done in the
25 presence of two other officers, Your Honor, who have

1 already testified in this case.

2 And I guess, Your Honor, what I stated before
3 was a fallback position. We don't think it's
4 relevant in any regard and we would object to him
5 being asked about it, period.

6 Like I said, we just don't think at -- in this
7 case at hand, the Court certainly is the gatekeeper
8 in the determination of what's relevant evidence.
9 We think that it's more prejudicial than probative
10 and shouldn't be allowed at all, Your Honor, but we
11 certainly don't think they should be allowed to ask
12 him about it in a vacuum like that and have that
13 before the jury, Your Honor, which we would think
14 would be fundamentally unfair and would result
15 certainly in unfair prejudice to the State's case in
16 confusion of the issues. And we think it would be a
17 direct attempt to mislead the jury in this case
18 which goes to the heart of 403.

19 (Pause.)

20 **THE COURT:** Okay. So which of you in this
21 scenario will be trying to limit the extrinsic
22 evidence?

23 **MR. MAYE:** Your Honor, I guess from the State's
24 perspective, we don't think it's relevant evidence
25 in this case at all. We don't think it should be

1 allowed. We don't think it survives a 403 balancing
2 test to go into his discharge in any regard, Your
3 Honor.

4 **MR. DRYLIE:** I think they'd be --

5 **COURT REPORTER:** I couldn't hear what you said.

6 **MR. DRYLIE:** I think they'd be -- the State
7 would be the ones trying to limit the extrinsic
8 evidence.

9 **THE COURT:** I've been reading as much as I can,
10 and we're an hour and 15 minutes past when the jury
11 was supposed to come in.

12 There's a law review article that I've been
13 reading, it's dated, it's older, but it's a proposal
14 about clarification of Rule 608. It goes through a
15 history, and it cites a -- at the very end of the
16 article, it talks about a North Carolina case that
17 it believes has stated well the scope of Rule
18 608(b).

19 It reads, Rule 608(b) addresses the
20 admissibility of specific instances of conduct,
21 parentheses, as opposed to opinion or reputation
22 evidence, closed parentheses, only in the very
23 narrow instance where, one, the purpose of producing
24 the evidence is to impeach or enhance credibility by
25 proving that the witness' conduct indicates his

1 character for truthfulness or untruthfulness, and,
2 two, the conduct in question is, in fact, probative
3 of truthfulness or untruthfulness and it's not too
4 remote in time, and, three, the conduct in question
5 did not result in a conviction, and, four, the
6 inquiry into the conduct takes place during
7 cross-examination.

8 If the proffered evidence meets those four
9 enumerated prerequisites before admitting the
10 evidence, the trial judge must determine in his
11 discretion, pursuant to Rule 403, that the probative
12 value of the evidence is not outweighed by the risk
13 of unfair prejudice, confusion of issues or
14 misleading the jury and that the questioning will
15 not harass or unduly embarrass the witness. Even if
16 the trial judge allows the inquiry on
17 cross-examination, extrinsic evidence of the conduct
18 is not admissible.

19 Then the author of the law review article
20 states, Thus, the authorities make clear that the
21 true intent of Rule 608 is to limit the use of
22 extrinsic specific facts evidence only when it is
23 being used in violation of the propensity rule,
24 i.e., to establish that the witness is either a liar
25 or a truth teller by nature and, therefore, must be

1 lying or telling the truth on the stand.

2 Then it notes in here about the seeming
3 inconsistencies. You have cases where -- cases,
4 jury instructions, treatises that justify the
5 admission of extrinsic evidence on grounds that it
6 goes to the credibility of the witness. And this
7 author is questioning whether you should use
8 credibility, the word credibility in the rule as
9 opposed to using another word.

10 This law review article, it's written by Janeen
11 J-a-n-e-e-n, Kerper, K-e-r-p-e-r, and Bruce E.
12 MacDonald, M-a-c-capital D-o-n-a-l-d. It's in
13 Akron. I think it's Akron University. Janeen
14 Kerper was a professor at California Western School
15 of Law, and MacDonald is a member of the California
16 Bar and a judge advocate general -- a Lieutenant
17 Commander in the Judge Advocate General Corps.

18 (Pause.)

19 **THE COURT:** Do you feel the need to make any
20 kind of proffer at this point, either of you?

21 **MR. DRYLIE:** I don't, Your Honor.

22 **MR. MAYE:** I would like to put -- I guess I'm
23 just asking for a ruling from the Court, Your Honor.
24 I can call him to the stand and ask where he would
25 be able to be -- whether they would be allowed to

1 ask him about being terminated from SLED, whether or
2 not that sur -- whether or not you deem that's more
3 prejudicial than probative or whether we're going
4 into that in the testimony, whether or not that
5 cross-examination would be allowed.

6 I will proffer the witness for that extent,
7 Your Honor. I guess I'm not asking for an advisory
8 ruling. I'll proffer it at that and ask if the --
9 if they would be allowed to go into that in front of
10 the jury. Because if they intend to ask that, I
11 would object immediately, if they intend to ask him
12 about being discharged and fired from SLED and what
13 the basis was.

14 **THE COURT:** All right. Tell the jury it's
15 going to be a while longer. It's going to be at
16 least 30 minutes or more.

17 (Pause.)

18 **THE COURT:** All right. Call him.

19 **MR. MAYE:** For the purposes of determination of
20 this, the State would call Omri Mota to the stand.

21 **THE COURT:** Come around, please. Weren't you
22 place under oath earlier? You're still under oath.
23 If you testify in front of the jury, they'll have to
24 swear you in front of the jury, but you're fine
25 right now. Just have a seat right there, please.

1 OMRI MOTA,
2 having been previously duly sworn, resumed the
3 witness stand and testified as follows:

4 **THE COURT:** Mr. Mota; yesterday I released part
5 of your file. And I thought you were here. I
6 learned that you had left. I just want to make --
7 to be fair to you, I want to show you what I gave
8 them.

9 (The Judge hands document to witness.)

10 **THE COURT:** All right. Would you answer Mr.
11 Maye's questions?

12 **MR. MAYE:** Your Honor, I have no questions for
13 Officer Mota at this time involving this issue. The
14 only issue we would have in this case, I'd offer him
15 to the defense if they intend to cross-examine him
16 involving his termination from SLED or the details
17 of his termination.

18 **THE COURT:** Do you want to ask him questions?

19 I told them they can't disseminate this outside
20 of this.

21 **THE WITNESS:** Thank you, Your Honor. I
22 appreciate it.

23 **THE COURT:** And everything that we did is under
24 seal. The documents that are here in court have
25 been sealed up. Nobody can get access to them

1 except through a court order.

2 **THE WITNESS:** Thank you.

3 **MR. DRYLIE:** Related to this issue, Your Honor,
4 this is what I had planned on asking:

5 EXAMINATION

6 BY MR. DRYLIE:

7 **Q** You started working at SLED in February of
8 2014?

9 **A** That's incorrect. I started working at SLED in
10 January of 2014 for ten months.

11 **Q** Okay. And you were terminated from SLED in
12 November of 2014?

13 **A** Yes, sir.

14 **Q** You were terminated for truthfulness?

15 **A** I was terminated for two things: One, failure
16 to obey a direct order, and truthfulness in an
17 investigation that was internal to SLED.

18 **Q** So truthfulness was one of the things that you
19 were terminated for?

20 **A** I can't accurately answer that question with a
21 yes or no.

22 **Q** Okay. You no longer work for SLED?

23 **A** I no longer work for SLED.

24 **Q** You no longer work in law enforcement?

25 **A** I no longer work in law enforcement.

1 **MR. DRYLIE:** Your Honor, that's about as far as
2 I had planned on going.

3 **THE COURT:** Thank you, sir. You can step down.

4 **THE WITNESS:** Thank you, Your Honor. Return
5 this to you?

6 **THE COURT:** No. I gave that copy to you. I
7 just wanted you to have it for the -- the parts that
8 I gave them.

9 **THE WITNESS:** I appreciate that. Thank you.

10 **THE COURT:** Anything else?

11 **MR. MAYE:** Nothing else, Your Honor. We would
12 just respectfully maintain it's more prejudicial
13 than probative and not -- and not relevant evidence
14 to the issues of any of the facts that are at issue
15 in this case.

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

17 **MR. DRYLIE:** And we'd maintain that this isn't
18 -- truthfulness isn't a collateral issue. That
19 basically we're here because we just found out about
20 it this week and that we should be allowed to ask --
21 that it is probative. He's their case agent. He's
22 their chief officer.

23 **THE COURT:** To be honest with you, I looked
24 through this stuff last night and this morning. And
25 the way I anticipated this playing out, I was

1 leaning towards ruling that this was not admissible.

2 The difficulty I have is that, several things:
3 It's not played out like I thought it was going to
4 play out. The question is, is credibility of a
5 State's witness. It's difficult for me to say that
6 that is irrelevant in any way. The third thing is
7 that you have these confrontation clause issues that
8 float around, which we haven't even discussed. And
9 you've got the lack of clarity in the rule and
10 seeming inconsistency in the rule. And the rule I'm
11 talking about is 608(b). And I've read different
12 commentators about it, and I've just got to make a
13 call so the trial can go on.

14 I think it's a very close question on whether
15 to exclude it under Rule 403. Even though I have --
16 even if evidence is relevant, if it doesn't pass the
17 403 test, the Court excludes it.

18 I am very concerned about confusing issues.
19 I'm really concerned about this interpretation
20 related to extrinsic evidence. And it seems to me
21 that this is kind of the opposite of the situation
22 that normally comes up in that the State's witness
23 is the one who might benefit from the extrinsic
24 evidence. That may or may not be the case as far as
25 how it normally comes up. I may be overstating

1 that.

2 The motion in limine is denied. If the witness
3 takes the stand, he may be asked about being
4 dismissed from SLED, terminated from his
5 probationary period.

6 Were it the other way around and the defense
7 was trying to put this in, I think I would go the
8 other way. I just think the dividing line, you have
9 to give some room to an accused who's standing trial
10 to be able to attack the credibility of the State's
11 witness. And it's not some pie in the sky stuff.
12 It's not some fishing expedition stuff. It's
13 concrete. It's known what the accusations are.

14 And the only -- they're not really related --
15 there's been no showing that they're related to the
16 buy that was involved here or in the extension of
17 that, which is taking the drugs to SLED to be
18 examined. I'm not finding that that's been shown.
19 What I am finding is that his credibility, if he
20 testifies, is going to be relevant.

21 All right. I note your exception, Solicitor.

22 **MR. MAYE:** Your Honor, that was not what I was
23 -- in that regard, Your Honor, on that ruling, I
24 would intend to rest and I will leave it to them. I
25 don't intend to purposefully embarrass this officer

1 or attempt to do that. We have the evidence that we
2 need to go forward in the case, if they want to call
3 him as a defense witness. When the jury comes out,
4 we would intend to rest.

5 **THE COURT:** Okay. Then do you intend to call
6 him?

7 **MR. DRYLIE:** We had. Your Honor, I'd ask for
8 five minutes.

9 **THE COURT:** Let me let the jury go to lunch.
10 Bring the jury in.

11 (The jury enters the courtroom at 11:30
12 A.M.)

13 **THE COURT:** Solicitor, do you have any further
14 witnesses?

15 **MR. MAYE:** Your Honor, at this time, the State
16 rests.

17 **THE COURT:** Okay. Ladies and gentlemen, I need
18 to explain to you that yesterday I told you there
19 was an issue that I had to deal with, a legal issue.
20 We worked on that yesterday afternoon. I read about
21 it overnight some. I got up this morning early and
22 read more stuff. Came in here this morning and
23 since we've been here, we've been working on it the
24 whole time. I haven't left the bench.

25 There have been some rulings that were just

1 against you for any purpose except to evaluate your
2 credibility or believability, if they choose to do
3 that at all.

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** I'm going to find that you've made
6 your decisions of your own free will and accord
7 knowingly, voluntarily and intelligently. So if
8 there's any problem or anybody tries to improperly
9 influence you on that decision, you let me know
10 immediately, all right?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Okay. Do I need to hear anything
13 related to the proposal to call the former SLED
14 agent? Do I need to hear anything else on that?

15 **MR. MAYE:** No, sir, Your Honor. We would say
16 that they would not be allowed in this case to call
17 their own witness. I know that he can impeach any
18 witness in this regard, but we would say that they
19 would not be able to call him and ask him about
20 the -- his discharge on -- I mean, his discharge
21 when they're calling him as their witness, Your
22 Honor, and then have him answer that it was -- that
23 he was fired for truthfulness or dishonesty knowing
24 what the answer -- if his response was, yes, I was
25 fired for something that was a personnel matter and

1 unrelated to this case, I don't think they can open
2 the door for themselves to then go into all of the
3 details on the underlying charges, Your Honor. I
4 don't think they can intentionally do that knowing
5 that that's the limitation on it and then open the
6 door themselves.

7 Perhaps I could, on cross-examination at that
8 point in time, ask him about the details, but
9 obviously I would not. I would decline to do so.

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

11 **MR. DRYLIE:** Judge, we would intend to ask him
12 about that. We also intend to have him declared as
13 an adverse witness under Rule 611(c).

14 **THE COURT:** You will be allowed to ask him
15 leading questions.

16 Now, I'm going to tell you my preliminary
17 ruling, after having thought about this overnight,
18 is that if the only purpose you're going to put that
19 witness on the stand is to have him testify about
20 his being fired for being untruthful, I don't think
21 you can do that.

22 **MR. DRYLIE:** That is not the only purpose we
23 are calling this witness.

24 **THE COURT:** I assumed that was going to be your
25 answer, but I'll just have to deal with the other as

1 it comes up, if anything else comes up.

2 All right. Need y'all back here at one
3 o'clock.

4 **MR. DRYLIE:** Thank you, Judge.

5 (Whereupon, there was a luncheon recess.)

6 **THE COURT:** Defense ready for the jury?

7 **MR. DRYLIE:** We are, Your Honor.

8 **THE COURT:** State?

9 **MR. MAYE:** The State's ready to proceed, Your
10 Honor. Thank you.

11 **THE COURT:** Bring in the jury.

12 (The jury returns to the courtroom.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 the State has rested its case. And the next thing
15 that happens is the defense is given the opportunity
16 to present evidence for you to consider. Now, that
17 doesn't change the burden of proof. The burden of
18 proof remains entirely upon the State to prove the
19 defendant guilty beyond a reasonable doubt. But the
20 defense is allowed to present evidence for you to
21 consider in evaluating whether the State has met its
22 burden or has failed to meet its burden of proof.
23 So I invite your close attention.

24 Mr. Drylie, call your witness.

25 **MR. DRYLIE:** The defense would call Omri Mota

1 to the stand.

2 OMRI MOTA,

3 having been duly sworn, testified as follows:

4 **THE COURT:** State your name for the record.

5 **THE WITNESS:** My name is Omri Mota.

6 DIRECT EXAMINATION

7 BY MR. DRYLIE:

8 **Q** Good afternoon.

9 **A** Good afternoon.

10 **Q** Now, in June of 2014, you worked at SLED;
11 correct?

12 **A** Yes, sir.

13 **Q** And you were the chief case agent on this
14 particular case that we're here this week, aren't
15 you?

16 **A** Yes, sir.

17 **Q** This was your case?

18 **A** Can I clarify that?

19 **Q** Go ahead.

20 **A** The case was -- SLED is an assisting agency, so
21 we were called by Chief Jared Goldman to come in and
22 assist with a buy. That's, as far as I knew, what
23 we were going to do.

24 **Q** That's as far as you went?

25 **A** Excuse me?

1 Q That's as far as you went, just assisting with
2 a buy?

3 A To assist with the buy, yes, of narcotics.

4 Q Who got the arrest warrant on this case?

5 A I did.

6 Q Okay. Who wrote the report on this case?

7 A I did.

8 Q Who's listed as the case agent?

9 A I'm listed as the case agent.

10 Q So this was your case?

11 A Yeah. It became my case. When we use
12 documented funds to purchase anything, we take over
13 the case.

14 Q Okay.

15 A Does that answer your --

16 Q It does.

17 A Okay.

18 Q And on June 19th, 2014, you met up with Officer
19 Goldman, Officer Miles and Timothy Erving; correct?

20 A Yes.

21 Q During your meeting or during the alleged
22 purchase that happened thereafter, did you take any
23 handwritten notes?

24 A We take notes that were all turned in with the
25 case, if that's what you're asking.

1 Q I'm asking if, during that time, did you take
2 any handwritten notes?

3 A Yes. They're handwritten notes because we
4 don't go around with a laptop to write it straight
5 into the report. So we write the notes down and
6 then we transcribe them on a computer back at the
7 office because we don't believe that, tactically,
8 it's smart to be out there with a computer when
9 you're doing your job when we have to make sure we
10 keep an eye out for the CI for his safety and for
11 our own.

12 Q I understand that. My question was simple. I
13 was just asking if you took any.

14 A I just wanted to make sure I left no stone
15 unturned.

16 Q Okay. Now, y'all met in the afternoon?

17 A Yes.

18 Q And the purpose was to have Tim Ervin purchase
19 crack cocaine while wearing a wire?

20 A Yes.

21 Q Did you have any video equipment with you that
22 day?

23 A We had video and audio equipment. And the --
24 we were under the impression that the video
25 equipment was working just fine. There's no way to

1 know on the field whether or not the video equipment
2 is working just fine because we do not have the
3 technology to download the video, and that's just to
4 avoid any form of tampering with any kind of
5 evidence. We can only take it back to the SLED
6 laboratory and they download everything that was
7 loaded.

8 We did not know that the video did not work
9 until after everything was downloaded, but we do
10 have audio.

11 Q But you wrote the report in this case?

12 A Yes, I wrote the report on this case.

13 Q In that report, does it anywhere mention that
14 the video equipment malfunctioned? I have a copy if
15 you'd like me to refresh your memory.

16 A I also have a copy right here. Thank you.
17 And, no, there's no information on the -- give me
18 one second.

19 Actually, there is because we don't
20 specifically say audio/video, it's all considered
21 surveillance equipment. So it's a matter of
22 semantics at that point. Surveillance equipment is
23 audio or video. It doesn't matter. It's
24 surveillance equipment.

25 Q Does it say surveillance equipment

1 malfunctioned?

2 **A** It does not say surveillance equipment
3 malfunctioned.

4 **Q** Okay. And there's no mention in there of the
5 video malfunctioning?

6 **A** It's part of surveillance equipment. And the
7 audio still worked fine, so, technically, the
8 surveillance equipment did not malfunction. The
9 audio worked just fine.

10 **Q** I understand that, but we don't have video of
11 this incident, do we?

12 **A** You do not have video. You do have audio.

13 **Q** My question was, we do not have video of this
14 incident?

15 **MR. MAYE:** Your Honor, that was asked and
16 answered. It just wasn't exactly -- he just said
17 that, Your Honor. It's just argumentative.

18 **MR. DRYLIE:** I'll move on.

19 **THE COURT:** All right.

20 BY MR. DRYLIE:

21 **Q** So after you wire him up, you drop Tim Erving
22 off and what does he do next?

23 **A** Tim Erving then walks a short distance to the
24 location listed on the report where he suspected
25 that he could make a purchase of crack cocaine.

1 **Q** And you could observe this area around Merritt
2 Avenue; right?

3 **A** Oh, yes.

4 **Q** Okay. Tell me what happens when Tim gets to
5 that yard where 212 Merritt Avenue is.

6 **A** When Tim gets to that yard -- and granted this
7 was over almost a year and a half ago, so my
8 memory's --

9 **Q** Go ahead.

10 **A** Okay. May I continue?

11 **Q** Uh-huh.

12 **A** But when he gets to that yard, I remember
13 seeing three black males in the yard area. I did
14 not know any of their names. And from that point
15 forward, my job was to keep an eye on Tim and listen
16 closely to the audio to make sure that he was safe.

17 We were parked within a short distance of where
18 he was which allowed me to visibly see who was
19 outside, but I couldn't make out identities. Like I
20 said, we were assisting on a case, on a buy, so my
21 concern, when he gets to that yard, is his safety,
22 to make sure he's okay. I'm listening to the wire.
23 I'm writing down the surveillance notes, which you
24 were just asking about, to later transcribe them and
25 turn them in, which you have access to all those

1 notes.

2 Q Okay. My question is when he gets to the yard,
3 what happens?

4 A Do you want me to read it straight from the
5 report?

6 Q Go ahead.

7 A When the CI entered the front yard of 212
8 Merritt Avenue, agents observed three black males
9 standing in the driveway. The CI greeted the three
10 black males, two of which the CI later identified as
11 D.J. Abney, who was on crutches, and Montez
12 Quattlebaum.

13 Montez told the CI that Leo was upstairs inside
14 the residence. Montez then took the \$20 -- which he
15 mentions in the audio as the doub, that's \$20 -- in
16 state documented funds from the CI. A short time
17 later, Abney returned to the door with a white,
18 rock-like substance recognized by the CI as crack
19 cocaine. Abney handed the suspected crack cocaine
20 to the CI who placed it in his or her pocket. The
21 CI then walked away from the residence to meet back
22 with agents.

23 The surveillance team picked up the CI, and
24 this writer took possession of the evidence as
25 Special Agent Miles drove the undercover vehicle to

1 a predetermined location.

2 Q So it's your testimony here today that Leo
3 Abney, sitting right there, handed crack cocaine to
4 the CI?

5 A My testimony today is that crack cocaine was
6 handed to our CI. We did not debrief him enough --
7 I wasn't debriefing him, Chief Goldman was, who was
8 here, who has already testified. I was just taking
9 notes. The CI's word was that Leo gave him the
10 drugs, so I went with what the CI was saying.

11 To my understanding, like I said before, the
12 video and audio, the surveillance equipment, which
13 I've already spoken to you about several times,
14 would let us know if there was a discrepancy. But
15 according to South Carolina law, to my
16 understanding, Montez was going to be charged just
17 like Leo was going to be charged. It didn't matter
18 who handed who what, both --

19 Q That's not my question.

20 A Can I finish what I'm saying, though, so that
21 you can understand why I'm saying it? Or you can
22 interrupt, that's fine.

23 Q Go ahead.

24 A Okay. So to my understanding, the hand-to-hand
25 game, I've seen it before. And it doesn't matter,

1 South Carolina law, we would have tied both of them
2 in to the same drugs.

3 Also, on the audio, it's clear that the CI told
4 Montez, I want Leo's stuff. And Montez responds to
5 him saying, It's all the same stuff. That's as far
6 as my testimony goes on that.

7 Q So here today in front of this jury with this
8 trial, your testimony is that you don't know who
9 gave the CI the drugs?

10 A My testimony in this trial is that Abney handed
11 the drugs, the suspected crack cocaine, to the CI.
12 Whether he handed it to him directly or not, it's a
13 matter of semantics.

14 Q I don't think it is, and let's talk about this
15 for a minute --

16 MR. MAYE: Your Honor, now I object to that.
17 That's not a question, that's his commentary on
18 that, "I don't think it is". And I object and I
19 move to have that stricken from the record.

20 THE COURT: Ladies and gentlemen of the jury,
21 disregard the statement of the attorney.

22 Ask questions, please.

23 BY MR. DRYLIE:

24 Q You went to -- you have training in law
25 enforcement; correct?

1 **A** Yes.

2 **Q** You have background in law enforcement?

3 **A** I worked for SLED from January 2014, so, yes.

4 **Q** Did you ever have any other law enforcement
5 jobs?

6 **A** Not before this one, no.

7 **Q** Okay. Did they train you when they hired you
8 at SLED?

9 **A** Yes, I was trained.

10 **Q** Were you trained on how to write reports?

11 **A** That depends. See, report writing is you
12 basically try to capture all of the events and you
13 turn that in, your lieutenant looks over it, gives
14 it back to you. I read a lot of sample reports, but
15 there's no formal report writing class that SLED
16 offers. Is that what you're asking?

17 **Q** I'm asking if you were trained on how to write
18 reports?

19 **A** I trained myself.

20 **Q** Okay. You try and write good reports?

21 **A** Of course.

22 **Q** Accurate reports?

23 **A** Yes.

24 **Q** Because they're very important?

25 **A** Of course. You're dealing with someone's

1 freedom in this case. Of course, it's important.

2 Q And you stated yourself that cases take a long
3 time to come to court, don't they?

4 A When did I state that?

5 Q You stated this happened over a year and a half
6 ago -- I'm sorry. I rephrase. This happened a
7 while ago; correct?

8 A Happened a while ago, yes.

9 Q Thank --

10 A Speaking of my memory; in terms of being at the
11 site, you were asking me what exactly happened, I
12 can't remember the exact details more than a year
13 and a half ago.

14 Q Okay. And that's why these reports are so
15 important; correct?

16 A I can agree with you on that, yes.

17 Q Because you use them?

18 A Yes. We're using the report right now.

19 Q The prosecutor uses them?

20 A Yes.

21 Q I use them. So it's really important that
22 these reports are accurate and correct?

23 A Yes.

24 Q Okay. And in your report, it states that Leo
25 Abney handed the crack cocaine to the CI; correct?

1 **A** Yes. Abney handed the cocaine to the CI.

2 Again, it's a matter of the fact that both of
3 them were going to be charged with the same -- with
4 the same crime. So, again, it's a matter of we're
5 working, that's what you're trying to point out.

6 **Q** Now --

7 **A** Oh, okay.

8 **Q** Did you prepare a statement for Timothy Erving?

9 **A** I did not write Timothy Erving's statement.

10 **Q** Can I refresh your memory?

11 **A** Sure.

12 **Q** You did not write that statement right there?

13 **A** Special Agent Charles Miles wrote this
14 statement. I was a witness to him writing the
15 statement.

16 **Q** Okay. Now, you stated you started working at
17 SLED in January of 2014; correct?

18 **A** Yes.

19 **Q** You no longer work there?

20 **A** No, I no longer work there.

21 **Q** Where do you live?

22 **A** I live in Massachusetts.

23 **Q** How did you get here for this trial?

24 **A** I flew in.

25 **Q** Who paid for your ticket?

1 **A** The Solicitor's Office.

2 **Q** Okay. You were terminated from SLED for
3 dishonesty?

4 **MR. MAYE:** Your Honor, I object to that. We've
5 been all through that. That is -- the Court's
6 already ruled on that. I ask that be stricken, Your
7 Honor.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** That question depends. I can't
10 answer that accurately with just a yes or no.

11 BY MR. DRYLIE:

12 **Q** And you were terminated from SLED for failure
13 to follow a directive?

14 **A** I was terminated from SLED for failure to obey
15 a direct order and for truthfulness in a matter that
16 dealt with SLED personnel.

17 **Q** In conclusion, today your testimony is you
18 didn't see Leo Abney on June 19th, did you?

19 **A** On June 19th, no, I did not see Leo Abney.

20 **MR. DRYLIE:** I don't think I have any further
21 questions.

22 **THE COURT:** All right. Thank you.

23 Do you have any questions of the witness?

24 **MR. MAYE:** Just a few.

25

1 CROSS-EXAMINATION

2 BY MR. MAYE:

3 Q Agent Mota, bottom line in this case is the CI,
4 Timothy Erving, always identified Leo Abney as the
5 source of the crack cocaine that's at issue in this
6 case, didn't he?

7 A Yes.

8 Q To say that because he handed it to someone
9 else there who handed it off in his presence is just
10 a word game, isn't it?

11 A Yes.

12 Q Based on your experience in law enforcement and
13 in dealing in narcotics, often times a dealer will
14 try to insulate himself by having, what they call, a
15 runner in the yard; isn't that right?

16 MR. DRYLIE: Objection.

17 THE WITNESS: Yes.

18 THE COURT: Hold on.

19 What's your objection?

20 MR. DRYLIE: Your Honor, he's asking for an
21 opinion based on his experience in law enforcement.

22 THE COURT: Overruled.

23 BY MR. MAYE:

24 Q They'll often times have a runner in the yard,
25 won't they?

1 **A** Yes.

2 **Q** Okay. And then they get the money for them;
3 right?

4 **A** Yes.

5 **Q** And take it upstairs or inside or what else, so
6 that person's outside the light of day, they've got
7 the money man; correct?

8 **A** Yes.

9 **Q** Okay. And then often times they'll pass it
10 back to them. They'll give the drugs to that
11 person, take the money from them and basically just
12 have somebody else as a go-between; isn't that
13 right?

14 **A** Again, it's a matter of insulation, yes.

15 **Q** And often times they catch people that are
16 addicts and are customers, and sometimes they'll
17 give them a little money, sometimes they'll give
18 them a little drugs for being the runner; isn't that
19 right?

20 **A** Yes, I've seen that happen before.

21 **Q** And y'all had Montez Quattlebaum in this case
22 that you also charged; correct?

23 **A** Yes, both had the same charge.

24 **Q** Okay. Out of the same crack that we've got in
25 evidence in this case here, the one that's already

1 into evidence, State's 1; correct?

2 **A** Yes.

3 **Q** So the information in this case that y'all
4 ultimately developed was Leo Abney was the source of
5 it. And they talked about it on the audio, didn't
6 they?

7 **A** Yes.

8 **Q** Okay. Because Montez was assuring him on the
9 audio tape that the drugs that they were getting in
10 this case were the ones that were from Leo Abney.

11 He said, It's the same thing. He was assuring him
12 of that --

13 **A** Yes.

14 **Q** -- isn't that correct?

15 **A** Yes.

16 **Q** At that point in time, you also heard on the
17 audio tape in this case they were already leery that
18 he was working for the police, or at least Montez
19 was. They called him that on the wire --

20 **MR. DRYLIE:** Objection.

21 **THE COURT:** Yes.

22 **MR. DRYLIE:** The audio speaks for itself.

23 **THE COURT:** Sustained.

24 **THE WITNESS:** I can't --

25 **BY MR. MAYE:**

- 1 Q Don't answer that.
- 2 A Okay.
- 3 Q You got the drugs back from the CI in this
- 4 case --
- 5 A Yes.
- 6 Q -- Mr. Erving; right?
- 7 A Yes.
- 8 Q You sealed them up in the BEST kit that's in 1;
- 9 correct?
- 10 A Yes. It's our policy. We have to do it right
- 11 on the site in the presence of whatever agents are
- 12 there with us.
- 13 Q Okay. And then you sealed up the BEST kit
- 14 there right there in the scene in the presence of
- 15 these two other officers?
- 16 A Yes. They will not sign the BEST kit unless
- 17 it's sealed right there.
- 18 Q Do you fill -- the paperwork and all that you
- 19 fill out has to be on the inside of that BEST kit,
- 20 doesn't it?
- 21 A Yes, it does.
- 22 Q Okay. So you took that to SLED the next day
- 23 and dropped it off to Doris Yarbrough?
- 24 A Yes, on June 20th.
- 25 Q Did you change or alter that substance in any

1 way when you had it?

2 **A** No.

3 **Q** Okay. Was everything that you did in this
4 case, all of your work, was it in the presence of
5 Agent Miles and Chief Goldman?

6 **A** Yes.

7 **Q** Did you do anything by yourself other than take
8 the drugs that were sealed up in an envelope to
9 SLED? Did you do anything by yourself?

10 **A** No.

11 **Q** Okay. You had at least two officers with you
12 at every stage of any operation that's got any
13 relevance to the issue of guilt or innocence of
14 Mr. Abney in this case?

15 **A** Yes.

16 **Q** Okay. Agent Mota, did you do anything
17 dishonest involving any of the transaction that you
18 did out there that day? Did you do anything that
19 was dishonest?

20 **A** No.

21 **Q** Okay. Did you carry this operation out in
22 accordance with your training and do the things that
23 you were asked to do as an assisting agency?

24 **A** Yes.

25 **Q** Do you know Leo Abney, the defendant, in this

1 case? Had you ever seen him before that day?

2 A No.

3 Q Had you ever been to Saluda before that day?

4 A No.

5 Q Okay. Did you know any of the parties in this?

6 Did you know Timothy Erving?

7 A No.

8 Q Did you know Montez Quattlebaum?

9 A No.

10 Q Did you even really know Chief Goldman before
11 you went down there to help him with this single
12 buy?

13 A He sounded like a nice guy on the phone, but,
14 no.

15 Q Okay. So you took the drugs to SLED and helped
16 them with the wire; correct?

17 A Yes.

18 Q And the CI was aware that what y'all were
19 putting on him was a camera, wasn't he?

20 A Yes. He was made well aware of that.

21 Q Y'all told him, in fact, didn't you?

22 A Yes. I even told him to be very careful about
23 speaking about a lot of things that had nothing to
24 do with the case, just be quiet. And you have --
25 you have surveillance equipment on you. Yes.

1 Q You told him everything that he was doing was
2 being audioed and videoed, didn't you?

3 A Yes.

4 Q At the time that y'all concluded the buy, y'all
5 had no idea that the video portion of the
6 surveillance equipment had failed, did you?

7 A No, we did not.

8 Q There was no way he could have known that
9 either. If y'all didn't know it, there's certainly
10 no way he knew it; correct?

11 A No, he couldn't know that.

12 Q Okay. So he's wearing what he believes to be a
13 functioning video camera and audio camera when he
14 goes out to make this buy; correct?

15 A Yes.

16 Q So anything that he came back and told y'all
17 that was false or contrary to what the video and
18 audio recorded, as soon as you downloaded it, you'd
19 know that he was telling a lie, wouldn't you?

20 A Oh, yes.

21 Q So that helps with the reliability when y'all
22 are making charges in this case because you have
23 audio and video evidence, so you know they're not
24 telling you anything wrong; correct?

25 A Yes.

1 Q So he certainly believed he had a functioning
2 system on him when he came back and talked to y'all
3 and told y'all verbally what had happened?

4 A Yes, we all believed that.

5 Q Okay. So he was debriefed in full by Chief
6 Goldman as to the events of what took place that
7 day; correct?

8 A Yes.

9 Q You were responsible, basically, for handling
10 the evidence post-buy; right?

11 A Yes.

12 Q Miles was there for security and to help you
13 search him, basically. That was his role?

14 A Yes, assistance in anything I needed, yes.

15 Q But the bottom line is Chief Goldman, he's the
16 one that developed the CI, Timothy Erving; correct?

17 A Yes.

18 Q He knew all of the background information about
19 what was going on there at the scene, didn't he?

20 A Yes.

21 Q Would y'all have -- y'all would have been lost
22 if he hadn't of been there telling you who was who,
23 where to go and what y'all were doing that day;
24 isn't that true?

25 A Yes, that is true.

1 Q That doesn't diminish your role in this case in
2 any regard, does it?

3 A No, it does not.

4 Q Okay. But it's just -- the bottom line is that
5 Chief Goldman in this case knew all the players, was
6 telling you where to go, was dealing with Erving,
7 knew Leo Abney, the defendant in this case, and knew
8 Timothy Erving; correct?

9 A Yes.

10 Q It certainly made more sense for Chief Goldman,
11 that knew all of the players in this case, to
12 debrief Timothy Erving in this case and not you,
13 didn't it?

14 A Yes.

15 Q Because you don't know the players and you
16 don't know the nuances of what's the underlying
17 cause of them believing they can make a transaction
18 that day, do you?

19 A Yes, you're correct.

20 Q Okay. But Chief Goldman did and he talked to
21 Timothy at that time; correct?

22 A Yes.

23 Q To your knowledge, in your presence there, was
24 there ever any information conveyed by the
25 confidential informant, Timothy Erving, that anyone

1 other than Leo Abney was the source of the crack
2 cocaine that y'all made the purchase of that day?

3 **A** No. I remember it was just Leo, Leo. He just
4 kept saying, Leo, Leo gave me the crack.

5 **Q** Okay. The notes in this case, the surveillance
6 notes are the same one that was provided to the
7 defense in this case. They are verbatim, the
8 surveillance notes, as you took them there; correct?

9 **A** Yes.

10 **Q** And they were made a part of your case report
11 and were turned over in this case?

12 **A** Yes.

13 **Q** Okay.

14 **MR. MAYE:** Nothing else.. Thank you.

15 **THE COURT:** Any other questions of the witness?

16 **MR. DRYLIE:** Yes, Your Honor, briefly.

17 The witness seems to have the document. We'd
18 ask permission to inspect it.

19 **THE COURT:** Sure.

20 (Pause.)

21 REDIRECT EXAMINATION

22 BY MR. DRYLIE:

23 **Q** In your report, you write, Montez told Erving
24 that Leo was upstairs; right? Second page,
25 paragraph two.

1 **A** Thank you.

2 Yes.

3 **Q** Okay. Now, the Solicitor asked you about your
4 experience in law enforcement; correct?

5 **A** Yes, he mentioned it.

6 **Q** Your experience in law enforcement included ten
7 months working for SLED?

8 **A** Yes.

9 **Q** That's the sum total of your experience in law
10 enforcement?

11 **A** I can't answer that with just a yes or no. Am
12 I able to explain it or --

13 **Q** Well, I --

14 **A** -- are you going to cut me off? I'm just
15 asking.

16 **Q** Go ahead.

17 **A** Okay. So law enforcement was not my first
18 career. I graduated from college in 2007. I worked
19 as a religion teacher and director of the religion
20 department in Miami, Florida. I also worked as a
21 assisting pastor at a church in Hialeah, Florida. I
22 also worked after that with a nonprofit
23 organization and --

24 **MR. DRYLIE:** Judge, I'm going to cut him off
25 now.

1 **THE WITNESS:** Can I --

2 **MR. DRYLIE:** He's going way outside the
3 question I asked him.

4 **THE COURT:** You have to be responsive to the
5 question. Are you leading up to law enforcement?

6 **THE WITNESS:** Yeah, I'm leading up to law
7 enforcement.

8 **MR. MAYE:** I would object. He's asked him
9 about his experience and the basis of his knowledge.
10 His answer is directly explaining the basis of his
11 knowledge. He's attempting to ask him about the
12 basis for his knowledge being only in law
13 enforcement. If he had knowledge of law enforcement
14 activities and the drug culture as a part of other
15 experience, he should be allowed to explain his
16 answer in full.

17 **THE COURT:** Do you wish to be heard any
18 further?

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

20 **THE COURT:** Go ahead with your answer.

21 **THE WITNESS:** So my experience in law
22 enforcement was also with my experience -- it's
23 based on also my experience in the nonprofit sector
24 and my experience as a religion teacher working with
25 students who came from neighborhoods that were drug

1 rated. And I was able to work with those young men
2 and women. And I was also familiar with law
3 enforcement from them. All those tools added into
4 the work I did with law enforcement. So it was not
5 my first rodeo.

6 BY MR. DRYLIE:

7 Q Your experience in law enforcement lasted ten
8 months?

9 A I worked as an officer for ten months.

10 Q And then you were terminated?

11 A I was terminated for an internal investigation,
12 yes, sir.

13 MR. DRYLIE: Nothing further.

14 THE COURT: Anything else of the witness?

15 MR. MAYE: No. Thank you.

16 THE COURT: Thank you, sir. You may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Is he released?

19 MR. DRYLIE: Yes, Your Honor.

20 THE COURT: Mr. Mota, you're released from your
21 subpoena.

22 Do you have any other witnesses?

23 MR. DRYLIE: We do. The defense calls Leo
24 Abney.

25 THE COURT: Come around, please.

1 LEO ABNEY,
2 having been duly sworn, testified as follows:

3 **THE COURT:** State your name, please.

4 **THE WITNESS:** My name is Leo Abney.

5 DIRECT EXAMINATION

6 BY MR. DRYLIE:

7 **Q** On June 19th, 2014, did you sell drugs to
8 Timothy Erving?

9 **A** No, sir.

10 **Q** Did you participate in any way in the audio
11 transaction we've heard in this courtroom this week?

12 **A** No, sir.

13 **Q** Did you take money from Montez Quattlebaum?

14 **A** No, sir.

15 **Q** Did you give crack cocaine to Montez
16 Quattlebaum?

17 **A** No, sir.

18 **Q** Did you give crack cocaine to Timothy Erving?

19 **A** No, sir.

20 **Q** Leo, in 2014, were you arrested for giving
21 false information to police?

22 **A** Yes, sir.

23 **Q** How did you dispose of that case?

24 **A** I pleaded guilty.

25 **Q** Why aren't you pleading --

1 **MR. MAYE:** Wait a second, Your Honor. I'm
2 going to object to this.

3 **THE COURT:** Well, first of all, I've got to
4 give a limiting instruction.

5 All right. Ladies and gentlemen, there's
6 admitted in the trial of this case evidence related
7 to a prior criminal conviction of the defendant,
8 Mr. Abney. At this point, I'm going to give you
9 what's known as a limiting instruction which means
10 that this evidence was admitted for a limited
11 purpose. And if you use this statement -- excuse me
12 -- this conviction for any purpose, you can only
13 consider it for the limited purpose for which it was
14 admitted.

15 I charge you that evidence of other crimes,
16 wrongs or acts is not admitted to prove the
17 character of an accused in order to show action in
18 conformity with the character -- or that character.
19 In other words, the fact that someone may have been
20 involved in a prior bad act cannot be used to prove
21 that he had the character to commit another bad act.
22 This evidence was admitted for a limited purpose.
23 And if you conclude it true, you can only use it for
24 the limited purpose of assessing the credibility or
25 believability of Mr. Abney's testimony and for no

1 other purpose.

2 All right. And you object to his next
3 question?

4 **MR. MAYE:** I do, Your Honor. And I have a
5 matter I'd like to take up outside the presence of
6 the jury in that regard.

7 **THE COURT:** All right. Ladies and gentlemen,
8 please step in the jury room. Don't discuss the
9 case.

10 (The jury retires to the jury room.)

11 **MR. MAYE:** Your Honor, he asked him about his
12 criminal conviction. He then asked him if he
13 pleaded guilty in disposing of it. I'm going to
14 presuppose that the next question out of his mouth
15 is, why aren't you pleading guilty now? Because I
16 did not do this.

17 Your Honor, we would maintain respectfully
18 that's an attempt to bolster his testimony and to
19 put his truthfulness -- to bolster his truthfulness
20 in this case and bolster his testimony. For him to
21 say that, I pleaded guilty previously and I'm not
22 pleading guilty to this one, we think, Your Honor,
23 puts his character and the prior convictions he have
24 -- we maintain it would open the door for us to go
25 into all of his convictions if they're going to put

1 his truthfulness and character in an attempt to
2 bolster it through this method, Your Honor. We
3 would object to that. We think that's improper.

4 Each case stands on its merit in this case,
5 Your Honor. The fact that he pleaded guilty in
6 another case has nothing to do with trying to
7 bolster his credibility in testifying as a witness
8 in this case as to the ultimate issue of whether or
9 not he's guilty or innocent in this case.

10 **MR. DRYLIE:** I'll withdraw the question.

11 **THE COURT:** All right. Bring in the jury.

12 (The jury returns to the courtroom.)

13 **THE COURT:** All right. The question is
14 withdrawn. You may continue.

15 BY MR. DRYLIE:

16 **Q** Leo, how old are you?

17 **A** Thirty-five.

18 **Q** Where do you work?

19 **A** Michelin Tires.

20 **Q** Where did you work before that?

21 **A** Amicks Farm.

22 **Q** Do you normally have a job?

23 **A** Yes, sir.

24 **Q** Do you sell crack cocaine as your job?

25 **A** No, sir.

1 Q Let's talk about this charge for a minute.

2 When were you arrested?

3 A September.

4 Q September of what?

5 A 2014.

6 Q Before you got your arrest warrant and were
7 told why you were being arrested, did you know why
8 they were arresting you?

9 A No, sir.

10 Q Was June 19th, 2014, significant to you in any
11 way?

12 A No, sir. It wasn't a very important day to me.
13 I didn't have nothing important going on, so I just
14 went along with my day.

15 Q Did you know that Tim Erving told law
16 enforcement officers that you sold him crack cocaine
17 on that day?

18 A No, sir.

19 Q Did you know Montez Quattlebaum was at your
20 house on that day?

21 A No, sir.

22 Q On June 19th, 2014, do you know exactly where
23 you were?

24 A Not exactly. Like I said, it wasn't a very
25 important day. I mean, in and out. I wasn't home.

1 I don't think -- I don't recall myself being at
2 home, but I know I don't sell drugs, so I know I
3 didn't have nothing to do with what is going on.

4 Q Did you in any way participate in the
5 transaction we heard on the audio recording in this
6 courtroom?

7 A No, sir.

8 Q Do you hear your voice anywhere on that audio?

9 A No, sir.

10 Q Did you sell Tim Erving crack cocaine?

11 A No, sir.

12 MR. DRYLIE: No further questions.

13 THE COURT: Cross.

14 CROSS-EXAMINATION

15 BY MR. MAYE:

16 Q Mr. Abney, you certainly know Timothy Erving?

17 A I know him.

18 Q You know him well, don't you?

19 A Yeah, because I --

20 Q You've seen him multiple times, haven't you?

21 A Yes, because I was the type of person, Tim
22 Erving used to come to me and ask me to borrow a
23 dollar or buy him alcohol, I do. I treated him like
24 anybody else. That's how I know him. I tried to be
25 nice to him.

1 Q You were selling him alcohol?

2 A I don't sell alcohol. He asked me to borrow a
3 dollar to buy alcohol.

4 Q How many times did he --

5 A All the time.

6 Q All the time?

7 A All the time.

8 Q So you dealt with Timothy Erving on a regular
9 basis?

10 A Nah. I never dealt with him on a regular
11 basis. He used to hang out in the neighborhood
12 where I lived at along with everybody else, that's
13 how I knew him.

14 Q State's 4 in this case, 212 Merritt, that's
15 your duplex, isn't it?

16 A Yes. That's where my mother live. I live with
17 my mother. It's not my duplex; it's my mother home.

18 Q But you lived up here with your brother
19 upstairs, didn't you?

20 A My brother and my mother. We lived with my
21 mother. It wasn't me and my brother house.

22 Q Well, if Montez Quattlebaum went upstairs in
23 that place to get crack cocaine, who was he getting
24 it from? Who had crack cocaine up there in y'all's
25 apartment?

1 **A** Ain't nobody had crack cocaine up there in our
2 apartment because ain't nobody stayed there sold
3 drugs. So Montez, I don't know where he got crack
4 cocaine from, if he even got crack cocaine, because
5 I never known Montez to sell drugs, just like I
6 don't.

7 **Q** You don't have anything to do with drugs
8 whatsoever?

9 **A** What so --

10 **MR. DRYLIE:** Objection.

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

12 **MR. DRYLIE:** Judge, the question was, You don't
13 have anything to do with drugs whatsoever?

14 **THE COURT:** Right.

15 **MR. MAYE:** Your Honor, they opened the door
16 wide open for that with this line of questioning.
17 They've asked him if he is a crack dealer.

18 **MR. DRYLIE:** We have a matter of law we'd like
19 to take up.

20 **THE COURT:** Ladies and gentlemen, please go in
21 the jury room. Don't discuss the case.

22 (The jury retires to the jury room.)

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

24 **MR. DRYLIE:** Asking if he sold drugs in no way
25 is opening the door to asking if he ever possessed

1 drugs.

2 **MR. MAYE:** Your Honor, I maintain they've
3 opened the door. I was stunned when they went down
4 that line of questioning, Your Honor. They're
5 asking him if he worked, if his job was selling
6 crack cocaine. They're bolstering his -- they're
7 trying to bolster this witness and comment, I guess,
8 on his work history and character by holding himself
9 out as gainfully employed. They're trying to say
10 that he has no involvement in drugs, that he doesn't
11 sell drugs as his business, Your Honor.

12 They've opened the door wide open, Your Honor,
13 to go into his -- this individual's got prior
14 convictions for possession of cocaine, Your Honor,
15 on two different occasions. He's got another drug
16 offense in this case, Your Honor. I maintain that
17 they've opened the door.

18 I was going to ask -- I'm glad that they asked
19 to take a break, Your Honor, because I was going to
20 ask to take up a matter of law. They're trying to
21 say that his -- that all he did was work and that
22 was his source of any income that he had, Your
23 Honor, and say that he doesn't have any involvement
24 with drugs. We maintain they've opened the door in
25 this case to ask about his prior convictions, to ask

1 about any prior drug dealings that this defendant
2 has in this case, Your Honor.

3 **THE COURT:** At this point, I do not believe
4 they've opened the door to ask questions about
5 selling drugs. He was saying he did not sell drugs,
6 and you can't bootstrap by asking him the question
7 you asked him. I don't think they've gone that far
8 yet, Solicitor.

9 **MR. MAYE:** I'll abide by the Court's ruling.
10 Thank you, Your Honor.

11 **MR. DRYLIE:** Thank you, Judge.

12 **THE COURT:** Bring in the jury.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Ladies and gentlemen of
15 the jury, the objection is sustained. Disregard the
16 last question of the Solicitor, please.

17 You may continue, Solicitor.

18 BY MR. MAYE:

19 **Q** You say you weren't around there when Montez
20 Quattlebaum went upstairs in your apartment there;
21 right?

22 **A** No, sir.

23 **Q** Okay. Why did Montez Quattlebaum need to go
24 upstairs to get crack cocaine?

25 **MR. DRYLIE:** Objection; that's speculative.

1 **THE COURT:** I'm sorry, what?

2 **MR. DRYLIE:** I think that's speculative if he's
3 asking why Montez needed to do something. He can't
4 answer that.

5 **THE COURT:** Sustained.

6 BY MR. MAYE:

7 **Q** Did you let Montez Quattlebaum come and go in
8 and out of your apartment whenever he wanted to?

9 **A** No, sir, I didn't let Montez Quattlebaum come
10 and go in and out of my apartment, because, like I
11 say, that was my mom house. And Montez Quattlebaum
12 and my brother, D.J., was real good friends, so
13 Montez might be there sometime when I'm not there
14 because he really hung out with my brother. So I
15 ain't have no control over what Montez do.

16 **Q** But you know Montez well, don't you?

17 **A** Yeah, I know him because him and my brother is
18 best friends.

19 **Q** He and your brother are best friends?

20 **A** Yeah.

21 **Q** And he hangs around there in the yard or, at
22 that point in time, he hung around in the yard on a
23 very frequent basis, didn't he?

24 **A** Everybody hang around in the yard. Where I
25 live at, that's all everybody -- it's a bunch of

1 people that hang out there all day every day. It's
2 not just Montez; it's a lot of people. If you was
3 riding through, you would see people hanging in the
4 yard all the time not just Montez.

5 Q There was a tremendous amount of traffic in and
6 out from your residence at that time, wasn't there?

7 A No, sir, because where I live at, my neighbor
8 next door she have company, my neighbor stay beside
9 me have company. It's a minimum amount of traffic
10 all the time because people come and visit, people
11 come and go all the time not just my house. So you
12 make it look like it seem like all the traffic is
13 coming from my house, no. The area where I live in
14 stay flooded with traffic not just my house.

15 Q But, unquestionably, you were living there at
16 the time?

17 A Yes, with my mother.

18 Q Okay. You say you weren't there that day;
19 right?

20 A No, sir. I don't know where I was that day,
21 but I --

22 Q You don't have any idea if you were there or
23 not, do you?

24 A I wasn't there. I know I wasn't -- I don't
25 have no idea that I was there or not, but I know I

1 don't sell drugs. So that what the matter is, when
2 it all boil down to it, I don't sell drugs. I don't
3 know if I was there or not, but I don't sell drugs.

4 Q How about the day before then? Were you there
5 or not?

6 A I don't know. That's been a year and a half
7 ago. How am I going to remember all that? Do you
8 remember where you was back in 2014 in June every
9 day? So don't expect me to remember.

10 Q How about the day afterwards?

11 A I don't know.

12 Q Bottom line is you don't have any idea whether
13 you were there or not on June 14th. You don't have
14 any idea, do you?

15 A Nah, I don't remember.

16 Q So any attempt to assert to this jury that you
17 knew where you were on that day is false because you
18 don't know where you were at what time on that --

19 A I'm just being honest like I been the whole
20 time. I don't know where I was. Like I say, I'm
21 only human. Do you remember where you was? I don't
22 remember where I was. It wasn't an important day
23 for me, so why should I remember?

24 Q So you very well could have been upstairs on
25 that day, couldn't you?

1 **A** No. I don't know. If I don't remember where I
2 was, then I don't remember if I was upstairs or not.
3 So I guess to answer your question, I might have
4 could have been upstairs, but I don't remember.

5 I don't have no reason to lie to you, sir. And
6 I don't sell drugs like I told you. So I don't know
7 how I get mixed up in this that they supposedly say
8 that I'm selling drugs when I don't. I've been
9 working all my life. I ain't got no reason to lie
10 to the jury or you. That's why I took it to trial.

11 **MR. MAYE:** Nothing else, Your Honor. Thank
12 you.

13 **THE COURT:** Any other questions of the witness?

14 **MR. DRYLIE:** No, Your Honor.

15 **THE COURT:** Thank you, sir. You may step down.
16 Any other witnesses from the defense?

17 **MR. DRYLIE:** The defense rests at this time,
18 Your Honor.

19 **THE COURT:** Any reply testimony?

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

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

22 (Pause.)

23 **MR. MAYE:** Your Honor, the State doesn't have
24 any reply witness. Thank you.

25 **THE COURT:** All right. Ladies and gentlemen,

1 you now have all of the evidence you're going to
2 have to decide this case. There are two stages that
3 remain in the trial, the closing arguments and the
4 charge. The charge is the part where I tell you the
5 law.

6 We've reached another one of those points where
7 I have to discuss legal issues with the attorneys.
8 This usually takes about ten minutes -- I'm sorry --
9 about 20 minutes. So I'm going to have to ask you
10 to step back in the jury room and not discuss the
11 case. Then I'll bring you out here as soon as I can
12 and you'll hear the closing arguments, I'll give you
13 the law, and the case will be given to you this
14 afternoon to decide. I don't know exactly what time
15 that will be that you'll get the case, but it takes
16 me about, unless I modify what I have drawn up now,
17 it's going to take me about 19, 20 minutes to tell
18 you the law.

19 So, please, just step in the jury room. And as
20 soon as I can, I'll get you back out here.

21 (The jury retires to the jury room.)

22 **THE COURT:** Any motions?

23 **MR. DRYLIE:** Your Honor, at this time, we'd
24 renew our directed verdict motion, as well as our
25 motion to dismiss based on prosecutorial misconduct

1 and Brady violations and any other motions and
2 objections we've made throughout the course of the
3 trial.

4 **THE COURT:** All right. The motions are
5 respectfully denied.

6 All right. I'm going to send the proposed
7 charge to the Clerk, ask the Clerk to print it out
8 for me and give each of the lawyers a copy and y'all
9 can review it. And as soon as you finish reading
10 it, we'll talk about the proposed charge. We're at
11 ease pending a verdict -- excuse me -- we're at
12 ease. Thank you.

13 (Brief recess.)

14 **THE COURT:** Do y'all need anymore time?

15 **MR. MAYE:** I'm ready, Your Honor.

16 **MR. DRYLIE:** Mr. Casto is dealing with another
17 client that we had show up. I do have one objection
18 I need to place on the record.

19 **THE COURT:** All right.

20 **MR. DRYLIE:** The indictment alleges that
21 Mr. Abney distributed crack cocaine. It doesn't
22 allege any accomplice liability, and we'd object to
23 the accomplice liability portion of the charge.

24 **THE COURT:** All right. I don't think that's
25 necessary. I may be wrong, but the objection's

1 noted.

2 (Pause.)

3 (Mr. Drylie hands the Judge a demonstrative
4 board.)

5 **MR. MAYE:** I would object on the basis, Your
6 Honor, I think it conflicts with the charge on
7 reasonable doubt that the Court is giving in this
8 case, Your Honor. It's a written document, Your
9 Honor. And I think the aspects of it would differ
10 from the Court's charge in this case and I would
11 object to its use.

12 **THE COURT:** What's been handed to me is a board
13 that has been prepared, apparently, for
14 demonstrative purposes in the argument. At the top,
15 it reads, Guilty, and then beside it, Guilt beyond a
16 reasonable doubt, and then below that, it has, Not
17 guilty, and it has a number of statements: Guilt,
18 highly likely, guilt likely, probably guilty,
19 possibly guilty, suspected, perhaps, may not be,
20 possibly not, unlikely, probably not, less than
21 likely, highly unlikely, proven not guilty.

22 The defense may use that in their closing
23 argument. The jury is instructed they have to apply
24 the law as I tell it to them.

25 Anything else?

1 **MR. MAYE:** No, sir, Your Honor, that's all.

2 (Pause.)

3 **THE COURT:** Are y'all ready?

4 **MR. DRYLIE:** Yes, Your Honor.

5 **THE COURT:** State ready?

6 **MR. MAYE:** State's ready, Your Honor. Thank
7 you.

8 **THE COURT:** Bring in the jury.

9 (The jury returns to the courtroom.)

10 **THE COURT:** All right. Ladies and gentlemen,
11 as I told you, there are two stages that remain, the
12 closing arguments and the charge. I told you in the
13 opening statement that I gave to you, that the
14 attorneys are not permitted to engage in argument
15 during their opening statements, that they could
16 give you an introduction, an outline, an overview,
17 but they could not extend into what we call
18 argument.

19 At this stage of the trial now that all the
20 evidence is in, the attorneys are permitted to use
21 the art of advocacy to attempt to get you to see
22 things as they would like you to see them on behalf
23 of their respective positions.

24 Now, again, that does not change the burden of
25 proof. The burden of proof remains with the State

1 throughout the entire trial.

2 The way this works is that since the State has
3 the burden of proof, it goes last. So you'll hear
4 the full closing argument of the defense counsel and
5 then you'll hear the full closing argument of the
6 State's -- the prosecutor. I always take a brief
7 recess between their arguments and where I tell you
8 the law. It's usually very brief just so I can get
9 set up, and then I'll bring you back out here and
10 I'll tell you the law. Shortly after that, the case
11 is given to you to decide. I invite your close
12 attention.

13 Mr. Drylie, you're recognized for your closing
14 argument.

15 **MR. DRYLIE:** Thank you, Judge.

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

17 CLOSING ARGUMENT

18 **MR. DRYLIE:** Good afternoon. I told you at the
19 beginning of this case to ask yourself, where's Leo?
20 And I still want you to ask yourself, where's Leo?
21 After they've presented all of their evidence,
22 where's Leo?

23 Well, we had Tim Erving come into this
24 courtroom and Tim Erving's the only one who puts
25 drugs in Leo Abney's hands. And is Tim Erving

1 believable? Think about the story that he told
2 y'all.

3 What he told you was that he went and gave \$20
4 to Montez Quattlebaum. Montez Quattlebaum walked
5 into the house, walked upstairs. At some point, Tim
6 creeps up the steps, goes into the house and sees
7 Leo give drugs to Montez Quattlebaum.

8 I want you to listen to this audio for a minute
9 and see if that's what that sounds like.

10 (Whereupon, portions of State's Exhibit
11 Number 2 was played for the jury. During the
12 playing of State's Exhibit Number 2, the following
13 occurred.)

14 **MR. DRYLIE:** You hear a screen door shut.

15 Sounds like he's yelling to someone outside.

16 (The playing of State's Exhibit Number 2 was
17 concluded.)

18 **MR. DRYLIE:** Took that F'ing long is what he
19 says. Doesn't sound like he goes in the house.
20 Sounds like someone comes back out.

21 For his story to be true, there should be
22 another screen door opening and shutting on that
23 right there because he would have had to walk into
24 the house.

25 Now, he's wanting you to believe that he walked

1 into the house and then they're in there talking and
2 walked back out to get the drugs. It doesn't make
3 sense. His whole story doesn't make sense. He says
4 there's not even a screen door on the house when he
5 came in here and testified yesterday morning.

6 You know, I commend Tim for wanting help with
7 his drug problem and wanting to go to rehab, but
8 what he said he'd do was that he said he'd tell the
9 truth. He didn't come in here and tell the truth.
10 Leo Abney did not distribute crack cocaine to
11 Timothy Erving. He didn't give it to Montez
12 Quattlebaum. There's no way for his story to add up
13 with what we have on that audio.

14 We heard through a number of witnesses in this
15 case, you know, we heard from Agent Miles who didn't
16 tell us much only that, eh, I don't want to reveal
17 too much about our video equipment malfunctioning.
18 Somebody's on trial here to take away their freedom,
19 I don't want to tell too much? That's unacceptable.

20 What we did learn from him is that he never saw
21 Leo. None of the law enforcement officers ever saw
22 Leo Abney. The only person who says that Leo Abney
23 was there was Timothy Erving.

24 Now, we heard from Officer Goldman. Officer
25 Goldman told us that there are no videos, no photos.

1 He told us that he wanted to help Tim, and I
2 honestly believe he does. I honestly believe he
3 wanted to clean up Ridge Spring, help Tim out, but
4 he believed that Tim was telling the truth when
5 Tim's story didn't add up. And I'm not criticizing
6 him. He works hard. He's overworked and underpaid,
7 but here's the thing: Tim wasn't telling the truth
8 and now we've got someone on trial.

9 Then we get to today. We heard about the
10 chemist. He never -- we didn't even ask him any
11 questions. There was no dispute that this was crack
12 cocaine. We never disputed that. The only issue
13 that we had in this case that I told you about from
14 the beginning was that Leo Abney was the source of
15 that crack cocaine, and he was not.

16 We get to today and the State rests. The State
17 rests without calling their case agent, their chief
18 investigating officer. What are they trying to
19 hide? They flew him down here to testify in this
20 trial and then didn't call him. I had to call him
21 so you could hear from him.

22 The reason I called him was because I wanted
23 you to hear what was in that report. In that report
24 was a completely different story than what was
25 presented here at trial. He read it to you from

1 that witness stand and said, It's just semantics.
2 I'm sorry, but when someone's on trial, when we're
3 talking about taking away their freedom, it's not
4 just semantics. Whether he handed the drugs to
5 Timothy Erving or whether he gave them to Montez
6 Quattlebaum who gave them to Timothy Erving, there's
7 a big difference here.

8 They want you to come in here and convict Leo
9 Abney on the basis that Tim Erving wanted help and
10 wanted to go to rehab and Officer Goldman's a good
11 cop and wanted to help him. And I think he is a
12 good cop and wanted to help him. But I don't think
13 he came in here and was telling you the truth. The
14 defense, think about that, the defense had to call
15 the chief investigating officer in this case.

16 Let's talk about who we didn't hear from,
17 because the Judge is going to tell you that you can
18 consider evidence and lack thereof. We never heard
19 from Montez Quattlebaum in this case. You think
20 that Montez Quattlebaum would say, Leo Abney gave me
21 crack cocaine and I gave it to Timothy Erving? Do
22 you think if he was pointing the finger at Leo
23 Abney, they would have him here? They absolutely
24 would.

25 This case has been slow and we apologize for

1 that, but there's just so many things going on that
2 don't pass the smell test. Timothy Erving saying
3 that there was no screen door, his testimony when he
4 got tripped up in court in the statement, the
5 statement where he says that he is referring to
6 Montez not Leo. Well, the statement that's written
7 down there is that -- that was read to you was that
8 Leo Abney handed him crack cocaine. That is a big
9 difference. That is a big deal in this case.

10 Leo Abney didn't distribute crack cocaine.
11 And, in fact, he got on the stand and he told y'all
12 that himself. He said he didn't give crack cocaine
13 to Montez Quattlebaum. He said he didn't give crack
14 cocaine to Timothy Erving. He didn't take money
15 from Montez.

16 He didn't have to get up on the stand and
17 testify, but he did because he's not trying to hide
18 anything. What are they trying to hide when they
19 don't call their chief officer?

20 I want to talk to you for a minute about
21 reasonable doubt because that's the court we're in
22 here. We're talking about reasonable doubt.

23 You know, there's certain levels of court, and
24 the Judge is going to charge you on the law in a
25 minute. You've got civil court. Civil court is by

1 the preponderance of the evidence or more evidence
2 than not. That's where we can take your money.
3 That's an important thing.

4 Then you've got family court and the standard's
5 a little higher there. Family court, they can take
6 away your kids.

7 But then the highest burden that we have in our
8 society is criminal court. And criminal court
9 requires proof beyond a reasonable doubt, which is
10 something that we don't have here in this case.

11 You know, the Judge is going to tell you that
12 you have to be firmly convinced, that you don't have
13 to exclude every other possibility, because the
14 simple fact is there aren't cameras everywhere, you
15 can't see everything that happens during the day.
16 How can we be firmly convinced that Tim Erving is
17 telling the truth when his story doesn't add up with
18 that audio that's right there?

19 You know, this is the last time that I'm going
20 to get a chance to talk to you. When we come into
21 criminal court, it's like coming inside on a hot
22 summer day. You want to come in and you want a
23 nice, big, tall glass of water, but what they've
24 done is they've diluted this case. And it's like
25 the tall glass of water is sitting there on the

1 counter and they've poured toilet water in it and
2 asking you to drink it. Nobody wants to drink that.

3 By not calling their officer, by paying for Tim
4 Erving's testimony and by not double-checking their
5 facts -- you know, another thing that is very
6 important that I forgot earlier to mention to you
7 was I asked that officer who wrote that report,
8 Didn't you write in your report that Montez
9 Quattlebaum said that Leo Abney was upstairs?
10 Nowhere in the audio. Listen to it for yourself.
11 You're going to have it back in the jury room.
12 You're going to have it back there. Listen to it a
13 couple of times. What you're going to hear is just
14 not what they testified to on the stand. It didn't
15 happen that way. It didn't happen. Leo Abney did
16 not distribute crack cocaine.

17 We'd ask you to return a verdict of not guilty
18 in this case and declare him an innocent man. He
19 did not distribute crack cocaine on that day, and
20 we'd ask for a verdict of not guilty.

21 **THE COURT:** Thank you, Mr. Drylie.
22 Solicitor.

23 **MR. MAYE:** Thank you, Your Honor. May it
24 please the Court.

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

1 **MR. MAYE:** I know it's 2:30 in the afternoon.

2 You know, there are a lot of monuments on the
3 courthouse ground here for a lot of different wars
4 and battles that were fought. Winston Churchill
5 once said that the highest duty that a citizen has
6 during peacetime is service on a jury.

7 People that are in this courtroom have heard me
8 talk about this many times, but they used to have
9 all sorts of things that people had to do. They
10 used to have to go out and work on the roads before
11 they had DOT or you had to pay a tax to have
12 somebody go out and work in your place. You
13 actually had to get a shovel and a pick and go out
14 and work on the roads. There were all sorts of
15 things in days gone by that were a compulsory public
16 service.

17 You look at the monuments here, there were
18 people here that were compelled, they used to have
19 the draft where people were compelled to go fight in
20 foreign wars. This is it. This is the last
21 compulsory public service that we have. It's the
22 only thing that's left in the United States. And
23 this is vitally important, because when I started
24 talking to you initially, all of you had to quit
25 everything that you were doing to come up here. You

1 had to drop everything. It didn't make any
2 difference whether you're missing work, being with
3 your families, wherever you were, it's vitally
4 important.

5 Now, I doubt anybody skipped or was clapping or
6 was joyous when they got the letter here from
7 Ms. Doris saying you've got to come down here for
8 jury duty because it's an imposition, but it's the
9 price of citizenship. It's important. You live
10 here.

11 The one thing that the 12 of you that are going
12 to go back in that jury room and deliberate all have
13 in common is y'all live here. This is your
14 community. A lot of people involved in this
15 process, representing the State included, going to
16 get in their cars and go back to other places when
17 the day is done. Y'all live here in Saluda County.

18 Talked from the outset about Ridge Spring in
19 this case. Chief Goldman there out of the Marine
20 Corps, coming into law enforcement, trying to do
21 something, it's tough, there's no doubt. You know
22 that when he came into office there, if his number
23 one priority, if he's looking around Ridge Spring --
24 and it isn't big, the areas that we're talking about
25 in this place. You can throw a rock from the back

1 of the police department and hit this. Even the
2 defendant in this case, when he gets up on the
3 stand, he's talking about there's traffic coming and
4 going from this location all the time.

5 There this is going on, this drug dealing,
6 right there under the Chief's nose basically in
7 Ridge Spring, but the bottom line is you've got to
8 have informants. You've got to have people that'll
9 stick their neck out and do it. And in a little
10 community like Ridge Spring, that's tough business.
11 It's hard for him to get informants. That was his
12 challenge in the case.

13 He knew what the problem was, it's going on
14 right there under his nose, traffic coming and
15 coming, grand central station. But unless you've
16 got somebody that'll wear a wire and go behind
17 closed doors and put their life on the line to do
18 something about it and being willing to suffer the
19 storm that would go in the community of being, what
20 do they call them, a snitch or a rat or anything
21 else, Chief Goldman can't go buy it, there's no
22 other way to fight this.

23 And he's scratching his head, he's trying to
24 figure it out. Unless he can get an informant or
25 unless he can get somebody that's willing to do

1 this, even though it's going on right there under
2 his nose, there's nothing he can do about it.

3 So, as we talked about from the outset, he's
4 just walking down the street and the phone rings.
5 Low and behold, what an unusual situation. Usually
6 what they have to do is catch somebody. They'll
7 stop them on a traffic stop and they're holding
8 drugs or they'll catch them on a buy, maybe somebody
9 did a buy right in front of an officer who was able
10 to take them down right then and catch them, and
11 they put screws to them. They tell them, you're
12 either going to go to jail or you're going to help
13 us. Either you're going to do it -- do the time or
14 you're going to pass it on and you're going to catch
15 somebody else and you're going to wear a wire.
16 That's usually what happens. What an unusual
17 situation.

18 Timothy Erving didn't even know the Chief here,
19 he just knew he was in law enforcement. And he's in
20 such desperate straights, because he got up here on
21 the stand and he told you he was messed up on crack;
22 poison if there ever, ever was one in the modern
23 era.

24 These drugs like crack and methamphetamine and
25 these hard narcotics have changed the face of the

1 whole country, the whole world and certainly every
2 community here in Saluda County. They are decimated
3 by this problem. The people that are purveying and
4 selling and distributing this stuff are poisoning
5 their neighbors because they are greedy, because
6 they want to get money and they don't care.

7 And you can see the greed demonstrated in this
8 case. Here Tim Erving goes up there, Montez
9 Quattlebaum thinks he might be the police, but yet
10 there's so much greed, he's going to go on and do it
11 anyway.

12 So these dealers, they take steps to insulate
13 themselves from it. They get runners. They get
14 people like Montez Quattlebaum who's standing out in
15 the yard act as a go-between. They're being slick.
16 They're going to stay ahead of this.

17 The challenge of the Chief in this case, not
18 only does he have to have an informant in this case,
19 but he's got to carry it back to the source. And
20 these guys that sell, it's not their first day, they
21 know how to do this. They surround themselves by
22 people who will take a pinch off of a rock of crack
23 cocaine or a little bit of money to act as a
24 runaround or go-between and those are the ones that
25 stand in the front yard.

1 Chief knows what's going on in this case, it's
2 right there under his nose. It fell in his lap that
3 he had Timothy Erving who was in such dire straights
4 that he calls the police, I'm messed up on crack
5 cocaine; my life's devastated. How far down the
6 line would you have to be to call the cops and tell
7 them that you're addicted to crack cocaine, what can
8 you do to help me?

9 Well, to the Chief's credit in this case, he
10 didn't go lock him up, he tried to give him some
11 help. Let's clean up the streets and let's do
12 something. You help me, you wear a wire, and I'll
13 help you, and they did.

14 But the help that came in was they bought him a
15 bus ticket and they arranged for him to go to rehab.
16 Thank goodness that they did because you know that
17 the Timothy Erving that sat up here on the stand and
18 testified before you is a different person today
19 than he was when he made the phone call to Chief
20 Goldman in this case. He was a desperate crack
21 addict when he made that call and reached out to the
22 Chief. He sits up here today clean and sober and
23 working.

24 You know the people that are dealing and
25 selling this poison doesn't care anything about the

1 state that Timothy Erving was in the day that he
2 made that phone call, they just care about the
3 rewards of selling it. They're willing to put the
4 poison out on the street with absolutely no regard
5 to their fellow man.

6 Timothy Erving was as good as his word. He
7 risked his neck. Here are these people that he
8 knows, they all know each other on the street in
9 Ridge Spring, that's as close of a knit community
10 there in and around downtown as there is anywhere in
11 Saluda County. Folks know each other.

12 And it doesn't take but a minute, as the Chief
13 talked about and insinuated in this case, if
14 somebody's snitching and working for the police, if
15 anybody sees somebody riding around in a police car
16 or hanging out and talking to Chief Goldman, they
17 are burned, everybody's calling five-o and the
18 police, and you're a snitch when you walk up on the
19 scene. Because they're just getting going good with
20 Timothy Erving and already people are starting to
21 suspect him. Here's a crack addict that's buying
22 crack all the time, a good customer if there ever
23 was one, and already the word's getting out in this
24 case and he's got to confront that.

25 But you think about it, they wire him -- and

1 SLED came down and they were an assisting agency,
2 and we'll talk more about that in a little bit, but
3 SLED came down and helped him because he can't do
4 this all by himself.

5 Make no bones about it, this is Chief Goldman's
6 operation. It's his CI. He knows the people. He's
7 responsible for trying to combat the drug problem in
8 Ridge Spring. He's the one that knows the players
9 and where these people live and who lives in what
10 duplex and who owns it and who stays there. He knew
11 that the two of them lived -- that D.J. and Leo
12 lived there. He knew who owned the place. He knew
13 all of it because he was trying to get entail and
14 find out how to combat the drug problem.

15 SLED comes in, but what SLED's doing is helping
16 him with the mechanics of the buy. They're
17 providing the technical equipment. Well, it didn't
18 work, all of it, that day, but they're providing the
19 technical equipment. They're providing the
20 supportive manpower for a one-man police force to be
21 able to conduct and carry out an undercover narcotic
22 operation, which is exactly what the State Law
23 Enforcement Division is supposed to do.

24 These agents come from all over the state,
25 these narcotics guys. You know, this guy's from out

1 of state comes, goes to work for SLED. He's never
2 even been to Saluda. He never even talked to the
3 Chief before. They came in to facilitate the
4 mechanics of carrying out this buy, and they don't
5 know one person for another. They don't know Leo
6 Abney from his brother, D.J. Abney, from anybody
7 standing in the yard, from anybody on the street
8 corner.

9 They don't have any friends to reward or any
10 enemies to punish. They don't know anybody. They
11 don't know the players. They're just coming down
12 here to offer support for the Chief in this case,
13 and that's exactly what they do.

14 They wire him up. And all of them believe
15 there that they've put on a camera. And they've
16 explained to Tim, You know you're wearing a wire and
17 you're wearing a camera.

18 Now, he's risking his neck when he does that
19 because if he gets caught wearing that wire, you can
20 imagine what the word on the street's going to be on
21 him and how dangerous it's going to be for him to
22 do. That's why they got two agents there watching,
23 so they want to make sure somebody doesn't kill him
24 in the midst of this.

25 Well, they wire him up and they tell him, You

1 know we're putting a video camera on you and we're
2 putting an audio recorder on you to document this
3 transaction. And the officers believed that it was
4 functioning and working. Tim believed it was
5 functioning and working. They take him around and
6 they drop him off at the church.

7 And you can hear him walking down the street.
8 And you heard from the outset, the defense in this
9 case trying to poke holes, Oh, ol' Leo, he's
10 friendly and he was speaking to everybody.

11 Well, sure, all the ladies on the street and
12 all and the kids that he's talking to walking down
13 the sidewalk, you can hear his demeanor. But you've
14 also got that audio tape and you hear how that
15 changes in a split second when he runs up on Montez
16 Quattlebaum. His voice changes. You can tell that
17 it's a totally different ball game because they're
18 talking about doing a drug transaction.

19 When he's accused of being the police, what
20 does he say? It's not the friendly speaking and
21 waving that you heard out on the street. F you.
22 He's trying to be tough at that point in time and to
23 be aggressive at that point in time to try to
24 sidestep any rumors that he's working for the
25 police, which is exactly what he's doing.

1 You can imagine the risk to him at that point
2 in time. He's wearing a wire and a transmitter and
3 a video camera at that point in time. The officers
4 are monitoring a live feed at that point in time,
5 and they've even positioned themselves where they
6 can see what's going on.

7 Well, all the talk at that point in time, and
8 you'll hear, get that tape and listen to it, they're
9 talking about buying from Leo Abney from the outset.
10 They're also talking about which one, Leo or D.J.
11 You take all that information that's in there and
12 you hear things kind of in their unfiltered state.
13 The talk from Montez Quattlebaum out there when Tim
14 goes up and he starts talking about, I want Leo's
15 stuff, I want Leo's stuff. What do you hear Montez
16 Quattlebaum say? This is the same thing. This is
17 his stuff.

18 Did you hear Montez Quattlebaum with anything
19 like the defendant had up here, oh, no, I don't sell
20 drugs? When they started bringing up Leo Abney and
21 the quality of his stuff there, did you hear any
22 argument from Montez Quattlebaum on there? What are
23 you talking about? Leo Abney, drugs? What?
24 Absolutely not. He's saying he's getting the drugs
25 from Leo, all of the talk.

1 Montez and him are talking. You don't even
2 hardly hear Montez's name mentioned. All of the
3 talk's around Leo because Montez is his runner.

4 They want to tell you, why didn't you hear from
5 Montez Quattlebaum in this case? He's charged, too.
6 Why is he not here is what they're trying to tell
7 you, that there's something wrong with that. He's
8 got the same charges. Is he going to get up here
9 and say he was in the midst of it and testify for
10 the State? Absolutely not. He's Leo Abney's
11 runner. He's standing in the yard either for a
12 piece of crack or some money because he's the one
13 that's going to get it from him.

14 Now, they want to tell you in this case, oh,
15 listen to this audio -- and they got it out and
16 played it for you here -- oh, you can just listen to
17 the audio and you can tell that it didn't happen the
18 way it did.

19 You know, the interesting thing about it is the
20 officers, all of them, were sitting and watching
21 this. All of them corroborate what Tim said
22 happened. They want to tell you to listen to this
23 audio tape and to just ignore what these officers
24 say, they're lying. All of the officers saw him go
25 inside the house just like they say. He wants to

1 tell you that that audio tape, you listen to that
2 and somehow extrapolate from that that he didn't go
3 inside like he said.

4 Timothy Erving was wearing on his head the next
5 best thing to a lie detector. He had what he
6 believed was a working video and audio system on him
7 at the time. Didn't make any sense for him to go
8 back and tell anything what had happened other than
9 what had happened to the officers when he's
10 debriefed. To his knowledge then, all of it was
11 recorded on video or all of it was recorded on
12 audio, they would have known in two seconds if he
13 was lying.

14 And they want you to somehow suppose in this
15 case that Leo Abney, the defendant in this case, is
16 somehow, out of all the people that live in Saluda
17 County, being singled out for this, that somehow
18 that all these people have got a vendetta and want
19 to stick it on Leo Abney. You can hear the officers
20 talking about in this case, when Timothy's
21 discussing with them, Buy from whoever you can buy
22 from, Leo, D.J. He says, I think I can get served
23 by Leo. That's what he thinks, and that's pretty
24 prophetic because that's exactly what he testifies
25 to and that's exactly what he sees.

1 They want to tell you that he's a bad guy and
2 that he's liar. He got up here under oath and told
3 you that he was a crack addict, told you that he
4 needed rehab, told you what happened.

5 But they want you to suppose that he somehow
6 has some vendetta and is going to come up here and
7 lie. He wasn't working off charges. It's all over
8 and done with for him. He's gone to rehab. He's
9 gotten his life back on track. There's absolutely
10 no pressure or no motivation on Timothy Erving to
11 come up here now in 2016 in February and tell you
12 that unless it's the truth.

13 What possible motivation would he have to come
14 up here and lie now? He's through with rehab. He's
15 back on track. He doesn't have any charges. They
16 don't have a thumb on him. They don't have a noose
17 around his neck with pending charges like they do
18 with most people. He's got absolutely nothing.

19 He didn't even have to come up here and say a
20 word, but he came in here and he told you what
21 happened. He told the officers what happened over
22 and over again always, Leo Abney was the source of
23 the drugs.

24 And I submit to you, ladies and gentlemen, they
25 didn't have the video in this case, but it's going

1 to be basically up to the 12 of you to go back in
2 that jury room and decide is the absence of the
3 video evidence in this case -- that's exactly why
4 they have audio backup -- is the absence of video
5 evidence reason to let a drug dealer walk away
6 scot-free and to let people like Montez Quattlebaum,
7 his little runner in the yard, take a hit for it?

8 The person that's benefiting from it is the
9 person that's got the crack. And he was known to
10 all of these individuals as being the man that had
11 the stuff and the good stuff, because you heard him
12 talking on this tape, I don't want any of that
13 bullshit, or whatever language he was using on
14 there. He's talking about that inferior quality
15 garbage and all. I want Leo's stuff. He's known to
16 have quality stuff because that's exactly what
17 Montez Quattlebaum's on there arguing with him
18 about, It's the same thing. Sure, it's the same
19 thing because he's going right and getting it from
20 Leo.

21 Now, Timothy Erving goes in the house, and the
22 officers all said under oath here, he went inside.
23 So you'll have to decide in their arguments about
24 trying to tell you, listen to that tape and
25 determine if the officers are liars or not, is

1 valid. But the officers all saw him go in just
2 exactly like what he said. They saw Montez there
3 dealing with him, which is exactly what he said.

4 And when they all came back, what did he say
5 when he was debriefed by the Chief, who didn't
6 equivocate; he was the one that extensively
7 debriefed him at that point in time because he's the
8 only one that knows the players? He said, that's
9 what Tim told him from the outset.

10 You can forget about what the agents wrote in
11 there. They were helping with the mechanics of the
12 buy, but it was the Chief's operation.

13 He got up here and told you, that's what Montez
14 told me from the outset. He said he went in there
15 in the alcove, and he said Leo Abney came out and
16 handed it to him and made him as a go-between.

17 Now, the Judge is going to charge you -- they
18 talked to you about the law of reasonable doubt and
19 got that little chart up here and talked all about
20 that, but the Judge is the one that's going to
21 charge you with what the law is in this case. And
22 the agent, you already heard, brushed on it. What
23 we're talking about is accomplice liability.

24 Because Judge Keesley is the one that's in
25 charge, you don't have even any discretion, you've

1 got to follow the law as Judge Keesley gives it to
2 you because that's his role here. He's the referee
3 of what's going on. He decides when we stop and
4 start and take breaks, rules on the objection.

5 But one of the biggest things that the Judge
6 does is he charges you with what the law is. You
7 can disregard anything you hear from anybody else in
8 the courtroom because Judge Keesley's going to tell
9 you what the law is that you're going to apply to
10 the facts in this case as you've heard them from the
11 stand. He's going to talk to you about accomplice
12 liability.

13 That agent when he -- they charged them both.
14 They charged Montez Quattlebaum. They're sitting
15 there watching him take the money and come back out.
16 They know he's involved in it. Naturally, they
17 charge him with distribution.

18 But they somehow want you to say, oh, no, you
19 know, he can't be involved with it. Well, yes, he
20 certainly can because under accomplice liability,
21 the hand of one is the hand of all. It doesn't make
22 any difference who actually makes the hand-to-hand
23 if you're the source of it and you're involved in
24 the distribution.

25 Just as surely as Leo Abney had been standing

1 out there and taking the money himself and handed it
2 to him, if he'd had been standing in the front yard
3 when Timothy walked up there and done the
4 hand-to-hand right there in the front yard, which is
5 a good way to get caught when the police might ride
6 by, but if he'd had done it right there, if he was
7 upstairs and Montez took him the money and he handed
8 the drugs off to him, whether or not he did it in
9 the stairwell or anywhere else and he gets the
10 proceeds, the hand of one is the hand of all. Under
11 accomplice liability, he is just as guilty as Montez
12 Quattlebaum.

13 And you can bet with the deal and arrangement
14 that they had set up here, he is just as guilty and
15 far more culpable in this case because he's the one
16 that's benefitting. He's not the little ol' runner
17 out there standing in the yard risking getting
18 caught, he's the big man that's inside that's
19 scraping the cream off of it and letting other
20 people do his dirty work in this case.

21 Timothy Erving, with no motivation to say
22 anything else, tells you, I saw him. He came to the
23 stairs. I saw him as clear as day. He hands the
24 rock to Montez. Montez gives it to me.

25 He was absolutely certain. He got up here

1 under oath with no pressure or anything to compel
2 him from saying that and that's what he told you up
3 here under oath. That is evidence. That's the
4 strength of the case in here.

5 But you can bet when he went back and told the
6 officers that after he was wearing what he believed
7 was a video and audio transmitter, what possible
8 motivation would he have to tell them a tale? As
9 soon as they downloaded the video, if he was telling
10 some lie, they would have known it. What person
11 that wanted help and wanted to assist and wanted to
12 do something would possibly do something so stupid?
13 It just doesn't make any sense.

14 You don't leave your common sense at home when
15 you come up here to the courthouse. The 12 of you
16 that are going to go back in that jury room and
17 deliberate, the collective wisdom of the 12 of you
18 outstrip that of any one person anywhere any time.
19 You decide if that makes any sense whatsoever that
20 he would name Leo Abney. Why in the world would he
21 make up a lie that he can get caught on immediately
22 if the things were working like they thought?

23 But that's exactly why the South Carolina Law
24 Enforcement Division had backup audio because it
25 caught the audio. And you've got it. And it

1 corroborates what Tim said. And the officers there
2 that were eyewitnesses corroborate what Tim says.
3 And Tim's got no motivation to lie.

4 Now, oh, they'll tell you, oh, why in the world
5 didn't they call that case agent? What in the world
6 are they trying to hide? They want you to believe
7 that they called that officer up here for some
8 reason to go back through the same testimony that
9 both of these other officers have testified. That
10 was nothing but subterfuge to get him up here and
11 somehow paint this man as being a dirty cop.

12 When you want to obscure the plain and simple
13 facts of anything, you kick up a cloud of dust and
14 you put up a smoke screen. And that's all that is.
15 They just wanted to embarrass him and somehow paint
16 this officer that lost his job at SLED as being a
17 dirty cob, to try to somehow insinuate that somehow
18 there's some sinister dirty cop that's involved in
19 this.

20 Well, he lost his job, but he lost his job for
21 what he said was something involving a personnel
22 matter. Asked -- when asked directly from the
23 stand, did you do anything illegal or unlawful or
24 dirty that would justify them trying to drag him
25 through the mud in this case up here in the case at

1 hand, the reason that we're up here, whether or not
2 Leo Abney sold crack cocaine, absolutely not.

3 And it's ridiculous to suppose that somehow
4 anything else that happened to him later on was
5 somehow related to this case because it just
6 absolutely wasn't.

7 Everything that he did in this case was in the
8 presence of other officers who are both still
9 employed in law enforcement. He's there with Agent
10 Miles. They were all watching and seeing the same
11 things.

12 So they want you to believe that they called
13 him in order to go back through that same stuff.
14 Absolutely not. They just wanted to make him look
15 bad and tell you there's a dirty cop in here and
16 that he's a bad man.

17 Now, they were an assisting agency. He carried
18 the drugs to SLED. They were all sealed up. The
19 drugs went there. Even they don't dispute what got
20 sold that day is crack cocaine.

21 Because the State's got the burden of proof in
22 this case and we welcome it. And you heard some
23 silly questions. One of the things that the State
24 asked Timothy Erving, What county did this happen
25 in? Because that's what we've got to prove. It

1 happened in Saluda County, right here in the county
2 where all of the 12 of you that are going to go back
3 in that jury room and deliberate are from and have a
4 stake in. We've got to prove that it happened here.

5 We've got to prove, basically, who he is in
6 this case, and that's why I asked the silly
7 question, Tim Erving, could you point him out?
8 Could you point out the person that was the source
9 of the crack cocaine that you got, that's the source
10 of this distribution charge? And he sat right here
11 and he pointed out Leo Abney as being the source of
12 it, because that's where it came from.

13 Montez was a runner. Now, he faces just as
14 much jeopardy as Leo does in this case. He's
15 charged with the same thing, distribution. That he
16 distributed, that he gave it out to him.

17 And distributing doesn't mean that you
18 necessarily have to do the hand-to-hand transaction.
19 If you're involved in it, if you're benefitting from
20 it, if you're putting it into motion, if you're the
21 wholesaler and you're the person that's got the
22 quantity and you're putting it out for your runners
23 to do, and the Judge is going to charge you
24 accomplice liability, hand of one, hand of all,
25 makes him just as guilty as Montez Quattlebaum.

1 And he's not as sleek as he thought by keeping
2 a runner out there in the yard and handing it off to
3 somebody else like he's somehow insulated from it,
4 because that's all this is about.

5 And he gets up here and tells you, Oh, yeah, I
6 know all these people; I don't know where I was that
7 day, but I didn't sell any crack cocaine. He's got
8 some motivation in this case. He's got some
9 jeopardy hanging over him in this case. Timothy
10 Erving does not. Of the two of them, Timothy
11 Erving's got absolutely no motivation to lie. He
12 has every motivation to tell you something other
13 than the truth.

14 But ultimately that's the beauty of the jury
15 system. The 12 of you that are going to go back in
16 that jury room and deliberate, you're the judges of
17 the facts in this case. It's up to you to weigh the
18 credibility and the believability of the witnesses
19 that you heard up here in this case, and it's not
20 complicated.

21 This is a dirty business. This is a bad, bad
22 thing that law enforcement's got to deal with, but
23 ultimately all they can do is what they're doing.
24 They put the case together. They brought it to you
25 warts and all. If the audio was all that they got,

1 they still brought it to you.

2 And ultimately you've got eyewitness testimony,
3 you've got that audio tape, you've got the crack
4 cocaine and you've got all the sworn testimony. You
5 weigh the credibility and believability of these
6 witnesses and come back with a verdict that speaks
7 the truth. If you do that, you will have done all
8 that anybody can ask of you and you will have
9 fulfilled your obligations as jurors in this case.

10 Listen closely to what Judge Keesley tells you
11 about the law, listen about accomplice liability and
12 think about the credibility and believability of the
13 witnesses. All that we ask that you do is speak the
14 truth. But the bottom line is it's up to you to
15 decide what's going to happen with a drug dealer
16 like Leo Abney. Whether he can walk away from this
17 or not is completely up to you.

18 **THE COURT:** Thank you, Solicitor.

19 Ladies and gentlemen, please step in the jury
20 room. Don't discuss the case.

21 (The jury retires to the jury room.)

22 **THE COURT:** We're at ease for just a few
23 minutes.

24 (Brief Recess.)

25 **THE COURT:** During the charge, please stay

1 still and stay quiet. Don't do anything to distract
2 the jury. Absent an emergency, please don't be
3 moving around or talking or doing anything that
4 distracts the jury.

5 Bring the jury in, please.

6 (The jury returns to the courtroom.)

7 CHARGE OF THE COURT

8 **THE COURT:** Members of the jury, all of the
9 evidence has been presented, you've heard the
10 arguments of counsel and now it's time for me to
11 instruct you on the law that applies to the case.
12 Please continue to pay close attention during this
13 next stage.

14 Now, first, you need to understand some basic
15 ground rules. You, the jury members, are the sole
16 judges of the facts. You decide all of the issues
17 of fact, the truth of the evidence, its effect, its
18 value and its weight. You alone judge the
19 credibility of witnesses, in other words, whether or
20 not their testimony is believable.

21 In evaluating the testimony of the witnesses,
22 you may believe all that a witness said or none of
23 it. You may believe part of what a witness said and
24 not believe the balance. You may believe one
25 witness against many or many against one. You may

1 its verdict at 4:51 P.M.)

2 **THE COURT:** All right. Madame Clerk.

3 **THE CLERK:** Madame Forelady, have you reached a
4 verdict?

5 **FORELADY:** Yes, ma'am.

6 (The Clerk hands the verdict to the Judge.)

7 VERDICT OF THE JURY

8 **THE COURT:** All right. This is in the matter
9 of the State versus Leo Abney, 2016-GS-41-00054. As
10 to the charge of distribution of crack cocaine, we,
11 the jury, unanimously find the defendant guilty of
12 distribution of crack cocaine, signed by the
13 Foreperson.

14 Madame Foreman, ladies and gentlemen of the
15 jury, if I've accurately stated your verdict, that
16 is, guilty of the charge, please raise your right
17 hand.

18 All 12 hands are raised.

19 Any matters to take up prior to the jury being
20 discharged, from the State?

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

22 **THE COURT:** Defense?

23 **MR. DRYLIE:** We'd ask that you poll the jury,
24 Your Honor.

25 **THE COURT:** Okay. Ladies and gentlemen, the

1 Clerk is going to call the role. When she says your
2 name, please raise your hand, you can put it back
3 down, but -- so she knows where to look. She's
4 going to ask you two questions, or one question with
5 two parts, was this your verdict; is it still your
6 verdict? Just answer her truthfully.

7 All right. Madame Clerk, are you ready?

8 **THE CLERK:** Yes.

9 Raul R. Jaramillo, was this your verdict and
10 still your verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Christopher N. Shealy, was this
13 your verdict and still your verdict?

14 **JUROR:** Yes, ma'am.

15 **THE CLERK:** Connie F. Bennett, was this your
16 verdict and still your verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Christopher T. Hall, was this your
19 verdict and still your verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Sharon R. Stone, is this your
22 verdict and still your verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** James M. Amick, was this your
25 verdict and still your verdict?

1 **JUROR:** Yes, ma'am.

2 **THE CLERK:** Wanda R. Brunson, was this your
3 verdict and still your verdict?

4 **JUROR:** Yes.

5 **THE CLERK:** Minnie L. Coleman, was this your
6 verdict and still your verdict?

7 **JUROR:** Yes.

8 **THE CLERK:** Cynthia S. Willis, was this your
9 verdict and still your verdict?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** Phillip S. Gibson, was this your
12 verdict and still your verdict?

13 **JUROR:** (No response.)

14 **COURT REPORTER:** I'm sorry? Did he answer?

15 **THE CLERK:** Yes, he did.

16 **THE COURT:** You need to answer -- answer her
17 question again for me.

18 **THE CLERK:** Phillip S. Gibson, was this your
19 verdict and still your verdict?

20 **JUROR:** Yes, ma'am.

21 **THE CLERK:** Norma J. Corley, was this your
22 verdict and still your verdict?

23 **JUROR:** Yes.

24 **THE CLERK:** Truett W. Matthews, was this your
25 verdict and still your verdict?

1 **JUROR:** Yes.

2 **THE COURT:** All jurors are polled. Anything
3 else from the defense prior to the jury being
4 discharged?

5 **MR. DRYLIE:** No, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen of
7 the jury, that's going to conclude your jury
8 service. I have some housekeeping matters I have to
9 address outside of your presence.

10 If you want to leave, you're free to leave, but
11 if you need a slip for work, you can just stay in
12 the jury room, the Clerk will come in there whenever
13 we finish and give you whatever slip you need for
14 work. If you want to watch the sentencing, you may
15 do so. I'll bring you back in here, if you wish to.
16 That's up to you. Like I said, if you don't need a
17 slip for work and you don't want to watch the
18 sentencing, then you're free to go.

19 You have an exemption from jury service for
20 2016, '17 and '18, state court, civil or criminal.
21 It will not help you in federal court or magistrates
22 or municipal court. You also have a
23 disqualification for a year since you actually sat
24 on a trial jury.

25 Thank you very much for your service. If you

1 would, step in the jury room and I'll let you know
2 when we're ready for the other.

3 I'm sorry, the Foreman I do need to stay
4 because I need you to sign something else for me.
5 You don't need to stay in the courtroom, you just
6 need to stay back there.

7 (The jury was excused.)

8 **THE COURT:** Any motions?

9 **MR. DRYLIE:** Yes, Your Honor. We'd move for a
10 new trial. Specifically, we'd state that no
11 reasonable jury, based on the evidence that had been
12 presented, could have found Mr. Abney guilty beyond
13 a reasonable doubt of crack cocaine. Specifically,
14 we'd also renew all motions made during trial, as
15 well as with specificity to our directed verdict
16 motion and our motion towards prosecutorial
17 misconduct. And we'd renew any and all objections.

18 **THE COURT:** Thank you. The motion's
19 respectfully denied -- the motions are respectfully
20 denied.

21 All right. What do y'all have on sentencing?

22 **MR. MAYE:** Your Honor, I have that he has --

23 **THE COURT:** Hold on a second.

24 See if any of them want to come in for the
25 sentencing..

1 (Pause.)

2 **THE COURT:** All right. What does the State
3 have on sentencing?

4 **MR. MAYE:** May it please the Court, Your Honor.
5 On indictment 2003-GS-19-202, Leo Abney was
6 convicted over in Edgefield County of possession of
7 cocaine, Your Honor. He was actually sentenced June
8 9, 2003, by Your Honor. He was given two years
9 suspended on two years probation at that point in
10 time, Your Honor.

11 He came back in front of Judge King, Judge
12 Howard King, and had his probation revoked on that
13 same charge June the 16th of 2005. He converted it
14 to a YOA sentence and recommended shock. That was
15 carried out in front of Judge Howard King.

16 I have additionally, Your Honor, he was
17 convicted of possession of controlled substances,
18 Schedule I to V, first offense, Your Honor, looks
19 like in 2006. Looks like he paid a fine on that.
20 It's a 565 dollar fine.

21 He also has a conviction in 2000 -- on a 2009
22 indictment, Your Honor, for possession of cocaine,
23 Your Honor. He was sentenced -- and I do not know
24 the judge, it has judge code 2158, and I don't
25 recognize the signature, but he was convicted of

1 possession of cocaine as a second drug offense, Your
2 Honor, and received a three-year sentence suspended
3 on a three-year period of probation, Your Honor,
4 credit for two days time served.

5 He has a simple possession of marijuana out of
6 Edgefield County, 2013. He has a giving false
7 information to law enforcement in 2014, Your Honor.

8 I can only state to the Court, in talking with
9 the Chief in Ridge Spring, he said it was just grand
10 central station at Mr. Abney's house, that he was a
11 prolific dealer, that they strove to find an
12 informant that could get in there and purchase from
13 him, but that it was a hot bed of drug activity and
14 a focus of the Ridge Spring Police Department to try
15 to get somebody in that could buy from Mr. Abney in
16 this case. His name repeatedly came up in drug
17 investigations. He was named as one of the number
18 one targets in this investigation, Your Honor.

19 And the jury has spoken with its verdict. We
20 leave the sentencing in the wise discretion of the
21 Court.

22 **THE COURT:** Okay. Mr. Drylie, what do you want
23 to tell me about sentencing?

24 **MR. DRYLIE:** Judge, obviously, we're not in a
25 position to comment on the facts at the moment. I

1 do want to let you know that I've gotten to know Leo
2 very well over the last year and a half, that I've
3 been out to his house, I've talked to him. He
4 hasn't been in any real trouble in quite some years.
5 I believe the last time he was in general sessions
6 was in 2009. That he works at Michelin. He just
7 recently got that job. Before that, he worked at
8 Amick Farms. He's always had a job and he always
9 worked. He's got a seven-month-year-old daughter
10 that he helps take care of. And he lives with his
11 girlfriend currently in Monetta.

12 Your Honor, in all candor to the Court, he's
13 always denied committing this offense. He has told
14 me, though, that he has had a drug problem in the
15 past, that he still struggles with addiction. He's
16 admitted from the get-go that he's had a problem
17 with drugs. He's never admitted to being a drug
18 dealer.

19 And, Your Honor, all his -- I realize that he
20 is subject to the sentencing enhancements, but all
21 of his priors are possessions making any time that
22 you give him suspendable, if the Court so deems it
23 to be suspendable.

24 Your Honor, he hasn't been in any trouble in
25 quite some years, and so, Your Honor, we'd ask the

1 Court to consider a probationary sentence in this
2 case.

3 **THE COURT:** Do you want to say anything,
4 Mr. Abney?

5 **DEFENDANT:** Yes, sir.

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

7 **DEFENDANT:** I just want to say I know I'm not a
8 perfect person. I had some problems in the past
9 with drugs, using drugs, but never sold drugs. And
10 this charge that they put on me, Your Honor, I swear
11 to God, I didn't have nothing to do with it. And
12 I'm being charged for somebody else crime. I don't
13 deal drugs.

14 When I got up on the stand and testified, I
15 told the truth from the bottom of my heart. So I'm
16 being sentenced for somebody else doing. I had
17 nothing to do with it.

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

19 So what offense is this?

20 **MR. MAYE:** Your Honor, he's got two priors.

21 The first one is a possessory offense that's outside
22 the ten-year range, Your Honor. And I'm going to
23 leave it in the discretion of the Court. I don't
24 know how that impacts. His first offense is a
25 possessory offense. I've printed the certified true

1 copies that I obtained from the Clerk of Court's
2 office, the certified true copies of this, Your
3 Honor.

4 His first one is a possession offense and it's
5 outside of ten years. And I leave it to the Court's
6 discretion forward. I know he has two prior
7 convictions for possession of cocaine, Your Honor,
8 but I don't know how the sentencing revisions as to
9 the computation of first, second and third offense
10 directly impact him.

11 **THE COURT:** Do you have any input on this, Mr.
12 Drylie?

13 **MR. DRYLIE:** Your Honor, we maintain it's
14 outside the ten years. We'd ask that he be
15 sentenced as a second.

16 (Pause.)

17 **THE COURT:** Where are y'all pulling this ten
18 years from? What statute? This is one of those
19 things where it's a whole lot easier to find in a
20 book than it is on...

21 **MR. MAYE:** Which one are you talking about on
22 the ten years?

23 **THE COURT:** Y'all have been talking about --

24 **MR. MAYE:** Your Honor, it says, 44-53-470,
25 Second or subsequent offense defined. It said,

1 compute -- in computing a first or second offense,
2 it said, For an offense involving a controlled
3 substance other than marijuana pursuant to this
4 article, the defendant has been convicted within the
5 previous ten years of a first violation of a
6 controlled substance provision, other than
7 marijuana.

8 For an offense involving a controlled substance
9 other than marijuana, if the offender has at any
10 time been convicted of a second or subsequent
11 violation, they stay on forever. I'm absolutely
12 clear of that. I know it's a second offense, Your
13 Honor.

14 The question is -- and it goes on to define in
15 the -- in section (B) of 44-53-470, it says, If a
16 person is sentenced to confinement as a result of
17 the conviction pursuant to this article, the time
18 period specified in this section begins on the date
19 of conviction or the date the person is released
20 from confinement imposed for the conviction,
21 whichever is later.

22 Now, on that first conviction, Your Honor,
23 that's why I handed up his probation violation, he
24 got an active sentence on the probation revocation.
25 I don't know how that impacts that. He got that

1 some two years later. You put him on probation back
2 in '03 and then he got revoked and got a -- he got a
3 shock incarceration on that sentence.

4 And I don't know, the statute's very clear.
5 When the original sentence -- it's just like if you
6 got sentenced to five years and five years suspended
7 on five years probation, and then after four years
8 and 11 months, you got your sentence revoked and got
9 five years, we would maintain that it runs from that
10 time period, Your Honor. He was back on that
11 probation revocation, and that's why I'm handing
12 that up, Your Honor.

13 We would maintain it's a third drug offense,
14 Your Honor, but if you want to sentence him as a
15 second drug offense, Your Honor, we've got no
16 objection to that. You've got the tools at your
17 disposal even with a second drug offense, Your
18 Honor, to hand down a sentence of the gravity we
19 would think that would be warranted. But that's our
20 position on it given the fact that he went back for
21 that revocation and did get an active sentence in
22 front of Judge King.

23 **THE COURT:** All right. So 44-53-470 deals with
24 second or subsequent offense and subsection --

25 **MR. MAYE:** Yes, sir, which would be a second or

1 third.

2 **THE COURT:** Subsection (3), For an offense
3 involving a controlled substance other than
4 marijuana, offender has been convicted within the
5 previous ten years of a first violation of a
6 controlled substance offense provision.

7 Or under subsection (4), If the offender has at
8 any time been convicted of a second or subsequent
9 violation of a controlled substance offense
10 provision.

11 **MR. MAYE:** And my understanding of it was, you
12 know, absent -- with no violations or revocations or
13 anything, your first possessory offense had a
14 ten-year shelf life.. And if you didn't get anything
15 within that ten-year shelf life, it doesn't matter.

16 My understanding was from section (4), the way
17 it was explained to me, respectfully, was that they
18 stay on forever. Second or subsequent offenses
19 don't have an expiration date.

20 But the -- the reason I handed up the probation
21 revocation and all of that was because, as to a
22 first offense, it says, If a person is sentenced to
23 confinement as a result of the conviction pursuant
24 to this article, the time period specified in this
25 section begins on the date of the conviction or the

1 date the person is released from confinement,
2 whichever is later.

3 So if he got an active sentence in front of
4 Judge King, Your Honor, I'm not sure, but I think
5 that could possibly put it in the -- at the time of
6 the probation revocation, that you would count from
7 that time. And I'm not sure what date, I should
8 have kept that, but I'm not sure what date Judge
9 King gave him an active sentence on that 2003 one
10 that you sentenced him on originally of probation.

11 **THE COURT:** June 16, 2005, he revoked his
12 probation on simple possession of cocaine. He
13 converted it to a youthful offender sentence not to
14 exceed one year and 362 days. He recommended shock
15 incarceration. If he went through shock, he would
16 have gotten out in 90 days.

17 **MR. MAYE:** If that does not impact it, Your
18 Honor, then it would be a second drug offense would
19 be the State's position. It will be distribution of
20 crack cocaine second offense if the first one does
21 not count, if that's outside the window on the YOA
22 and shock.

23 **THE COURT:** Well, I mean, you all know, these
24 drug laws are the most complicated things we read,
25 and they change them.

1 All right. Let me scroll back up to 44-53-375.

2 (Pause.)

3 MR. MAYE: Your Honor, we have, on a second
4 offense, not less than five years nor more than 30
5 years.

6 THE COURT: Right. And 50,000 -- or \$50,000 --

7 MR. MAYE: And fined not more than 50,000 or
8 both.

9 THE COURT: All right. In the section about
10 being able to suspend if the priors are just
11 possessions -- I saw that a minute ago, but I've
12 lost it.

13 MR. DRYLIE: I think that's in 44-53-370 --
14 I've got it here, Your Honor.

15 It's 44-53-375(B) (3).

16 THE COURT: All right. I got if I sentence him
17 under 44-53-375(B) (2) as a second offense -- so I
18 think I have to give him the benefit of the doubt
19 based on the record that's been presented to me --
20 it carries not less than five years nor more than 30
21 years and a fine of up to \$50,000.

22 And it provides that if his prior violations
23 are all possession cases and not distributions or
24 possession with intent to distribute, then I can
25 suspend below the five and grant probation. And he

1 is eligible for parole, supervised furlough,
2 community supervision, work release, work credits,
3 education credits, and good conduct credits.

4 I don't even think that depends on the
5 possession.

6 **MR. DRYLIE:** It doesn't, only if it's a third
7 offense.

8 **THE COURT:** Right. If it's a third offense,
9 that kicks in.

10 But it's still a strike; right? It's a serious
11 offense.

12 **MR. DRYLIE:** That's correct; Your Honor.

13 **THE COURT:** And it's a no parole offense.

14 **MR. DRYLIE:** That is currently at the Supreme
15 Court. The Court of Appeals just handed a decision
16 down; I believe, within the last few months that it
17 is a parolable offense.

18 **THE COURT:** Well, the statute I just read to
19 you says he's eligible for parole, but I don't -- I
20 don't know how they're interpreting the 85 percent
21 minimum time.

22 Is that on appeal, too?

23 **MR. DRYLIE:** I believe so. I believe it's now
24 being determined that it's, according to the Court
25 of Appeals, two-thirds violent more or less, but

1 that the State's appealed and it's going up to the
2 Supreme Court.

3 **THE COURT:** Well, I don't see it as violent.
4 Am I looking at it wrong?

5 **MR. MAYE:** It's a serious offense, Your Honor.
6 I think trafficking is violent. It's a serious
7 offense, Your Honor.

8 **THE COURT:** All right. I've got the CDR code
9 as 3199 -- 3199 for (B)(2). All right.

10 (Pause.)

11 **THE COURT:** Okay. Mr. Abney, I'm sorry. I was
12 trying to make sure I look at everything, and
13 hopefully I did it right.

14 You understand that you have a right to appeal.
15 And if you wish to file an appeal, it has to be in
16 writing and it has to be filed promptly. So tell
17 your lawyers to file your notice of appeal, all
18 right?

19 **DEFENDANT:** Yes.

20 SENTENCE OF THE COURT

21 **THE COURT:** The sentence of the Court is as
22 follows: The Court finds that what's been
23 established is that this is a second offense under
24 44-53-375(B)(2). It is a situation where the
25 minimum is suspendable under 44-53-375(B).

1 The sentence is you be committed to the South
2 Carolina Department of Corrections for five years;
3 provided that upon the service of three years plus
4 costs and assessments, the balance is suspended.
5 I'm recommending the Addictions Treatment Unit while
6 you're incarcerated.

7 You understand your sentence?

8 **MR. DRYLIE:** We'll explain it to him, Your
9 Honor.

10 **THE COURT:** You've got a three-year active
11 sentence. If you wish to file the appeal and seek
12 an appeals bond, if it's applicable, you let me
13 know. Good luck to you, sir.

14 **DEFENDANT:** Judge, is there any way I can see
15 my family before you lock me up?

16 **THE COURT:** They can come and see you in jail.

17 (Court's Exhibit Numbers 8 and 9 were marked
18 for identification.)

19

20 END OF PROCEEDINGS

21

22

23

24

25

WITNESSES

SLED

MOTA

DOCKET NO. 2016-GS-41- 054

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

vs.

LEO ABNEY

ARREST WARRANT NUMBER
DIRECT

ACTION OF GRAND JURY

TRUE BILL

Janeth E.

Foreperson of Grand Jury

Date:

FEB 03 2016

CDR#3039

VERDICT

GUILTY

Indictment for

DISTRIBUTION OF CRACK COCAINE

Wanda Bruner

Foreperson of Petit Jury

Date: **FEB. 11, 2016**

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Chris B. Dobbins
Clerk of Court
Saluda, S. C.

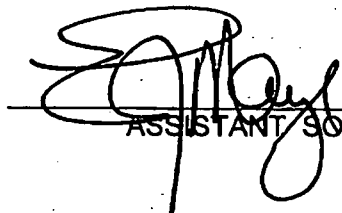
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on February 8, 2016 the Grand Jurors of Saluda County present upon their oath:

That LEO ABNEY, did in Saluda County on about June 19, 2014, knowingly and intentionally, distribute to a confidential informant working with Saluda County Sheriff's Department, a quantity of Crack Cocaine, a controlled substance, in violation of §44-53-375(B), South Carolina Code of Laws, 1976, as amended, such distribution not having been authorized by law, with penalties provided for in §44-53-375(B)(3), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

258
STATE OF SOUTH CAROLINA

COUNTY OF _____ Saluda
STATE _____ VS.
Leo Abney
AKA: _____
Race: Black Sex: M Age: 35
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100054
A/W#: 2016GS4100054
Date of Offense: 6/19/2014
S.C. Code § : 44-53-0375(B)(3)
CDR Code #: 3039

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: DISTRIBUTION OF COCAINE BASE - CRACK COCAINE (944-53-375(B)(2) - 22 OFF.)
in violation of § 44 53 375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3199
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor _____ SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 3 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended, with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation which are incorporated by reference. ATM MIN. IS SUSPENDABLE UNDER 944-53-375(B)
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: Pay Court Costs @ \$25/hr
beginning 180 days after release
from actual incarceration
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk _____
Court Reporter: Nancy Sheppard
SCCA/217 (03/2011)

Presiding Judge William P. ...
Judge Code: 2050
Sentence Date: FEB. 11, 2016

RECEIVED

259

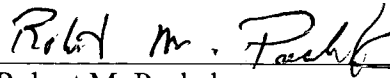
NOV 02 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 2nd day of November, 2016.