

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

JAMES RAY BYERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001077

APPENDIX

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ALICIA OLIVE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JAMES RAY BYERS, JR.,) 2009-GS-11-1179
7 DEFENDANT.) 2009-GS-11-1180
8) APRIL 19, 2011
9) GAFFNEY, SOUTH CAROLINA

10 (VOLUME I)

11 B E F O R E:

12 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
16 MATTHEW KENDALL, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 WILLIAM RHODEN, ESQUIRE
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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(APRIL 19, 2011)

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2	NO.	DESCRIPTION	ID.	EV.
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1 (PROCEEDINGS, APRIL 19, 2011)

2 (C.D. marked as State's Exhibit No. 1 for
3 identification)

4 THE COURT: All right. Ladies and gentlemen, we
5 are ready to now begin with jury selection in the first case
6 that's going to require some of your participation, and the
7 title of that case is the State versus James Ray Byers, Jr..

8 Mr. Byers has been accused by the solicitor of
9 having committed --

10 MS. LESKANIC: Your Honor, may we approach for
11 just a moment?

12 THE COURT: Yes.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: Mr. Byers is charged -- an indictment
16 is the charging papers. It's kind of like a warrant. You
17 have probably heard of that, but it sets forth an
18 allegation. It sets forth the charge that has been brought
19 against someone who is accused of a crime. The indictment
20 is that. It's the charging papers. It's not evidence of
21 anything. It doesn't prove anything, but it does bring the
22 person into court and it does provide them notice as to what
23 crime the State claims they have committed.

24 In this case Mr. Byers is charged in one
25 indictment with distribution of crack cocaine. The State

1 alleges that that occurred here in Cherokee County on or
2 about August the 26th of 2009. And they alleged on that
3 date that he did distribute some quantity of crack cocaine
4 to a person working in an undercover capacity for the
5 Cherokee County Sheriff's Department.

6 He's also charged in a separate indictment with
7 distribution of crack cocaine within a one-half mile radius
8 of an elementary school. They alleged that on December the
9 26th of 2009, not only did he distribute some quantity of
10 crack cocaine, as is alleged in the other indictment, but he
11 also distributed that crack cocaine within a half mile of
12 Mary Bramlett Elementary School here in Gaffney. That's a
13 separate and distinct criminal offense, even though it
14 arises out of the same event or circumstances, but there are
15 two separate charges.

16 Now, as to those charges Mr. Byers has entered a
17 plea of not guilty. And a plea of not guilty places upon
18 the prosecutor the burden of proving the allegations that
19 they have set forth in those indictments, the burden of
20 proving each of the essential elements that make up the
21 crimes that have been alleged. And, therefore, the burden
22 is upon the State to establish the defendant's guilt to the
23 satisfaction of twelve jurors beyond a reasonable doubt
24 before any verdict of guilty could be returned as to either
25 indictment.

1 So we are going to be selecting thirteen of you to
2 participate in this case. There will be twelve primary
3 jurors and one additional juror to serve as an alternate, so
4 that if something happens to a juror during the trial, that
5 alternate will take that person's place. But by way of your
6 participation, you simply are going to be called upon to use
7 good judgment and exercise common sense and apply it to the
8 testimony and evidence received during the trial of the
9 case.

10 And as jurors you will decide what the facts are
11 that relate to this case. You will apply the law that I
12 will have provided you, and the jury will determine whether
13 or not the defendant's guilt has been proven beyond a
14 reasonable doubt. And if it has, then he is guilty. If it
15 has not, then he's not guilty.

16 Now, as we begin with this jury selection process
17 I'm going to ask you some questions in order to determine if
18 you ought to serve in this case or not. I'm also going to
19 introduce some people to you so you will find out who is
20 involved in the case and a little bit about what the case is
21 about, because I need to know if you are connected by blood
22 or marriage to any person involved in the case, or if you go
23 to church with them, or if you go to school with them, or
24 you work with them, or you socialize with them, or you know
25 them in any fashion whatsoever. So as these people are

1 introduced, if you know them or some member of their family,
2 or you have some connection with them or a family member, I
3 will ask that you please stand so that we can determine if
4 that would affect your judgment in the case.

5 Now, as I told you, the person who is accused of
6 these criminal offenses is James Ray Byers, Jr..

7 Mr. Byers, if you will stand and face the jury
8 panel, please, sir.

9 Okay. Thank you. Be seated.

10 Sitting with Mr. Byers at the defense table is
11 Bill Rhoden, his lawyer. He will be assisting him in the
12 trial of this case.

13 Presenting the case on behalf of the State is Kim
14 Leskanic, who is an assistant circuit solicitor for the
15 Seventh Circuit.

16 Seated next to her is Greg Phillips, who's an
17 investigator with the solicitor's office.

18 Seated next to him is Matthew Kendall, who is also
19 an assistant circuit solicitor for the Seventh Judicial
20 Circuit.

21 Did y'all give me a witness list?

22 MS. LESKANIC: Yes, sir, Your Honor.

23 THE COURT: I got it.

24 All right. Potential witnesses in the case
25 include Todd Parker with the sheriff's department.

1 Jason Burgess with the sheriff's department.

2 Chris Wyatt with the sheriff's department.

3 Michael Owensby. Is Mr. Owensby present?

4 MS. LESKANIC: No, Your Honor.

5 THE COURT: All right. Mr. Owensby is not in the
6 courtroom, but his name is Michael Owensby. So if you think
7 you know somebody by that name, just stand and we will try
8 to narrow down that identification for you.

9 An additional potential witness is Felicia
10 Jackson. Felicia Jackson. She's apparently not present,
11 but if you know somebody by that name, stand and we will
12 determine who it is.

13 And the remaining witness is Carmen Tucker, who is
14 employed with the State Law Enforcement Division.

15 Are there any other potential witnesses on behalf
16 of the State?

17 MS. LESKANIC: No, Your Honor.

18 THE COURT: The defendant?

19 MR. RHODEN: No, sir.

20 THE COURT: All right. Does any member of the
21 jury panel know anybody who has been identified or
22 introduced to you? If so, please stand.

23 All right, I'm going to start in the front row or
24 closest to me and I'll work my way back. If you will please
25 give me your name and juror number and tell me how that

1 question relates to you or who you know.

2 JUROR NUMBER 29: Mae Gregory, juror 29. I'm
3 related to Mr. Byers.

4 THE COURT: You are related to Mr. Byers?

5 JUROR NUMBER 29: Yes.

6 THE COURT: In what way?

7 JUROR NUMBER 29: Cousins. Second cousin.

8 THE COURT: Second cousin?

9 JUROR NUMBER 29: Yes.

10 THE COURT: Would that have any impact upon your
11 decision in the case? Would it prevent you from being able
12 to be fair and impartial to both sides?

13 JUROR NUMBER 29: No, sir.

14 THE COURT: Okay. Thank you, ma'am. You can be
15 seated. Juror 29.

16 Yes, ma'am.

17 JUROR NUMBER 60: Juror 60, Kathy Mullinax.

18 THE COURT: All right. How does that question
19 relate to you?

20 JUROR NUMBER 60: I go to church with Jason
21 Burgess.

22 THE COURT: And would that have any bearing upon
23 your decision in this case?

24 JUROR NUMBER 60: No, sir.

25 THE COURT: Thank you. Be seated.

1 Next row. Excuse me, I got one in the front row.

2 Yes, sir.

3 JUROR NUMBER 67: I know Mr. Wyatt of the
4 sheriff's office.

5 THE COURT: Your name and number?

6 JUROR NUMBER 67: Juror 67, I'm sorry.

7 THE COURT: You know Mr. Wyatt?

8 JUROR NUMBER 67: Yes.

9 THE COURT: How do you know him?

10 JUROR NUMBER 67: It's just a friend.

11 THE COURT: Would that have any bearing upon your
12 decision?

13 JUROR NUMBER 67: No.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am?

16 MR. RHODEN: What number was that?

17 THE COURT: 67.

18 JUROR NUMBER 73: Juror 73, Vici Randolph. I'm
19 just acquainted with Greg Phillips.

20 THE COURT: All right. Would that have any
21 bearing upon your decision?

22 JUROR NUMBER 73: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NUMBER 86: 86. I'm acquainted with Greg

1 Phillips.

2 THE COURT: And would that have any bearing upon
3 your decision?

4 JUROR NUMBER 86: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NUMBER 81: 81, Nancy Sereno.

8 THE COURT: What was Your number?

9 JUROR NUMBER 81: 81.

10 THE COURT: All right.

11 JUROR NUMBER 81: Nancy Sereno. I'm friends with
12 Greg Phillips.

13 THE COURT: And would that have any bearing upon
14 your decision in this case?

15 JUROR NUMBER 81: No, sir.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NUMBER 68: 68, Sylvia Phillips. I am
19 acquainted with Mr. Parker's parents. We go to church with
20 them.

21 THE COURT: And would that have any bearing upon
22 your decision?

23 JUROR NUMBER 68: No.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

1 JUROR NUMBER 21: Number 21, Sandra Ellison.

2 THE COURT: You say 21?

3 JUROR NUMBER 21: 21.

4 THE COURT: Yes.

5 JUROR NUMBER 21: And my husband works with
6 Cherokee County Sheriff's Department and I know all the
7 these guys.

8 THE COURT: All right. Would that cause you any
9 problems? Could you be fair to both sides, or do you
10 think it might interfere with your --

11 JUROR NUMBER 21: I think it might interfere.

12 THE COURT: Okay. We will excuse you from service
13 in the case. Don't leave yet, though.

14 JUROR NUMBER 21: Okay.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 104: Juror -- my number is 104, and
17 I have a daughter that has an addiction and I believe that
18 would --

19 THE COURT: Do you think that would cause you some
20 reason that you couldn't be fair to somebody?

21 JUROR NUMBER 104: Yes, sir.

22 THE COURT: All right. We will excuse you from
23 service in the case also, but don't leave yet. You can have
24 a seat.

25 Yes, ma'am.

1 JUROR NUMBER 78: Juror 78, Louise Sanders. Mr.
2 Rhoden is my family attorney that --

3 THE COURT: I'm sorry, I didn't hear all that.
4 Mr. Rhoden is your lawyer. You have -- he's representing
5 your family?

6 JUROR NUMBER 78: He's represented us for real
7 estate matters only.

8 THE COURT: Okay.

9 JUROR NUMBER 78: So it would not affect.

10 THE COURT: So it would not have any bearing in
11 your decision?

12 JUROR NUMBER 78: No, sir.

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

14 Anyone else know any of the people who have been
15 introduced?

16 JUROR NUMBER 82: Mr. Owensby was --

17 THE COURT: Just a minute. Give me your number,
18 please, again, sir.

19 JUROR NUMBER 82: Huh?

20 THE COURT: Would you please give me your number?

21 JUROR NUMBER 82: 82.

22 THE COURT: You know someone that I introduced?

23 JUROR NUMBER 82: Yes, sir. Mr. Owensby was one
24 of the arresting officers on my case last year.

25 THE COURT: Is Michael Owensby with the sheriff's

1 department?

2 MS. LESKANIC: No, sir.

3 THE COURT: This Owensby is not -- he is not
4 employed by a police department. Michael Owensby?

5 JUROR NUMBER 82: Yes.

6 THE COURT: They tell me he's not employed with
7 the police department.

8 All right. Juror number 82.

9 JUROR NUMBER 82: Yes, sir.

10 THE COURT: That's Mr. Sheppard.

11 Mr. Sheppard, you think you might know Mr.
12 Owensby -- assuming that's the same Owensby, would it have
13 any bearing upon your decision in this case?

14 JUROR NUMBER 82: If it's the same one I'm
15 thinking of.

16 THE COURT: Do you think it would have a bearing
17 if it is the same one?

18 JUROR NUMBER 82: Yeah..

19 THE COURT: In other words, you think it would --

20 JUROR NUMBER 82: Yes, sir.

21 THE COURT: Well, I hadn't asked the question yet.
22 Do you think it might prevent you from being able
23 to be fair and impartial?

24 JUROR NUMBER 82: Yes, sir.

25 THE COURT: Okay. Thank you. We will excuse you

1 from service in this case.

2 Yes, ma'am.

3 JUROR NUMBER 20: I worked for Michael Hamrick for
4 quite awhile in the real estate department and in some way
5 indirectly with Mr. Rhoden. In particular situations we did
6 have some real estate issues that we did deal with him. I
7 don't think it would have any bearing on my judgment.

8 Patricia Dunn, number 20. I'm sorry.

9 THE COURT: It would not have any bearing upon
10 your decision?

11 JUROR NUMBER 20: No, sir.

12 THE COURT: Okay. Thank you.

13 Does anyone else need to respond to that question?

14 (No response)

15 THE COURT: Is any member of the jury panel
16 connected by blood or marriage with any type of law
17 enforcement officer? Do you have a family member who is any
18 type of law enforcement officer employed by any law
19 enforcement agency? Not just the sheriff's department or
20 the Gaffney City Police Department, but any law enforcement
21 agency; town, municipal, state, highway patrol. If so,
22 please stand.

23 All right. Yes, ma'am.

24 JUROR NUMBER 21: 21, Sandra Ellison.

25 THE COURT: How does that question relate to you?

1 JUROR NUMBER 21: My husband works at the Cherokee
2 County Sheriff's Department.

3 THE COURT: And you say it would not have any
4 bearing upon you? I'm sorry, you have already been excused
5 in this case. You won't need to stand up any further.
6 Thank you, ma'am.

7 Yes, ma'am.

8 JUROR NUMBER 20: Number 20. Patrick Phillips is
9 my brother-in-law.

10 THE COURT: All right. Would that have any
11 bearing upon your decision?

12 JUROR NUMBER 20: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NUMBER 108: 108, Larry Wood. I have a
16 cousin who works for the Stephens County Sheriff's
17 Department.

18 THE COURT: Would it have any bearing upon your
19 decision in this case?

20 JUROR NUMBER 108: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NUMBER 33: Number 33. My son works for the
24 jail at the sheriff's department.

25 THE COURT: Did you say 33?

1 JUROR NUMBER 33: 33, yes.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NUMBER 33: No, sir.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NUMBER 51: Juror 51, Curtis Martin. I have
8 got three or four cousins; highway patrolman, one deputy
9 sheriff, one military MP, and one at the city for Kings
10 Mountain, North Carolina.

11 THE COURT: And would any of those connections
12 have any bearing upon your decision?

13 JUROR NUMBER 51: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, sir.

16 JUROR NUMBER 9: Number 9, Charles Cadenhead. A
17 Nephew, cousins, several relatives in law enforcement. It
18 won't affect my decision.

19 THE COURT: Would it have any bearing upon your
20 decision?

21 JUROR NUMBER 9: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NUMBER 60: Number 60, Kathy Mullinax. My
25 brother works for the Cherokee County sheriff's office in

1 maintenance.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NUMBER 60: No, sir.

5 THE COURT: Thank you. Be seated.

6 Mr. Sheppard?

7 JUROR NUMBER 82: 82, my sister is a Cherokee
8 County sheriff.

9 THE COURT: Okay. Thank you. You can be seated.

10 Has any member of the jury panel ever been
11 involved in a case where the Seventh Judicial Circuit
12 Solicitor's Office was handling that matter for you? Have
13 you ever been a victim of any type of criminal offense and
14 the solicitor's office handled that for you? Or have you
15 ever been a witness called to testify as a witness in a
16 case, whether it be for the State or the defendant? If so,
17 please stand.

18 (No response)

19 THE COURT: Does any member of the jury panel
20 belong to or contribute time or money to any organizations
21 that might be described as law enforcement support types of
22 organizations or victims rights organizations? And those
23 would include organizations such as Mothers Against Drunk
24 Drivers, Citizens Against Violent Crime, a rape crisis
25 center, a domestic abuse shelter, or any of those types of

1 organizations; Honorary Sheriff's Association, Troopers
2 Association, Fraternal Order of Police? Anyone belong to
3 those or contribute time or money to them? If so, please
4 stand.

5 You are juror number 9.

6 JUROR NUMBER 9: Yes, sir.

7 THE COURT: And how does that question relate to
8 you?

9 JUROR NUMBER 9: I contribute to several of the
10 organizations. I contributed to the organizations, several
11 of them.

12 THE COURT: Okay. Would it have any bearing in
13 your decision?

14 JUROR NUMBER 9: No, sir.

15 THE COURT: Thank you. Be seated.

16 Is any member of the jury panel a member of or
17 contribute time or money to any organization in which
18 opposes or advocates against the use of alcohol and/or
19 drugs? If so, please stand.

20 Yes, ma'am.

21 JUROR NUMBER 78: Juror 78. Louise Sanders. I
22 don't know if it's pertaining to this, but I'm a member of a
23 Southern Baptist church.

24 THE COURT: Okay. Is there anything about any
25 opinion that your church has or that you have about the use

1 and/or abuse of alcohol and/or drugs that would have any
2 bearing upon your decision in this case?

3 JUROR NUMBER 78: I just have some opinions
4 against the use of alcohol or drugs.

5 THE COURT: Well, do you think any opinion that
6 you might have would cause you to be unable to be fair to
7 anybody in this case?

8 JUROR NUMBER 78: No, I do not.

9 THE COURT: Okay. Thank you. Be seated.

10 All right. I have introduced everybody I know
11 that's involved in the case to you and I have told you
12 basically what the case is about. Understanding who is
13 involved and understanding what the case is about, is there
14 any member of the jury panel that knows of any reason
15 whatsoever why you could not be fair and impartial if you
16 were called upon to serve as a juror in this particular
17 case? If so, please stand.

18 (No response)

19 THE COURT: All right. Any other questions
20 requested by the State?

21 MS. LESKANIC: No, Your Honor.

22 THE COURT: By the defendant?

23 MR. RHODEN: No, sir, Your Honor.

24 THE COURT: All right. We are going to draw a
25 jury. Now, as your name is called, you will be asked to

1 come forward. Just stand right in front where Ms. McBee is
2 seated. Turn and look toward the back of the courtroom and
3 each side is going to have an opportunity to excuse you from
4 service in the case or to have you seated for service in the
5 case. If either side asks that you be excused, just go back
6 and have a seat where you are now.

7 If both agree to have you seated for service of
8 the case, you will be having a seat in that jury box to your
9 right and to my left.

10 So please come forward as your name is called.
11 You will be instructed if you have been selected or excused.

12 The bailiff -- he's also a bailiff. I didn't see
13 him.. He was sitting back over there a while ago. He's a
14 bailiff, too. So if you have a problem, you can talk to him
15 and he'll answer it or refer you to me, okay?

16 THE CLERK: Juror 43, Shahram Lalianpour.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Swear the juror.

21 THE CLERK: Please take a seat in the jury box.

22 Juror 76, Carol Ruppe.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What the says the defense?

1 MR. RHODEN: Swear the juror.
2 THE CLERK: Please take a seat in the jury box.
3 Juror 19, Angelia Dover.
4 What says the State?
5 MS. LESKANIC: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. RHODEN: Please swear the juror..
8 THE CLERK: Please take a seat in the jury box.
9 Juror 9, Charles Cadenhead.
10 What says the State?
11 MS. LESKANIC: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. RHODEN: Please excuse the juror from this
14 case.
15 THE CLERK: You may be excused.
16 Juror 48, Sherida Littlejohn.
17 What says the State?
18 MS. LESKANIC: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. RHODEN: Please swear the juror.
21 THE CLERK: Please take a seat in the jury box.
22 Juror 16, Dale Davis.
23 What says the State?
24 MS. LESKANIC: Please present the juror.
25 THE CLERK: What says the defense?

1 MR. RHODEN: Please seat the juror.

2 THE CLERK: Please take a seat in the jury box.

3 MR. RHODEN: Can we approach, Your Honor?

4 THE COURT: Sir, do you have something you need to
5 address with me?

6 (Whereupon, the following was an off-the-record
7 discussion with both counsel and Juror Number 16 at the
8 bench)

9 THE CLERK: Juror Number 88, Ricky Smith.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. RHODEN: Please excuse the juror for this
14 case.

15 THE CLERK: You have been excused.

16 Juror 17, Deborah Davis.

17 What says the State?

18 MS. LESKANIC: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. RHODEN: Please swear the juror.

21 THE CLERK: Please take a seat in the jury box.

22 Juror 57, Rhonda Morris.

23 What says the State?

24 MS. LESKANIC: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. RHODEN: Please swear the juror.
2 THE CLERK: Please take a seat in the jury box.
3 Juror 26, Daniel Frye.
4 What says the State?
5 MS. LESKANIC: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. RHODEN: Please swear the juror.
8 THE CLERK: Please take a seat in the jury box.
9 Juror 55, Clarence Mccraw.
10 What says the State?
11 MS. LESKANIC: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. RHODEN: Please excuse the juror from this
14 case.
15 THE CLERK: You have been excused.
16 Juror 73, Vici Randolph.
17 What says the State?
18 MS. LESKANIC: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. RHODEN: Please excuse the juror from this
21 case.
22 THE CLERK: You have been excused.
23 Juror 83, Darrius Shippy.
24 What says the State?
25 MS. LESKANIC: Please excuse the juror from

1 service in this case.

2 THE CLERK: You have been excused.

3 Juror 87, Melody Smith.

4 What says the State?

5 MS. LESKANIC: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. RHODEN: Please swear the juror.

8 THE CLERK: Please take a seat in the jury box.

9 Juror 95, Pamela Turner.

10 What says the State?

11 MS. LESKANIC: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. RHODEN: Please swear the juror.

14 THE CLERK: Please take a seat in the jury box.

15 Juror 50, Josephine Lyons.

16 What says the State?

17 MS. LESKANIC: Please excuse the juror from

18 service in this case.

19 THE CLERK: You have been excused.

20 Juror 27, Craig Gaffney.

21 What says the State?

22 MS. LESKANIC: Please excuse the juror from

23 service in this case.

24 THE CLERK: You have been excused.

25 Juror 81, Nancy Sereno.

1 What says the State?

2 MS. LESKANIC: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. RHODEN: Please excuse the juror from this
5 case.

6 THE CLERK: You have been excused.

7 Juror 51, Curtis Martin.

8 What says the State?

9 MS. LESKANIC: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. RHODEN: Please swear the juror.

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

13 Juror 20, Patricia Dunn.

14 What says the State?

15 MS. LESKANIC: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. RHODEN: Please swear the juror.

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

19 THE COURT: This will be for the alternate.

20 THE CLERK: Juror 108, Larry Wood.

21 What says the State?

22 MS. LESKANIC: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. RHODEN: Please excuse the juror from this
25 case.

1 THE CLERK: You have been excused.

2 Juror 7, Benjamin Brackett.

3 What says the State?

4 MS. LESKANIC: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. RHODEN: Please swear the juror.

7 THE CLERK: Please take a seat in the jury box.

8 THE COURT: All right. Those who have been
9 selected I'll ask you to please go with the bailiff to a
10 jury room and I'll bring you back shortly to begin with the
11 trial.

12 (Whereupon, the jury panel went to the jury room)

13 THE COURT: Are there any matters that need to be
14 addressed regarding jury selection, by the State?

15 MS. LESKANIC: No, Your Honor.

16 THE COURT: By the defendant?

17 MR. RHODEN: Yes, sir, Your Honor.

18 THE COURT: I'm going to ask y'all to step up
19 here, please.

20 (Whereupon, the lawyers approached the bench for
21 an off-the-record discussion)

22 (Juror Number 48, Sherida Littlejohn, was brought
23 into the courtroom for an off-the-record bench conference)

24 (Whereupon Juror Number 48 re-took the jury venire
25 panel)

1 THE COURT: Bring the jury back, please.

2 MR. RHODEN: Can we approach?

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 (Whereupon, the jury panel returned to open court)

6 THE COURT: Ladies and gentlemen, one of your
7 fellow jurors who was selected has determined that she is
8 going to be unable to serve as a juror in this particular
9 case. So, Mr. Brackett, you are going to be the twelfth
10 juror and we are now going to select an alternate juror.
11 Okay.

12 THE CLERK: Juror 35, Mark Hughes.

13 What says the State?

14 MS. LESKANIC: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. RHODEN: Please excuse the juror in this case.

17 THE CLERK: You have been excused.

18 Juror 68, Sylvia Phillips.

19 What says the State?

20 MS. LESKANIC: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. RHODEN: Please excuse the juror in this case.

23 THE CLERK: You have been excused.

24 Juror 28, Ronald Fegter.

25 What says the State?

1 MS. LESKANIC: Please excuse the juror from
2 service in this case.

3 THE CLERK: You have been excused.

4 Juror 60, Kathy Mullinax.

5 What says the State?

6 MS. LESKANIC: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. RHODEN: Swear the juror.

9 THE CLERK: Please take a seat in the jury box.

10 THE COURT: All right. Now, let me ask the
11 jurors, if you will, please, go with the bailiff to the jury
12 room and I will be back with you in just a few minutes.

13 (Whereupon, the jury panel went to the jury room)

14 THE COURT: All right. Those jurors who were not
15 selected, you may be excused for the balance of the
16 afternoon. I would ask that you please call the number that
17 you have in your juror information pamphlet. That number
18 that's in that black box, 487-2585, call that number after
19 six o'clock this evening to receive further reporting
20 information. Call back after six o'clock this evening to
21 receive that information.

22 Thank you for your participation.

23 (Whereupon, the jury venire panel left the
24 courtroom)

25 THE COURT: Ms. Littlejohn, I need for you to stay

1 with me, please, ma'am.

2 We are going to be at ease for ten minutes.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: Bring the juror in.

6 (Whereupon, Juror number 43, Shahram Lalianpour,
7 was brought into the courtroom)

8 THE COURT: Please stand right there.

9 You are Mr. Lalianpour?

10 JUROR NUMBER 43: Yes, sir.

11 THE COURT: You were selected as a juror in this
12 case?

13 JUROR NUMBER 43: Yes, sir.

14 THE COURT: And the bailiff says that you have an
15 issue that you want to address with me?

16 JUROR NUMBER 43: Well, when you asked one of the
17 questions, I had a misunderstanding when you say in the way
18 of like contributing money. I was not. You know, I manage
19 a hotel here in Gaffney and five or six years ago I was
20 working with the Cherokee County Sheriff's Department. When
21 they had a drug bust, like they would suspect someone is
22 staying at the hotel, you know, they would come and ask me
23 if they can get a room right next to that room at no charge.

24 And also they were practicing. Sometimes they
25 will bring in the new officers to practice drug busts.

1 I mean, that was on my mind when I was sitting
2 over there, that I must bring that to your attention. I did
3 not stand up and talk about it because I tried -- you were
4 talking about money, you know, if I contributed a check, or,
5 you know, money to the --

6 THE COURT: Sure. Well, so what you are saying is
7 that you own a hotel here in Gaffney?

8 JUROR NUMBER 43: I manage. I'm a managing
9 partner.

10 THE COURT: You are the manager of a hotel?

11 JUROR NUMBER 43: Yes.

12 THE COURT: And that you have permitted law
13 enforcement to use the hotel if they requested for the
14 purpose of --

15 JUROR NUMBER 43: You know, sometimes --

16 THE COURT: -- to help them out?

17 JUROR NUMBER 43: -- they were practicing.
18 Sometimes they were practicing, you know, like if that would
19 happen, have to handle it, you know.

20 THE COURT: So you have allowed them to use the
21 hotel room for their training purposes?

22 JUROR NUMBER 43: For their training practices.
23 And a couple of times, my recollection, I remember that it
24 was suspected, you know, that someone was staying at the
25 hotel that, you know, they're drug related. And they asked

1 me if I can give them a room right next to that room at no
2 charge, you know, and I was cooperating with that.

3 THE COURT: Okay. But do you know any of the
4 police officers that are identified --

5 JUROR NUMBER 43: I --

6 THE COURT: Let me finish the question.

7 JUROR NUMBER 43: I'm sorry.

8 THE COURT: Do you know any of the officers that
9 are identified as witnesses in this case?

10 JUROR NUMBER 43: Yes. I forgot his name. He was
11 working at the Cherokee Law Enforcement Center. Then I
12 think, you know, he was changed to a different department.
13 A couple times I came here to pay my property tax and he was
14 downstairs in the room sitting at the chair.

15 THE COURT: I'm talking about the ones that I
16 identified as a witness.

17 JUROR NUMBER 43: No, not those.

18 THE COURT: Mr. Parker, Mr. Burgess, Mr. Wyatt.

19 JUROR NUMBER 43: No, sir.

20 THE COURT: And Mr. Owensby.

21 JUROR NUMBER 43: No, sir.

22 THE COURT: You didn't know any of those?

23 JUROR NUMBER 43: No, I do not know none of those.

24 THE COURT: Okay.

25 JUROR NUMBER 43: But the gentlemen that, you

1 know, was coming into me from the Cherokee law enforcement,
2 you know, I forgot his name, but I can go and find out, you
3 know.

4 THE COURT: Well, you don't need to do that.
5 You didn't know anybody involved in this case?

6 JUROR NUMBER 43: No, sir.

7 THE COURT: All right. Is there anything about
8 the situation that you have just described, your assistance,
9 or whatever, is there anything about that that would cause
10 you to be unable to be fair and impartial in this case?

11 JUROR NUMBER 43: Yes, sir. Yes, sir.

12 THE COURT: It would be?

13 JUROR NUMBER 43: Yes, sir.

14 THE COURT: Okay. Then we will excuse you from
15 service in the case.

16 You just need to have a seat right back there with
17 Ms. Littlejohn.

18 (Whereupon, Juror number 43, Shahram Lalianpour,
19 was excused from the jury panel)

20 THE COURT: All right. Ms. Littlejohn, I need you
21 to step down here, please, ma'am.

22 Is there any objection to Mr. Lalianpour being
23 excused?

24 MS. LESKANIC: None from the State, Your Honor.

25 MR. RHODEN: Well, obviously I think he is not

1 qualified. So, yes, sir, I think he is properly excused.

2 THE COURT: Okay.

3 Just stand there where Mr. Lalianpour was.

4 JUROR NUMBER 48: Right here?

5 THE COURT: Yes. I mean, try and turn kind of --

6 I'm going to be talking to you, but I want the court

7 reporter to be able to see you as you answer my questions.

8 You are Sherida Littlejohn?

9 JUROR NUMBER 48: Yes, sir, "Shidra".

10 THE COURT: "Shidra"?

11 JUROR NUMBER 43: Yes.

12 THE COURT: Is it spelled S-H-E-R-I-D --

13 JUROR NUMBER 43: That's how my mother spelled it,

14 but everybody pronounce it like that because that's what it

15 look like, but that's not how it's pronounced.

16 THE COURT: You pronounce your name "Shidra"?

17 JUROR NUMBER 43: Uh-huh.

18 THE COURT: But it's spelled S-H-E-R-I-D-A?

19 JUROR NUMBER 43: Yes, sir.

20 THE COURT: Okay.

21 Ms. Littlejohn, after you were selected as a juror

22 in the case you also contacted the bailiff and indicated to

23 the bailiff that you needed to address a matter with me. We

24 addressed it here, but those discussions, while the lawyers

25 were present while I was discussing the issue with you, the

1 court reporter was not taking any of that down, so that's
2 why I need you to -- we are going to go through that process
3 again, okay?

4 JUROR NUMBER 43: Okay.

5 THE COURT: Now, you indicated to the bailiff that
6 you had some issue about being able to serve as a juror in
7 this case. What was your issue?

8 JUROR NUMBER 43: I just told her I was nervous
9 and I was uncomfortable and I didn't want to judge anyone.
10 I was uncomfortable during jury duty.

11 THE COURT: You were uncomfortable serving as a
12 juror in this case?

13 JUROR NUMBER 43: Yes, sir. It's uncomfortable.

14 THE COURT: And the reason that you weren't
15 comfortable in serving as a juror in this case is what?

16 JUROR NUMBER 43: I don't -- I don't want to judge
17 anyone. I don't have no reason reason. I'm just not
18 comfortable of doing it. I'm not -- I'm not comfortable.

19 THE COURT: All right. And one of the questions
20 that I asked you is that -- the last question that was asked
21 of the panel before the jury was sworn was does anybody have
22 any reason why you think you could not be fair and impartial
23 as a juror in the case, and you did not respond to that
24 question. And why did you not respond to that question?

25 JUROR NUMBER 43: Maybe I didn't hear it, sir,

1 correctly or --

2 THE COURT: Maybe you didn't hear it? I mean, do
3 you know whether or not you heard it, or do you not know
4 that either?

5 JUROR NUMBER 43: I might have didn't hear it.
6 I --

7 THE COURT: You just didn't hear it?

8 JUROR NUMBER 43: No, not -- honestly, no, I
9 didn't.

10 THE COURT: Well, did you think about asking me to
11 repeat that question?

12 JUROR NUMBER 43: No, sir.

13 THE COURT: No.

14 All right. Well, now that you were selected and
15 you said that you don't feel comfortable in serving as a
16 juror because you don't believe that you can -- or you don't
17 feel comfortable judging anyone. Is that a fair statement
18 of what you said?

19 JUROR NUMBER 43: Yes, sir, I would think so.

20 THE COURT: All right. Now, is it your belief
21 that you can or you will not be able to render a decision in
22 the case?

23 JUROR NUMBER 43: Yes, sir.

24 THE COURT: Well, my question is can you -- if you
25 served as a juror, would you be able to come to a decision

1 in the case, or would you not be able to come to a decision
2 in the case?

3 JUROR NUMBER 43: Not come to one in the case.

4 THE COURT: You would not be able to come to a --

5 JUROR NUMBER 43: No, sir.

6 THE COURT: -- decision in this case?

7 JUROR NUMBER 43: No, sir.

8 THE COURT: And what is your reason that you would
9 be unable to come to a decision in this case?

10 JUROR NUMBER 43: Because I don't really have one.

11 THE COURT: Because what?

12 JUROR NUMBER 43: I don't really have one. I just
13 feel uncomfortable. I don't have a reason or a good reason.

14 THE COURT: Well, I'm not asking whether you think
15 it's a good reason or a bad reason. I'm just asking you if
16 you have a reason.

17 JUROR NUMBER 43: No, sir.

18 THE COURT: You don't?

19 JUROR NUMBER 43: No, sir.

20 THE COURT: But is it a fair statement -- are you
21 telling me that while you are not sure how to verbalize it
22 or express it or give a reason for it, if you were to serve
23 as a juror you would not be able to render a decision in the
24 case?

25 JUROR NUMBER 43: No, I don't -- I don't know.

1 No.

2 THE COURT: Ma'am?

3 JUROR NUMBER 43: No, sir, I don't guess.

4 THE COURT: Did you understand my question?

5 Let me ask you again because I need you to
6 specifically respond to it.

7 If you were to remain as a juror in this case and
8 hear all the testimony and consider all of the evidence,
9 after the trial was concluded and you went back with your
10 fellow jurors to render a decision, to decide a verdict,
11 would you be able to render a decision? Would you be able
12 to decide a verdict in this case?

13 JUROR NUMBER 43: No, sir. I -- I don't feel
14 comfortable.

15 THE COURT: All right. So you would not be able
16 to arrive at a decision?

17 JUROR NUMBER 43: No, sir.

18 THE COURT: Okay. All right. Thank you, ma'am.
19 Just have a seat back there where you were.

20 Does either side wish to be heard on whether or
21 not Ms. Littlejohn ought to be excused?

22 MS. LESKANIC: No, Your Honor, I agree with the
23 court's decision.

24 MR. RHODEN: Well, my position, Your Honor, on
25 that is that I don't think she's given any legal reason to

1 be excused. I mean, she's certainly reluctant to say that
2 she could render a decision or not. She equivocates,
3 obviously, on her answer. She hasn't said she can't be fair
4 and impartial. She just has a hard time conceptualizing
5 whether or not she can render some decision at some future
6 time, and she basically says that she's just uncomfortable.

7 Obviously if everybody who was uncomfortable was
8 excused, I mean, we probably wouldn't have any jurors. So I
9 don't think she said anything that would disqualify her from
10 being a juror in this case, and I would object to excusing
11 her at this point in time. She was obviously chosen. She
12 was the fourth juror chosen to serve, so I would object to
13 excusing her.

14 THE COURT: Well, had the court known, and I'm
15 sure had the lawyers known, that she had told us that she
16 was not going to be comfortable in serving as a juror in
17 this case, and had she told us that she would not be able to
18 judge anyone in this case, and had she told us that she
19 would not be able to render a decision or a verdict in this
20 case, I'm satisfied that she would not have been qualified
21 to serve as a juror.

22 And if she even met the basic test of
23 qualification, I feel fairly certain that -- and Ms.
24 Leskanic can speak for herself, but I'm fairly certain that
25 she would have stricken her as a juror, based upon those

1 responses.

2 Now, I understand that your position is that she
3 hasn't given a reason why she cannot serve as a juror in the
4 case, or why she's reluctant and why she's uncomfortable,
5 and I will agree with you there. She has said she doesn't
6 really know the reason. Perhaps it's because she doesn't
7 want to express the reason. But what I have heard from her
8 mind is that she is uncomfortable, that she does not want to
9 judge anyone in this case, and she has clearly stated that
10 she is not able to render a decision in this case. And you
11 cannot fulfill your obligations as a juror, no matter how
12 fair you can be, if you can't tell us what your decision is.
13 That's one of the primary obligations of the juror is to
14 render a decision. And if you are able to listen
15 attentively, if you are able to be fair and impartial,
16 that's wonderful, because that's what jurors need to be, but
17 if taking all of that into consideration you aren't going to
18 be able to decide the case, then you can't be a juror.
19 That's just as simple as that.

20 So based upon her inability to be able to render a
21 decision, which she's clearly stated, I find she also should
22 be excused from any further service in the case.

23 Now, this leaves us now with twelve jurors, if my
24 count is correct. Would you agree?

25 MR. RHODEN: Yes, sir.

1 THE COURT: You will agree with that?

2 MR. RHODEN: I think we have twelve people back
3 there.

4 THE COURT: All right. Well, I'm going to bring
5 those twelve back in here and I'm going to excuse them for
6 lunch and then we will address any other matters that need
7 to be placed on the record.

8 MR. RHODEN: Okay. Thank you.

9 THE COURT: All right. Bring the jury back.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: All right. Now, ladies and gentlemen,
13 I apologize for the delay. We have had a delay in getting
14 started. It's a good time for us to break for lunch, so I'm
15 going to do that.

16 Ms. Mullinax, another juror that was selected in
17 the case has -- now it's been determined that he's unable to
18 continue as a juror in the case, so you are going to take
19 that person's place. So we now have twelve jurors.

20 Is there any juror who has any reason whatsoever
21 why you think you can't serve as a juror in this case and be
22 fair and impartial to both sides? Because if you do have
23 such a reason, I need for you to let me know now. I hoped
24 that we would have done it before, but now is not too late.

25 (No response)

1 THE COURT: Okay. Now that you have been
2 selected, understand that you are not permitted to talk
3 about the case. You can't discuss anything that relates to
4 this case with anybody whatsoever, including your fellow
5 jurors. You are only permitted to talk about the case when
6 you are involved in jury deliberation, and that won't be
7 until the end of the trial after we have received all of the
8 evidence and you have heard the instruction on the law from
9 me and you have been asked to begin your deliberations which
10 will result in your decision. So until the time for
11 deliberation comes you are not permitted to talk about the
12 case with anybody whatsoever in any fashion whatsoever, and
13 that includes your fellow jurors. You can only discuss it
14 during deliberations.

15 You are also not permitted to conduct any research
16 or do your own investigation into any issue that might arise
17 in the trial. You have got to base your decision solely
18 upon what you see and hear during the trial, and you are not
19 permitted to supplement your base of knowledge by conducting
20 outside resources or discussing the matter with any other
21 person. So no discussions, no research, no investigation.
22 Base your decision upon what you see and hear during the
23 trial.

24 You are excused for lunch now. I would ask that
25 you please report back to your jury room at 2:15. At 2:15

1 this afternoon. At that time we should be in a position to
2 begin with the trial. So thank you for your patience. We
3 will see you at 2:15.

4 When you come back, you will come in the side door
5 that's directly across from the back of the church. The
6 bailiff will be there to let you in. So just be sure when
7 you come back, go straight to that side door and then you
8 will go to the jury room from there. Okay.

9 Have a good lunch.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Ms. Leskanic, do you have
13 anything that you needed to address on the record?

14 MS. LESKANIC: No, Your Honor.

15 THE COURT: Mr. Rhoden, do you have any further
16 matters that you need to address on the record?

17 MR. RHODEN: Yes, Your Honor, I have got numerous
18 matters.

19 First of all, I object to this panel being sworn
20 as the jury in this case. The first reason is that the
21 State used three strikes of their five strikes. Every
22 single strike they used was to strike a juror of -- a black
23 juror. Obviously the defendant is also black. As I
24 understand it, in the -- I'm not trying to put words in the
25 solicitor's mouth, but --

1 THE COURT: Well, you don't have to do -- you
2 don't have to put words in her mouth. You can put your
3 motion on the record and I'm going to let her respond to it.

4 MR. RHODEN: Yes, but I do object.

5 THE COURT: I know we discussed it here, but --

6 MR. RHODEN: Yes.

7 THE COURT: -- we are putting it on the record
8 here.

9 MR. RHODEN: So that's number one, it's racial --
10 the Batson issue.

11 THE COURT: Okay.

12 MR. RHODEN: Number two, or --

13 THE COURT: Well, let's deal one at a time. You
14 object to her striking three black --

15 MR. RHODEN: Yes, sir.

16 THE COURT: Three black -- two black males, one
17 black female from the jury panel in the exercising of her
18 peremptory challenges.

19 All right. Ms. Leskanic, you apparently struck
20 juror number 83, which is a black male. Do you have a --

21 MS. LESKANIC: Yes, Your Honor.

22 THE COURT: -- race neutral reason for the
23 exercise of that challenge?

24 MS. LESKANIC: Yes, Your Honor. He has pending
25 convictions, based on the NCIC, for driving under the

1 influence.

2 THE COURT: Say that again. It can't be a pending
3 conviction.

4 MS. LESKANIC: I'm sorry, he has a conviction for
5 driving under the influence, criminal domestic violence,
6 possession of marijuana, and possession of stolen goods.

7 He also has a pending possession with intent to
8 distribute case in our office.

9 THE COURT: All right. Mr. Rhoden, do you believe
10 that that is pretext for her exercising the challenge in an
11 unconstitutional fashion, or do you believe that that is
12 sufficiently race neutral?

13 MR. RHODEN: Well, I don't think that the reason
14 given is a pretext. However, it does raise a whole other
15 issue in my mind is that when the jury panel was qualified,
16 there was no indication that Mr. Shippy had any record
17 whatsoever. Now, apparently from information that the
18 solicitor has, or is privy to, that I'm not, we find that
19 Mr. Shippy has a DUI, a possession of marijuana, and a
20 possession of stolen goods. Now, if that's a receiving
21 stolen goods, it may possibly be a conviction that would
22 disqualify him.

23 THE COURT: Well, it might be. I don't have
24 any -- I wasn't provided with the jurors criminal histories,
25 for whatever reason, but I don't have it, but I wouldn't

1 know who on this panel has.

2 MR. RHODEN: But if he wasn't qualified -- I mean,
3 if that was a disqualification to start with, he shouldn't
4 even have been in the panel and that would have changed the
5 entire complexion and mix of the potential jury pool. So
6 that's just another reason that I --

7 THE COURT: Okay.

8 MR. RHODEN: -- would give, Your Honor, but I
9 don't -- I don't think that the solicitor has -- that this
10 is a pretextual reason. I --

11 THE COURT: All right. Ms. Leskanic, what about
12 the criminal history of Mr. Shippy?

13 MS. LESKANIC: If I could have just a moment, Your
14 Honor, our investigator Greg Phillips is the one that
15 reviews the NCIC reports that we receive from the jail and
16 he has written those down on the sheet beside Mr. Shippy.
17 I'm not sure of the dates or the amount of the possession of
18 stolen goods or receiving stolen goods, but I'll be happy to
19 get that information from Mr. Phillips.

20 THE COURT: Well, do you have the criminal
21 history?

22 MS. LESKANIC: I only have what Mr. Phillips has
23 written down.

24 THE COURT: You don't have the actual --

25 MS. LESKANIC: No, sir, Mr. Phillips has that, but

1 apparently he's stepped out of the courtroom with that
2 information.

3 THE COURT: Well, let's get him.

4 MS. LESKANIC: Thank you, Your Honor.

5 (Off the record)

6 (Back on the record)

7 MS. LESKANIC: Your Honor, it appears that the
8 information was written down incorrectly. Mr. Shippy
9 appears that they -- CDV from 2009. The information that
10 was written down for juror 83 is actually the information
11 for juror 85.

12 THE COURT: Well, who prepared the information?

13 GREG PHILLIPS: I did.

14 THE COURT: So Mr. Phillips put the information
15 that related to juror number 83, which is actually
16 information that related to juror number 85?

17 GREG PHILLIPS: Yes, sir. They are one right
18 under the other on the list, and evidently it was just an
19 error in where I placed that information.

20 THE COURT: So Mr. Shippy has a conviction for
21 criminal domestic violence and nothing else?

22 MS. LESKANIC: It's just showing a charge. I'm
23 not sure what the disposition is.

24 THE COURT: A charge of criminal domestic
25 violence?

1 MS. LESKANIC: Yes, Your Honor.

2 THE COURT: Okay. Ms. Leskanic, were you aware
3 that the information was incorrect?

4 MS. LESKANIC: No, Your Honor.

5 THE COURT: Did you base your decision on
6 exercising the challenge of Mr. Shippy based on the
7 information that you had?

8 MS. LESKANIC: Yes, Your Honor.

9 THE COURT: And the information that you had was
10 that he had convictions and a pending charge for possession
11 with intent to distribute?

12 MS. LESKANIC: Yes, Your Honor.

13 THE COURT: All right. Well, Mr. Rhoden, the saga
14 continues, but it doesn't appear that Ms. Leskanic has
15 exercised a challenge of Mr. Shippy in any unconstitutional
16 fashion; that he was a qualified juror, and that she would
17 have had the right to strike him, if she wished to, based
18 upon the pending charge for criminal domestic violence.
19 Whether she would or she would not, I don't know. Perhaps
20 she doesn't know at this point, but the point being she
21 exercised the challenge based upon information that she had,
22 even though it might not have been correct information, but
23 it's not a pretext. She believed the information to be
24 valid. It would be information that would support, in my
25 view, an exercise of a strike in keeping Mr. Shippy from the

1 jury panel. And it does not appear that the defendant is
2 prejudiced by the fact that Mr. Shippy was called and
3 stricken, since in this case he was qualified to serve as a
4 juror, and the State has not exercised the challenge in an
5 unconstitutional fashion. It might be a mistake, but it's
6 not unconstitutional. So, therefore, if you have made that
7 motion to quash the panel based on the exercise of that
8 strike, it's denied.

9 MR. RHODEN: Can I -- just to state for clarity on
10 the record, because I'm not clear at this point in time as
11 to pending charges. I mean, not that it's going to change
12 your decision, but is the pending charges true or not true?

13 THE COURT: That was as to juror 85, as I
14 understood it. The information that she was provided to
15 exercise her challenge on Mr. Shippy were actually is
16 information that would be applicable to juror number 85.
17 Mr. Shippy only has a pending charge for criminal domestic
18 violence, or also has a criminal domestic violence charge
19 with no disposition, is that correct?

20 MS. LESKANIC: That's correct, Your Honor.

21 THE COURT: Okay. The next juror that was
22 stricken was a black female, juror number 50.

23 MS. LESKANIC: Yes, Your Honor. When juror number
24 50 came up to be sworn, I watched their demeanor as they
25 come up. She was looking at the defense cable smiling in

1 that direction. I did not feel that if she could be fair to
2 the State in her disposition of the charges just in the way
3 she was not looking at our table. When asked whether or not
4 the State wanted to present that juror, she was looking at
5 the defense table and smiling in that direction, and that is
6 the reason for the strike.

7 THE COURT: All right. Mr. Rhoden?

8 MR. RHODEN: Your Honor, I would say -- I would
9 move to quash the jury panel on the basis of this, not -- on
10 the surface maybe that's race neutral, but I think that's
11 pretextual. She is a 69 year old black female with a
12 twelfth grade education that is retired. The fact that she
13 might have been grinning at me, or my client, or someone on
14 that side of the courtroom is certainly I think nothing more
15 than a pretext to strike all of the black jurors that we
16 have.

17 Now, as I will get into in a minute, as this saga
18 has unfolded this morning, we now have a lily-white jury
19 panel of twelve people with no blacks and nobody, other than
20 Caucasians, on the jury, so I would move to quash and --

21 THE COURT: Well, let me ask you, is there some --
22 is there some constitutional provision or some case law
23 somewhere that says a defendant has a right to have a jury
24 panel made up of those who are of his race, or of his
25 gender, or any other --

1 MR. RHODEN: Well, I think he has a right to have
2 a fair and impartial jury that's not -- and jurors not
3 stricken because of their race, that just simply --

4 THE COURT: Well, I'm talking about the twelve
5 that are seated. You said those twelve are not fair and
6 impartial?

7 MR. RHODEN: Well, I'm just pointing out for the
8 record that we now have twelve white jurors on the panel as
9 this has unfolded.

10 THE COURT: Well, I understand that, but Ms.
11 Littlejohn's excusal was not based upon anything Ms.
12 Leskanic did. She seated her.

13 MR. RHODEN: I understand.

14 THE COURT: Okay.

15 MR. RHODEN: But I don't think grinning in the
16 direction of the defendant is a sufficient reason to strike
17 a black juror from this potential panel.

18 THE COURT: All right. So you are saying that Ms.
19 Leskanic is simply using that reason as a pretext to
20 exercise a peremptory challenge in an unconstitutional way?

21 MR. RHODEN: Yes, sir.

22 THE COURT: In other words, she has no valid basis
23 for striking that juror, other than she is saying it was
24 because she smiled at the defendant, but she really means
25 she struck her because she was black?

1 MR. RHODEN: Yes. I mean, otherwise, I mean, you
2 can give any reason for striking a juror.

3 THE COURT: Well, of course --

4 MR. RHODEN: And you have to look beyond. I mean,
5 you have got -- you have to look at the totality of the
6 circumstances.

7 THE COURT: All right. Let me hear from Ms.
8 Leskanic in response to your assertion.

9 MS. LESKANIC: Your Honor, I seated Ms.
10 Littlejohn. It was not an effort to keep any particular
11 jurors off of the jury, but I am looking for a jury that is
12 going to listen to the evidence. We have the burden of
13 proof in every case, as Your Honor knows, and I want to make
14 sure that I at least have a 50/50 start at the beginning of
15 a trial.

16 When juror number 50 came up, she appeared already
17 to be leaning toward the defense. It did not have to do
18 with her race. It had to do with her demeanor and the fact
19 that she would not look at me when Madam Clerk asked whether
20 or not the State wanted to approve her as a juror, she
21 continued to look at the defense table in a pleasing manner,
22 smiling and keeping her attention focused on them. That is
23 the reason I did not feel that she would give our side a
24 fair opportunity, and I felt that it only right to strike
25 her from this case, as I would have done whether she were

1 male, female, black, white. It was her demeanor when she
2 came up here to be seated as a juror. That was my decision
3 for not seating her.

4 THE COURT: All right. Well, I do not think that
5 the demeanor is something that cannot be considered in
6 exercising a peremptory challenge. Now, whether it's a
7 pretext or not, that's difficult to say, but in this case I
8 have heard the explanations from both and I do not find that
9 Ms. Leskanic has exercised a challenge in striking Ms. Lyons
10 that was exercised in an unconstitutional fashion.

11 What she tells me she perceived that that juror
12 was more favorable to the defendant than she was to the
13 State, because she did not basically pay attention to the
14 State's table, while she was smiling and looking favorably
15 upon the defense. And, you know, that might be a good
16 reason for one lawyer and not for another, but it's only an
17 unconstitutional reason when it's used as a pretext for the
18 striking of jurors based solely upon race.

19 In this case I don't have any belief that Ms.
20 Leskanic did exercise that strike based solely upon the race
21 of Ms. Lyons, and I certainly don't have any experience in
22 Ms. Leskanic engaging in that type of selection process, so
23 I find that it's not a pretext and it was constitutionally
24 valid.

25 All right, the next juror is juror number 27.

1 MS. LESKANIC: Your Honor, juror number 27, Mr.
2 Gaffney, advised the court that he has a conviction for DUI.
3 So it was based on his statement to the court that he has a
4 prior conviction and that is why he was struck from the
5 jury.

6 THE COURT: All right. Mr. Rhoden?

7 MR. RHODEN: I have got no complaints of that,
8 Your Honor. I accept that.

9 THE COURT: All right. The defense motion to
10 quash the panel based upon the unconstitutional exercise of
11 peremptory challenges is denied.

12 All right. Mr. Rhoden, do you have another
13 objection to the seating of this jury?

14 MR. RHODEN: Yes, Your Honor.

15 THE COURT: All right.

16 MR. RHODEN: I think -- or I would move to quash
17 this panel, and I think the remedy is to start over again.
18 As it has unfolded, we had juror number 43, who was the very
19 first juror selected, that being the -- I can't pronounce
20 his name, but the --

21 THE COURT: Lalianpour?

22 MR. RHODEN: Yes, sir.

23 THE COURT: Okay.

24 MR. RHODEN: Is that how you pronounce it, Mr.
25 Lalianpour?

1 JUROR NUMBER 43: Yes, sir.

2 THE COURT: Okay.

3 MR. RHODEN: The hotel manager, Your Honor, who
4 did not disclose in the qualification process that he had
5 worked with law enforcement agencies using the hotel for
6 various drug operations, including training, and I guess
7 stings, and then he later on said he could not be fair. The
8 court did properly excuse him based on those responses.
9 However, after we had picked this panel, including the
10 alternate that that occurred.

11 And in addition to that, we have juror number 48,
12 who was also picked and seated who says, well, she's not
13 sure she could give a decision or not give a decision. She
14 was the fourth juror that was picked. I had used one strike
15 at that point in time. So she was the fifth juror called,
16 the fourth juror seated. And then she says she cannot --
17 she didn't know whether she could render a decision or not.
18 She was ultimately excused.

19 So when she was excused, then we bumped up the
20 alternate as the real juror and picked another alternate,
21 which I then used both of my strikes on, and we wind up with
22 number 60 as the alternate who is now seated. Number 60
23 goes to church with one of the folks involved in the case at
24 the sheriff's office. She has relatives with the sheriff's
25 office, and now she's one of our jurors.

1 The point I'm making --

2 THE COURT: Well, you didn't know to challenge her
3 for cause?

4 MR. RHODEN: I understand that. I understand
5 that.

6 THE COURT: I probably doubt that I would have
7 granted it.

8 MR. RHODEN: She said she could be fair and
9 impartial, but I don't think the court would have granted
10 that for cause.

11 THE COURT: I think you are right.

12 MR. RHODEN: The point is the dynamics of the way
13 this has played out in these excusals after the panel was
14 picked, I would move to quash this panel, put them back into
15 the pool, start over again, because a number of those -- it
16 changes the dynamics of using peremptory challenges when you
17 have people seated and you are using that dynamics and you
18 are choosing other people to strike, and now we come and two
19 of those people that were chosen are now off of the panel,
20 then I think the only fair solution for the defendant and
21 the State is to start over again with the jury selection
22 process, knowing that number 43 and knowing that number 48
23 are not even in the potential pool of jurors, because they
24 can't properly participate. So I would move to quash this
25 panel and start over again with a new panel altogether with

1 each side having all their strikes.

2 THE COURT: Well, I would say this, insofar as Mr.
3 Lalianpour is concerned. In fairness to him, he was not
4 asked if he had any connection with law enforcement. He was
5 asked if he had any connection with any of those who were
6 called or potentially going to be called as witnesses in the
7 case and he still affirmed that he did not have any
8 connection with them. So the question was not put to the
9 panel as to whether they had ever worked with law
10 enforcement in any fashion. And so I don't know that -- I
11 mean, he could have told us that during that process if it
12 had dawned on him at that time to provide that information.
13 It apparently did not, because he was not specifically
14 asked. After the jury was selected it did dawn on him that
15 that might be relevant. And so he did, as he should have
16 done, and that was to inform the bailiff that he had that
17 connection, or he needed to talk to me about that issue and
18 he did. And, as he stated it, that based upon that he
19 couldn't be fair, so he was properly excused, without
20 objection from the defendant.

21 So I just want to comment upon the fact that
22 that -- I don't know if a question was asked of Mr.
23 Lalianpour, or all of the venire, that it would have or
24 should have initiated a specific response like that,
25 although obviously it is relevant and I'm glad he did

1 provide us that information. But the ultimate goal, of
2 course, is to have jurors who are fair and impartial, and
3 that's what a defendant is entitled to, and at least up to
4 this point I'm told we have twelve jurors who can be fair
5 and impartial, but let me hear from Ms. Leskanic if she
6 wishes to respond to your argument.

7 MS. LESKANIC: Yes, Your Honor.

8 The State has no objection to the court's handling
9 of the picking of this jury and has no objection to going
10 forward with this jury.

11 I certainly wish, as everyone else in here, that
12 we had the information about the two jurors that have since
13 been excused, but Mr. Rhoden was given -- I believe he gets
14 five strikes in this case and he used his five strikes.
15 Then in selecting the alternate he used a strike. And then
16 when we had to select a second alternate, he used two
17 strikes, and we did not object or question the usage of that
18 strike. I wanted him to have an opportunity to get a jury,
19 since there had been some confusion about who could and
20 could not serve and those jurors had to be excused, but I
21 believe it was randomly selected by the clerk. Those
22 individuals came forward. They stated to Your Honor that
23 they are qualified and willing and able to serve on this
24 case and the State's position that we go forward with these
25 twelve jurors.

1 THE COURT: All right. Mr. Rhoden, any other
2 matters?

3 MR. RHODEN: The only other thing I wanted to say,
4 Your Honor, is that I think the ultimate --

5 THE COURT: On this point?

6 MR. RHODEN: Yes, sir.

7 The ultimate reason that number 43, as I
8 understand it, was ultimately stricken or excused was not
9 because of the participation with the helping of law
10 enforcement, although that was significant. He ultimately
11 said in response to Your Honor's questions that he couldn't
12 be fair and impartial.

13 THE COURT: That's true.

14 MR. RHODEN: And he didn't say that to start with.
15 I mean, obviously that question was asked earlier and he
16 didn't respond and he couldn't be and now he does. But,
17 once again, that changes the entire dynamics and I think
18 that we are entitled to have a new panel impaneled and go
19 through the process again.

20 THE COURT: All right. That motion is denied.
21 What others do you have?

22 MR. RHODEN: I think that's all, Your Honor.

23 THE COURT: All right. Court is in recess until
24 2:15.

25 Is the defendant in jail or not?

1 MR. RHODEN: Yes, he is.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: All right, any matters we need to
5 address before the jury is brought in?

6 MS. LESKANIC: Not by the State, Your Honor.

7 MR. RHODEN: No.

8 THE COURT: All right. Bring the jury in.

9 Ask Ms. Ruppe to take the foreperson's seat.

10 MS. LESKANIC: Mr. Kendall is going to open for
11 the State, Your Honor.

12 THE COURT: Okay.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Good afternoon, ladies and gentlemen.
16 We are ready to begin with the trial of the case for which
17 each of you have been selected.

18 Ms. Ruppe, I'm going to ask you to serve as the
19 foreperson of the jury.

20 As the foreperson you will have three specific
21 duties that none of the other jurors will have. Number one,
22 you will be asked to serve as the spokesperson for the jury.
23 And that just means if something arises that needs to be
24 brought to my attention, you or a fellow juror has some
25 difficulty, problem, or question, if you will let the

1 MR. RHODEN: Yes, he is.

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21 duties that none of the other jurors will have. Number one,
22 you will be asked to serve as the spokesperson for the jury.
23 And that just means if something arises that needs to be
24 brought to my attention, you or a fellow juror has some
25 difficulty, problem, or question, if you will let the

1 has to be delegated those responsibilities that I have just
2 indicated and I have delegated those to Ms. Ruppe in
3 appointing her as the foreperson. But all of you jurors are
4 equally important, so far as the ultimate decisions are
5 concerned, because, as I have stated, the verdicts have to
6 be unanimous. All twelve of you must be in agreement.

7 You may swear the panel.

8 THE CLERK: Madam Forelady, ladies and gentlemen,
9 please stand and raise your right hand.

10 Do you solemnly swear that you will truly try the
11 issues joined in this case and true verdicts rendered
12 according to the law and evidence, so help you God?

13 JURY PANEL: (Jury Panel collectively said I do)

14 THE CLERK: You may be seated.

15 THE COURT: Ladies and gentlemen, as you know, you
16 have been selected to decide the verdicts in the case of the
17 State versus James Ray Byers.

18 As you also know, Mr. Byers has been accused of
19 having committed two separate and distinct criminal
20 offenses, although they are each alleged to have arisen out
21 of one particular event or a course of events which the
22 State alleges occurred back on August the 26th of 2009. But
23 by way of these two indictments, the defendant has been
24 accused of the crimes of distribution of crack cocaine and
25 distribution of that crack cocaine within a half mile of an

1 elementary school. So while it's only one distribution,
2 there are two separate offenses, and the second offense, as
3 I just indicated, has an additional element that the first
4 crime does not. The first crime you have to prove
5 distribution of crack cocaine. The second indictment
6 charging the second crime has an additional element, and
7 that is that the distribution had to have taken place within
8 a one-half mile radius of a public school.

9 Now, as to those allegations and as to each of
10 those charges the defendant has entered a plea of not
11 guilty. And as I have already told you, that plea of not
12 guilty has placed upon the State the burden of proving the
13 allegations that they have set forth in each of these
14 indictments, the burden of proving each of the essential
15 elements that constitute the crimes that have been alleged
16 against the defendant. And, therefore, the burden is upon
17 the State to establish the defendant's guilt to the
18 satisfaction of you twelve jurors beyond a reasonable doubt
19 before any verdict of guilty could be returned as to either
20 of the indictments.

21 Anytime a person is accused of a crime, they are
22 always, under the law, presumed to be innocent. And that
23 presumption of innocence remains with any defendant, as it
24 does with this defendant, from the time that he is placed
25 under arrest and throughout the course of the criminal

1 process, and even throughout the course of the actual trial
2 in the case. And that presumption of innocence will be with
3 Mr. Byers even as you go back at this trial's conclusion to
4 begin with your deliberations in this case. And that
5 presumption of innocence will be with him in that jury room
6 and it will be with him forever, unless you twelve jurors
7 determine that he is no longer entitled to that presumption
8 of innocence. In other words, after you have carefully
9 considered all the evidence in the case and decided the
10 facts and applied the law, if you twelve jurors unanimously
11 determine that his guilt as to a particular indictment has
12 been proven beyond a reasonable doubt, then he would no
13 longer be entitled to that presumption of innocence as it
14 relates to that particular charge. But it is only if,
15 unless, and until you are satisfied of his guilt beyond a
16 reasonable doubt that the presumption of innocence would no
17 longer be applicable.

18 Now, the way the trial will proceed is that in a
19 moment the lawyers are going to address you in what are
20 called opening statements. There are two occasions where
21 lawyers are permitted to address the jury: And, that is, at
22 the beginning of the trial before any evidence is
23 introduced; then again at the conclusion of the trial after
24 all the evidence has been received. But please understand
25 that the lawyers' statements are not evidence in this case.

1 You may not consider the lawyers' statements as being any
2 evidence upon which you will base your decision. You have
3 to base your decision and your determination as to the facts
4 based upon evidence that actually comes in during the trial,
5 and that will come in by way of witnesses testifying from
6 the witness stand, as well as perhaps the introduction of
7 other types of physical exhibits. But while the lawyers'
8 statements are not evidence, you should listen to what they
9 have to say, because those statements do serve a purpose.
10 The opening statements will serve to provide you with the
11 basic understanding as to what this case is about from both
12 the perspective of the State and the defendant so that you
13 will have some context in which to place the evidence that
14 we will be receiving shortly thereafter.

15 The closing statements occur after all the
16 evidence has been received. And, again, while those
17 statements are not evidence, it does afford the lawyers an
18 opportunity to discuss with you the evidence that you have
19 seen and heard during the trial of the case. And through
20 that discussion each will have an opportunity to try to
21 persuade you or to convince you that that evidence does or
22 does not support a particular decision. And it's in between
23 those opening and closing statements that we actually
24 receive the evidence upon which you will base your decision.

25 The State, as I have told you, has the burden of

1 proving the defendant's guilt beyond a reasonable doubt.
2 And, therefore, the State will go forward first in its
3 presentation of evidence.

4 After the State has concluded with that
5 presentation, a defendant has the same rights to take the
6 witness stand and testify and to present evidence, if he or
7 she wished to do so, but a defendant in a criminal case is
8 never under any obligation to take the witness stand and
9 testify, or to call witnesses, or to produce evidence,
10 because the burden is not upon a defendant to prove that he
11 or she is not guilty. The burden is on the State to prove
12 that he or she is guilty. And so there are some times where
13 a defendant would never even be able to prove his or her
14 innocence and that's why that's never required of a
15 defendant. It is required of the State, because they have
16 brought the accusation to establish the defendant's guilt
17 beyond a reasonable doubt.

18 All we are going to ask for you to do is pay
19 careful attention throughout the course of the trial, give
20 every witness the same degree of attention as they testify.
21 Jurors have the prerogative of accepting or rejecting
22 witness testimony just as you do any other evidence that
23 might be presented. You base your decision upon what you
24 find to be the most credible evidence. And if you find some
25 testimony or other evidence in your mind not to be credible,

1 then you will reject it and won't consider it. You will
2 only consider the evidence that you determine is the most
3 believable and the most credible in arriving at your
4 decision in the case.

5 And, of course, it is important that you keep an
6 open mind throughout the course of the trial. And that just
7 means that you are not to begin making up your minds or
8 formulating your opinions as to what you think the ultimate
9 decision will be until all the evidence has been received,
10 until I have instructed you on the law, and until you have
11 been asked to go back and begin with your deliberations in
12 the case. That is the process that is designed for you
13 twelve jurors to arrive at a fair and just decision in this
14 case.

15 So I do want to thank you in advance for your
16 participation, as well as for your careful attention. I
17 would ask you that you please give the lawyers your
18 attention now as they give you their opening statements.

19 Mr. Kendall.

20 MR. KENDALL: Thank you, Your Honor.

21 Good afternoon, ladies and gentlemen. Thank you
22 for coming here today.

23 My name is Matt Kendall. This is my co-counsel
24 Ms. Kimberly Leskanic and we represent the State of South
25 Carolina.

1 We are all here today because on August 26th,
2 2009, the defendant, Mr. James Byers, sold crack cocaine to
3 a confidential informant here in Gaffney, South Carolina,
4 within the County of Cherokee. Moreover, Mr. Byers sold
5 this crack cocaine within a half mile of a school.

6 Now, Mr. Byers was caught in this case using a
7 technique called a video buy. Now, what is a video buy?
8 Well, in a video buy the police will wire up a confidential
9 informant up with a very small high tech audio and video
10 recording device. They are given a little bit of money and
11 they are sent out to make a crack transaction to purchase
12 crack. Once they are out there and the transaction is
13 complete, it's been recorded on the video, they then go back
14 to the police with the crack and with the video recording.
15 The crack is then taken and sent off to SLED where it's
16 tested by a chemist to ensure that it is, in fact, crack
17 cocaine, and the video is kept by law enforcement for
18 viewing to identify the individual who sold the crack.

19 And, ladies and gentlemen, in just a few minutes
20 you too will have the opportunity to watch the video and
21 view this entire operation in action. You will have the
22 opportunity to see with your own eyes the CI travel the area
23 of Sixth Street and Cherokee Avenue, watch the CI stop
24 briefly and get change at a convenience store. And most
25 importantly and in full view with full audio, full color,

1 and full sound watch the defendant, Mr. James Byers, sell
2 one of these CI's \$10 worth of crack cocaine in a field next
3 to a convenience store at the corner of Cherokee and Sixth.

4 You will also hear in later testimony from a
5 chemist from SLED who will, in fact, verify that what was
6 sold there that night was, in fact, crack cocaine.

7 Now, ladies and gentlemen, at the end of this case
8 I'm going to ask you to return a verdict of guilty, but for
9 right now I'm only going to ask you for three things.

10 First, that you listen to all the directions the
11 judge gives you. The most important part of this trial is
12 to ensure that it's fair, and listen to the judge's
13 instructions that will ensure that fairness is maintained.

14 Second, you listen to all the evidence that's
15 presented by all the witnesses here today.

16 And, third, that when assessing this evidence you
17 use a little bit of common sense. I think in this case you
18 will find that it will take you a really long way.

19 Thank you very much and good afternoon.

20 THE COURT: Mr. Rhoden.

21 MR. RHODEN: May it please the court.

22 Good afternoon, ladies and gentlemen. How y'all
23 doing?

24 Obviously you have been selected to be our jury.
25 This is a drug trial. The allegations are against my

1 client, Mr. Byers, they claim that he sold drugs back in
2 August of 2009. You will hear the evidence and you will see
3 the allegations are that it happened at 9:22 p.m. I mention
4 that just because there is two charges. One is distribution
5 and one is distribution within a school. I don't want you
6 to think that anybody is accusing him of being out there
7 selling to school children. It didn't happen anything like
8 that. There is no allegation that there were children
9 involved and that sort of thing, so I wanted to kind of
10 clear that up right away.

11 As His Honor has told you, Mr. Byers comes into
12 this courtroom presumed to be innocent, and that presumption
13 of innocence is not just word games that we play. It's a
14 very important rule of law. Anybody, whether it's you, or
15 me, or anybody else is accused of a crime, the State has to
16 prove their guilt beyond a reasonable doubt.

17 Now, as I mentioned, we have got two separate and
18 distinct charges against Mr. Byers in this case. He has
19 pled not guilty to both of those charges, which means the
20 State has got to come forward and prove to you beyond a
21 reasonable doubt that he did both things. And we submit to
22 you that the State will not meet that burden of proof in
23 this case and the State will not prove to you that Mr. Byers
24 is guilty beyond a reasonable doubt.

25 Yeah, just kind of look around for a minute. We

1 are in this big nice courtroom. We have got all of these
2 people here. We got two assistant solicitors. We have got
3 these police officers. We have got this lady that came all
4 the way from Columbia with SLED that comes up here. We have
5 got the solicitor's office investigator. We have the
6 awesome power of the State of South Carolina in this case.
7 They come in here with all of these resources to prove their
8 case, and it's just little old me sitting over there on the
9 other side. Now, I mentioned that, because Mr. Kendall in
10 his opening statement even mentioned the sophisticated
11 camera that they have here in these little video buys,
12 etcetera, etcetera. I mentioned that because you will see
13 as this case progresses all of the things that are wrong
14 with this case, all of the things that were done wrong, all
15 of the missteps, all the gaps that occur in this case. And
16 I point that out to you now, because with the awesome power
17 of the State of South Carolina as -- they even made y'all
18 come here today through the power of summonsing you to be
19 jurors, that they need to be held to their burden of proof.
20 That's all I'm asking. Just hold them to their burden of
21 proof.

22 Mr. Kendall also said in his opening that listen
23 to all the evidence. I ask you to do the same thing.
24 However, you know, sometimes the most powerful evidence is
25 what isn't presented.

1 Now, the State has the burden of presenting all of
2 the evidence to you. And if they fail to do so, then they
3 haven't met their burden of proof. So as you listen to the
4 State's witnesses, and they will get to go first, keep that
5 in mind, that it's not just the evidence that you see. It's
6 sometimes it's what you don't see and what they didn't
7 present, or what they didn't do, or those gaps that have no
8 explanation, or the mistakes that were made. Sometimes that
9 is the most powerful evidence that you will see.

10 Mr. Kendall said this involves a confidential
11 informant. He's right to an extent. The State likes to
12 call them confidential informants, CI. You know, it sounds
13 cool, but in this case you will see that the CI involved was
14 nothing but a guy and a gal who basically been in trouble
15 and they are out there trying to do something. You know,
16 they are not some mysterious person that comes from another
17 part of the State, some police officer comes from another
18 part of the State. They are just basically people on the
19 street that come in here and the State, through the
20 sheriff's office, is hooked up to these people and send them
21 on their merry way.

22 And you will also see in this case that these
23 little recordings that are made through this camera is just
24 that. It's just a recording. You know, the police just
25 send them out, do your thing, come back. Well, you got a

1 problem with that, then once again it might be the lack of
2 evidence, it might be the gap, it might be the mistakes
3 that's the most powerful evidence in this case.

4 Now, ladies and gentlemen, as His Honor has told
5 you and as I have told you, the burden is always on the
6 State. If somebody accuses you of a crime -- and you will
7 see in this case that nobody did anything on August the --
8 the police didn't do anything on August the 26th. You know,
9 they didn't arrest anybody on August the 26th, when they say
10 this occurred. They didn't arrest a single solitary soul
11 involved in this case on August 26th.

12 So, ladies and gentlemen, pay close attention to
13 the evidence. Keep an open mind, because, as I said, the
14 State gets to go first in this case. Just keep an open mind
15 as you listen to the evidence, and keep in mind what I said,
16 that all of the T's have to be crossed and the I's have to
17 be dotted. I mean, we want nothing more -- or nothing less,
18 I should say, than that. And if you find at the end of the
19 day that they are mis-crossing a T or mis-dotting an I, what
20 is that? That's reasonable doubt. That's what this case is
21 all about. They got to prove to you beyond a reasonable
22 doubt their allegations.

23 Thank you for being here. You know, I say that
24 all the time when I get up here and talk to jurors, I say
25 thank you for being here. It's like I know you didn't have

1 a choice. You had to come or somebody would come looking
2 for you, but, once again, that's how the Criminal Justice
3 System works and it's a pretty good system. It works pretty
4 good. As long as everybody does their job, including the
5 jurors, you, in following the law, and, of course, applying
6 the evidence, the law to the evidence as the judge gives
7 you, and keeping in mind that the defendant never has to
8 prove anything. The state has to prove everything. The
9 defendant never has a burden to prove his innocence. The
10 State has to prove guilt beyond a reasonable doubt.

11 Once again, thank you.

12 THE COURT: Ms. Leskanic?

13 MS. LESKANIC: Thank you, Your Honor.

14 The State calls Todd Parker.

15 OFFICER TODD PARKER, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MS. LESKANIC:

18 Q. Would you please introduce yourself to the ladies and
19 gentlemen of the jury?

20 A. Yeah, I'm Todd Parker. I'm employed by the sheriff's
21 department here in Cherokee County.

22 Q. And what is your current position at the sheriff's
23 department?

24 A. I'm in the narcotics division.

25 Q. All right. And what do you do in the narcotics

1 division?

2 A. Here lately I have been supervising the narcotics unit.

3 Q. Okay. Were you working in the narcotics unit in August
4 of 2009?

5 A. Yes, ma'am.

6 Q. Were you involved in the video transaction in this
7 case?

8 A. Yes, ma'am.

9 Q. All right. Before we get to the specifics of this
10 case, would you please explain to the jury how a video buy
11 works, just in general, and then we will talk specifically
12 about this case?

13 A. Yes, ma'am. Basically what happens is we will have
14 what we call a confidential informant. We actually explain
15 to them how the operation works. Based on what we normally
16 do a video buys, we basically run an ongoing investigation
17 where we will purchase drugs from known street dealers over
18 a period of time. And then once we identify the people --

19 MR. RHODEN: Your Honor, I'm going to object in
20 that he certainly can explain it, but the implication that
21 there is some -- that they only target known drug dealers,
22 or whatever I think is improper.

23 THE COURT: Let me see y'all just a minute.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: Okay. You may continue.

2 MS. LESKANIC: Thank you.

3 BY MS. LESKANIC:

4 Q. So, Officer Parker, so y'all would get your
5 confidential informant and then they would go out and make a
6 purchase in Cherokee County, is that correct?

7 A. Yes, ma'am.

8 Q. And who is the confidential informant in this case that
9 made this buy for you?

10 A. Felicia Jackson.

11 Q. How did Ms. Jackson become an informant?

12 A. She was actually -- I actually met her on a -- in fact,
13 we did a search warrant on her residence that she was
14 staying with one of her old boyfriends. And from that day
15 forward she continued to call me. She stated from that day
16 that we did the search warrant on her house that, you know,
17 that wasn't her life, that what her boyfriend done and she
18 couldn't control what her boyfriend done, but --

19 MR. RHODEN: Your Honor, I'm going to object to
20 the hearsay, as far as the --

21 THE COURT: Sustained.

22 BY MS. LESKANIC:

23 Q. Okay. So did she -- did you ask her to become an
24 informant, or did she request to become an informant?

25 A. She actually requested it at a later day.

1 Q. Okay. And was she compensated for this work as an
2 informant?

3 A. She was.

4 Q. How much was she paid?

5 A. We paid her \$30 for every buy that she made.

6 Q. When you would pay her for that buy, would you test the
7 substance when she returned with it?

8 A. No, ma'am. We normally bought small quantities and it
9 wasn't enough there to test. We actually just packaged it
10 up and sent it to SLED where it's tested.

11 Q. Would she only get paid after the results came back
12 from SLED and it tested positive, or was she paid the day
13 that she made the buy?

14 A. She got paid at the time. Each buy that she made, she
15 got paid on the spot that day.

16 Q. Okay. In this particular case what day did you meet
17 with Ms. Jackson?

18 A. It was on the 26th of '09.

19 Q. August 26th, 2009?

20 A. Yes, ma'am.

21 Q. And was she set up with the audio and video equipment?

22 A. Yes, ma'am, she was.

23 Q. And how was that set up?

24 A. She actually met -- she actually met us first at the
25 sheriff's department and the narcotics division actually put

1 the video recorder on her. It's known as a button cam that
2 will fit any -- normally any buttons on shirts, clothing,
3 any kind of button -- where buttons are normally at. We
4 will actually replace that button with our button that's
5 wired up with the camera. And I actually put it on her that
6 day. I think she was wearing just -- she brought a shirt in
7 that she -- and I actually wired the camera up in that
8 button. And once it was wired up, she actually puts the
9 shirt on and then that's how she wears it.

10 Q. Do you search her prior to her going out --

11 A. Yes, ma'am.

12 Q. -- to make a buy?

13 A. We search them anytime -- anytime we have -- before and
14 after any beginning we search them.

15 Q. And how did they get the money to make the purchase of
16 crack cocaine?

17 A. We give them the money from the sheriff's drug fund.

18 Q. All right. How much money was she given in this case?

19 A. At that point we gave her a \$20 bill.

20 Q. And what are the instructions with that \$20 bill?

21 A. We basically just instruct them. We don't ask any
22 specific amount. We don't say we got to have \$20 or \$10.
23 Be just basically tell them anything that they can buy,
24 whether it's \$5, \$10, \$15. Some people won't sell less than
25 20. Some will, so we just basically leave it open to

1 whatever they can purchase.

2 Q. And what if they make a \$10 buy? What do they do with
3 the remaining money?

4 A. They just -- they keep the rest of it as part of their
5 transaction.

6 Q. All right. And how much was she given in this case?

7 A. \$30.

8 Q. And where did she go?

9 Well, let me ask you, what time was this that she went
10 out?

11 A. It was roughly around nine o'clock. I think she met us
12 around nine o'clock, 8:30. She met us at the sheriff's
13 department.

14 Once we got her wired up with the video recorder and
15 once we search her, she actually got in the car with us.
16 And we actually had an unmarked car at that time that we was
17 using and me and -- myself and Mr. Burgess actually drove
18 them to a location off of Cherokee Avenue where once we got
19 to that spot, we turned the video recorder on and put the
20 date and the time that the video starts. And from that
21 point, once she left us, everything is videoed from that
22 point until the time she gets back to us.

23 Q. And she's with you the entire time from when you search
24 her to when she gets out of the vehicle and the video
25 recording device is turned on?

1 A. Yes, ma'am.

2 Q. Okay. And then does she make multiple buys while she's
3 out, or what are the -- what are your rules with that?

4 A. No, ma'am, we -- after each particular buy we actually
5 have to come back to the sheriff's department where we
6 actually download the video and collected the evidence that
7 we had on from the initial buy.

8 Q. All right. Where did this buy of crack cocaine take
9 place?

10 A. Actually -- I don't have an address. It was right
11 there on the corner of Sixth Street and Cherokee Avenue.
12 It's right beside a convenience store.

13 Q. Is that in Cherokee County?

14 A. Yes, ma'am.

15 Q. Is that within a half mile of a school or playground?

16 A. Yes, ma'am.

17 MR. RHODEN: Objection, Your Honor, unless there
18 is some foundation for that.

19 THE COURT: Well, overruled. I mean, you can
20 examine him about it, but --

21 A. Yes, ma'am.

22 BY MS. LESKANIC:

23 Q. And what school or playground was that within a half
24 mile of?

25 A. Mary Bramlett Elementary.

1 Q. And how do you know that?

2 A. Well, actually we have used it before in previous cases
3 where we actually Googled it on the Internet where actually
4 you Mapquest it and mapped it from the location we are at to
5 the address of the school.

6 Q. And there was another narcotics agent with you?

7 A. Yes, ma'am.

8 Q. Who was that?

9 A. That was Jason Burgess.

10 Q. Okay. Do you watch the video when they return?

11 A. Yes, ma'am.

12 Q. All right. So did you watch the video in this case?

13 A. Yes, ma'am. We don't actually watch the entire video
14 from A to B. We actually watch the actual drug transaction
15 in trying to identify the person that was actually selling
16 the drug.

17 Q. And when you watched the video in this case, were you
18 able to identify the person that made the sale on August
19 26th, 2009, on Sixth Street and Cherokee Avenue?

20 A. Yes, ma'am.

21 Q. And who was that individual?

22 A. That was Mr. James Byers, the defendant in the case.

23 Q. Now, this occurred on August 26th, 2011. Was Mr. Byers
24 arrested on that day?

25 A. No, ma'am.

1 Q. Would you tell us why?

2 A. Actually -- we actually do an undercover operation
3 where we actually purchase a lot of different people over a
4 lot of different areas of time. And once we get so many
5 buys built up, we actually will sign arrest warrants for the
6 people that actually -- you have all probably seen in the
7 papers where we have roundups and people are arrested,
8 multiple people arrested at one time.

9 Q. And what would be the downside to arresting them right
10 then?

11 A. Well, one, we have to identify them who they are and
12 they are particularly gone when we got back anyway.

13 Q. You have to identify whom, I'm sorry?

14 A. Identify the person that's actually selling the drugs,
15 like -- we don't know who they are when we buy them from.
16 We don't send them. We just send them out to buy drugs to
17 whoever that will sell it to them. And then after that
18 happens we actually have to identify the people that sold
19 the drugs.

20 Q. And I would like to show you what's been marked State's
21 Exhibit 1. Do you recognize that?

22 A. Yes, ma'am.

23 Q. What is that?

24 A. That's the video that we made on the 26th by the
25 undercover operative.

1 Q. And have you watched this video?

2 A. Yes, ma'am.

3 Q. And does it show the entire transaction that occurred
4 on that date?

5 A. Yes, ma'am.

6 Q. And the video equipment was working properly at that
7 time?

8 A. It was.

9 Q. Okay.

10 MS. LESKANIC: Your Honor, at this time we would
11 offer State's Exhibit 1 for admission as evidence.

12 MR. RHODEN: I do object. I don't think the
13 proper foundation has been laid. He wasn't there. He can't
14 testify and has not testified that --

15 THE COURT: Sustained.

16 BY MS. LESKANIC:

17 Q. When Ms. Jackson made the purchase, did she return to
18 the car?

19 A. Yes, ma'am, she did.

20 Q. And what did she have with her when she returned to the
21 car?

22 A. She had a quantity of crack cocaine, what appeared to
23 be crack cocaine.

24 Q. And what was done with that substance?

25 A. At that point it was -- the crack cocaine was actually

1 handed to Detective Burgess where he collected it as
2 evidence.

3 Q. Okay. And then how does he collect it? Did you see
4 that happen?

5 A. Yes, ma'am, he had a -- we don't like to touch the
6 drugs, because, you know, you never know where its been or
7 what happened, but he actually put them in an envelope, held
8 the envelope out to her and she drops the crack down in the
9 manilla envelope.

10 Q. Is that labeled in any way, that you see?

11 A. Yes, Detective Burgess actually labels it, the time,
12 the date. Normally we don't know who they are. If we have
13 a nickname or something, we will write it on the envelope of
14 how we identify them.

15 Q. And is that what was done in this case?

16 A. Yes, ma'am.

17 Q. And then what is done with that envelope that the
18 informant has placed the substance into?

19 A. Then typically it would be -- it would be put in what
20 we know as a best bag. It's an evidence sealed bag that
21 can't be tampered with. It's tamperproof. It's actually
22 sent to SLED to be tested for what it actually comes back
23 as.

24 Q. That's all the questions that I have for you. If you
25 will, please answer any of Mr. Rhoden's questions.

1 A. Yes.

2 MR. RHODEN: If it please the court?

3 THE COURT: Mr. Rhoden.

4 CROSS EXAMINATION BY MR. RHODEN:

5 Q. Officer Parker, you were not present when this alleged
6 buy took place, is that correct?

7 A. No, sir.

8 Q. Y'all were in -- you and Detective Burgess were
9 somewhere in a car, or were y'all back in the sheriff's
10 department?

11 A. Well, we was about a block down from where it took
12 place.

13 Q. Okay. But you are not watching as it's going on,
14 right?

15 A. No, sir.

16 Q. And this little camera that's set up on the button, you
17 don't have the ability to actually follow the transaction as
18 it takes place, correct?

19 A. No, sir.

20 Q. It just is a recording thing, correct?

21 A. It is.

22 Q. Okay. So does it feed back to some location, or does
23 it -- or is it self-contained?

24 A. It's self-contained and kept on a hard drive.

25 Q. So the person that you send out making the buy has this

1 equipment on their person, is that correct?

2 A. That's correct.

3 Q. And the recording that is made is on their person?

4 A. Yes, sir.

5 Q. All right. So there is no way that you even know what
6 they did, or who they saw, or where they went until you get
7 the buy off of them and look back at it, correct?

8 A. Correct.

9 Q. In this particular case you are using this Felicia
10 Jackson, correct?

11 A. That's correct.

12 Q. And her instructions basically or her directions from
13 you is go out and buy drugs?

14 A. We normally pick areas that we have a high complaint of
15 drug activity.

16 Q. All right, but the more drugs she buys or the more
17 people she sees, supposedly selling them, each transaction,
18 when she comes back to you after going out and brings you
19 back something, you are going to pay her 30 bucks?

20 A. Yes, sir.

21 Q. And from the time that she leaves your presence until
22 the time that she comes back, you don't have any control
23 over her, correct?

24 A. No, sir.

25 Q. So if she bought drugs from somebody, or gave them

1 away, or did something that was improper, you wouldn't have
2 any way of knowing it until you get her back and look at the
3 video, correct?

4 A. Correct.

5 Q. And in this particular case she didn't even go out
6 until I think 9:22 p.m., is that correct?

7 A. That sounds correct.

8 Q. On August the 26th?

9 A. Yes, sir.

10 Q. Okay. It will be two years this coming August,
11 correct?

12 A. Yes.

13 Q. And, of course, with this equipment it has the ability
14 to record whenever you turn it on, correct?

15 A. Once I turn it on, it can't be turned off until I turn
16 it back off.

17 Q. Why is that?

18 A. Because it's impossible to get to it.

19 Q. Well --

20 A. If it did -- the video would cut off. I mean, once you
21 turn it off, it's going into a different folder.

22 Q. Okay, you have confused me. I'm sorry. I have got a
23 simple mind sometimes.

24 How do you turn it on? Does it have a button or switch
25 or --

1 A. It has an on off switch.

2 Q. -- some magic device?

3 A. It has an on off switch.

4 Q. On and off switch.

5 Where is the on off switch?

6 A. On the side of the device.

7 Q. You mean the on and off switch is on the device that
8 Ms. Jackson is wearing?

9 A. Correct.

10 Q. Okay. So if you are not there, you can't turn it on
11 and off, right?

12 A. I was -- I turned -- I'm the one that turned it on.

13 Q. Right. Once you turned it --

14 A. Once she leaves, I mean, I can't turn it off until she
15 gets back.

16 Q. Right, because you are not with her?

17 A. Right.

18 Q. I mean, if you were with her, you could turn it off?

19 A. That's correct.

20 Q. I mean, if you were walking side by side with her, you
21 could turn it off any time that you wanted to?

22 A. That's correct.

23 Q. In fact, she could turn it off any time that she wanted
24 to?

25 A. She could.

1 Q. And she could turn it back on?

2 A. She could.

3 Q. Okay. So you send her out to find people. And when
4 she comes back, you pay her 30 bucks.

5 One other thing that I was confused about, or maybe I
6 didn't hear you right. If -- you gave her how much money?

7 A. \$20.

8 Q. Did you give that to her?

9 A. We gave that to her boyfriend.

10 Q. Her boyfriend?

11 A. Yes, sir.

12 Q. And who is her boyfriend?

13 A. Michael Owensby.

14 Q. Okay. So the 20 bucks you gave to Mr. Owensby?

15 A. Uh-huh.

16 Q. Right?

17 A. Yes, sir, they were working together at the time. I
18 mean they were boyfriend girlfriend.

19 Q. So were they both then in the sheriff's office with you
20 that night?

21 A. Yes, sir.

22 Q. But Ms. Jackson was the one that was wearing the
23 device?

24 A. That's correct.

25 Q. Did the \$20 that you gave her, did you -- was it marked

1 in some way, because -- did you retrieve it later, or find
2 it later, or anything like that?

3 A. No, sir.

4 Q. So it's just the \$20 bill that looks like any other \$20
5 bill?

6 A. That's correct.

7 Q. You didn't write down the serial number?

8 A. No, sir.

9 Q. And if she uses \$10, or \$15, and doesn't use the whole
10 20, I mean, do you get change?

11 A. No, sir, she keeps it.

12 Q. Oh, okay. So y'all don't get change back?

13 A. No, sir.

14 Q. So she gets \$30 for doing the deal, plus she keeps any
15 money that she saves, so to speak?

16 A. Correct.

17 Q. All right. Now, when Ms. Jackson --

18 Oh, let me ask you this. Where was she when you
19 actually hooked the device up on her?

20 A. Where was she?

21 Q. Yes.

22 A. She was at the sheriff's office when I actually put the
23 device on her.

24 Q. Okay. And that's downtown here on Frederick Street,
25 correct?

1 A. That's correct.

2 Q. All right. And, of course, you turned it on
3 immediately?

4 A. We turned it on when we got close enough to the
5 particular area that we was going to.

6 Q. All right. And, of course, I'm sure that you have it
7 video recorded that you did a pat-down search of her to make
8 sure she didn't have anything on her already?

9 A. Do I have a video recording of it?

10 Q. Yes, sir.

11 A. No, sir, we don't video us searching our informants.

12 Q. Well, why don't you do that?

13 A. We always have those officers with us.

14 Q. Pardon?

15 A. We have other officers with us.

16 We don't -- I don't have a device that's going to
17 record. I can't take the button off her camera that I just
18 installed on her and aim it on her while we search her and
19 then put it back on, because the video is going to actually
20 record her.

21 Q. So y'all don't have the capability of showing or making
22 a recording of you searching the confidential informant, as
23 you call them?

24 A. No, sir.

25 Q. You don't have -- in the whole and the entire sheriff's

1 department you don't have any cameras that you could use to
2 do that?

3 A. No, sir.

4 Q. Okay. The only camera that you got in this whole
5 entire sheriff's department is this little thing that's
6 sitting on the informant?

7 A. Yes, sir.

8 Q. Really?

9 A. Yeah, to record a video.

10 Q. Okay. So in this particular case when did you -- when
11 did you turn on this video?

12 A. As I testified just earlier, once we got about a block
13 away from where we let them out. Once they left our
14 presence, that's when we actually turned it on.

15 Q. All right. Well, that -- I mean, you don't mean to say
16 once they left your presence you turned it on, because they
17 have to be right there with you when you turn it on,
18 correct?

19 A. True.

20 Q. All right. So from the time you left the sheriff's
21 department until you are close to where you are going to let
22 her out, that's when you turned it on?

23 A. Yes, sir.

24 Q. Okay. Well, you don't always do that, though, do you?

25 A. Every -- every situation is different. I mean, you

1 have to be a little more in depth in that to --

2 Q. Well, I mean there are times you turn it on right away
3 and you have a recording that's actually you can see the
4 inside of the sheriff's department, don't you?

5 A. That's correct.

6 Q. Okay. And in this particular case y'all didn't do
7 that?

8 A. Not this particular case we didn't, no, sir.

9 Q. All right. So you sent Ms. Jackson on her little merry
10 way and she I think went with Mr. Owensby, is that right?

11 A. That's correct.

12 Q. And these are two people that you just got hooked up
13 with off the street, correct?

14 A. That's correct.

15 Q. And that's how they are making their living? They are
16 basically going out there and doing their little thing,
17 keeping the change and getting paid 30 bucks a pop, correct?

18 A. That's correct.

19 Q. The more people they find, the more people they
20 allegedly buy drugs from, the more money they make, correct?

21 A. That's correct.

22 Q. Now, after she did her thing, how did you meet back up
23 with her?

24 A. We stayed in the same area, the same place that we
25 dropped them off at.

1 Q. Okay. So you dropped her off at some particular
2 location and she comes back to that particular location?

3 A. Yes, sir.

4 Q. All right. And this particular case on August the 26th
5 of 2009, sometime after 9:22 p.m., where was that location
6 that you dropped her off at?

7 A. It's right off Cherokee Avenue. It's right beside
8 Hardee's. I think it's two houses down below Hardee's, by
9 the old flea market. I don't know if any of y'all are
10 familiar with the old flea market there beside Hardee's.
11 That was the location that we dropped her off at.

12 Q. That's where you dropped her off?

13 A. Yes, sir.

14 Q. And y'all just stayed there?

15 A. Yes, sir.

16 Q. You and Detective Burgess?

17 A. Yes, sir.

18 Q. And just waited for her to come back?

19 A. Yes, sir.

20 Q. All right. So during that time you are just sitting
21 there killing time waiting for her to come back?

22 A. That's right.

23 Q. All right. Now, after awhile she did come back in this
24 particular case, correct?

25 A. She did.

1 Q. And was Mr. Owensby still with her when she came back?

2 A. He was.

3 Q. Okay. So it was the two of them the whole time?

4 A. Yes, sir.

5 Q. And, of course, you keep recording her movements and
6 transactions until she gets back to you, correct?

7 A. Correct.

8 Q. And you do, I guess, record her giving you the drugs or
9 substance that she supposedly buys, correct?

10 A. Once she gets back to us, that's when we cut the video
11 recorder off.

12 Q. Okay.

13 A. I don't know -- I don't know if this particular
14 incident if it did or it didn't, but once they meet back up
15 with us, that's when we cut the device off.

16 Q. So you haven't even looked at this video?

17 A. Yes, sir, I have.

18 Q. You just don't remember?

19 A. That's correct.

20 Q. All right. So I guess my question is, because I'm a
21 little confused here again, did you record her giving you
22 the crack, that was supposedly crack cocaine, back when she
23 gets to your car?

24 A. I don't recall. If it happened, it's on the video.

25 Q. Okay. So you certainly have the capability of doing

1 that?

2 A. The capabilities of recording her just giving the drugs
3 back to us?

4 Q. Yeah.

5 A. Yeah, we have the capabilities of it.

6 Q. And you do it from time to time?

7 A. That's right.

8 Q. So if you didn't do it on this particular occasion,
9 it's just because you didn't want to do it or didn't think
10 about doing it, correct?

11 A. I'm not sure what you are asking.

12 Q. Well, I guess -- let me be -- let me just be a little
13 bit more straightforward in my questions.

14 Did you or did you not record Ms. Jackson turning over
15 the drugs to either you or Detective Burgess?

16 A. I don't recall. If it did, it's on the video.

17 Q. Well, we are here in court today for this case and you
18 are the first witness and you work in the narcotics division
19 and you don't even know whether you recorded that or not?

20 A. If I did, it's on the video.

21 Q. Okay. So if it's not on the video, that means you
22 simply didn't bother to do it, correct?

23 A. That would be correct.

24 Q. Okay. You did not actually collect the drugs or
25 anything from Ms. Jackson, correct?

1 A. That's correct.

2 Q. That was all Detective Burgess?

3 A. That's right.

4 Q. So you didn't have any involvement in either putting or
5 having anybody put the drugs in an envelope, or writing down
6 anything on an envelope, or doing any sort of chain of
7 custody forms, or anything of that nature? That would have
8 been Detective Burgess?

9 A. That's correct.

10 Q. You just basically was there?

11 A. That's correct.

12 Q. What's your job now?

13 A. I'm overseeing the narcotics division.

14 Q. So you are actually in charge --

15 A. That's correct.

16 Q. -- of the narcotics division?

17 A. That's correct.

18 Q. All right. Have you ever measured, physically
19 measured, the distance between Mary Bramlett Elementary
20 School and the corner of Cherokee Avenue and Sixth Street
21 where this buy allegedly occurred?

22 A. Do you mean in a car?

23 Q. I mean getting out and measuring it with any type of
24 mechanical device.

25 A. No, sir, I haven't.

1 Q. Did you take Ms. Jackson and Mr. Owensby back to the
2 sheriff's office that evening?

3 A. I don't recall if they went back that evening or not.
4 I don't know if -- I don't remember if that was their last
5 buy that they made that night. I'm not sure on that.

6 Q. Okay. So you don't know when they actually -- if they
7 actually got out of the car and just went their merry way,
8 or they came back to the sheriff's office, you don't know?

9 A. I have no idea.

10 Q. And where did you meet Ms. Jackson?

11 A. On a search warrant on her residence.

12 Q. All right. Thank you.

13 MR. RHODEN: That's all I have.

14 REDIRECT EXAMINATION BY MS. LESKANIC:

15 Q. Officer Parker, Mr. Rhoden mentioned Mr. Owensby who
16 was with her during this purchase?

17 A. Yes, ma'am.

18 Q. You stated that you gave him the \$20, is that correct?

19 A. Yeah. I actually think Detective Burgess gave him the
20 money, if I remember correctly.

21 Q. Now, Ms. Jackson, is she the one that actually brought
22 the white rock-like substance back to you and Detective
23 Burgess?

24 A. She is.

25 Q. Were both of them searched, Ms. Jackson and Mr.

1 Owensby, prior to the purchase?

2 A. Yes, ma'am.

3 Q. Were they searched afterward as well?

4 A. Yes, ma'am.

5 Q. Now, I want to talk a little bit more about the video
6 recording device. There is a switch on it where you turn it
7 off and on?

8 A. Yes, ma'am.

9 Q. What happens if you turn it off?

10 A. Then actually -- it's actually made to set up it puts
11 it in the frame, individual files. Like you can turn it off
12 and turn it back on, it's going to start video file two,
13 once we get it back to download it into our computer. So if
14 it is actually turned off, we are going to know that it's
15 been turned of, because it will actually put them in
16 different frames. If you have to turn it off four or five
17 times, you are going to have five different videos on that
18 particular incident when we download it. In this particular
19 incident it was just one long video, so we know that the
20 equipment wasn't turned off.

21 Q. So you have watched what's marked State's Exhibit 1,
22 the video in this case?

23 A. Yes, ma'am.

24 Q. And was that turned off during the time that it was
25 being worn by Ms. Jackson during this purchase of crack

1 cocaine?

2 A. No, ma'am.

3 Q. All right. Now, sometimes -- y'all are having ongoing
4 operations, is that correct?

5 A. Yes, ma'am.

6 Q. All right. And sometimes the video recording device
7 would be turned on at the sheriff's department?

8 A. Yes, ma'am.

9 Q. Why on this particular occasion were y'all in a
10 vehicle?

11 A. That particular night we just had -- they didn't have a
12 driver's license or anything like that. Sometimes people
13 have licenses and they can actually leave the sheriff's
14 office and drive and we will turn it on there.

15 Anytime -- anytime once they leave our presence, that's
16 when the video is turned on. So if they leave from the
17 sheriff's office on their own, then it would be recorded
18 from the sheriff's office as they leave.

19 In this particular incident we actually drove them
20 closer so they didn't have to walk all the way from the
21 sheriff's office to Sixth Street, which is a pretty good
22 little walk.

23 Q. Are they video recorded for every moment that they are
24 out of your presence?

25 A. Yes, ma'am.

1 Q. All right. Thank you.

2 MR. RHODEN: A couple follow-ups.

3 RECROSS EXAMINATION BY MR. RHODEN:

4 Q. Who conducted the search of Ms. Jackson and Mr.
5 Owensby?

6 A. Jason Burgess.

7 Q. You didn't do it?

8 A. No.

9 Q. And the device itself, when the solicitor asked you
10 about recording everything, the person who is wearing this
11 device you really can't see, correct, because they are
12 wearing the device?

13 A. Right.

14 Q. It's shooting a video out from them?

15 A. That's correct.

16 Q. All right. So you are really capturing things that
17 they are not doing? They are capturing things that other
18 people do, correct?

19 A. That's correct.

20 Q. Because if their hands, or whatever, is not in front of
21 them, you are not going to see anything about that
22 particular individual wearing the device, correct?

23 A. You can see what goes on in front of them, if that's
24 what you are asking.

25 Q. Well, that's what I'm saying, is that, you know, when

1 you are looking at the recording that is made, you are not
2 really looking at your informant? You are looking at what
3 is occurring in front of them?

4 A. That's correct.

5 Q. You can't even see what's going on behind them?

6 A. That's correct.

7 Q. And you can't tell if the informant is putting other
8 things in their pockets, or getting other things in their
9 pocket, or somebody comes up from another angle to the
10 informant, correct?

11 A. That's correct.

12 Q. You are only seeing what's straight ahead?

13 A. That's correct.

14 Q. So you don't know anything about what's going on either
15 to the side or behind them, correct?

16 A. You can only see what's in the video.

17 Q. Right. And you are not there, so you don't know?

18 A. That's correct.

19 Q. You don't know if somebody else walked up to them and
20 handed them a piece of crack cocaine, do you?

21 A. If they did, it would be on the video.

22 Q. Well, if somebody walked up behind them, it wouldn't,
23 would it?

24 A. No, sir, it wouldn't.

25 Q. No.

1 Or even to the side?

2 A. Correct.

3 Q. It's not going on the video, is it?

4 A. Correct.

5 Q. So basically when you see things on this video, it's
6 not the informant you see? It's other people, correct?

7 A. Correct.

8 MR. RHODEN: That's all. Thank you.

9 MS. LESKANIC: Nothing further, Your Honor.

10 THE COURT: You may step down.

11 MS. LESKANIC: The State calls Felicia Jackson.

12 FELICIA JACKSON, having been first duly sworn,
13 testified as follows:

14 THE COURT: Ms. Leskanic is going to be asking you
15 some questions.

16 DIRECT EXAMINATION BY MS. LESKANIC:

17 Q. Would you please introduce yourself to the jury? Tell
18 them your name.

19 A. Felicia Jackson.

20 Q. Do you live in Gaffney, Ms. Jackson?

21 A. Yes, I do.

22 Q. How old are you?

23 A. 30.

24 COURT REPORTER: Pull up the microphone a little
25 bit closer, please.

1 BY MS. LESKANIC:

2 Q. This gentleman is making a recording of everything that
3 we say in the courtroom, so you need to speak loud enough so
4 that he can hear everything that you say.

5 A. Okay.

6 Q. Okay. Now, did you work with Todd Parker and Jason
7 Burgess with the Cherokee County Sheriff's Department?

8 A. Yes, I did.

9 Q. And in what way did you work with them?

10 A. With narcotics.

11 Q. Okay.

12 THE COURT: Excuse me, you are going to have to
13 speak up louder, please.

14 A. Narcotics, busting different drugs and stuff.

15 BY MS. LESKANIC:

16 Q. Were you working for them on August 26th, 2009, on the
17 case that we are in court for today?

18 A. Yes.

19 Q. Okay. And were you -- did you meet with Jason Burgess
20 and Todd Parker on that day?

21 A. Yes, I did.

22 Q. Do you remember where you met with them?

23 A. At the detention center.

24 Q. And what happened?

25 A. We left from there and went to a store up the street.

1 Q. Okay. Let me back up a little bit.

2 Were you set up with any type of camera or recording
3 device?

4 A. Yeah, we had -- I had a camera on.

5 Q. Okay. How does that work? You went where to get
6 hooked up with the camera?

7 A. We went to the detention center in Todd and them's
8 office. The camera is right there and went to the store to
9 make the buy. And after that we left the store and went
10 back to the detention center.

11 Q. Okay. You say we, who were you with?

12 A. Michael Owensby.

13 Q. Did they search you before you left the sheriff's
14 department?

15 A. Yeah, they searched before we left and then when we got
16 back.

17 Q. When you got back.

18 Did you have anything on your person?

19 A. Uh-uh.

20 Q. How long were you working with the sheriff's department
21 as an undercover informant?

22 A. I'm not sure. It wasn't that long.

23 Q. Were you compensated for what you did? Were you paid?

24 A. Uh-huh.

25 Q. How much were you paid?

1 A. It was like \$30.

2 Q. For everything?

3 A. Yeah.

4 Q. Or for each particular buy that you made?

5 A. For each buy that we made.

6 Q. How did you start doing this? How did you meet Officer
7 Parker?

8 A. I met Todd when the dude I lived with before, they had
9 rented my house, but I didn't get charged with anything.

10 And then they got me for CDV and that's when I --

11 THE COURT: Excuse me just a minute. Excuse me.

12 You are going to have to speak up a little bit louder, but
13 you are also going to have to speak slower, because I'm
14 having a hard time understanding you, and I expect that the
15 jurors are too, so slow down and speak louder, okay?

16 A. They had run me in my house. After that I got
17 community service and Todd wanted to speak to me and asked
18 me if I wanted to make money, so I done it.

19 BY MS. LESKANIC:

20 Q. Were you working off any kind of charges?

21 A. Uh-uh.

22 Q. So this was strictly to make money?

23 A. Yeah.

24 Q. Okay. On this particular occasion you were wired with
25 the audio and video device?

1 A. Yes, ma'am.

2 Q. And you left the sheriff's department with whom?

3 A. Michael Owensby.

4 Q. Did you at any point turn the camera off?

5 A. No.

6 Q. Do you know how to turn the camera off?

7 A. No, ma'am.

8 Q. Who was responsible for turning it on and off?

9 A. Todd or Jason.

10 Q. All right. Where did you go to make the purchase?

11 A. At the Sixth Street store. I'm not sure of the name of
12 it, but it's the store up the street.

13 Q. In Gaffney?

14 A. Uh-huh.

15 Q. Do you know who you made that purchase from?

16 A. His name is 1-9, but I don't personally know him.
17 Michael knew him. I don't know. I don't know him.

18 Q. Was everything that you did captured on video?

19 A. Yes, ma'am.

20 Q. Have you seen the video in the case?

21 A. Yes, ma'am.

22 Q. Are you the person that's wearing the recording device
23 in that video?

24 A. Yes, ma'am.

25 Q. Does it show everything that you did from the time that

1 you left the officers presence to the time that you
2 returned?

3 A. Yes, ma'am.

4 MS. LESKANIC: Your Honor, at this time --

5 BY MS. LESKANIC:

6 Q. Let me show you. This is State's Exhibit 1. Do you
7 recognize that?

8 A. Uh-huh.

9 Q. And what is this?

10 A. It's the video that I was wearing when we bought the
11 drugs from 1-9.

12 Q. And have you seen this video?

13 A. Uh-huh.

14 Q. And it does accurately show everything that happened
15 that transpired on this purchase?

16 A. Yes, ma'am.

17 MS. LESKANIC: Your Honor, at this time we offer
18 State's Exhibit 1 for admission.

19 MR. RHODEN: No objection.

20 THE COURT: It's admitted.

21 MS. LESKANIC: May we publish to the jury, Your
22 Honor?

23 THE COURT: You may.

24 MS. LESKANIC: Thank you.

25 (Whereupon, the videotape was played to the jury

1 panel)

2 BY MS. LESKANIC:

3 Q. Ms. Jackson, could you tell me who the individual is in
4 the either white or cream colored T-shirt?

5 A. Michael Owensby.

6 Q. And he was with you?

7 A. Yes, ma'am.

8 Q. And who was the individual in the green and yellow
9 shirt?

10 A. 1-9.

11 Q. Is that who y'all made the purchase from that night?

12 A. Yes, ma'am.

13 Q. Did you make a purchase from anyone else during this
14 video recording?

15 A. No, ma'am.

16 Q. Did anyone give you anything else?

17 A. No, ma'am.

18 Q. Did you take contraband or narcotics from anyone else
19 during this video buy?

20 A. No, ma'am.

21 Q. Did you turn the video recording device off at any
22 point?

23 A. No, ma'am.

24 Q. How much money did you give this individual?

25 A. I think it was \$10.

1 (Drugs marked as State's Exhibit No. 2 for
2 identification)

3 BY MS. LESKANIC:

4 Q. Okay. Let me show you what's been marked State's
5 Exhibit 2. Take a look at State's Exhibit 2 and tell me if
6 in this small plastic bag that appears to be what you
7 received from the individual that you know of as 1-9?

8 A. Yes, ma'am, it's crack cocaine.

9 Q. Okay. And what did you do with the substance after you
10 received it from the defendant on the videotape?

11 A. Took it back to Todd and Jason, or I gave it to Jason.

12 Q. Okay. And do you know what Jason did with it?

13 A. Took it to the office, I guess. Once you give it to
14 him, you don't -- it's just done. You don't see it no more.

15 Q. Okay. And did you go back to the sheriff's department
16 that night?

17 A. Yes, ma'am.

18 Q. I think that's all questions that I have for you. If
19 you would please answer any questions from Mr. Rhoden.

20 MR. RHODEN: If it please the court?

21 THE COURT: Mr. Rhoden.

22 CROSS EXAMINATION BY MR. RHODEN:

23 Q. Okay. Ms. Jackson, so the narcotics officers
24 approached you to start helping them buy drugs from people,
25 correct?

1 A. Yes, sir.

2 Q. So they basically enlisted your services, correct?

3 A. Yes, sir.

4 Q. Okay. And for each time that you get the drug buy or
5 bring them back the crack cocaine, you got 30 bucks,
6 correct?

7 A. Yes, sir.

8 Q. Now, on this particular occasion the narcotics officers
9 gave -- well, let me back up. Let me strike that.

10 On this particular occasion you were with Michael
11 Owensby, correct?

12 A. Yes.

13 Q. Michael Owensby, is he a friend of yours?

14 A. He was a boyfriend at the time.

15 Q. Y'all aren't boyfriend girlfriend any more?

16 A. No.

17 Q. So you and Mr. Owensby were together the whole time,
18 correct?

19 A. Yes, sir.

20 Q. And it was actually -- the narcotics officers actually
21 gave Mr. Owensby the \$20, correct, at the station?

22 A. I ain't for -- I don't remember if they give it to me
23 or him. I think it was him, but I'm not for sure.

24 Q. All right. So it could have been him that they gave
25 the 20 bucks to?

1 A. It could have been.

2 Q. Okay. You are not -- you are just not sure?

3 A. Yes.

4 Q. You don't know?

5 A. I really don't know.

6 Q. Okay. But you started out at the sheriff's department,
7 correct?

8 A. Yes.

9 Q. Okay. And, of course, the video doesn't show anything
10 at the sheriff's department, does it?

11 A. No.

12 Q. It just starts off kind of black, doesn't it?

13 A. Uh-huh.

14 Q. Okay. So we don't know what happened at the sheriff's
15 office by watching that videotape, do we?

16 A. Everything is on the video. I mean --

17 Q. Well, what I'm asking you is was there something
18 videoed at the sheriff's office that we could look at?

19 A. Other than the camera that I got on, they cut it on
20 before I left the office and we walked out and then --

21 THE COURT: Ma'am, can you slow down a little bit?
22 I'm having a hard time understanding you.

23 BY MR. RHODEN:

24 Q. What I'm asking you is that -- because I don't know. I
25 wasn't there.

1 Was there a video made of you and Mr. Owensby at the
2 sheriff's office that night?

3 A. When we got to the sheriff -- I think it was the
4 sheriff's office, that's where they cut the video on at.

5 Q. Okay. So they actually cut the video on at the
6 sheriff's office?

7 A. Yes.

8 Q. Correct?

9 A. Yes.

10 Q. Okay. And the sheriff's officers, the narcs gave
11 you -- you don't have to look at them. You can look at me
12 when you answer my questions, okay?

13 When the sheriff's deputy or the narcotics officers
14 gave you the 20 bucks and the camera started rolling at the
15 sheriff's office, correct?

16 A. I'm not for sure if was at the sheriff's office,
17 because sometimes we went to the -- met like in their car
18 and stuff and they cut it on.

19 Q. All right.

20 A. I can't remember if it was at the sheriff's office or
21 met them somewhere at their car, they hooked us up and we
22 walked from there to wherever, I don't remember.

23 Q. All right. Well, you have done this a bunch of times,
24 hadn't you?

25 A. A couple of times. Not a whole lot.

1 Q. Well, that's how you were making money back then, you
2 and your boyfriend, right?

3 A. Yeah, but we didn't do it forever.

4 Q. Yeah, I know, but you did it a bunch, right?

5 A. Uh-huh.

6 Q. Because that's how y'all were making money, correct?

7 A. Yes.

8 Q. Sometimes you buy drugs, sometimes Mr. Owensby would
9 buy drugs, right?

10 A. Yes.

11 Q. Y'all were both going out there doing the thing
12 together, right?

13 A. Yes.

14 Q. All right. And Mr. Owensby was with you on this
15 particular occasion, correct?

16 A. Yes, he was.

17 Q. All right. And so this wasn't something that you just
18 did one time and don't know anything about it. You did it a
19 bunch of times, so you are familiar with the process,
20 correct?

21 A. Yeah, but I don't remember everything. I mean, I can't
22 remember if we was at the police station or if we met in the
23 car, but wherever we met them at, that's where the video got
24 cut on at.

25 Q. Okay. Well, did they normally make a record, a video

1 record, of everything that occurred from the time that they
2 wired you to the time that you got back to the car? Is that
3 the way they usually did it?

4 A. Did they what now?

5 Q. All right. Did they turn that camera on? Did they
6 usually turn it on as soon as they wired you up and then
7 turned it off when you got back?

8 A. Yes.

9 Q. Okay. And they wired you up at the sheriff's office,
10 correct?

11 A. Sometimes it was at the sheriff's office. Sometimes it
12 was at their car. It was just according to where we met
13 them at.

14 Q. So you don't know anything about how this video really
15 works, do you?

16 A. Other than putting it on, I mean --

17 Q. Well, that's my question. Other than putting it on,
18 you don't know how this device works, do you?

19 A. Not really.

20 Q. Okay. And you don't know how we got the images on the
21 computer, on the C.D. or the DVD? You don't know how all
22 that happened either, do you?

23 Well, you didn't make this video?

24 A. Uh-uh. I wore the camera. I mean --

25 Q. That's all you did was wore the camera?

1 A. Yes.

2 Q. You don't know anything -- you don't know whether or
3 not there was, you know, two videos in this?

4 A. No, there wasn't but one video, as far as I know.

5 Q. Well, every time that the switch turns on and off, it
6 makes another video, doesn't it, or do you know?

7 A. As far as I'm --

8 Q. You don't know?

9 A. I don't guess it does.

10 Q. All right. Well, you really don't know, do you?

11 A. (Shaking head no).

12 Q. Do you?

13 A. That wasn't but one video. That's the one that I was
14 wearing.

15 Q. Well, I understand that, but that little device, you
16 just -- they just take it off of you and you don't see --

17 A. Once they take it off, I don't know where it goes.
18 After I take it off, I mean, I just hand it to them.

19 Q. Right, but you don't know anything else, right?

20 A. No, right.

21 Q. Okay. But there is stuff on here -- I mean -- I
22 started off that question badly.

23 There is stuff that happened that night that's not on
24 this video, right?

25 A. Everything that happened is on the video.

1 Q. Well, we don't see you at the sheriff's office. Were
2 you there that night at the sheriff's office?

3 A. If it's not on the video, like I say, we may have met
4 them in the car sometimes because they wired us up there.

5 Q. So maybe you didn't go to the sheriff's office?

6 A. We may have not. That's what I said, I don't remember.

7 Q. You might have just met them at the car?

8 A. Sometimes it was at the Limestone plant, yes.

9 Q. Well, if you -- so you might have -- if it's not on the
10 video, then you probably didn't meet them at the sheriff's
11 office then, did you?

12 A. Yes, sir.

13 Q. Okay. And when you get back to the car, this doesn't
14 show you giving the detectives anything, does it?

15 A. Uh-uh.

16 Q. No? It doesn't, does it?

17 A. No, on the video it don't.

18 Q. And it doesn't even show anything that was given to you
19 or Mr. Owensby, does it?

20 A. It shows him handing us the drugs. We handed him -- or
21 handled him the money.

22 Q. Does it show the drugs on the video?

23 A. I thought it did.

24 Q. Okay. Well, let's kind of -- let's take this a little
25 bit at a time here.

1 If you don't mind cutting those lights back off.

2 Can you see this okay?

3 A. Uh-huh.

4 Q. Okay.

5 (Video played)

6 BY MR. RHODEN:

7 Q. All right. Right there.

8 (Video stopped)

9 BY MR. RHODEN:

10 Q. Let me back that up again.

11 All right. That shows a \$20 bill, is that
12 correct?

13 A. Uh-huh.

14 Q. And who has that \$20 bill at that particular point in
15 time?

16 A. Michael.

17 Q. Michael has --

18 A. Michael.

19 Q. Michael has the \$20 bill?

20 THE COURT: Just what is the --

21 JURY FOREPERSON: Could we move back to watch this
22 because it's so close and we are not able to see it?

23 THE COURT: Okay, sure, yeah. You all can step
24 out. If you will, you can just line up in front of the box
25 right there. Will that work for you?

1 (Whereupon, the jurors left the jury box)

2 THE COURT: Mr. Rhoden, let me ask you if you
3 would move that podium over towards this table.

4 Well, let's don't go back that far. Let me just
5 ask you -- you see where that table is right in front of the
6 jury box?

7 JURY FOREPERSON: Okay.

8 THE COURT: Yeah, right in there. Will that help
9 you?

10 JURY FOREPERSON: Yes, sir, that's fine.

11 THE COURT: Y'all move towards the jury box. Kind
12 of right in there.

13 Is that good for you? Can everybody see it fine?

14 JURY FOREPERSON: That's fine.

15 THE COURT: Okay.

16 BY MR. RHODEN:

17 Q. So that is the \$20 bill that Michael has, is that
18 correct?

19 A. Yes.

20 Q. That's Michael Owensby?

21 A. Yes.

22 (Video played)

23 BY MR. RHODEN:

24 Q. So we see Michael going into this convenience store,
25 correct?

1 A. Yes, sir.

2 (Video stopped)

3 BY MR. RHODEN:

4 Q. Now, Michael is handing the \$20 bill to the clerk
5 behind the counter, is that right?

6 A. Yes.

7 Q. Okay.

8 (Video played)

9 (Video stopped)

10 BY MR. RHODEN:

11 Q. Now, the voice that we heard on that video calling out,
12 was that your voice?

13 A. Yes, it was.

14 Q. And you are calling out Aaron, is that correct?

15 A. Aaron.

16 Q. Aaron?

17 A. Uh-huh.

18 Q. Okay. Is that somebody else that you saw that night?

19 A. Yeah, he was standing at the store. He always stands
20 at the store. Can you remember where somebody is at, you
21 ask him, and he usually will --

22 Q. My question -- if you will listen to my question, my
23 question is was that somebody else that you saw that night?

24 A. Yes, it was.

25 Q. And this was Aaron?

1 A. Aaron.

2 Q. Aaron?

3 A. Uh-huh.

4 Q. Do you know Aaron's last name?

5 A. No, I don't.

6 Q. Is Aaron here?

7 A. No, he's not.

8 (Video played)

9 (Video stopped)

10 bY MR. RHODEN:

11 Q. All right. Now, who is this guy?

12 A. That's Aaron.

13 Q. That's Aaron? That's the one that you were talking
14 about?

15 A. Yes.

16 Q. Okay. So that's him?

17 A. Uh-huh.

18 (Video played)

19 (Video stopped)

20 bY MR. RHODEN:

21 Q. All right. On this video -- we see in the bottom
22 left-hand corner there we see -- well, it looks to me like
23 four different people. Do you know any of them?

24 A. I'm not sure.

25 Q. You are not sure?

1 A. Uh-uh.

2 Q. But you saw those people that night, too, right?

3 A. There was people in the parking lot, but I just
4 talked -- there was a girl and a boy that pulled up in a
5 black car, I talked to them.

6 Q. All right. Well, we hear a female. There is a female
7 voice on this a lot. Is that you when we hear a female
8 voice mainly?

9 A. It may have been, probably.

10 Q. When you yelled out to Aaron and you were talking to
11 Aaron?

12 A. Yes.

13 (Video played)

14 (Video stopped)

15 BY MR. RHODEN:

16 Q. All right. Now, that's your buddy, Mr. Owensby, right?

17 A. Yes, it is.

18 Q. All right. And, of course, he's there with you the
19 whole time, correct?

20 A. Yes.

21 Q. Now, we don't see him a lot of times, though, right?
22 On the video you don't see him the whole time, do you?

23 A. Who, Mr. Owensby?

24 Q. Yes.

25 A. Yes, he's on the video all the time.

1 Q. I mean but sometimes you don't see him, right?

2 A. If that camera is on him, you don't see him, but other
3 than that you see him.

4 Q. That's what I'm saying. A lot of times you don't
5 see -- you don't see him on the video? He kind of comes and
6 goes, doesn't he?

7 A. Uh-huh.

8 Q. Now, what's he putting underneath his shirt there,
9 getting out from underneath his shirt? Have you got any
10 idea what he's doing there?

11 A. Yeah, he's just got a habit of doing that with his
12 shirt. That's just him.

13 Q. Okay. Well, is he getting something out from
14 underneath his shirt there?

15 A. No, it's just a habit of him putting his hand under his
16 shirt.

17 Q. Okay. So you are saying he didn't get anything from
18 out underneath his shirt?

19 A. No.

20 Q. All right.

21 (Video played)

22 (Video stopped)

23 BY MR. RHODEN:

24 Q. All right. We hear you talking. You are -- obviously
25 you are not talking to Mr. Owensby?

1 A. No, I was talking to somebody, but I don't know who it
2 was.

3 Q. All right. Well, is it somebody that you knew, because
4 you are talking like you knew them?

5 A. Probably.

6 THE COURT: Wait a minute. Don't turn your face
7 away and look at that when you answer questions. I need you
8 to speak into that microphone.

9 A. Yeah, I probably knew them, but, I mean, I couldn't
10 tell you who it was. I don't remember who it was.

11 BY MR. RHODEN:

12 Q. All right. So you don't know who else was there?

13 A. There's people coming up in the parking lot, you see
14 them, you know them, you talk to them.

15 Q. Well, I know that, but this is a particular event we
16 are here trying today. I'm just asking you if you know who
17 these people are that you are talking to?

18 A. I probably do, but I can't remember exactly who I was
19 talking to, but if I was talking to them, I probably knew
20 them.

21 Q. All right. Well, my question is do you remember who
22 they were?

23 A. No.

24 Q. So you couldn't give us -- you couldn't tell us today
25 who they were?

1 A. No.

2 Q. Did you tell the detective, the narcotics officers, who
3 they were?

4 A. No.

5 Q. Did they even ask?

6 A. Yeah, they asked me who I was talking to and I told
7 them I don't remember. I don't remember who all I was
8 talking to.

9 Q. All right.

10 (Video played)

11 (Video stopped)

12 BY MR. RHODEN:

13 Q. Now, there was a girl there that we kind of missed. I
14 wasn't quick enough on the draw there.

15 Back it up just a minute.

16 (Video played)

17 (Video stopped)

18 BY MR. RHODEN:

19 Q. That girl right there, do you know who she is?

20 A. She looked familiar, but I don't remember what her name
21 is.

22 Q. Okay. Well, is that the one that you were talking to?

23 A. They stayed at the store all the time.

24 Q. Is that the one that you were talking to?

25 A. I'm not sure.

1 Q. Okay. I mean, she's right there when all this is going
2 on, supposedly, right?

3 A. Yeah, but I'm not sure she was one I was talking to.

4 Q. Okay.

5 A. Other than saying hey, or something like that, she
6 hangs out at the store.

7 Q. Okay. So you are talking this whole time, is that
8 correct?

9 A. Yes.

10 (Video played)

11 (Video stopped)

12 BY MR. RHODEN:

13 Q. Now, somebody hands something to Mr. Owensby there.
14 What's that all about?

15 A. Can you rewind it?

16 Q. Pardon me?

17 A. Can you remind it? I didn't see it.

18 Q. Sure. Glad to.

19 (Video played)

20 (Video stopped)

21 BY MR. RHODEN:

22 Q. Now, there is somebody handing something to Mr. Owensby
23 there. What's that all about?

24 A. That was somebody just walking around handing out cards
25 like I guess from a church or something.

1 Q. What's her name?

2 A. Oh, I don't know.

3 Q. Where is that card?

4 A. I have no idea.

5 Q. You said she was handing out cards?

6 A. Cards, like --

7 Q. Yeah, cards.

8 A. Yeah.

9 Q. Well, I'm asking you where is the card? If there is a
10 card that's being handed out, where is it?

11 A. I don't know what he done with it. She handed it to
12 Michael. It's a church card or something, had the church's
13 name and stuff trying to get him to go.

14 Q. All right.

15 A. I don't know where the card is at.

16 Q. Well, did you -- did Michael give it -- did you see
17 Michael give a card to the police officer?

18 A. No.

19 Q. Did they ask him about the card?

20 A. I'm not sure.

21 Q. Did you ever see this supposed card again?

22 A. I guess he don't have the card no more. I didn't see
23 it no more.

24 Q. All right.

25 (Video played)

1 (Video stopped)

2 BY MR. RHODEN:

3 Q. Now, that looks like some money, right?

4 A. Uh-huh.

5 Q. Right. Handing out some money, right?

6 A. Me handing him the drugs and --

7 THE COURT: Use the microphone, please.

8 A. He handed him the drugs and the money.

9 BY MR. RHODEN:

10 Q. Pardon?

11 A. The drugs and the money.

12 Q. So Mr. Owensby handed him the drugs and the money?

13 A. No, Mr. Owensby gave him the \$20, and he gave him the
14 drugs and I guess the other 10 back.

15 Q. Okay.

16 (Video played)

17 (Video stopped)

18 BY MR. RHODEN:

19 Q. Did you see anything in his hands at all?

20 A. (No response).

21 Q. Do you want me to rewind that?

22 (Video played)

23 (Video stopped)

24 A. That's where he just handed him the drugs and then he
25 handed him the money.

1 (Video played)

2 (Video stopped)

3 BY MR. RHODEN:

4 Q. You never see anything in his hand, do you?

5 A. He had his hand like that when he handed him the drugs.

6 Q. I'm asking you on this video did you see anything in
7 his hand?

8 A. You can't actually see the crack cocaine personally,
9 but he handed it to him.

10 THE COURT: Use the microphone.

11 BY MR. RHODEN:

12 Q. My question is do you see anything on this video, any
13 drugs at all in his hand on this video?

14 A. No.

15 (Video played)

16 (Video stopped)

17 BY MR. RHODEN:

18 Q. Now, I played it for a little while. We don't Mr.
19 Owensby at all, do we?

20 A. No.

21 (Video played)

22 (Video stooped)

23 BY MR. RHODEN:

24 Q. Now, you have got the camera on you, so you are
25 approaching these people in the car, correct?

1 A. Yes.

2 Q. Now, who are these people?

3 A. They were friends that I knew. I was just talking to
4 them.

5 Q. All right. Who is the girl?

6 A. Her name is Tara, but I'm not for sure of her last
7 name.

8 Q. But she's somebody that you know?

9 A. Yes.

10 Q. All right. Who is the guy?

11 A. His name is Loto, but I don't know his last name.

12 Q. His name is what?

13 A. Loto.

14 Q. Loto?

15 A. Yes.

16 Q. Is he somebody else that you know?

17 A. Yes.

18 Q. All right. And you told the police officers their
19 names and addresses so they could get a hold of them,
20 correct?

21 A. No, not -- they asked me who they were and I told them
22 their name, but I don't have no address or anything like
23 that.

24 Q. Well, you could get ahold of them if you needed to,
25 couldn't you?

1 A. Not now.

2 Q. Well, back then, August 26th, 2009, right?

3 A. Yeah, back then I could, yeah.

4 Q. Okay.

5 (Video played)

6 (Video stopped)

7 BY MR. RHODEN:

8 Q. All right. Now, tell me on that video where it shows
9 you giving whatever it was to Detective Burgess.

10 A. It isn't. I guess they cut it off.

11 Q. Okay. Or Mr. Owensby giving anything to Detective
12 Burgess. It doesn't show anything, does it?

13 A. No, but they always said it and I always make sure they
14 got it back.

15 Q. All right. So basically on the video we don't -- it
16 starts off in darkness and it ends in darkness, doesn't it?

17 A. Yes.

18 Q. And during this video we see Mr. Owensby from time to
19 time, but a lot of times we don't see where or what he's
20 doing, do we?

21 A. Not other than walking in front of me.

22 Q. Okay. And, of course, we don't -- we never see your
23 face, because you got the camera on, right?

24 A. Yes.

25 Q. And we never see what goes on on one side or the other

1 side or behind you, correct?

2 A. No.

3 Q. I mean, we are just seeing what's in front of you,
4 correct?

5 A. Uh-huh.

6 Q. Now, after you got in the car -- you did get in the car
7 with the detectives, right?

8 A. Yes.

9 Q. They took you back to the station?

10 A. I can't remember if we went back to the station.
11 Sometimes they just dropped us off, or we left from there
12 after we gave them back the drugs and stuff, after we was
13 done. Sometimes we walked. Sometimes we go back to the
14 police station.

15 Q. Well, I'm not asking you about sometimes. I'm asking
16 you about what happened on August the 26th of 2009. Did you
17 go back to the police station then or not?

18 A. I don't think so.

19 Q. You don't think so?

20 A. I'm not sure, but I don't think so.

21 Q. Maybe?

22 A. Because usually at night they just let us go from there
23 and we turn it in in the car or whatever.

24 Q. And it doesn't show you giving the detectives or Mr.
25 Owensby giving the detectives back the change, does it?

1 A. No.

2 Q. And, of course, you did give the money back that wasn't
3 used, right?

4 A. Yes, we gave it back. Sometimes they will let us keep
5 it.

6 Q. All right. Well, they don't always let you keep it?

7 A. Most of the time if we have any money left, if we don't
8 make a whole buy they do.

9 Q. Okay. Well, do you give it back sometimes to them?

10 A. Yeah, we sold it to them and --

11 Q. Is that kind of your tip? Is that what that is?

12 A. No, I guess they just give it to you.

13 Q. All right. Now, the solicitor showed you this bag
14 that's been marked -- well, I don't guess it's been put into
15 evidence yet, but it's been marked for identification,
16 State's Exhibit No. 2, and asked -- the solicitor asked if
17 you could identify the stuff in that little bag. I mean, is
18 this is magic stuff that's got your name written on it or
19 something? I mean, you don't know what that is, do you?

20 A. That's crack cocaine.

21 Q. All right. Well, do you know that crack cocaine from
22 some crack cocaine that was put in there yesterday?

23 A. No.

24 Q. I mean, you can't say that that's the crack cocaine or
25 that's the white stuff that you had that night, can you, or

1 that Mr. Owensby had that night, can you?

2 A. No.

3 Q. I mean, but just by looking at that, you don't -- you
4 don't know how it got in there, do you?

5 A. No. They put it in there when we gave to them, I
6 guess.

7 Q. Well, did you put it in there?

8 A. I didn't put it in there.

9 Q. Did you put it in that little bag?

10 A. No.

11 Q. Did you put it in the big bag?

12 A. No.

13 Q. So you didn't do any of that?

14 A. No.

15 Q. So as far as you know, that could have been put in
16 there last week, or last month, or yesterday?

17 A. I don't know when it was put in there. I know when I
18 gave it back to them, they took it from there.

19 Q. Okay. All right.

20 THE COURT: Yes, ma'am.

21 JURY FOREPERSON: Will we get to see the crack
22 cocaine? I have never seen it before, so I don't know how
23 small --

24 THE COURT: You are going to get to see anything
25 that's introduced into evidence.

1 JURY FOREPERSON: Okay.

2 THE COURT: They are talking about it right now,
3 but it has not been introduced, so you will not be permitted
4 to have it until such time as it comes in.

5 BY MR. RHODEN:

6 Q. But just looking at this, you don't know what it is or
7 when it got there or how it got there, do you?

8 A. It looks like crack, but after I give it back to them,
9 I don't know when they put it in there.

10 Q. Okay.

11 A. I'm not told their time of day or anything like that.

12 Q. Okay. You just give it and leave, or whatever? You
13 don't see them do anything with it?

14 A. Exactly.

15 Q. So basically on August the 26th of 2009, you get back
16 to the car, give them whatever you got and you get the heck
17 out of Dodge, right?

18 A. Yes.

19 Q. All right. Sometimes you keep the tip and sometimes
20 you don't?

21 A. Yeah.

22 Q. And, of course, you -- do you still keep up with Mr.
23 Owensby?

24 A. No.

25 Q. No. Y'all are on the outs now? Y'all don't keep up

1 with each other?

2 A. I don't talk to him unless I have to and that's only
3 because my little girl is concerned. Other than that I
4 don't talk to him. I don't know about him.

5 Q. When was the last time that you saw him?

6 A. This morning.

7 Q. Okay. Thank you.

8 MR. RHODEN: That's all I have..

9 REDIRECT EXAMINATION BY MS. LESKANIC:

10 Q. Mr. Rhoden was asking you about other individuals that
11 are on the video, Aaron and the girl that was standing out
12 there?

13 A. Yes.

14 Q. Do any of those individuals have anything to do with
15 the transaction that took place?

16 A. No, ma'am.

17 Q. Did they have -- did they give you anything that
18 appeared to be crack cocaine?

19 A. No, ma'am.

20 Q. Did you or Michael give them any money for anything
21 that appeared to be crack cocaine?

22 A. No, ma'am, I have never bought nothing from them and
23 they didn't know they were on that video.

24 Q. Did you make a buy of crack cocaine that night, or what
25 appeared to be crack cocaine?

1 A. Yes, ma'am.

2 Q. And who did you make that buy from?

3 A. 1-9.

4 Q. Do you see 1-9 in the courtroom right now?

5 A. Yes, ma'am.

6 Q. And where is he?

7 A. Right there.

8 Q. Okay. What's he wearing?

9 THE COURT: Describe right there it is for the
10 record.

11 A. The white shirt sitting beside Mr. Rhoden.

12 MS. LESKANIC: Please let the record reflect she's
13 identified the defendant as 1-9.

14 THE COURT: The record shall reflect it.

15 MS. LESKANIC: Thank you.

16 BY MS. LESKANIC:

17 Q. Now, also I want to be clear, because you testified a
18 little differently on whether he handed the drugs to you. I
19 think you stated on direct he gave the drugs to you and you
20 gave him \$10 for the buy and you took it back and gave it to
21 Detective Burgess, is that correct?

22 A. Yes, ma'am.

23 Q. Okay. Let's just watch the -- we can cut the lights
24 for just a second.

25 MS. LESKANIC: May she step down for a second,

1 Your Honor?

2 THE COURT: She may.

3 BY MS. LESKANIC:

4 Q. Will you please step down to get a good view. I know
5 it's difficult seeing in that position to watch the video.
6 Just watch from this point.

7 (Witness off the witness stand)

8 (Video played)

9 (Video stopped)

10 BY MS. LESKANIC:

11 Q. Can you tell me what -- all right. Back it up just.

12 (Video played)

13 (Video stopped)

14 BY MS. LESKANIC:

15 Q. All right. Can you tell me what 1-9, that the
16 defendant is doing right there?

17 A. He was getting the crack ready.

18 Q. Getting the crack ready. What do you to -- what is he
19 doing --

20 MR. RHODEN: Your Honor, I'm going to object.

21 This isn't in response to anything that was brought up on
22 cross.

23 THE COURT: Overruled.

24 You are going to have to speak loudly because you
25 have got the court reporter behind you and he has to hear

1 you, and so everybody has to hear you.

2 A. Right there, breaking it, or whatever they do before he
3 brings it to us.

4 BY MS. LESKANIC:

5 Q. I'm sorry, could you say that again?

6 A. I guess it would be he's like breaking it or --

7 MR. RHODEN: Your Honor, I'm going to object,
8 unless she knows. Now this is just pure conjecture on her
9 part.

10 THE COURT: All right. You can only testify as to
11 what you know, not what you guess has occurred. You can
12 testify as to what you saw, what you heard, what you felt,
13 what you perceived, but not what you think somebody else
14 might be thinking or doing. Only what you observed.

15 BY MS. LESKANIC:

16 Q. What did you observe the defendant doing at this point
17 in the video?

18 A. Getting the drugs ready for us.

19 Q. Okay.

20 (Video played)

21 (Video stopped)

22 BY MS. LESKANIC:

23 Q. Okay. Who is he handing the drugs to --

24 A. Michael.

25 Q. -- and the money to?

1 A. Michael.

2 Q. Okay. All right. Who is on the top right part of the
3 screen? Is that Michael or --

4 (Video played)

5 (Video stopped)

6 A. That was my hand. Michael is standing beside me and he
7 is handing me the drugs.

8 BY MS. LESKANIC:

9 Q. So in reviewing the video, he handed you the drugs?

10 A. Yes, ma'am.

11 Q. And you had money in your hand?

12 A. Yes, ma'am.

13 Q. All right. Do you need to watch that again to be sure?

14 A. Yes.

15 Q. All right. Please play that one more time. I just
16 want to be certain.

17 (Video played)

18 (Video stopped)

19 BY MS. LESKANIC:

20 Q. So who were the drugs handed to?

21 A. It looked like I handed him the money and he handed me
22 the drugs and I handed him the money.

23 Q. Okay.

24 A. Michael is standing beside me.

25 Q. If you will, you can have a seat back on the witness

1 stand.

2 (Witness back on the witness stand.)

3 BY MS. LESKANIC:

4 Q. And then from that point you all walked back and talked
5 to the people --

6 A. Yes, ma'am.

7 Q. -- and walked back to the car?

8 A. Yes, ma'am.

9 Q. But the other individuals that were out there, they
10 didn't have anything to do with that transaction?

11 A. No, ma'am.

12 Q. Is the defendant the only one that you dealt with on
13 this video?

14 A. Yes, ma'am.

15 Q. All right. Thank you very much.

16 MR. RHODEN: May it please the court.

17 RECROSS EXAMINATION BY MR. RHODEN:

18 Q. Okay. Now, Ms. Jackson, you don't know who got the
19 drugs now, do you? You say -- you told me on
20 cross-examination that you got the -- I mean that Michael
21 got the drugs, and now you say that you got the drugs?

22 A. I -- I couldn't remember, but you see him handing me
23 the drugs. I handed him the money. Michael is standing
24 beside me, but it's my hand going to his.

25 BY MR. RHODEN:

1 Q. Well, why did you tell me just not ten minutes ago that
2 it was Michael that got the drugs?

3 A. Because I couldn't remember. I thought --

4 THE COURT: Well, that video is not on up there,
5 so don't look at it. Speak into that microphone, please.

6 BY MR. RHODEN:

7 Q. So my question is why did you tell me 10 or 15 minutes
8 ago that Michael got the drugs?

9 A. Because I didn't -- I couldn't remember. There it
10 showed on the video he was handing me the money.

11 Q. What I'm asking you now, okay, now, this very moment,
12 do you really remember who got the drugs, whether it was you
13 or Michael?

14 A. Now that I have seen the video, I have.

15 Q. Well, you told us a little while ago you already
16 watched the video before you even came in here.

17 A. I have seen the video.

18 Q. I mean, the solicitor has asked you question does this
19 video accurately depict what happened that night and you
20 said yes, and she asked you whether you have reviewed it,
21 right?

22 A. Yes.

23 Q. All right. But even though you had reviewed the video,
24 you told me earlier that Michael got the drugs.

25 A. I thought he did until I re-watched the video.

1 Q. All right. And until just that very moment a few
2 minutes ago, now it's you that got the drugs?

3 A. Yes.

4 Q. Right?

5 A. Yes.

6 Q. All right. And then you gave the drugs back to
7 Michael? Is that the way it worked?

8 A. No, I gave the drugs to Jason when we got back to the
9 car.

10 Q. Are you sure? Are you sure that it wasn't Michael that
11 gave the drugs to Jason?

12 A. No, I'm pretty sure I'm the one that gave the drugs to
13 Jason.

14 Q. Well, I'm asking you if you are sure, not pretty sure,
15 if you are positive it was you and not Michael?

16 A. Yeah.

17 Q. Pardon?

18 A. Yes.

19 Q. All right. So if you are now so sure, the explanation
20 that you have for telling me on cross-examination a minute
21 ago it was Michael, you just had forgotten it, is that
22 right?

23 A. No, I'm trying to remember after I watched the video.
24 I thought Michael was the one that got them, but it showed
25 him handing it to me in my hand.

1 Q. Okay. All right.

2 But you don't remember who it was that you were talking
3 to, because you were talking the whole time while this was
4 going on. You don't know --

5 A. No, I know a lot of people at the store. I talked to
6 everybody, but I can't remember exactly who it was.

7 Q. Okay. All right.

8 MR. RHODEN: All right. Thank you. That's all I
9 have.

10 MS. LESKANIC: No redirect, Your Honor.

11 THE COURT: You may step down.

12 MR. KENDALL: The State calls Jason Burgess, Your
13 Honor.

14 OFFICER JASON BURGESS, having been first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. KENDALL:

17 Q. Mr. Burgess, could you please state your complete name
18 for the record, please?

19 A. Jason Burgess.

20 Q. Mr. Burgess, where are you employed?

21 A. Cherokee County sheriff's office.

22 Q. How long have you been with the sheriff's office?

23 A. Right at 15 years.

24 Q. What is your rank?

25 A. I'm a lieutenant right now on the road.

1 Q. What were you doing -- where were you working with the
2 sheriff's office in September of 2009?

3 A. In narcotics.

4 Q. And were you working at the sheriff's office in
5 narcotics on August 26th, 2009?

6 A. Yes, sir.

7 Q. And on that night did you conduct a video buy?

8 A. Yes, sir.

9 Q. Now, could you please basically describe that process
10 for me?

11 A. Basically we will get our CI's and they will come in
12 and pretty much we wire them up.

13 Q. And on this case who was your CI?

14 A. Felicia Jackson.

15 Q. So she came and met you?

16 A. Uh-huh.

17 Q. And what did she do from there?

18 A. We wired her up. We drove her to, like I say, the
19 little flea market over on Sixth Street and Cherokee Avenue
20 right a couple houses down from Sixth Street on Cherokee
21 Avenue. Give her the \$20 bill and let her out and she went
22 to --

23 Q. Was she --

24 A. -- purchase some crack cocaine.

25 Q. Was she with anybody at that time?

1. A. Yes, sir.

2. Q. And did you search?

3. A. Yes, sir.

4. Q. Okay. And as a result of this search did you find any
5. narcotics anywhere on them at that time before they went
6. out?

7. A. No, sir.

8. Q. Okay. Once they went out, what did you y'all do?

9. A. We stayed in position and just waited on them to come
10. back.

11. Q. And did they come back?

12. A. Yes, sir.

13. Q. Did they have anything with you -- or excuse me, with
14. them, I'm sorry?

15. A. Yes, sir.

16. Q. And what was that?

17. A. It was a white colored rock-like substance believed to
18. be crack cocaine.

19. Q. And what did you do with that white rock-like substance
20. believed to be crack cocaine?

21. A. I had a vanilla envelope and when they got back,
22. they -- or Felicia dropped it into the bag for me.

23. Q. Okay.

24. MR. KENDALL: May I approach, Your Honor?

25. THE COURT: Yes.

1 MR. KENDALL: I'm using State's Exhibit 2, Mr.
2 Rhoden.

3 BY MR. KENDALL:

4 Q. In your hand is State's Exhibit 2, which is, amongst
5 other things, some rock-like substance. Is that consistent
6 generally with about the quantity that you received that
7 night?

8 A. Yes, sir.

9 Q. And also in that packaging is a manilla envelope. It's
10 got all sorts of writing on it.

11 A. Yes, sir.

12 Q. Let's start with you explaining what the manilla
13 envelope was used for.

14 A. Basically any time I would go out and we had purchased
15 some illegal narcotics or anything like that, I would always
16 keep this envelope like this right here and I would write
17 the date on it and the time, and I would put some kind of --
18 something I would recall who my CI was on it, and basically
19 who -- if we had a nickname or a name of a subject that we
20 purchased from, I would write it on there.

21 Q. What notations are on specifically that bag?

22 A. The date is 8-26-09. It's at 2122. White female with
23 white male, which would be our CI's. Crack cocaine buy.
24 Subject as a/k/a 1-9. Sixth Street, Cherokee Avenue.

25 Q. So that's what you identified. Where did you -- when

1 did you write that on there?

2 A. That night when she give it to me.

3 Q. All right. And once it was put in that manila
4 envelope, did you ever take it out of the manila envelope?

5 A. No, sir.

6 Q. So it stayed in there?

7 A. Yes, sir.

8 Q. Also in that container is a real small bag, a real
9 small bag.

10 A. Yes, sir.

11 Q. Did you guys put that in there, or did that get in
12 there later?

13 A. I'm assuming that came with -- I'm not for sure if I
14 put it in there. If -- when it came, I'm thinking that's
15 from the SLED, maybe.

16 Q. Okay. Okay.

17 Once you got back to the sheriff's office with your
18 envelope, what did you do with it?

19 A. We put it in the best bag.

20 Q. What is a best bag?

21 A. Best bag basically it's a sealed package that would be
22 tamperproof, pretty much for chain of custody purposes.

23 Q. Are there any other documents that are put in the best
24 bag?

25 A. Yes, sir.

1 Q. And what do those documents indicate?

2 A. Once we get like the name of the suspect, we put it on
3 there. We have to put all our information, who is sealing
4 it. You know, everything that belongs with the case.

5 Q. Now, what happens if you don't put those documents in
6 the bag?

7 A. If it's not put in correctly, the SLED, you can't send
8 it up. They have to have all the information. It has to be
9 all in there correctly.

10 Q. So if it's not in there, you have to reopen it?

11 A. Yes, sir, but you can't just reopen it. It's not
12 reusable.

13 Q. Okay. So if you don't put the documents in there, you
14 have to reopen it and you can't reuse the bag?

15 A. No, sir.

16 Q. So then what would you do then?

17 A. Basically on this -- on something like that right
18 there, if you left something out or something wasn't
19 documented on the paper, you would have to pretty much
20 destroy that bag and redo another best bag.

21 Q. And did that happen in this case?

22 A. Yes, sir.

23 Q. And so you put it in another best bag?

24 A. Yes, sir. I left off the case number. And once I
25 sealed the bag, I re-looked and observed the case number

1 wasn't on it, which is vital information we had written on
2 it.

3 Q. Once you put it back into that best bag, what did you
4 do with it then?

5 A. Basically I -- are you just talking about what do I do
6 once I sealed it and took it?

7 Q. Yes, sir.

8 A. As soon as you seal it up the bag, and we do that, we
9 will take it to our evidence drop box.

10 Q. What exactly -- what is the evidence drop box?

11 A. It's located in the hallway of the sheriff's office.
12 It's just basically a small door with a flap in it that we
13 will slide this into and it's sort of protected in the vault
14 until our evidence guy comes in and retrieves it.

15 Q. So it's like a secure --

16 A. Yes, sir.

17 Q. A secure vault?

18 A. Yes, sir.

19 Q. Okay. And do you recognize what's marked as State's
20 Exhibit 2?

21 A. Yes, sir.

22 Q. And is that the narcotics that you retrieved from Ms.
23 Jackson the night of August 26th?

24 A. Yes, sir.

25 Q. Okay. We have touched on the second bag. You unsealed

1 one best bag, placed some documents in there and used a
2 separate best bag?

3 A. Yes.

4 Q. At any time did you ever take it out of the manila
5 envelope?

6 A. No, sir.

7 Q. So it stayed in the manila envelope the entire time?

8 A. Yes, sir.

9 Q. The manila envelope in the sealed best bag for the
10 evidence, it also went into an evidence locker that is also
11 secure?

12 A. Yes.

13 MR. KENDALL: I have no further questions, Your
14 Honor.

15 MR. RHODEN: May it please the court?

16 CROSS EXAMINATION BY MR. RHODEN:

17 Q. Okay. Detective Burgess, first of all, who searched
18 Ms. Jackson?

19 A. I did.

20 Q. All right. You did not have a female officer to search
21 Ms. Jackson?

22 A. No, sir.

23 Q. You did a full body search of Ms. Jackson?

24 A. No, sir.

25 Q. Okay. So you did not do a complete search of Ms.

1 Jackson?

2 A. No, sir.

3 Q. Okay. Did Ms. Jackson kind of -- did she enlighten you
4 that she and her friend, Mr. Owensby, only used 10 bucks
5 instead of 20 bucks?

6 A. Yes, sir.

7 Q. Okay. So why did you put in your report that it was a
8 \$20 purchase?

9 A. I give her 20 bucks and I just -- I reckon I just put
10 \$20. Maybe a typo. I should have put 10.

11 Q. Well, you know, if you look at your report, it's in
12 there on two different occasions. Do you make typos often?

13 A. No, sir.

14 Q. I mean, 10 and 20, I mean, they got a lot more letters
15 than the words. It would be kind of hard to make a typo
16 that turns out to be 20, when it's supposed to be \$10,
17 right?

18 A. I give her \$20.

19 Q. Okay. Well, so my question is did she lie to you when
20 she came back and said she spent \$20 and you are just now
21 finding this out as this case goes along?

22 A. No, sir.

23 Q. Well, why in the world would you put \$20 in your report
24 if it wasn't true?

25 A. I just give her 20 bucks. She brought me back the

1 crack. I didn't weigh it, so I don't know how much she
2 spent on that point, and she kept 10. She kept 10.

3 Q. Well, that's the point. That's the point.

4 My question is this. I don't know if you didn't
5 understand. My question is -- my question is this, which
6 when she came back to the car, to the department, wherever
7 she came back to that night, did she tell you that she stuck
8 \$10 or Mr. Owensby stuck 10 of the 20 in their pocket?

9 A. I don't recall if she did or not.

10 Q. Well, she must not have, if you put \$20 in your report,
11 right?

12 A. If that's what I wrote.

13 Q. So she is deceiving you, isn't she?

14 A. No, sir.

15 Q. Well, she wasn't forthcoming about only spending \$10?

16 A. When she knows if I give her 20, if she has something
17 left over, that's just something that -- she knows I don't
18 really care.

19 Q. So y'all's policy is that you give these informants a
20 certain amount of money and if they use it all, fine? If
21 they don't, then they just keep it? That's what the policy
22 is of Cherokee County sheriff's department?

23 A. The way we did it, I give her \$20. If she bought a \$10
24 rock, she bought a \$10 rock. She brought us back a white
25 rock-like substance.

1 Q. Okay. So you didn't even ask her?

2 A. I don't recall. Probably didn't.

3 Q. Probably didn't.

4 All right. So when you typed up your report saying it
5 was 20 bucks, 20 bucks, but it's at some point in time you
6 find out it's 10, correct?

7 A. I reckon.

8 Q. Okay. Well, maybe it when 10. Maybe all this is just
9 wrong.

10 A. No.

11 Q. No? Well, when did you find out it was 10 and not the
12 20?

13 A. I didn't really ask her.

14 Q. Why it's not that, that is my question.

15 My question is when did you find out that it was 10 and
16 not 20?

17 A. After we watched and reviewed the video where I saw,
18 I'm assuming it got changed in the store, I never was really
19 told she got a 10 dollar rock.

20 Q. Okay. All right. So he goes to the store, Mr.
21 Owensby, and he hands the clerk something and he gets
22 something back. We don't really know what that was, do we?
23 You can't see it on the video?

24 A. I seen her give -- I seen her give the money.

25 Q. And we don't know what else happened, do we?

1 A. I'm not recalling what you are asking.

2 Q. I mean we don't know what happened in the store, do we?
3 You weren't there. The video doesn't show it.

4 A. No, sir, I wasn't there.

5 Q. Okay. And the video doesn't show it either, does it?

6 A. Doesn't show what?

7 Q. What happened when Mr. Owensby is standing at the
8 counter waiting on the clerk. We see his hand go over and
9 money is given to the clerk and we don't see anything else
10 after that, do we?

11 A. You seen it just like I did. I don't know.

12 Q. You don't know?

13 A. I seen what you seen.

14 Q. Okay.

15 So did you take Ms. Jackson and Mr. Owensby back to the
16 sheriff's office that night?

17 A. I don't recall if we did or not.

18 Q. Okay. And obviously you didn't completely search Ms.
19 Jackson when she came back to the car either, did you?

20 A. Our policy is we can't just actually search a female
21 like we would a male.

22 Q. Right. Right. That's my question is you didn't
23 completely search Ms. Jackson when she came back to the car
24 either, did you?

25 A. We did a search as good as we could.

1 Q. Well, I mean, so now it's as good as we can do it
2 without a female officer, right?

3 A. Yes.

4 Q. Okay. Well, if you had a female officer at the
5 beginning and the end, the female officer could have done a
6 real search, correct?

7 A. Yes.

8 Q. But that didn't happen here, did it?

9 A. No.

10 Q. Okay. So Ms. Jackson really was not completely
11 searched at the beginning or the end, was she?

12 A. She was searched.

13 Q. All right. By you?

14 A. Yes, sir.

15 Q. And you are only going to go so far, right?

16 A. Yes, sir, as earlier stated I searched her.

17 Q. Okay. Well, there were parts on her body you didn't
18 search, weren't there, because you are not allowed to by
19 sheriff's office policy, correct?

20 A. Yes, sir.

21 Q. All right. Okay. Now, we have these -- we have
22 certain little forms that you fill out and the solicitor has
23 asked you about some of this stuff that's contained in these
24 envelopes. We have got the brownish envelope inside of the
25 clear envelope that's inside this. I mean, that's clear

1 bags. What's the clear bags called?

2 A. Which clear bag? There is two there.

3 Q. Well, I'm saying the big clear bag that I got my hand
4 actually feeling?

5 A. That outer bag.

6 Q. The outer bag?

7 A. The outer bag. That's just a sealed bag that I
8 reckon -- I'm not sure who put that on there. I didn't.

9 Q. Okay. So the outer bag, you don't know how the stuff
10 got in the outer bag?

11 A. No, sir, unless it was sealed by SLED.

12 Q. You don't know how it happened?

13 A. I don't work at SLED.

14 Q. It's pretty simple. You don't know how it happened?

15 A. No, sir.

16 Q. Now, inside of the outer bag is another bag that's got
17 SLED drug analysis security envelope and stuff. Do you see
18 that?

19 A. Only -- yes, sir, I see that.

20 Q. Has this bag got some particular name?

21 A. That's the best bag.

22 Q. The best bag?

23 A. Yes.

24 Q. Now, up here on the top, this top, this yellow label
25 with numbers on it?

1 A. Yes, sir.

2 Q. Has that got a particular name for what those numbers
3 are?

4 A. I'm assuming that come from SLED, because it wasn't on
5 there when it --

6 Q. Okay. So that's not something that you put on there
7 either?

8 A. No, sir.

9 Q. Okay. Now, on the bag here, on the best bag, is
10 another number that 209192?

11 A. Yes, sir.

12 Q. Okay. Now, is that the number that's actually on the
13 best bag, that's printed on the best bag?

14 A. It's a control number. It's B-209 --

15 Q. Right, B-209192, correct?

16 A. Yes, sir.

17 Q. Okay. Now, that's the envelope we have now?

18 A. Yes.

19 Q. The best bag envelope?

20 A. Yes.

21 Q. And the best bag is really the control bag that you put
22 stuff in and seal it and it can't be unsealed, unless -- I
23 mean, it's a tamper-proof bag, correct?

24 A. Yes, sir.

25 Q. Okay. We have a form that's called Form B that is

1 filled out. Let me just show this to you. Do you recognize
2 that?

3 A. Yes, sir.

4 Q. All right. And at the top left-hand corner of that
5 document it's got a place for a control number, is that
6 right?

7 A. Yes, sir.

8 Q. And on that -- and that's a form that you fill out
9 routinely in drug cases, correct?

10 A. Yes, sir.

11 Q. All right. And did you fill that -- did you fill out
12 that control number?

13 A. Yes, sir.

14 Q. Now, on that particular form the one number is
15 scratched out and another number is written underneath
16 there, correct?

17 A. Yes, sir.

18 Q. And the first number appears to be B-208558. Is that
19 what it appears to be?

20 A. Yes, sir.

21 Q. All right. And that would be the control number of the
22 best bag, correct?

23 A. Of a best bag, yes, sir.

24 Q. Of a best bag.

25 And you wrote that number on there?

1 A. Yes, sir.

2 Q. Did you also scratch out that number?

3 A. Yes, sir.

4 Q. Okay. So now we have another number underneath that
5 that is the number of the best bag that we have in the
6 courtroom today, correct?

7 A. Yes, sir.

8 Q. What happened to the best bag that had the control
9 number 208558?

10 A. It's destroyed.

11 Q. And who destroyed that?

12 A. I did.

13 Q. And why did you destroy that?

14 A. Anytime that you fill out a best bag, when you put --
15 when you drop the narcotic in it, you have to also fill out
16 paperwork that goes along with it. On that paperwork you
17 have got a lot of information you have got to have, as far
18 as everything -- as far as you know, suspect, my
19 information, address and the sheriff's office, case numbers,
20 everything. Basically I sealed it. After I sealed it,
21 while I still holding it, I reviewed everything I had on it.
22 I observed that I left off the case number. You just can't
23 reopen this bag and just put something else on it and then
24 put it right back in. So at that point I had to destroy
25 that bag. I got a new best bag. And, as I said, I had to

1 redo all the paperwork. That number was scratched and put
2 on here. This dope never left my hands and it was done all
3 at once.

4 Q. All right. So when was it that you actually put the
5 substance in the first best bag?

6 A. About 10 minutes prior to this one.

7 Q. Well, but I don't know when that is. I'm asking --

8 A. That was on -- I'm just telling you it was on 8-26-09.

9 Q. Okay. About what time?

10 A. As soon as we got back to the office.

11 Q. Okay. Well, I think we have a time that we used as a
12 reference point of 9:22 p.m. is when everything kind of
13 began, is that correct?

14 A. Yes, sir.

15 Q. All right. So it would be sometime later in the
16 evening that you put the stuff in the best bag, correct?

17 A. When we retrieved -- when we got back to the office.

18 Q. Okay. Now, was Ms. Jackson and Mr. Owensby with you
19 when you went back to the office?

20 A. I believe I already answered that. I don't remember.

21 Q. You don't remember. Okay.

22 So at the very beginning of trying to put this stuff in
23 the best bag, you put it in a best bag and then had to
24 reopen it and put it in another best bag, right?

25 A. For the simple fact I left the case number off.

1 Q. All right. But you didn't preserve the original best
2 bag?

3 A. No, sir.

4 Q. You just threw it in the trash can?

5 A. Yes, sir.

6 Q. All right. So other than basically taking your word
7 for it today, we don't really know when the stuff got out of
8 the first best bag and put in the second best bag, correct?

9 A. I'm telling you I -- I'm testifying right now I'm
10 telling you it was ten minutes --

11 Q. That's why I --

12 A. -- after the first one.

13 Q. I'm just saying do we have any way of knowing, other
14 than you just telling us today?

15 A. I reckon not.

16 Q. Okay. And we don't even have the original best bag?

17 A. No, sir.

18 Q. Are you sure that control number is not associated with
19 another case?

20 A. I'm a hundred percent.

21 Q. All right.

22 Okay. And we don't have any videotape of when you met
23 up with Mr. Jackson and -- I mean Ms. Jackson and Mr.
24 Owensby to start with, correct?

25 A. No, sir.

1 Q. Because they were wired -- she was wired with the
2 camera at the sheriff's office?

3 A. Yes, sir.

4 Q. All right. And then taken to a location. So we don't
5 have any video of that process, correct?

6 A. No, sir.

7 Q. And do you agree with Officer Parker that in the entire
8 department of the Cherokee County sheriff's office that
9 y'all don't have any other video equipment, other than this
10 little camera that gets attached to somebody's shirt?

11 A. We don't video like us doing anything like that. We
12 put the video on and we go.

13 Q. That's not my question.

14 My question --

15 A. We do not have any other videos, no.

16 Q. So you agree with Officer Parker that the entire
17 Cherokee County sheriff's office has absolutely no other
18 video equipment other than this little camera?

19 A. I can tell you what's in our office.

20 Q. All right. So y'all had no way of preserving for us
21 today what transpired in the sheriff's office and what
22 transpired after Ms. Jackson got back to the police
23 department?

24 A. No.

25 Q. All right. So, Officer Burgess, is it safe to say that

1 by the time you got the substance from Ms. Jackson, put
2 it -- either took her back to the office or y'all take it to
3 the office and leave Ms. Jackson and Mr. Owensby somewhere
4 else and go through this process of putting it in the best
5 bag, filling it out wrong to start with, taking it out of
6 the first best bag, putting it in the second best bag, would
7 you agree with me by the time that you got it into the
8 evidence drop it was probably fairly late in the evening of
9 August the 26th of 2009?

10 A. It was put in there as soon as we got back to the
11 office.

12 Q. All right. Well, we started -- you are just not going
13 to answer, are you? You --

14 A. I have done answered your question.

15 Q. Do you remember when it was that you put it in the
16 evidence drop --

17 A. It was --

18 Q. -- at that time?

19 A. It usually takes about 30 minutes to fill out all the
20 paperwork.

21 Q. Okay. Do you even -- do we even think we are still in
22 8-26, and not maybe spilling into 8-27?

23 A. No, sir.

24 Q. So it was sometime before midnight?

25 A. Whatever is on that paperwork.

1 Q. What paperwork?

2 A. My paperwork is what time it was.

3 Q. Well, maybe there is something to enlighten us. I'm
4 sorry if I have overlooked it. Is there something --

5 A. It was a date.

6 Q. Well, I'm asking for times. Is there anything on here
7 that can tell us, tell me, tell these 12 folks over here
8 what time this envelope got put in the evidence drop box?

9 A. No, sir.

10 Q. So we don't know?

11 A. No.

12 Q. But it's obviously sometime after 9:22, because that's
13 when all this started, correct?

14 A. Yes, sir.

15 Q. Okay. In the evening, 9:22 p.m. --

16 A. Yes, sir.

17 Q. -- is when we started. Ms. Jackson goes her merry way
18 with Mr. Owensby. They come back. You go to the sheriff's
19 office. We do one best bag, you say it takes about 30
20 minutes to fill out. That got screwed up, got reopened.
21 Put in another best bag, takes another 30 minutes to fill
22 out?

23 A. No, sir.

24 Q. No, it doesn't take that long?

25 A. The first one takes about 30 minutes. The reason they

1 were scratched is because all I had to do is change the
2 numbers on it.

3 Q. All right. Okay.

4 So give me your best estimate, given all the
5 circumstances of that evening and trying to go back into
6 your mind and help us here as to when do you think that that
7 got put in the evidence box?

8 A. All I can tell you is it was on this date.

9 Q. 8-26?

10 A. Yes, sir. It was after she bought the dope. That's
11 all I can tell you.

12 Q. All right. That's all I'm going to ask you then.

13 Thank you.

14 A. Thank you.

15 MR. KENDALL: I'll be brief on redirect, Your
16 Honor.

17 REDIRECT EXAMINATION BY MR. KENDALL:

18 Q. Just to clear something up. I didn't do a very good
19 job the first time around.

20 We are here to talk about a whole bunch of bags, right?
21 I think it would make it a lot easier if we just kind of
22 share with everybody exactly what bag we are dealing with.

23 When you send this off to SLED --

24 A. Yes, sir.

25 Q. -- it doesn't look like this, does it?

1 A. No, sir.

2 Q. What bag does it go off to SLED? What's the outer
3 packaging of what you sent it off to SLED in?

4 A. The big brown -- this manila envelope.

5 Q. Okay. And what's inside of that?

6 A. Inside of it is this bluish colored bag with all the
7 writing on it.

8 Q. And that's what is commonly known as the best bag, is
9 that correct?

10 A. Yes, sir.

11 Q. And inside the best bag, in this case what did you put?

12 A. A white rock-like substance.

13 Q. What else did you put?

14 A. All the forms -- a form that goes with it.

15 Q. Did you put this manila envelope in there?

16 A. Yes, sir.

17 Q. All right. Now, you are looking at some manila
18 envelopes here, State's Exhibit No. 2, and there is a bunch
19 of writing on that?

20 A. Yes, sir.

21 Q. Is that your writing?

22 A. Yes, sir.

23 Q. When it goes off to SLED, it's all in a sealed
24 envelope, right?

25 A. Yes, sir.

1 Q. And when you get it back, it looks like this, correct?

2 A. Yes, sir.

3 Q. And this envelope right here was in that bag and you
4 got back from SLED that's standing right here right now,
5 correct?

6 A. Yes.

7 Q. And that handwriting in there is your handwriting,
8 correct?

9 A. Yes, sir.

10 Q. Now, the purpose of these best bags, why do you guys
11 use them? What's the whole purpose of this whole evidence
12 control thing?

13 A. Basically just protection of what we retrieved and
14 where we send it. It's basically a chain.

15 Q. To make sure that the dope in there is the one we are
16 accusing him of? Is that a fair way of saying chain?

17 A. Yes, sir.

18 Q. And throughout this entire process, from the second
19 Ms. -- the CI dropped it into that manila envelope --

20 A. Yes, sir.

21 Q. -- did it ever leave that manila envelope?

22 A. No, sir.

23 Q. While it was in your possession?

24 A. Yes, sir.

25 Q. While it was in your possession did it ever leave the

1 envelope?

2 A. No, sir, it never was taken back out of the envelope.

3 Q. And when you left it, when you put it in that evidence
4 drop box, is this manila envelope inside the best bag?

5 A. Yes, sir, completely sealed.

6 Q. And when you got it back, there is still the manila
7 envelope?

8 A. Yes, sir.

9 Q. And there is still the best bag that's in there,
10 correct?

11 A. Yes, sir.

12 Q. Okay. Let's briefly talk about this \$20 versus \$10
13 thing.

14 A. Yes, sir.

15 Q. You are the one making this case. Is it more important
16 to you the amounts or the fact it's being sold?

17 A. The fact it's being sold.

18 Q. So it's not a primary -- you are not going to use this
19 crack for anything yourself, correct?

20 A. No, sir.

21 Q. Just the issue of whether or not somebody sold this?

22 A. Yes, sir.

23 Q. And on August 26th, 2009, did you meet up with the CI
24 Felicia?

25 A. Yes, sir.

1 Q. Did you search her?

2 A. Yes, sir.

3 Q. And based on your 14 years, I believe it was, in law
4 enforcement, you conducted a search that satisfied you that
5 she did not have additional narcotics on her?

6 A. Yes, sir.

7 Q. Did you wire her with a video camera or a video button?

8 A. Myself and Todd Parker did.

9 Q. And did you send her out to make a drug buy?

10 A. Yes, sir.

11 Q. Did she come back with drugs?

12 A. Yes, sir.

13 Q. And did she put -- did you put those drugs in that
14 manila envelope?

15 A. Yes, sir, she put it in there.

16 Q. And after messing up one, you sealed it in the best
17 bag?

18 A. Yes, sir.

19 Q. And put it in the evidence drop box?

20 A. Yes, sir.

21 MR. KENDALL: No further questions, Your Honor.

22 MR. RHODEN: A couple on recross.

23 RECROSS EXAMINATION BY MR. RHODEN:

24 Q. Detective Burgess, of course, you weren't there when
25 any of this transaction took place, right?

1 A. No, sir.

2 Q. And you just have to rely on whatever you are given in
3 the patrol car as to where it came from, correct? I mean,
4 when Ms. Jackson brought you something, you weren't present
5 when she got it, right?

6 A. No, sir, I wasn't standing beside her, if that's what
7 you are asking me.

8 Q. What?

9 A. I was not standing beside her, no.

10 Q. Right.

11 And a lot of times on the video camera you can't even
12 see her because she's got the camera on, correct?

13 A. Yes, sir. The video camera is just actually to see
14 basically in front of her to --

15 Q. Right.

16 A. The sale.

17 Q. Right.

18 A. That's what it's for.

19 Q. All right.

20 Now, in trying to protect evidence and make sure we
21 have the right sequence of events, this best bag has kind of
22 been developed as a mechanism for sealing evidence so that
23 it's tamper resistant, correct?

24 A. Yes, sir.

25 Q. All right. But in this particular case you basically

1 violated the first bag when you had to open it, right?

2 A. No, sir, because I wasn't tampering with it. I --

3 Q. Well --

4 A. -- had to unseal it to correct the problem that was in
5 it.

6 Q. Right.

7 A. It never left my control.

8 Q. I know, but if you are destroying the purpose of the
9 first best bag because the best bag is designed to determine
10 whether or not there has been any tampering with the
11 evidence after it got put in there?

12 A. Well, I couldn't send it with a torn best bag, if
13 that's what you are asking, no.

14 Q. Okay. All right.

15 So your choices are you could either put everything in
16 the second best bag, right?

17 A. Which I did. That's the second one.

18 Q. Well, without tearing open the first one, correct?

19 A. No, sir.

20 Q. No, you couldn't do that? You couldn't use the second
21 best bag?

22 A. I could. I -- you are going to have to make your
23 question a little bit clearer for me.

24 Q. Well, my question is when you discovered that you have
25 got to go back into where the drugs are in this envelope --

1 A. Uh-huh.

2 Q. -- that you could have just used the first best bag and
3 put it into a second best bag and put the additional
4 information on the second best bag, correct?

5 A. No.

6 Q. No?

7 A. You have to have all the information on that one form
8 and then you send it off.

9 Q. All right. Well, what -- and I'm --

10 A. SLED is real strict on how --

11 Q. What form is there?

12 A. There is a form that you have to fill out, and I have
13 done explained it a couple of times. It's not in here.
14 It's basically a form like this, but it's another form
15 that's got all the information that I would put for me who
16 the dope would come back to, case numbers, other information
17 as far as, you know, anything pertaining to the sheriff's
18 office, and then it will have a place on the bottom that I
19 would put the same thing, as far as a narrative or whatever
20 I wrote here.

21 Q. Okay. So you put that into the best bag?

22 A. A portion of it. The back copy goes inside this sealed
23 paper.

24 Q. But now it's not in there?

25 A. After SLED gets it I don't know what happens to it.

1 Q. Okay.

2 A. It ain't nothing that came from the sheriff's office.

3 Q. All right. So are you --

4 A. As far as I'm concerned, it may be in this bag. I
5 can't see in there.

6 Q. Okay. So the form is what did not get in the best bag?

7 A. No, sir, the form was in it. The case number was not
8 on the form.

9 Q. Okay. Okay.

10 So the form was in it, but the case number was omitted
11 from the form, right? Is that --

12 A. The case number was not on the form.

13 Q. Okay. So that was the screw-up, or the -- just the
14 mess-up, or whatever?

15 A. It was left off the form.

16 Q. Okay. All right.

17 So what would have prevented you from putting the case
18 number on something else, another form, or whatever, and
19 just putting that and the first best bag into the second
20 best bag?

21 A. I just answered that. It has to be on that form.

22 Q. Okay.

23 A. Or SLED will not receive it. It would be sent back.

24 Q. So in the -- it's just an impossibility to do it any
25 other way?

1 A. I done it the correct way.

2 Q. Okay. All right.

3 So why didn't you preserve the first best bag so we
4 could see it today?

5 A. I didn't need to at the time.

6 Q. Just like you didn't need to fully search Ms. Jackson
7 either?

8 A. We searched her as good as we could.

9 Q. All right. Thank you.

10 MR. RHODEN: That's all.

11 MR. KENDALL: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Let me see y'all a minute.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 THE COURT: All right, ladies and gentlemen, we
18 are going to recess for the afternoon. Keep in mind, as I
19 told you earlier, don't talk about the case with anybody,
20 family, friend, even your fellow jurors. No discussions
21 about it. Don't conduct any research. Don't do your own
22 investigation into any issue. You have got to base your
23 decision upon what you see and hear during the trial. You
24 can't supplement that information by outside discussions or
25 research.

1 Do have a good evening. Please report to your
2 jury room at 9:30 in the morning. At 9:30 in the morning
3 and we will continue with the trial. Have a good afternoon.

4 (The following takes place outside the presence of
5 the jury panel):

6 THE COURT: Let me see y'all a minute.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 THE COURT: All right, court is in recess until
10 9:30 in the morning.

11 (Whereupon, proceedings were adjourned until April
12 20, 2011)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JAMES RAY BYERS, JR.,) 2009-GS-11-1179
7 DEFENDANT.) 2009-GS-11-1190
8) APRIL 20, 2011
9) GAFFNEY, SOUTH CAROLINA

10 (VOLUME II)

11 B E F O R E:

12 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
16 MATTHEW KENDALL, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 WILLIAM RHODEN, ESQUIRE
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	C.D.		109
4	S-2	DRUGS		204
5				
6				
7				
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1 (PROCEEDINGS, April 20, 2011)

2 THE COURT: All right, any matters to address
3 before the jury is brought in?

4 MS. LESKANIC: Not by the State.

5 MR. RHODEN: Nothing, Your Honor.

6 THE COURT: All right, bring them in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: Good morning, ladies and gentlemen.

10 As you know, when we recessed yesterday the State
11 was in the midst of their presentation of evidence, so we
12 will continue with that presentation this morning.

13 THE COURT: Mr. Kendall.

14 MR. KENDALL: The State calls Chris Wyatt.

15 OFFICER CHRIS WYATT, having been first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. KENDALL:

18 Q. Good morning, sir.

19 Would you mind please stating your name for the record,
20 please?

21 A. Chris Wyatt.

22 Q. Where are you employed, Mr. Wyatt?

23 A. Cherokee County sheriff's office.

24 Q. In September of 2009, what were your responsibilities
25 for the sheriff's office?

1 A. In September of 2009?

2 Q. Excuse me, August of 2009.

3 A. Evidence clerk.

4 Q. And could you please describe what all that entails?

5 A. I inventoried the evidence that would come in in the
6 drop box. I receive it from the drop box and I'll enter it
7 into the computer.

8 Q. Could you please describe just for a moment what the
9 evidence drop box is?

10 A. It's a large box behind a wall. It has a little narrow
11 flap in front of it that the officers will drop evidence
12 through.

13 Q. Who has access to opening that to get it out of the
14 evidence drop box?

15 A. Myself, the sheriff, and one other officer, the crime
16 scene technician.

17 Q. Okay. And once you take it out of the evidence drop
18 box, what do you check for?

19 A. It's according to what kind of evidence it is.

20 Q. If it's narcotics evidence.

21 A. Make sure the evidence is sealed up and has a case
22 number assigned to it the first thing.

23 Q. Do you make any annotations on that evidence if it's,
24 in fact, sealed or unsealed?

25 A. For best bags I'm required by SLED to go ahead and

1 write sealed across the seal and initial it with a Sharpie.

2 MR. KENDALL: May I approach, Your Honor?

3 BY MR. KENDALL:

4 Q. I'm showing you what is State's Exhibit 2. We looked
5 at this yesterday. Could you please tell me and just show
6 the jury what that is right there and what those initials
7 signify?

8 A. Across this blue sleeve here is the actual seal.
9 Across the edge of the seal I write sealed and I'll initial
10 my initials on all best bags.

11 Q. And on that particular best bags is that your writing?

12 A. It is.

13 Q. And are those your initials on that best bag?

14 A. It is.

15 Q. And did you, in fact, put them on there? Is that
16 consistent with your handwriting?

17 A. Yes.

18 Q. And what else do you do to handle intake of these best
19 bags?

20 A. I'll enter the information into the computer and it
21 will assign a shelf location and I'll put a bar coded on it,
22 which allows me to track the evidence.

23 Q. And on this bag here do you see a bar code?

24 A. I do.

25 Q. Would you mind pointing that out to the jury, please?

1 A. (Witness demonstrating).

2 Q. To be clear, I see a yellow sticker bar code looking
3 thing on there. Who puts that on there?

4 A. That's the SLED's bar code system there.

5 Q. Okay. So we have a SLED bar code. We also have a
6 sheriff's office bar code?

7 A. Yes, sir.

8 Q. And do you keep any paper documentation as well that
9 goes along with this?

10 A. Yes, sir.

11 Q. And did you keep that in this case?

12 A. I did.

13 Q. Okay. Is that dated? Did you date it, put the date on
14 that?

15 A. I'm sure that I did.

16 Q. In this case did you get that date right?

17 A. On this specific case, I think that it was one day off.

18 Q. Okay.

19 A. Mistaken dates.

20 Q. Okay. And what was going on at that time?

21 A. At that time I was -- I was being bombarded with a lot
22 of evidence from the serial killer.

23 Q. Okay.

24 A. A lot of stuff coming in.

25 Q. To be clear to make sure we have positive control of

1 this evidence, when that evidence came in did you check to
2 ensure that it was, in fact, sealed?

3 A. I did.

4 Q. And did you make annotations on that bag indicating
5 that it was, in fact, sealed?

6 A. Yes, sir.

7 Q. And did you log it into your system using up the bar
8 code?

9 A. Yes, sir, I did.

10 Q. Okay. Now, what did you do with it after that? You
11 have taken it out, you have logged it in the system, where
12 does it go next?

13 A. It goes into a shelf location. Once the narcotics are
14 entered we have a separate location we store those. We
15 store those behind a chain link fence inside the vault.

16 Q. Is that secure?

17 A. It is.

18 Q. Both the vault and the chain link fence, they have an
19 independent security mechanism?

20 A. Yes.

21 Q. Okay. And is that what happened to this best bag?

22 A. It did.

23 Q. And what did you do with it after that? Did it just
24 sit there indefinitely?

25 A. It will sit there until my next scheduled time to

1 carrying this down to SLED.

2 Q. Okay. And when it was time to carry it down to SLED,
3 this particular evidence, were you able to locate it?

4 A. Yes.

5 Q. And was it in the location which, according to the
6 system, that you had indicated it was going to be at?

7 A. Yes.

8 Q. Did it appear tampered with at any time?

9 A. No.

10 Q. Was the seal, to the best of your knowledge, was it
11 still sealed?

12 A. Yes, it was.

13 Q. Okay. And when it was time to take it down to SLED,
14 could you please describe the procedure of checking it out?

15 A. I pull all the evidence that's going to SLED. I will
16 actually scan it out to the location to SLED.

17 Q. So the bar code is used to scan it both into evidence
18 and when it's removed out of evidence, is that correct?

19 A. Yes.

20 Q. Okay. And what did you do with it after that?

21 A. I scanned it out and then I carried it down to SLED and
22 it was processed in there.

23 Q. Okay. And who did you turn it over to at SLED? Is
24 there a SLED evidence custodian there?

25 A. There is four ladies down there at intake evidence.

1 Q. Okay. And at no time did it appear to you that the
2 bags had ever been tampered with?

3 A. No, sir.

4 Q. And you were able to -- while it was in your
5 possession, however, when the -- the evidence, when you took
6 it out of the evidence drop box, when it physically went
7 down to SLED, you are able to say you could positively
8 identify where that evidence was?

9 A. Yes.

10 Q. Okay. On kind of an unrelated note, did we ask you to
11 drive the distance between Mary Bartlett Elementary
12 School -- Mary Bramlett, I'm sorry, and the incident scene,
13 Sixth Street and Cherokee Avenue?

14 A. Yes, sir.

15 Q. The convenience store there. Did you, in fact, drive
16 that distance?

17 A. Yes, sir, I did this morning.

18 Q. And how far was that distance driving?

19 A. From the parking lot beside of the playground at Mary
20 Bramlett, I traveled down Washington Avenue, took a left on
21 Sixth Street, crossed over the railroad tracks, I pulled in
22 the parking lot of the store where the actual buy was done,
23 it was four-tenths of a mile.

24 Q. Okay. Exactly four-tenths?

25 A. After I pulled in the parking lot, I pulled to the far

1 side of the store actually where the buy appeared to have
2 taken place and that's when my odometer turned four-tenths.

3 Q. Okay. And to be clear, is that a straight line
4 distance like as a bird flies, or was that the driving
5 distance?

6 A. The driving distance.

7 Q. Okay. So would that be shorter or longer?

8 MR. RHODEN: I object, unless he has some personal
9 knowledge.

10 THE COURT: Well, yeah, I'll sustain it, but if he
11 knows, based upon something he did, he can testify to it.
12 He can't speculate about it.

13 MR. KENDALL: Okay.

14 BY MR. KENDALL:

15 Q. In your experience as a law enforcement officer are you
16 experienced with reading maps and mapping techniques?

17 A. I'm not an expert, but I can read a map, yes, sir.

18 Q. Okay. And while you are reading a map, from your
19 experience is the shorter distance between two points a
20 straight line?

21 A. Yes, sir.

22 Q. And was the distance that you drove today a perfectly
23 straight line?

24 A. By no means it wasn't.

25 Q. Okay. So the road map involved turns and things like

1 that, correct?

2 A. Yes.

3 Q. And the shortest distance is a straight line, correct?

4 A. Yes.

5 Q. So this would have been longer than a straight line
6 distance, correct?

7 A. Yes, sir.

8 Q. We have no further questions. Please answer any
9 questions that Mr. Rhoden has for you.

10 A. Okay.

11 MR. RHODEN: May it please the court?

12 THE COURT: Mr. Rhoden.

13 CROSS EXAMINATION BY MR. RHODEN:

14 Q. All right. Officer Wyatt, so today, this morning, this
15 very morning before you come to court you drive from Mary
16 Bramlett Elementary School to the place where you think the
17 transaction took place?

18 A. Yes, sir.

19 Q. Okay. You hadn't done that before?

20 A. No.

21 Q. The solicitor asked you to do it this morning?

22 A. Yes, sir.

23 Q. Okay. Of course, this case was made back in August of
24 2009, a year and a half, plus, ago, and y'all are just now
25 measuring the distance?

1 A. I -- it wasn't my responsibility. I just done it this
2 morning because I was asked to.

3 Q. Okay. All right. Now, were you there where the buy
4 took place?

5 A. I drove from the school to --

6 Q. No, no, that's not my question.

7 A. No, I wasn't there.

8 Q. You wasn't there when it happened?

9 A. During the buy, I wasn't, no, sir.

10 Q. All right. Did you see the video?

11 A. I did.

12 Q. Other than in the courtroom yesterday?

13 A. No.

14 Q. That was the first time, right?

15 A. Yes.

16 Q. Okay. So you drive from Mary Bramlett to where you
17 think the buy took place and that's four-tenths of a mile?

18 A. Yes, sir.

19 Q. And y'all just did that today?

20 A. Yes, sir, I did.

21 Q. All right. Okay.

22 Now, let's get back to the real reason that you are
23 here, and that's because you are the evidence officer,
24 correct?

25 A. Correct.

1 Q. All right. Now, on August the 26th of 2009, the date
2 this supposedly happened, sometime after 9:22 p.m., what
3 time did you leave the sheriff's office?

4 A. I looked back at my time sheets for that date. A
5 little after five.

6 Q. Okay. So on August the 26th of 2009, at 9:22 p.m., you
7 weren't even at the sheriff's office, correct?

8 A. No, sir, I wasn't.

9 Q. You had already clocked out and left?

10 A. Yes, sir.

11 Q. Nevertheless, when you fill out the evidence log, you
12 put in the evidence log on the evidence form that you
13 received these drugs from the evidence locker on August the
14 26th of 2009, correct?

15 A. I did.

16 Q. Okay. So, in fact, you could not have received this
17 evidence on August the 26th of 2009, because it didn't get
18 there until after 9:22 p.m., correct?

19 A. Correct.

20 Q. So that's just totally wrong, correct?

21 A. Correct.

22 Q. And on that form, the evidence form, I believe you go
23 back and fill it in again when you take the evidence out,
24 correct?

25 A. Yes, sir, I do.

1 Q. Okay. So not only do you see that form one time, you
2 see it twice, correct?

3 A. Correct.

4 Q. And you didn't go back and correct the incorrect date
5 that you put on there to start with?

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

7 Q. It's still there as we see it today?

8 A. Yes.

9 Q. It being incorrect?

10 A. Yes, sir.

11 Q. All right. And you talk a lot about the bar codes and
12 the scanning of the evidence and scanning it in, etcetera,
13 etcetera. I'm sure that you have all that information today
14 to show the jury, correct?

15 A. No, sir, I do not.

16 Q. You don't have that?

17 A. I have the bar code on the evidence, but I don't have
18 the information from the computer, no, sir.

19 Q. You didn't bring that to court with you?

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

21 Q. Well, you know we got this date that's in dispute, but
22 yet you don't bring any more documentation as to when you
23 got the evidence, checked it in or checked it out?

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

25 Q. All right. Do you know Felicia Jackson?

1 A. No, sir, I do not.

2 Q. Did you see her here yesterday?

3 A. Yes.

4 Q. Do you know Michael Owensby?

5 A. No, sir, I don't.

6 Q. Did you see him here yesterday?

7 A. I do.

8 Q. You didn't see him here yesterday --

9 A. On the video.

10 Q. -- going in and out of the solicitor's office?

11 A. No, I didn't see him.

12 Q. While you were standing there out in the hallway out

13 there yesterday morning?

14 A. No, I didn't see him.

15 Q. Okay. Thank you. That's all.

16 REDIRECT EXAMINATION BY MR. KENDALL:

17 Q. Just to clarify a couple of things. On that evidence

18 form --

19 A. Uh-huh.

20 Q. -- we also have that again you scan it, correct? And

21 you are admitting that we did make a mistake on that date,

22 correct?

23 A. Correct.

24 Q. And you said that to the court, correct?

25 A. Yes, sir.

1 Q. All right. And you were able to positively identify
2 and track where those drugs were through the entire process,
3 correct?

4 A. Yes, sir.

5 Q. And at no point did they ever appear to be tampered
6 with, is that correct?

7 A. No, sir, they didn't.

8 Q. In fact, you have a sealed -- you have initialed the
9 fact that envelope was sealed, is that correct?

10 A. Correct.

11 Q. When you turned it over to SLED it was still sealed, is
12 that correct?

13 A. Yes.

14 Q. You have been a law enforcement officer in this
15 community for how long?

16 A. A little over nine years.

17 Q. And so you are relatively familiar with the streets and
18 schools and things like that, is that fair?

19 A. Something like that.

20 Q. At any point in time has Mary Bramlett Elementary
21 School moved? Have they picked it up and moved it anywhere
22 or renamed it another school, or anything like that?

23 A. To the best of my knowledge they haven't.

24 Q. So it's still in the same place?

25 A. Yes, sir.

1 Q. And yesterday did you have an opportunity to watch this
2 video up there?

3 A. I did.

4 Q. And you were able to see the Chevron station -- or the
5 convenience store at the corner of Sixth and Cherokee?

6 A. Yes, sir.

7 Q. And is that thing still in the same place it was on
8 August 26th, when you saw the video, or August 26th when
9 this took place?

10 A. Yes, sir, it is.

11 Q. So both those things were still in the same place?

12 A. Yes, sir.

13 Q. And they haven't moved?

14 A. No, sir.

15 Q. We haven't renamed any streets or anything like that?

16 A. No, sir.

17 Q. Okay.

18 MR. KENDALL: No further questions, Your Honor.

19 MR. RHODEN: Just one followup.

20 RECROSS EXAMINATION BY MR. RHODEN:

21 Q. You can't see Mary Bramlett Elementary School from the
22 location where the transaction allegedly occurred, can you?

23 A. No, sir, I cannot.

24 Q. Thank you.

25 MR. RHODEN: That's all.

1 THE COURT: You may step down.

2 You got something else?

3 MR. KENDALL: No, sir, Your Honor.

4 THE COURT: You can step down.

5 MS. LESKANIC: The State calls Carmen Tucker.

6 SLED AGENT CARMEN TUCKER, having been first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. LESKANIC:

9 Q. Good morning.

10 A. Good morning.

11 Q. Can you please introduce yourself to the ladies and
12 gentlemen of the jury?

13 A. Carmen Janine Tucker.

14 Q. And where are you employed?

15 A. The South Carolina Law Enforcement Division.

16 Q. How long have you been employed with SLED?

17 A. This June will be five years.

18 Q. What is your current position with SLED?

19 A. My current position is a forensic chemist in the
20 toxicology department. I accepted a transfer. I did serve
21 in the drug analysis department for four years and one
22 month.

23 Q. Okay. So at one time you were in the drug analysis
24 department as a chemical analyst?

25 A. That's correct.

1 Q. Would you please tell the jury about your education,
2 training, and experience to become a chemical analyst in the
3 drug analysis department?

4 MR. RHODEN: Your Honor, I'll be glad to stipulate
5 to her qualifications.

6 THE COURT: That is as an expert in the field of
7 drug analysis?

8 MR. RHODEN: Yes, sir.

9 THE COURT: Okay. She is so qualified.

10 MS. LESKANIC: Thank you.

11 BY MS. LESKANIC:

12 Q. Let me --

13 MS. LESKANIC: May I approach the witness, Your
14 Honor?

15 THE COURT: You may.

16 MS. LESKANIC: Thank you.

17 BY MS. LESKANIC:

18 Q. Ms. Tucker, I'm going to show you what's been marked
19 State's Exhibit 2. Would you take a moment and take a look
20 at that and tell me if you recognize that?

21 A. Yes, I do.

22 Q. Okay. And what is that?

23 A. This is -- the outer pack is the K-pack. We call these
24 the K-pack. They are sealable, heat sealable, plastic bags
25 that we reseal the evidence in. Inside is the original best

1 bag that the evidence was received in.

2 Q. Okay.

3 MS. LESKANIC: Your Honor, may I have the witness
4 step down so she can show the jury, because there are
5 multiple bags inside of that, and she can show them which
6 ones are from SLED and which ones she received from law
7 enforcement?

8 THE COURT: Okay. Just be sure that you speak up
9 because the court reporter is going to be behind you.

10 A. All right.

11 (Witness off the witness stand)

12 BY MS. LESKANIC:

13 Q. All right. Ms. Tucker, if you would, start by just
14 explaining each of the bags so that the jury can understand
15 which ones you received from our sheriff's department and
16 what you did with those and how it came to be in this last
17 bag.

18 A. Okay. The best kits are basically, it's supplied to
19 the officers. It's a large manila envelope that contains
20 this bag inside of here. It's called the best bag. It also
21 contains the forms that go with that.

22 Basically the way we receive it is this best bag comes
23 with the evidence inside of it sealed inside the manila
24 envelope. We take this best bag out. We start by checking
25 all around the edges to make sure there are no cuts or

1 tears. We check this seal to make sure it's intact. This
2 is a tamper-evident seal due to the adhesive that's used.
3 If anyone tries to pull on it, tear on it, do anything with
4 it in any way, we will be able to tell that.

5 Once we have determined that this is sealed when we
6 receive it, I then mark here okay, the date and my initials.

7 Then I go to the opposite end of the bag. This bag is
8 folded over in here. So if you can imagine I go away from
9 the adhesive end and to the opposite end and cut the bag
10 open so that I don't disturb the seal.

11 I then retrieve what's in the bag, okay.

12 In this particular case the evidence that was in the
13 bag was this manila envelope here, which I have marked with
14 our lab number, the item number, and my initials. Inside
15 this manila envelope was this little piece of napkin or
16 paper towel, okay. This is also marked with a lab number
17 and the item number and my initials down at the bottom.

18 Once I open the paper towel, remove the substance,
19 which is in this little bag here, I proceed to weigh it and
20 then do my test.

21 For purposes of repacking this, since it did not come
22 in a sealable bag, you take this zip lock bag and we put it
23 back in the zip lock bag, seal that. That is also labeled
24 with our lab number, the item number, my initials, and I put
25 bag added to bottom so that it's noted that this was a bag

1 that was added by me and it's not part of the original
2 evidence that was submitted.

3 This is all then resealed in what we refer to as a
4 K-pack. These are heat sealable. We heat seal them. And
5 for what I do is on the inside I write the date and my
6 initials and then I heat seal over that so that it can't be
7 rubbed off at any time. That's how it came to be in this
8 bag.

9 Q. All right. So in this case you received a sealed best
10 bag and you did not write that?

11 A. I did not write that. That was on the bag when I
12 received it.

13 Q. Okay. And Officer Wyatt just testified that he
14 actually wrote sealed. And when you received it, that was
15 still sealed? It had not been tampered with?

16 A. That's correct.

17 Q. And inside the best bag you found this manila
18 envelope --

19 A. That's correct.

20 Q. -- that Detective Burgess had testified he wrote this
21 information on?

22 A. That's correct.

23 Q. And inside this was the napkin and the white rock-like
24 substance?

25 A. That's correct.

1 Q. Okay. You break the seal at that point?

2 A. I do not -- what do you mean, seal of this bag?

3 Q. I'm sorry. No, you cut open the best bag on the
4 bottom?

5 A. On the bottom, yes..

6 Q. Without breaking the seal --

7 A. That's correct.

8 Q. -- that was sealed by Chris Wyatt or checked by Officer
9 Wyatt?

10 A. Right.

11 Q. Okay. And then at that point you weigh the substance
12 and test the substance?

13 A. Test it.

14 Q. And then seal it back in this bag?

15 A. Yes.

16 Q. Okay. If you will please have a seat. Thank you.

17 (Witness back on the witness stand)

18 BY MS. LESKANIC:

19 Q. All right. In this case did you weigh the white
20 rock-like substance that was sent to you from our sheriff's
21 department?

22 A. Yes, I did.

23 Q. And what was the weight of the substance.

24 A. .08 grams.

25 Q. And did you also test the substance to determine what

1 that white rock-like substance is that was sent to you?

2 A. Yes, I did.

3 Q. And what was your analysis on that?

4 A. Cocaine-based crack found.

5 Q. And is that crack cocaine? Is that what that means?

6 A. It's crack cocaine.

7 Q. So .08 grams of crack cocaine is what was sent to you
8 in this bag?

9 A. That's correct.

10 Q. And when you received it, it was in a tamper-evident
11 package that had not been tampered with?

12 A. That's correct.

13 Q. All right. And after you did your testing, what did
14 you do with this substance?

15 A. After I finished my testing, I resealed it in the bag
16 that you are holding there.

17 Q. Okay. And then how did it come back to our sheriff's
18 department?

19 A. Okay. Once it's resealed in those bags and our testing
20 is finalized and all of our reports are reviewed by our
21 peers in our lab and everything is finalized, then we are
22 allowed to take the evidence bag back down to the girls in
23 evidence control, our log-in department, and then they store
24 it in a secure facility until such time as someone from the
25 agency could come and pick it up.

1 Q. All right. But is this the bag that you sealed it in?

2 A. That's the bag that I sealed it in.

3 Q. All right. So no one else opened this bag?

4 A. No, they did not.

5 Q. Okay.

6 MS. LESKANIC: Your Honor, at this time we would
7 offer State's Exhibit 2 for admission as evidence.

8 MR. RHODEN: No objection.

9 THE COURT: It's admitted.

10 MS. LESKANIC: Thank you.

11 BY MS. LESKANIC:

12 Q. I think that's all the questions that I have for you.

13 Please answer any question that Mr. Rhoden may have.

14 MR. RHODEN: May it please the court?

15 THE COURT: Mr. Rhoden.

16 CROSS EXAMINATION BY MR. RHODEN:

17 Q. Ms. Tucker, should I call you Agent Tucker?

18 A. Oh, no.

19 Q. Is Ms. Tucker okay?

20 A. Yes.

21 Q. All right. Let me show you what's now been marked as
22 State's Exhibit No. 2.

23 Let me ask you this. In fact, what we actually see in
24 the bag as we speak today has actually not been tested by
25 you, has it?

1 A. I'm sorry, what do you mean?

2 Q. Well, the stuff that's in the bag today has not been
3 tested?

4 A. That stuff that's in that bag has been tested.

5 Q. Well, so you actually did the test on this material, or
6 did you take some material off and test it?

7 A. We take a representative sample.

8 Q. That's what -- my question is that when you test, you
9 take something out of the bag to test it --

10 A. Right, you have to take a sample out to test it.

11 Q. -- and you don't put that sample back in?

12 A. No, that sample is consumed during the testing.

13 Q. All right. So that's -- my point is this. The stuff
14 we see right there in this bag has actually not been tested?

15 A. A representative sample of that has been tested.

16 Q. Well, I understand if you would like for me to ask that
17 question, but that's not the question that I asked.

18 A. No, I did not consume what you are holding there in my
19 testing, no.

20 Q. All right. So the answer to my question is that's
21 correct, that this what we see today has actually not been
22 tested?

23 A. That has not been consumed in testing, no.

24 Q. Okay. It's not been tested at all, has it? This, what
25 we see --

1 A. A sample of that substance has been tested.

2 Q. Right. And the sample of the substance you don't have
3 with you today?

4 A. No, I do not.

5 Q. And you didn't put that bag in the bag?

6 A. No, I did not.

7 Q. Okay. So the sample that was tested is not here today,
8 correct?

9 A. No, it is not.

10 Q. So everything that's here today has not been tested,
11 correct?

12 A. It's play on words, but a representative sample has
13 been tested of that.

14 Q. Okay. Can you answer my question?

15 A. I did.

16 Q. No, you didn't.

17 The stuff we see today has not been tested?

18 A. What you have in that bag has not been consumed by the
19 testing that I did. I took a sample of that substance.

20 Q. All right.

21 A. It wasn't two separate substances. It was all in one.

22 Q. All right. Okay.

23 And did you match it up? Did you -- or was it in one
24 rock when you got it?

25 A. We crush it and mix it so that we get a representative

1 sample.

2 Q. So you did all that too?

3 A. Yes, sir.

4 Q. Okay. All right.

5 Now, the napkin or the paper towel that's in here --

6 A. Uh-huh.

7 Q. -- do you know where that came from?

8 A. I don't. It was part of the evidence when I received
9 it.

10 Q. All right. You didn't put it in there?

11 A. No, I did not. It came in the manila envelope that was
12 submitted to me in the best bag.

13 Q. All right. So when you actually got the evidence and
14 looked at it, this piece of paper, whether it's a paper
15 towel, or paper napkin, or whatever it was, was in there
16 too?

17 A. The rock substance was wrapped in that paper towel,
18 which was in the manila envelope, which was in the best bag.

19 Q. Okay. So when you actually opened up the stuff and got
20 it out, this white stuff, the rock-like substance, was
21 actually wrapped in this paper towel?

22 A. That's correct.

23 Q. And that's the way that you found it?

24 A. That's the way I received it.

25 Q. All right. Now, this paper towel has writing on it.

1 A. Yes.

2 Q. Who put the writing on there?

3 A. I have to label all packaging that comes with the item
4 with the lab number, the item number and the initials, my
5 initials, and that's -- I put the writing on there. That's
6 my writing.

7 Q. Okay. So the paper towel that you found is the same as
8 we see here today, except for the writing that's on it?

9 A. That's correct.

10 Q. Okay. Because you put that on it?

11 A. Yes, I did.

12 Q. You didn't have anything to do with setting up this
13 buy, or being present when this occurred, or anything of
14 that nature?

15 A. No, sir, I did not.

16 Q. All that occurred way before you got there?

17 A. That's correct.

18 Q. You didn't even get this until sometime in October, is
19 that correct?

20 A. I believe the submission came into my custody on
21 October the 12th, that's correct.

22 Q. October the 12th?

23 A. Yes.

24 Q. Okay. So, you know, a month and a half, almost two
25 months after this occurred is the first time that you saw

1 this stuff?

2 A. That's correct.

3 Q. And that's when you found the paper towel in the bag?

4 A. That's correct.

5 Q. Okay. All right.

6 Now, let's talk a little bit about weight. I think you
7 said this is .08 grams, is that correct?

8 A. That's correct.

9 Q. How many grams are in an ounce?

10 A. I don't have that conversion right off the top of my
11 head. We don't convert to ounces.

12 Q. You don't even know how many grams are in an ounce?

13 A. Not off the top of my head. We only convert to grains.

14 Q. All right. Well -- okay.

15 Is it safe to say that this is way, way, way less than
16 an ounce?

17 A. Like I said, I don't have that conversion right off the
18 top of my head.

19 Q. Well, if I told you there is 28 grams in an ounce,
20 would you dispute that?

21 MS. LESKANIC: Your Honor, I'm going to object to
22 the relevance of this line of questioning.

23 THE COURT: Overruled.

24 MS. LESKANIC: Thank you.

25 BY MR. RHODEN:

1 Q. Would you dispute that if I said there is 28 grams in
2 an ounce?

3 A. I would have to confirm that.

4 Q. How long have you been doing this?

5 A. Like I said, we don't convert to ounces. We work in
6 grams or grains.

7 Q. Well, isn't --

8 A. So it not traditional. I would have to do the
9 calculation.

10 Q. Well, my question is how long have you been doing this?

11 A. I have been doing this for five years.

12 Q. Okay. And part of your job is to weigh the evidence?

13 A. That's correct, and we weigh it in grams.

14 Q. Okay. Well, you know, when you go to a grocery store
15 and you buy something, it's usually marked in ounces and not
16 grams, correct?

17 A. I would assume so, yes.

18 Q. I'm just trying to put it in perspective here, so that
19 we can all understand, and you have no clue how many grams
20 are in an ounce?

21 A. Like I said, that is not a conversion we typically use
22 every day. So if it's like something that you wouldn't use
23 every single today, you wouldn't know it right off the top
24 of your head.

25 Q. Okay. All right.

1 So after you did your analysis and put everything back
2 together, what did you do with this stuff?

3 A. When I -- once I finished all of my analysis, I reseal
4 it in this K-pack, with my initials and the date.

5 Q. Uh-huh.

6 A. And then once all of my reports has been reviewed and
7 confirmed, then this evidence is taken back down to evidence
8 control. And then there it stays in their lockup until one
9 of the agencies come and pick it up.

10 Q. All right. I mean, did you bring this to court with
11 you today?

12 A. I did not bring this to court, no.

13 Q. No.

14 Well, how did it get back up here?

15 A. I can't testify to that. I'm not the one who brought
16 this evidence.

17 Q. All right. You don't know how it got from SLED back up
18 here?

19 A. I can only speculate.

20 Q. Well, no, I'm not asking you to speculate. I'm asking
21 you do you know how it got from SLED back up here?

22 A. Like I'm saying, I did not bring this physically
23 myself, so I don't know who picked this up from the evidence
24 control department, but that's typically the procedure.
25 They would pick it up and then they would bring it to court

1 with them.

2 Q. You know, I'm not trying to be argumentative with you.

3 A. Oh, I understand.

4 Q. I would appreciate an answer to my question. Do you
5 know how this got back up here?

6 A. I know the procedure for this.

7 Q. Well, no, that's not my question. My question is do
8 you know how this evidence got back up here to this
9 courtroom? Do you know?

10 A. I do not know who brought this evidence to this
11 courtroom.

12 Q. All right. Thank you.

13 MR. RHODEN: That's all.

14 REDIRECT EXAMINATION BY MS. LESKANIC:

15 Q. Ms. Tucker, Mr. Rhoden has already stipulated that you
16 are an expert. I guess that means --

17 Could you please tell us a little bit about your
18 education, training, and experience to do the job that you
19 do and that made you a chemical analyst in the drug analysis
20 department at the South Carolina Law Enforcement Division?

21 MR. RHODEN: Your Honor, I have already stipulated
22 to her qualifications, which apparently the solicitor
23 accepted. I don't know what the relevancy is here and --

24 THE COURT: I think she just stated it.

25 Overruled.

1 MS. LESKANIC: Thank you, Your Honor.

2 BY MS. LESKANIC:

3 Q. Please tell the jury about your training and
4 experience.

5 A. Yes. I have a Bachelors of Science Degree in
6 Chemistry.

7 I have a Masters of Science Degree in Chemistry.

8 I have -- prior to coming to work for the South
9 Carolina Law Enforcement Division, I have worked several
10 years in organic and medicinal synthesis of chemical
11 compounds.

12 I came to work for the South Carolina Law Enforcement
13 Division. They trained me with my chemical analyst
14 certification and my marijuana analyst certification.

15 I've also received my law in legal training with them
16 at the academy, and then I went on to Drug Enforcement
17 Administration and took a class from them. And also our
18 Southern Association of Forensic Scientists seminar, I took
19 a class from them as well.

20 Q. And how long did you work in the drug analysis
21 department at SLED?

22 A. Four years and one month.

23 Q. Okay. During that time did you have to testify in
24 other cases or have you continued to testify in cases
25 involving narcotics?

1 A. Yes, I have.

2 Q. All right. And how many times have you been qualified
3 as an expert to testify in these cases?

4 A. 13.

5 Q. All right. And what counties have you been qualified
6 as an expert in the analysis and weight of narcotics?

7 A. Cherokee, Anderson, Union, and Aiken.

8 Q. All right. Now, let's go back to State's Exhibit 2.
9 It's already been admitted into evidence. And please
10 explain to the jury first why you weigh the substance,
11 first, because you said that's what you do is you first have
12 to weigh it before you test it.

13 A. That's correct.

14 Q. Why is that?

15 A. We weigh the substance before we test it because we
16 need an actual weight before we start, because when we start
17 testing, that consumes some of the sample. So we need to
18 get a weight before we start so that we know what we
19 actually received.

20 Q. Okay. So you weigh it first, because you are going to
21 have to take part of it to determine if it's crack cocaine
22 or if it's not?

23 A. That's correct.

24 Q. All right. And when you weighed it, what was the
25 weight?

1 A. .08 grams.

2 Q. Then what do you do to test the substance?

3 A. The sample of the substance is tested with chemical
4 reagents. We look for characteristic response. And then
5 that sample of the substance is tested on an instrument that
6 we have in the lab, infrared spectroscopy, and that
7 basically presents us with a profile for the compound that's
8 present.

9 Q. And how do you get the substance that you are going to
10 test?

11 A. We actually take it directly from a sample that's
12 submitted.

13 Q. All right. And in this case the sample that was
14 submitted, was it one white rock-like substance, or was it
15 broken up into pieces, or do you know?

16 A. I don't remember that for sure. All I know is it came
17 as a rock substance. That is how it's noted. We don't
18 count the rocks because they can break up in transit, and,
19 you know, in packaging. Basically we shave what's there.
20 We cut into pieces that are there and we take a mixed
21 representative sample of those.

22 Q. All right. So let's just say that in transport, or
23 however it was delivered, it was two rocks, or three rocks,
24 do you just take part of one of those and test it, or --

25 A. No, we shave several.

1 Q. So you shave something -- if there are three rocks, you
2 shave part of the each one of those rocks?

3 A. Yes, to get a representative.

4 Q. And mix that up and you tested that?

5 A. Yes, ma'am.

6 Q. All right. Is that what you did in this case?

7 A. Yes, ma'am.

8 Q. And what was the substance in this case, after shaving
9 off part of the white rock-like substance and testing it?

10 A. After testing was completed, it was determined that
11 this is cocaine crack.

12 Q. Thank you very much.

13 MR. RHODEN: If it please the court?

14 RECROSS EXAMINATION BY MR. RHODEN:

15 Q. So -- I know the solicitor asked you some procedures,
16 but in this particular case you are not telling us that
17 these were multiple rocks?

18 A. I don't know for sure. I don't remember. This was in
19 '09.

20 We don't count the rocks when they come in, because,
21 like I said, they can crumble and break up in the packaging,
22 so we don't count rocks. That's why we weigh it. We don't
23 count rocks.

24 Q. So from your own personal recollection of this
25 particular case, you don't recall whether this was one rock,

1 or two rocks, or anything of that nature?

2 A. No, sir, we just notated it as a rock substance and
3 take a weight.

4 Q. Okay. And the weight before you did anything was .08
5 grams?

6 A. That's correct.

7 Q. So that's actually eight one-hundredths of a gram?

8 A. You can look at it like that. It's 80 milligrams.

9 Q. Okay. Well --

10 A. Eight one-hundredths.

11 Q. Right. Going back to my days in grammar school, you
12 got a decimal point and you have got the first one is after
13 the tenth and the second digit after is hundredths --

14 A. Okay.

15 Q. -- correct?

16 A. Yeah.

17 Q. So we have got eight one-hundredths of a gram?

18 A. Right.

19 Q. And there are multiple grams in an ounce, but you don't
20 know how many there are?

21 A. We covered this.

22 Q. You don't know how many there are?

23 A. I would have to confirm that conversion before I would
24 say it here.

25 Q. So in all of your four plus years of experience

1 testifying in numerous courts, I'm the first lawyer that's
2 asked you that question?

3 A. Yes, because we don't convert to ounces. We go grams
4 and grains.

5 Q. Okay.

6 A. And we don't typically use ounces in our lab.

7 Q. All right.

8 MR. RHODEN: Thank you. That's all.

9 MS. LESKANIC: Nothing further, Your Honor.

10 THE COURT: You may step down.

11 THE WITNESS: Thank you.

12 MS. LESKANIC: We would ask that this witness be
13 excused, Your Honor.

14 MR. RHODEN: No objection.

15 THE COURT: She may be.

16 MS. LESKANIC: Your Honor, at this time the State
17 rests.

18 THE COURT: All right, ladies and gentlemen, that
19 is all the testimony or evidence to be offered by the State,
20 at least in their case in chief.

21 Before we go further I have got some matters I'll
22 need to address with the lawyers, so I'll ask you to please
23 go to your jury room. Do not yet discuss the case. I'll
24 bring you back shortly to continue.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: Mr. Rhoden, do you have any matters you
3 need to address before we continue?

4 MR. RHODEN: Yes, Your Honor.

5 I would move for a directed verdict on both
6 charges. Taking the evidence in the light most favorable to
7 the State, Your Honor, I believe that the State has failed
8 to prove all the elements of both charges.

9 Going into particular detail in regards to the
10 charge of distribution of a controlled substance within the
11 proximity of a school, I would argue, Your Honor, that
12 obviously the law changed June the 2nd of 2010. There is an
13 additional element in that law when it was changed that
14 requires proof that the defendant has knowledge that he was
15 within one-half mile radius of a school or playground.

16 I would argue that that change of the law,
17 although after the incident here, would still apply in this
18 case. When the legislature passed the new legislation,
19 there was a saving clause in it. However, I don't think
20 that it affects the applicability of the change. I think
21 the change would be prospective and retroactive, both.

22 The amendment to the legislation says that this is
23 to become effective on the signing of the governor. It says
24 cases on appeal rather pending under the laws which is prior
25 are stayed. It didn't say that this law doesn't apply to

1 those.

2 So I would argue that it does, and there is
3 absolutely no evidence in the record whatsoever that the
4 defendant had knowledge that he was within a half mile of
5 Mary Bramlett Elementary School. In fact, the only real
6 testimony of distance came this morning from Officer Wyatt,
7 who apparently went by there this morning and drove the
8 distance, and he certainly candidly admits you can't see
9 Mary Bramlett Elementary School from the location where the
10 transaction apparently occurred.

11 I would also argue, Your Honor, that to apply
12 these two statutes without there being some additional
13 requirement of criminal culpability amounts to nothing more
14 than double jeopardy, in that we have the same alleged
15 criminal activity being punished twice. I think that even
16 under the old law it is incumbent to prove some nexus
17 between the distribution and the proximity of a school or
18 playground.

19 My argument would be that certainly the intent of
20 the statute would be to discourage or to prohibit
21 individuals from distributing drugs in the area of a school
22 or playground or to school children. This occurred in
23 August, at nine -- sometime after 9:22 p.m.. There is no
24 evidence that there was any activity going on at the school,
25 or classes, or anything of that nature sometime after 9:22

1 p.m. on August the 26th. Therefore, simply applying this
2 law to transactions that occurred today, without there being
3 some nexus and without some knowledge that the defendant was
4 in the proximity of the school or playground would, in
5 effect, amount to being punished twice for the same activity
6 and, therefore, would be tantamount to double jeopardy, and,
7 therefore, I would move for a directed verdict on the
8 proximity charge, as well as a directed verdict on the
9 distribution charge. Thank you.

10 THE COURT: All right.

11 Ms. Leskanic?

12 MS. LESKANIC: Thank you, Your Honor.

13 I'm not sure what the particular issue is with the
14 directed verdict on the distribution charge itself. I
15 believe the State has shown by the video that there was a
16 confidential informant. The defendant is seen on the video
17 handing her a substance. She has testified that she took
18 that substance back to Jason Burgess. He put that in the
19 best bag. It was given to Chris Wyatt, who took it to SLED,
20 and the SLED agent has testified that that was crack
21 cocaine. So I'm not sure what the particular motion is, but
22 I believe in the light most favorable to the State we have
23 given that evidence sufficient to take that issue to the
24 jury.

25 With regard to the distribution within proximity

1 of a school or playground, the law did change June 2nd of
2 2010. This occurred August 26th, 2009. There is a savings
3 clause that says that the changes in the law will not begin,
4 except on cases that begin June 2nd, 2010. There is not a
5 requirement in the law that I am aware of that requires this
6 nexus that school be going on, that you have to see the
7 school, or that school children be involved in the
8 transaction. So I do not believe it falls under any threat
9 of double jeopardy, and I believe that we do not have to
10 prove evidence in this case that the defendant knew that
11 Mary Bramlett Elementary School was within a half mile,
12 based on the savings clause and the change in the law.

13 THE COURT: Did either of y'all have a copy of the
14 savings clause?

15 MR. RHODEN: I do. I think it starts --

16 I have got a bunch of it highlighted there. I put
17 the sticker work there. I'm sorry.

18 THE COURT: The defendant's motion should be
19 denied.

20 MS. LESKANIC: Thank you, Your Honor.

21 THE COURT: Anything further?

22 MR. RHODEN: No, sir, not in that regard.

23 I would just tell the court that my intent is not
24 to present any evidence, Your Honor. The defendant will not
25 testify, so we would go straight into closing, unless -- I

1 have not put anything up. If you want to ask the defendant
2 in regard to his right to testify.

3 THE COURT: All right. Mr. Byers, Mr. Rhoden has
4 told me that you don't intend to testify during the trial of
5 this case. Is that true?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that when you
8 are charged with a crime, you have an absolute right to
9 remain silent? Nobody can require that you take the witness
10 stand and testify. No one can require that you make a
11 statement or answer any questions that relate to these
12 charges.

13 At the same time, this is the trial of your case.
14 And if you wished for this jury to have any additional
15 information that has not already been presented, now is the
16 time for you to present that testimony or that other
17 evidence or information. You can't wait until after the
18 jury has reached a decision and then change your mind as to
19 whether or not you will testify or present other evidence.
20 You have to make that determination now, but it is your
21 decision and only you can determine it whether or not you
22 will testify.

23 Have you had plenty of time to reflect upon your
24 decision as to whether or not you will testify?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you discussed it with Mr.
2 Rhoden?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And has he explained to you the
5 advantages and disadvantages of your testifying, as well as
6 not testifying?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you appreciate what those
9 advantages and disadvantages are?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And have you reached a decision as to
12 whether or not you will testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, do you understand that if you
15 take the witness stand and testify, you will have to answer
16 not only your lawyer's questions, but you will have to
17 answer the solicitor's questions, even if the responses to
18 those questions might tend to prove your guilt?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you also understand that if you
21 decide not to take the witness stand, that I'm going to
22 instruct the jury that they can't hold that against you in
23 any way or consider it in their deliberations?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Having had time to think about it,

1 what is your decision as to whether or not you will testify?

2 THE DEFENDANT: I don't want -- I'm not going to
3 testify.

4 THE COURT: You are not going to testify?

5 THE DEFENDANT: No, sir.

6 THE COURT: And is that a decision that you
7 reached of your own free will and accord?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has anybody forced you into it?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anybody pressured you into it?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is that a decision that you reached on
14 your own after careful reflection and deliberation?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions you need to
17 ask me about that decision?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you need to discuss it with your
20 lawyer any further?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any other witnesses that
23 you would like for your lawyer to call on your behalf?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay.

1 All right. Any request for jury instructions from
2 the State?

3 MS. LESKANIC: No, Your Honor.

4 THE COURT: From the defense?

5 MR. RHODEN: No, sir.

6 THE COURT: All right. Let's take ten minutes.

7 MR. RHODEN: Just to clarify, I did not present
8 any evidence, so I assume I get the last argument?

9 THE COURT: I don't recall you having presented
10 any evidence, except that which you developed on
11 cross-examination, and I don't think that precludes you from
12 retaining your right to argue last.

13 MR. RHODEN: Thank you, Your Honor.

14 THE COURT: Okay. We will take ten minutes.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 THE COURT: We are ready for the jury?

18 MS. LESKANIC: The State is ready, Your Honor.

19 MR. RHODEN: Yes, sir.

20 THE COURT: All right, bring them in, please.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: All right, ladies and gentlemen, as
24 you know, the State has concluded with their presentation.

25 Does the defendant wish to present any additional

1 evidence, Mr. Rhoden?

2 MR. RHODEN: No, sir, Your Honor.

3 THE COURT: All right. That's all of the
4 testimony or evidence to be offered in the trial of the
5 case. And, therefore, what remains to be done are the
6 lawyers final summations, after which I'll instruct you on
7 the law that's applicable, and then you can begin with your
8 deliberations. So please give the lawyers your attention
9 now as they give you their final summations.

10 Ms. Leskanic.

11 MS. LESKANIC: May it please the court.

12 Good morning again, ladies and gentlemen.

13 I'm going to start by going over a little more
14 slowly the video in this case, because you have heard a lot
15 of things in a short amount of time and you have heard a lot
16 of things from the defense that talks about the stuff other
17 than what's on this. And the great advantage that you have
18 in this case that we don't have in a lot of cases that come
19 in this courtroom is you get to watch the crime happen.
20 That doesn't happen in many cases. Most of the time you
21 just have to rely on testimony and who is telling the truth
22 and what really happened. Here it is.

23 The informant was wired with the camera. She was
24 wired by those officers. They leave their vehicle. She
25 walks down the street, hollers at some guy named Aaron,

1 walks backs over to the convenience store. You hear them
2 say on the video "we are going to go talk to 1-9." Felicia
3 testified his nickname is 1-9. She ID'd him as the one she
4 bought it from. She walks over and on the video you will
5 see him in his left hand had a little piece of plastic with
6 something in it. In his right hand he picks up his phone,
7 "who is this? Who is this? Hold on a minute while I do
8 this." He puts the phone away. Both hands go back to the
9 baggy. He's seen breaking up the crack. He hands it to
10 Felicia with his left hand, hands it to her and takes the
11 money. And if you watch closely you will see him handing
12 something to another female. So let's go through that step
13 by step.

14 You are going to hear a lot of things from Mr.
15 Rhoden when he gets up here. And I'm going to go through
16 those in more detail, but it's going to be best bag numbers
17 and what videos, what it didn't show. But he doesn't want
18 to talk about what it does show, because his client is
19 selling crack. That's what it shows. So he wants to
20 confuse you. He wants you to look at everything except this
21 disc. But it's in evidence and you can watch it as many
22 times as you need to. If you want to come back out here and
23 watch it, the judge will let you. You just say "we want to
24 see the video again."

25 This is the case. Not what he's going to talk

1 about when he gets up here. And I don't have a chance to
2 come back up here and talk to you again. This is my -- this
3 is my last chance. So whatever he says, I don't get that
4 opportunity that I would like to come back up and answer
5 some things that he says. I'm going to do my best to
6 anticipate, based on his cross-examination of the witnesses,
7 what I think he's going to do.

8 This is the case. Don't let him muddy the water
9 with dates and why something was taken out of a best bag and
10 a SLED agent doesn't know ounces and grams. It doesn't
11 matter. He wants you to think it does, but then you won't
12 be thinking about his client selling crack.

13 Let's start with State's Exhibit 1.

14 (Video played)

15 (Video stopped)

16 MS. LESKANIC: All right.

17 I want to stop right there for a second, because
18 Mr. Rhoden says, you know, we can't see what's going on in
19 the car. It's dark. It's 9:22 at night and it's dark.
20 That's why you can't see. Common sense. You have to bring
21 that with you today.

22 All right. I'm going to move forward and try to
23 get to the pertinent part to see Mr. Byers. Bear with me
24 for just a moment.

25 All right. That's at 5:15 we are going to see

1 him.

2 (Video played)

3 (Video stopped)

4 MS. LESKANIC: All right. There is Mr. Byers.

5 He's at the convenience store and we have Felicia Jackson

6 wired with the audio video. Michael Owensby is on the right

7 and he's going to take him around to the side of the

8 convenience store.

9 (Played video)

10 (Video stopped)

11 MS. LESKANIC: All right. That is the \$10 bill

12 that Felicia has. You can see right here. We can play it.

13 Sometimes it's hard to see it when we stop, but that's the

14 money. She's got a \$10 bill in her right hand.

15 (Video played)

16 (Video stopped)

17 MS. LESKANIC: If you will look closely, he is

18 getting his phone in his hand here and in this hand he has a

19 piece of plastic. A plastic baggy, a piece of cellophane.

20 (Video played)

21 (Video stopped)

22 MS. LESKANIC: Hold on. Hold on for a second

23 while I do this.

24 What is he doing? Okay.

25 (Video played)

1 (Video stopped)

2 MS. LESKANIC: That's the bag. I apologize. It's
3 hard to see when I stop the video, but right there both
4 hands go to the bag. He puts the phone away and goes to the
5 bag.

6 (Video played)

7 (Video stopped)

8 MS. LESKANIC: He's breaking it up in his hand.
9 His hand is cupped. His left hand is cupped. His right
10 hand is inside the left hand breaking up the crack cocaine,
11 giving him a \$10 rock.

12 (Video played)

13 (Video stopped)

14 MS. LESKANIC: He shakes it in his hand after he
15 breaks it off. You see him pop his hand. And now it's
16 cupped. That hand right there, he's got it cupped. He's
17 holding something in his hand.

18 (Video played)

19 (Video stopped)

20 MS. LESKANIC: He hands it to Felicia. She's
21 handing him the money. Transferred the crack cocaine to her
22 hand.

23 (Video played)

24 (Video stopped)

25 MS. LESKANIC: Now, keep looking at him. Let's

1 see what's going on over here.

2 (Video played)

3 (Video stopped)

4 MS. LESKANIC: That person is not an informant. I
5 don't know. Let's pay attention to the entire video.

6 That's essentially what this case is about.
7 That's what he's charged with. He is charged with
8 distributing or selling crack cocaine right here in Cherokee
9 County. This was the area of Sixth Street and Cherokee
10 Avenue and that's within a half mile of Mary Bramlett
11 Elementary School. And you are not going to hear Judge
12 Cole, when he gives you the law, say that it has to be to a
13 school student, or it has to be during school hours, or he
14 has to be able to see the school. The law is, first of all,
15 you can't sell crack. And, second, you can't do it within a
16 half mile of a school or a playground. There are not
17 exceptions for the time of day or who you are selling it to.

18 There has been also a big thing about, well, if
19 they gave them \$20 and they only spent \$10. It's just as
20 illegal to sell \$20 worth of crack as it is \$10 worth of
21 crack. It doesn't matter. If it was a dollar's worth of
22 crack, it's illegal to sell crack. That's all that matters.
23 The amount of the money doesn't matter. Whether, you know,
24 they let the informant keep the money, that's fine. You
25 don't like the policy, that's fine, but the police

1 department and their policy is not what's on trial. I
2 assure you it will be when Mr. Rhoden gets up here, because
3 if he gets you to quit looking at this, he's got you. But
4 that man over there is the one that's on trial. So I ask
5 you to keep a focus of what this case is about. You may not
6 like everything the way that the police handled it. You
7 know, if they let an informant keep \$10, they make a \$10 buy
8 instead of \$20 buy. It doesn't make him not guilty. He
9 still sold crack and he did it within a half mile of a
10 school.

11 You will have an opportunity to watch the video,
12 as I said, as many times as you want to.

13 The guy on the video, the man sitting over there.

14 (Video played)

15 (Video stopped)

16 MS. LESKANIC: Watch it as many times as you want
17 to. Pause it. Stop it.

18 Felicia Jackson testified that's him. That's
19 James Byers, and this is 1-9.

20 Todd Parker testified. "Yeah, we watched the
21 video. That's him."

22 So we have got the ID. We have got the right
23 person sitting in the courtroom and that's important.

24 Number two, does he sell crack? We have gone over
25 it on the video. Watch it again as many times as you want

1 to.

2 And was it within a half mile of a school? Yes.

3 He's guilty. He's guilty of both charges.

4 Without a doubt it's on the video.

5 Now, as I said, I have a difficult job of
6 anticipating what Mr. Rhoden is going to do when he gets up
7 here. I wish I would have a chance to come back and talk to
8 you again, but some of the things that he talked about
9 during his opening and during his cross-examination. He
10 said during his opening that he wanted you to focus on what
11 was not presented. He said some of the most powerful
12 evidence would be what you don't see. The reason he said
13 that is because what you do see right there is his client
14 selling crack. If you focus on the evidence that is
15 presented, his client is guilty, but he want you to think
16 that there is something else out there that y'all should be
17 focused on. You should go back there and talk about it
18 other than what's going on right there right then.

19 He talked during his cross-examination about other
20 people in the video. We see Michael Owensby in the video.
21 Where is he? Well, he wasn't the informant in this case.
22 He was with the informant, but the informant was Felicia
23 Jackson. She's the one that's wired with the audio and the
24 video. She's the one that handed the defendant the money.
25 She's the one that took the crack cocaine. She's the one

1 that gave it back to Jason Burgess. She's the one that's in
2 our what's called the chain of custody. That's every person
3 that touches the narcotic, the crack cocaine, has do come to
4 court and testify, so we know that what she received that
5 day is what you have on State's Exhibit 2. So we don't need
6 him. He's probably going to try to make you think that we
7 do.

8 He asked Felicia about the other people on the
9 video. Well, who is that lady standing next to him? And
10 who are all these people out in the parking lot? And who
11 are the people in the car? And who is Aaron? Why did he
12 want to do that? There were at least ten other people in
13 the parking lot. Only one of them is selling crack, and
14 that's his client. But if he can make you think that there
15 is some reason we should have brought in everybody that was
16 in the parking lot, then he can get you back there talking
17 about something other than the crime. The other people
18 don't matter. They weren't selling crack cocaine. Mr.
19 Byers was. Don't let him take you down the rabbit hole.

20 First was the informant. How well did you search
21 her? She she's a female. What kind of search did you do?
22 I'm not sure of the point of that. They said that they
23 searched, and you see her get a substance from him. You
24 watched him on the video leave the officers, come back to
25 the officers. The officers testified that when she came

1 back, she had what she got from him. It's just another
2 thing to try to confuse you.

3 The video equipment. During the video Mr. Rhoden
4 was saying, well, you can't see what's going on behind you
5 and you can't see what's going on to the side of her. You
6 can only see what's going on in front. True. He would like
7 you to go back in the jury deliberation room and talk about
8 what might have been happening on the side and what might
9 have been happening behind, because if you only talk about
10 what happened in front, that's that guy selling crack.

11 He know his guy is guilty, so he wants you to talk
12 about stuff that you don't see, instead of talking about the
13 only thing that matters, and that is what you do see.

14 Best bag number. Officer Burgess testified that
15 when he sealed the first best bag he realized he left off
16 the case number. He opened it, he put it in a brand new
17 best bag. He sealed it and changed the number. He
18 testified to that on direct examination.

19 Well, where is the other best bag? He threw it
20 away. What was that best bag -- the drugs never left his
21 possession. Putting it in a new bag because he neglected to
22 put the case number on it doesn't change the evidence. It
23 doesn't turn something into crack cocaine, it wasn't crack
24 cocaine to begin with. He made a mistake. I think we all
25 have. He forgot his case number. It was late at night.

1 This is a time after everyone had dealt with a serial
2 killer. He's working at ten o'clock at night. Putting
3 stuff in the bag he neglected to put a case number. He
4 caught the mistake. He opened the bag and he put it in a
5 new bag. He dropped it in evidence.

6 The paperwork isn't always clear and accurate as
7 we want, and I'm sorry, but clerical mistakes happen. But
8 that's why in this case we were so fortunate that what is
9 crystal clear and what no one can change is what happened on
10 the video. That's what this case is about. I can't stress
11 that enough that that is what you should be focused on when
12 you go back in the jury room, is what happened on this
13 video.

14 Agent Tucker with SLED was given such a hard time
15 about, you know, ounces and grams. Again, it doesn't
16 matter. The defense wants you to think that it matters
17 whether, you know, how many ounces this would be and was it
18 a whole ounce. We are not talking about the weight. Was it
19 crack? Did he sell crack cocaine?

20 Was it \$10? Was it \$20? None of that matters.
21 That's not going to be an element of the crime that the
22 judge is going to instruct you on when he gives you the law.
23 The only question is did he sell it, not whether or not she
24 could convert grams to ounces. But he does that to make you
25 think it's important. It's not.

1 I have spent more time than usual in this closing
2 going over what I think Mr. Rhoden is going to do. I don't
3 like to spend as much time in what I think the defense is
4 going to do, but in this case I think it's important. Mr.
5 Rhoden is a good attorney. And, you know, many times when
6 he was standing up here during his cross-examination talking
7 to somebody, he would say, well, I'm confused. He wasn't
8 confused. He wanted you to think the case is confusing, and
9 it's not. It doesn't get much better than this. It doesn't
10 get much better than seeing that man on that video taking
11 money, breaking up a crack rock, handing it to an informant,
12 and that informant going back to officers, giving it to
13 them, putting it in a best bag, putting it into evidence,
14 taking it to SLED, having it weighed, having it tested and
15 bringing it back here for you. It doesn't get any better
16 than that.

17 He's guilty. He's guilty on both charges. Watch
18 the video. Don't let something as crystal clear become
19 confusing.

20 There is a story, and I'll end with this, where a
21 prosecutor is standing by a puddle of water, and there is a
22 quarter in the puddle. And a defense attorney walks up and
23 says what are you doing? The prosecutor says, well there is
24 a quarter in the puddle. The defense attorney picks up a
25 stick and stirs up the puddle, says well, I don't see it.

1 The quarter is still there. The evidence is there. He's
2 trying to muddy the water, but the evidence that says James
3 Byers is guilty is here, and the State respectfully requests
4 that you return a verdict of guilty on both charges. Thank
5 you.

6 THE COURT: Mr. Rhoden.

7 MR. RHODEN: May it please the court.

8 Greg, you can turn that off? I'm not going to use
9 it.

10 Good morning. Make sure it's still morning. I
11 appreciate y'all being here, like I said, yesterday and
12 paying close attention.

13 It's been a relatively short trial. Sometimes
14 trials last days. Sometimes they are shorter. That doesn't
15 mean it's any less important because this is a short trial.
16 We are here today on a very serious case. My client is
17 accused of selling crack cocaine, obviously.

18 So there is some things I want to go over with
19 you. And let me just reflect back and start back where I
20 was yesterday in my opening statement, because I think that
21 sets the tone of this case.

22 The State of South Carolina has pointed the finger
23 at Mr. Byers. When the State of South Carolina points a
24 finger at Mr. Byers, points a finger at anybody else, the
25 State of South Carolina assumes the duty and the obligation

1 to prove its case beyond a reasonable doubt. And if the
2 State of South Carolina can't do that, then they can't come
3 in here and just fill in the blanks the way they want to
4 fill in the blanks. They have to have the evidence, and all
5 of the evidence.

6 And in this particular case we have blank after
7 blank after blank, gap after gap after gap, and the
8 solicitor wants to get up here and say, and I heard it, I
9 don't know how many times I heard just a few minutes ago it
10 doesn't matter. How many times did I hear that, it doesn't
11 matter? Well, yes, it does matter. When the State of South
12 Carolina accuses any citizen of a crime, it matters what
13 they do. It matters what they bring into this courtroom.
14 It matters what they present to you twelve jurors. And if
15 the State of South Carolina cannot present its case to you,
16 then you are duty bound under the law to find a defendant
17 not guilty. You can't fill in the blank for the State.

18 And let me just say one thing here that is very,
19 very important. What I am arguing to you right this very
20 minute is not evidence. What the solicitor argued to you a
21 few minutes ago is not evidence. We are advocates for our
22 positions. We do not constitute evidence in the case. The
23 solicitor, as much as she wants to fill in those blanks with
24 what comes out of her mouth in closing argument is not
25 evidence. She wants to say, oh, this and that and the

1 other. She wants to fill in the blanks to you with her
2 argument. That doesn't work.

3 If you go back and look at the evidence and if you
4 remember something different from what I'm saying today, go
5 with what you see, because I'm not going to try to mislead
6 you. I want you to look at the evidence. I want you to go
7 back. If you want to play that video over and over and over
8 again, play it, because you will not see in that video any
9 crack cocaine. There is no crack cocaine in that video.

10 What you have here, and what I have done, is --
11 and I apologize because I can't blow them up any bigger, is
12 I have just taken some pictures off of the video. And these
13 are still shots that came straight off the video. It
14 doesn't matter.

15 Let's see, this guy right here, that's the first
16 person we encounter. Ms. Jackson said that's Aaron.

17 "Aaron who?

18 "I don't know.

19 "Well, could you have found him, you know, back
20 then if we needed to get him?

21 "Oh, yeah.

22 "Do you know where he stays?

23 "I don't know.

24 Oh, we don't have Aaron. Nobody brought Aaron to
25 the courtroom. The State doesn't know who Aaron is. They

1 don't know what his involvement is. They don't know nothing
2 about Aaron.

3 All right. Then after we got these two people
4 here. They are sitting in the car. We don't know who they
5 are. Who are they? We have no clue. Nobody has told us.

6 We have Mr. Owensby. Now, this is just -- this is
7 just very important here. I mean, we have got Mr. Owensby,
8 Michael Owensby. He was part of this whole thing. You
9 know, remember, the two of them were together. Yeah, we got
10 a little bit of different testimony about, well, Officer
11 Parker says that she approached them about helping. She
12 says the officers approached her about helping. I'm not
13 really sure what, but it was Ms. Jackson and Mr. Owensby who
14 started this transaction, this deal, this whatever was going
15 on that evening. It's Mr. Owensby right here who has the
16 money that he gives to the clerk behind the counter here.
17 We don't know anything about what happened here, because Mr.
18 Owensby for some reason is not here and was not presented to
19 you to testify.

20 The defendant doesn't have to present any
21 evidence. The burden is on the State. And if the State
22 doesn't meet that burden, you are to find the defendant not
23 guilty. The State has the burden of bringing all the
24 evidence to you. This was their informant. Ms. Jackson and
25 Mr. Owensby were their informants and they don't even bother

1 to bring Mr. Owensby into the courtroom yesterday or today
2 to have him testify.

3 Ms. Jackson, I asked her yesterday, I said "when
4 was the last time that you seen Mr. Owensby?

5 "Today."

6 I mean, it's not like they don't know where he's
7 at. They just didn't bring him here. They just didn't
8 present him to you. We don't have to do that. They do. We
9 don't know what he did that night. We don't know what he
10 gave to the clerk, got back from the clerk. Just don't
11 know.

12 Here he is again in the video. Hand in his
13 pockets going underneath the shirt. What was he doing
14 there? What was he getting? What was he taking out? We
15 don't know, because he's not here to tell us what he was
16 doing.

17 Down here. Look at that video a hundred times if
18 you want to, you will not see anything in that hand.

19 Is that Ms. Jackson's hand or is that Mr.
20 Owensby's hand? I don't know, and I submit to you by the
21 evidence in this case you don't know either.

22 Remember when I asked Ms. Jackson the question on
23 cross-examination, she says "that's Mr. Owensby." Well,
24 then she changes her story, "oh, that's me." So we got her
25 saying well, that's Mr. Owensby one time or so, and then

1 another time she said that's me. I submit to you we don't
2 know whose hand that is. And Mr. Owensby didn't come in
3 here and say that's not my hand, that's Ms. Jackson's hand,
4 because Mr. Owensby didn't testify. So it does matter.

5 The State says muddy the water. Oh, it's a little
6 story about the prosecutor and the defense attorney and the
7 quarter. Well, ladies and gentlemen, I tell you right now
8 if there is no mud to start with, you can't muddy the water.
9 If there was no mud, how in the world am I going to muddy
10 the water to start with? That's the problem with this case,
11 is there is mud, mud, mud, and the State wants to say it
12 doesn't matter.

13 The evidence log is wrong. Officer Wyatt says
14 well, no, I put the wrong time of the date on there. It's
15 just my mistake. I didn't get it on the 26th because I was
16 already gone. Just my mistake. We have these bar codes and
17 we scan it in and we do this and we do that. Did he bring
18 any of that information to you today? No.

19 And we have got the proximity charge of it's a
20 half mile from Mary Bramlett. Well, nobody yesterday had
21 even bothered to measure it. So what do they do? Mr. Wyatt
22 rides by there this morning and measures it.

23 I mean, that is just what we have here, is we have
24 the State wanting you to do their job for them. They want
25 you to fill in the blank, because you know what? It doesn't

1 matter.

2 When you are accused of a crime and you come into
3 this big courtroom up here that is made just for presenting
4 cases such as this, it does matter. It does matter, because
5 ladies and gentlemen, what is that? That's two lines on a
6 piece of paper. That's all it is. Two lines on a piece of
7 paper.

8 Here is the problem, though. It does matter. It
9 is the important word. It does matter. And if the State
10 doesn't dot all of their I's and cross all of their T's,
11 they don't have it. It does matter. The State has to dot
12 their I's and cross their T's before we even get to it,
13 because if they don't have their I's dotted and their T's
14 crossed, you don't know what it is. You have two lines on a
15 piece of paper is all you have.

16 Now, I have said a lot of stuff here, and I could
17 probably talk for a long time and you will say to yourself,
18 boy, I hope he doesn't, but I could, but let me kind of wrap
19 this up and, you know, I usually talk longer in this
20 actually, but you are saying oh, my gosh, so let me kind of
21 wrap it up here, because I think this is very, very, very,
22 very important; the gaps that we have, the evidence we don't
23 have, the T's aren't crossed, the I's aren't dotted.

24 Well, ladies and gentlemen, something I think real
25 significant was brought out in this case today, just this

1 morning. What was that? This is State's Exhibit No. 2.
2 This is what they claim was sold that night, purchased that
3 night. Look what we got here. We have a piece of a paper
4 towel. Up until a little while ago there was no testimony
5 whatsoever about a piece of a paper towel. Felicia Jackson
6 didn't say anything about a piece of a paper towel. The
7 officers didn't say anything about a piece of a paper towel.
8 Nobody said anything about a piece of a paper towel.
9 However, the lady from SLED who testified, she said "when I
10 got this, it was wrapped -- "the drugs were wrapped in a
11 piece of a paper towel. The crack cocaine was wrapped in a
12 piece of a paper towel. And that is the very piece of the
13 paper towel that I found when I opened the bag." That's
14 what she said. She wrote identifying information on the
15 piece of the paper towel. Was there any testimony in this
16 case whatsoever about a piece of a paper towel? Did Ms.
17 Jackson say, well, the drugs I got were wrapped in a piece
18 of a paper towel? Did Ms. Jackson say I wrapped the drugs
19 in a piece of a paper towel? Did the officers say we
20 wrapped the drugs in a piece of a paper towel? No. Not a
21 single solitary bit of evidence about a piece of a paper
22 towel, about the drugs being wrapped in a piece of a paper
23 towel. But there it is, ladies and gentlemen, and the State
24 can't hide that from you, because there it is. Do we know
25 how the piece of the paper towel got into the evidence bag?

1 No, because they didn't tell you. Nobody told us. Maybe
2 they don't even know how it got into the evidence bag. But
3 we certainly don't know, you don't know, because there is no
4 evidence of how the piece of the paper towel got into the
5 evidence bag.

6 We all have a job to do. The judge has a job to
7 do. I have a job to do. The solicitor has a job to do.
8 And most importantly you have a job to do. It is your job,
9 based on the evidence or lack of evidence, to make a
10 determination as to whether or not the defendant is guilty.
11 It's not by conjecture. It's not by speculation. It's not
12 by guessing. And you should not be asked by the State to
13 fill in the blanks, because that, ladies and gentlemen, is
14 their job. And when you go back into that jury room, all
15 twelve of you have to be convinced beyond a reasonable doubt
16 of this case. And if you go back there and you do not
17 believe that the State has dotted the I, that the State has
18 not crossed their T, then it does matter.

19 I submit to you, ladies and gentlemen, there are
20 so many gaps in this case, there are so many holes in this
21 case, that there is overwhelming doubt as to what happened
22 on this evening. I submit to you by the oath that you took
23 yesterday as jurors, the oath that you took means you as 12
24 judges of the facts are obligated to hold the State to their
25 burden of proof. And if, considering all the evidence, you

1 are not quite sure what happened that night, you are not
2 totally convinced about what happened that night, that you
3 think some I's have not been dotted or T's crossed, that's
4 what reasonable doubt is. And under the law if you have got
5 that doubt in your mind, then you are obligated by your oath
6 to resolve that doubt in the defendant's favor and find him
7 not guilty.

8 If you believe that Mr. Owensby is an important
9 part of this case that you didn't get to hear, that's
10 reasonable doubt.

11 If you believe Aaron, who is an important part of
12 this case, that you didn't get to hear, that's reasonable
13 doubt.

14 If you believe these people who they were, what
15 they did, if that's important, that's reasonable doubt.

16 But probably most importantly if you don't know
17 how that piece of paper towel got into the evidence bag,
18 that is reasonable doubt.

19 Ladies and gentlemen, thank you very much for your
20 attention. I appreciate it. I'm going to sit down, but I
21 ask you hold the State accountable, because it does matter.
22 Thank you.

23 THE COURT: Before I give you the instruction we
24 are going to take a short break. The clerk is going to take
25 your lunch order. It would be prepared while I'm giving you

1 the instruction, and then it will be brought to the
2 courthouse and you can eat and deliberate, or eat and then
3 deliberate, whichever. But right now we are going to take
4 your lunch orders. So please go to your jury room. Do not
5 yet discuss the case. I'll bring you back once that
6 ordering has been completed.

7 (The following takes place outside the presence of
8 the jury panel)

9 THE COURT: We will be at ease for about ten
10 minutes.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: All right. Bring the jury in, please.

14 (The following takes place in the presence of the
15 jury panel)

16 (Whereupon, at 12:02 p.m., the court charged the
17 jury panel)

18 THE COURT: Ladies and gentlemen, it is your
19 exclusive duty to determine what the facts are. You do that
20 through your own common sense, examination, and evaluation
21 of all the testimony and the other evidence received during
22 the trial of this case. And you twelve jurors alone will
23 decide what weight, value, and effect to give any particular
24 testimony or other evidence in the case.

25 Your sole objective is to simply reach the truth

1 in the matter. And by doing that, you will have fulfilled
2 your obligations as jurors, and that is to simply give both
3 the State and the defendant a fair and impartial trial.

4 In this case, as you know, the State, through the
5 prosecutor, has charged the defendant, James Ray Byers, Jr.,
6 with having committed two separate and distinct offenses,
7 although, as I have told you, they are alleged to have
8 arisen out of one particular event or a course of events
9 which the State alleges occurred back on August the 26th of
10 2009. Because there are two charges, there are also two
11 separate indictments. You will be rendering separate and
12 distinct verdicts as it relates to each of those separate
13 indictments.

14 One indictment charges the defendant with having
15 committed the crime of distribution of crack cocaine. The
16 State alleges that on or about August the 26th of 2009,
17 James Ray Byers, Jr., did, here in Cherokee County,
18 distribute some quantity of crack cocaine, a Scheduled II
19 controlled substance, in violation of a particular statute.

20 They also allege in a separate indictment that
21 James Ray Byers did, here in Cherokee County, on or about
22 that same day, distribute a quantity of crack cocaine within
23 a one-half mile radius of Mary Bramlett Elementary School in
24 Gaffney, South Carolina.

25 Now, as to that allegations contained in each of

1 those indictments and as to the charges the defendant has
2 entered a plea of not guilty. And as I have told you, that
3 plea of not guilty, therefore, places upon the State the
4 burden of proving the allegations that are set forth, the
5 burden of proving each of the essential elements that makes
6 up the crimes which have been alleged against the defendant.
7 And, therefore, the burden is upon the State to establish
8 the defendant's guilt to the satisfaction of you twelve
9 jurors beyond a reasonable doubt before any verdict of
10 guilty could be returned.

11 As I believe I also told you, the indictments
12 themselves are not evidence in the case. They don't
13 establish anything. They don't prove anything. They are
14 simply the manner by which any person who is accused of a
15 crime is brought into this court to stand trial on that
16 charge. And, of course, the indictment serves to put them
17 on notice what crime the State claims they have committed.

18 The indictments, however, will be in the jury
19 room, because it is on the back of each indictment, Madam
20 Forelady, that you are going to be asked to indicate the
21 jury's unanimous decision as it relates to that particular
22 charge. So you will be rendering two separate and distinct
23 verdicts, and those verdicts may be the same or they may be
24 different. That, of course, will depend upon your
25 determination of fact and then your application of the law

1 as I will have provided it to you.

2 The burden is never upon a defendant or a person
3 accused of a crime to prove that they are not guilty or to
4 prove that they are innocent, because in some cases that
5 might not be possible. It is a vital, important, and
6 cardinal rule of law that every defendant in a criminal
7 trial, no matter how serious the offense might be for which
8 that person stands charged, that person shall always be
9 presumed innocent of that charge. And that presumption of
10 innocence remains with any defendant, as it does with this
11 defendant, from the time that he is placed under arrest and
12 throughout the course of the criminal process, and even
13 throughout the course of the actual trial. And that
14 presumption of innocence will be with Mr. Byers even as you
15 go back to begin with your deliberations in this case. And
16 that presumption of innocence will be with him in the jury
17 room, and it will be with him forever, unless you twelve
18 jurors determine that he's no longer entitled to that
19 presumption of innocence. In other words, after you have
20 carefully considered all the evidence, and from that
21 evidence you have decided the facts, and upon the deciding
22 the facts you apply the law that I will have provided you,
23 if you twelve jurors unanimously determine that his guilt as
24 to a particular indictment has been proven beyond a
25 reasonable doubt, then the defendant would no longer be

1 entitled to the presumption of innocence as it relates to
2 that charge. But it is only if, unless, and until you are
3 satisfied of his guilt beyond a reasonable doubt that the
4 presumption of innocence would no longer be applicable.

5 Now, while the State does have the burden of
6 proving the defendant's guilt to your satisfaction beyond a
7 reasonable doubt, that does not mean that the State has to
8 prove his guilt beyond all doubt or beyond any possible
9 doubt, but it does require the State to prove his guilt to
10 your satisfaction beyond a reasonable doubt. And the term
11 reasonable doubt should be given its plain and ordinary
12 meaning. A reasonable doubt is the kind of doubt that would
13 cause a reasonable person to hesitate to act upon the
14 information provided. And the defendant in a criminal trial
15 is entitled to any reasonable doubt that arises from the
16 evidence or lack of evidence in the case.

17 And if, upon any factual issue essential to a
18 finding of a verdict of guilty, you have some reasonable
19 doubt as to how that issue should be resolved, it would be
20 your duty to resolve that reasonable doubt in favor of the
21 defendant. And, therefore, if upon your consideration of
22 the whole case you have a reasonable doubt as to the
23 defendant's guilt as it relates to a particular indictment,
24 you must resolve that reasonable doubt in his favor and
25 return a verdict of not guilty.

1 And at the same time after you have carefully
2 considered all of the evidence and you have decided the
3 facts and you have applied the law as it relates to that
4 charge, if you have no reasonable doubt as to his guilt,
5 then it would be your corresponding duty to find him guilty
6 of any charge that has been proven to your satisfaction
7 beyond a reasonable doubt.

8 The same law which provides that you are the
9 judges of the facts also provide that I am the judge of the
10 law. That simply means that nobody is going to tell you how
11 to arrive at your determination of fact in this case. You
12 do that, as I have already stated, through the exercise of
13 good judgment and common sense, conscientiously applied to
14 the testimony and evidence received during the course of the
15 trial. You must, however, under your oath as a juror accept
16 the law as I provide it to you as being the law that you are
17 to apply in the case. In other words, you are never to
18 concern yourself with what you thought the law was before
19 you came to serve as a juror this week or what you think the
20 law ought to be. You must, under your oath as a juror,
21 simply accept the law as I provide it to you as being the
22 law that you are to apply in the case. And then you take
23 that law and you apply it to the facts as you twelve jurors
24 have determined those facts to be, based upon your own
25 common sense examination of all the testimony and other

1 evidence received during the trial.

2 Because you are the sole judges of the facts in
3 this case, you are, therefore, necessarily the sole judges
4 of the credibility or the believability of each witness.

5 There are a number of factors which you should
6 consider in assessing the credibility of a witness'
7 testimony, and those factors include what was the demeanor
8 of the witness as the witness testified from the witness
9 stand. Was the witness straightforward in response to
10 questions, or was the witness hesitant or evasive in
11 responding to questions that were asked of that witness.
12 Simply put, did the witness appear to you to be telling the
13 truth and to have knowledge of the fact to which that
14 witness has testified.

15 You should also consider whether or not the
16 testimony of a witness is consistent or is it inconsistent
17 with that witness' own testimony or statements made by the
18 witness, whether in court or out of court, and whether or
19 not the testimony of a witness is consistent or inconsistent
20 with other testimony or other evidence received during the
21 trial.

22 You should also consider how the witness came to
23 know the facts to which that witness has testified. In
24 other words, what was that particular witness' opportunity
25 and ability to perceive the existence of those facts to

1 which that witness has testified by having previously used
2 his or her senses, and then what is that witness' ability to
3 be able to come into court and to accurately recollect to
4 you as to what they have previously perceived.

5 You should also consider any bias or prejudice or
6 interest that a witness might have with respect to a case.
7 In other words, do you find some reason that a particular
8 witness would testify one way or the another to help or to
9 hurt one side or the other. And you should consider any
10 interest that a witness might have in the outcome of the
11 case. If you determine that a witness does have such an
12 interest and you find that that interest would bear upon
13 that particular witness' credibility. And you should also
14 consider whether or not the testimony of a witness is
15 strengthened or was it weakened by other testimony or other
16 evidence received during the course of the trial.

17 Now, during the trial of this case you heard the
18 testimony from a person who was qualified as an expert in a
19 particular field. Now, while not just any witness can
20 testify as an expert, where a witness does have some special
21 education or training or experience as it relates to a
22 particular field, they may be offered as an expert in that
23 particular field. And the purpose of offering a witness as
24 an expert in a particular field is to allow them to testify
25 in an opinion form as it relates to the facts of the matter.

1 Ordinarily lay witnesses can't testify to as to opinions
2 they may have. They can testify as to what they have seen
3 or observed or perceived, but they don't give opinions.
4 However, witnesses that have special education and training
5 or experience with respect to a particular matter, if they
6 are qualified by the court as an expert, they may testify in
7 an opinion form.

8 Now, understanding the fact that I qualify a
9 witness as an expert does not mean that you must accept
10 everything that the expert witness testifies to. You still
11 must determine and assess the credibility of an expert
12 witness, just as you do any other witness' testimony. And
13 if you determine in your view that an expert who testifies
14 during the trial does not have sufficient training, skill,
15 education, or experience, or did not properly consider the
16 facts related to the matter, then you may reject that
17 expert's opinion in its entirety; or you may believe some
18 portion of it and reject some other portion of it, just
19 as you are allowed to do with respect to any other witness
20 that has testified during the trial. But you as the finders
21 of the fact and the judges of the credibility of each
22 witness may believe as much or as little of what a witness
23 has testified to as you deem is appropriate. And so you can
24 believe everything that a witness testifies to. You may
25 choose to believe none of it. You may believe some portion

1 of a witness' testimony and reject some other portion of
2 that same witness' testimony. You could believe one witness
3 as opposed to many, or many as opposed to one. But whatever
4 your good judgment and common sense tells you is the most
5 believable and credible testimony is the testimony that you
6 should accept, and you should reject any testimony that you
7 find not to be credible or believable.

8 Again, your sole objective is to simply reach the
9 truth in the matter. And by doing that you will have
10 fulfilled your obligations as jurors.

11 Now, while there are various forms of evidence,
12 such as testimony, photographs, documents, charts, and other
13 types of physical exhibits, there are really only two types
14 of evidence. Either or both of those types of evidence may
15 be used to prove any fact in issue, but the two types of
16 evidence are direct evidence and circumstantial evidence.

17 Direct evidence is the testimony of a person who
18 testifies from actual knowledge of a fact. It is testimony
19 by a person who has perceived the existence of some fact by
20 means of his or her senses and then they come into court and
21 they testify to what they have previously perceived.

22 Circumstantial evidence, on the other hand, is the
23 proof of some other fact or set of facts, which taken either
24 singularly or collectively, may prove the existence of a
25 fact in question as a necessary consequence; that is,

1 through an inference.

2 And an inference is simply a deduction of fact
3 that may logically and reasonably be proven by some other
4 fact or set of facts. In other words, it's not a fact
5 proven by the direct testimony of a person based upon their
6 own personal perception, but it is a conclusion which might
7 reasonably be drawn from the proof of other facts. In other
8 words, you may infer that a particular fact exists or that a
9 particular event occurred based upon the proof of sufficient
10 factual circumstances which would reasonably warrant your
11 arriving at that conclusion.

12 The law, however, does not make any distinct
13 between the weight or the value to be given to direct
14 evidence as opposed to circumstantial evidence, nor is there
15 a greater degree of certainty required of circumstantial
16 evidence as opposed to direct evidence.

17 Whatever the type of evidence used to prove any
18 fact in issue, you should consider all of that evidence.
19 And after weighing all of that evidence in your minds, if
20 you are not convinced of the guilt of the defendant beyond a
21 reasonable doubt, then you must resolve that doubt in his
22 favor and return a verdict of not guilty.

23 You are further instructed, and I emphasize to
24 you, that the fact that a defendant does not testify during
25 the trial of the case is not something that the jury may

1 consider in any way whatsoever in your deliberations or in
2 your determination as to whether or not his guilt has been
3 proven beyond a reasonable doubt. You may not allow such a
4 fact to weigh in the slightest degree against a defendant.
5 And that is, because, as I have stated, the burden is not
6 upon a defendant to prove that he or she is not guilty,
7 because in some cases that might not be possible. The
8 burden is always upon the State, because they have brought
9 the charge against another, to establish that person's guilt
10 beyond a reasonable doubt. And, therefore, you are not to
11 draw any inference nor reach any conclusion from the fact
12 that a defendant does not testify during the trial of the
13 case, nor may you even discuss that fact while you are
14 engaged in your deliberations.

15 Now, as you know, the defendant is charged with
16 two separate and distinct offenses. One is distribution of
17 crack cocaine. The other is distribution of crack cocaine
18 within one-half mile radius of an elementary school.

19 As you can tell from what I have just stated, a
20 distribution of crack cocaine is necessary to be proven for
21 each of the separate offenses, because of the offense of
22 distribution within a half mile of a school necessarily
23 includes distribution of crack cocaine, so I'm going to
24 instruct you on the law as it relates to the distribution of
25 crack cocaine, and then I'll instruct you on the law as it

1 relates to that within one-half mile radius of an elementary
2 school, but that is the additional element for that offense,
3 is simply that it must be shown to have been in the one-half
4 mile radius of an elementary school.

5 Both of these offenses are what are referred to as
6 statutory offenses, and that just means that they are
7 contained in these blue volumes. There are, I don't know,
8 25, maybe. Every year the legislature meets from January to
9 June. And while they meet, they pass laws and regulations
10 and things. And some of those laws are criminal statutes.
11 And it just means that the legislature has prohibited
12 citizens from engaging in certain types of conduct. And
13 where a citizen is found to have engaged in that conduct
14 which is prohibited by the statute, then it subjects them to
15 some form of punishment or penalty as a result.

16 Please keep in mind, however, that you are never
17 to base your decision upon any punishment or penalty that
18 might be imposed as a result. Your sole obligation and duty
19 in the trial of this case is to determine whether or not a
20 person's guilt has been proven beyond a reasonable doubt.
21 And you do that without any regard to the consequences of
22 your decision. But, as I say, these are statutory offenses.

23 And distribution of crack cocaine is set forth in
24 Section 44-53-375. And that statute simply provides that it
25 shall be unlawful for any person to manufacture, distribute,

1 dispense, deliver, purchase; or otherwise aid, abet,
2 attempt, or conspire to manufacture, distribute, dispense,
3 deliver, or purchase; or possess with intent to distribute,
4 dispense, or deliver, methamphetamine or cocaine base in
5 violation of the provisions of 44-53-370.

6 Now, 44-53-370 provides that it shall be unlawful
7 for any person to manufacture, distribute, dispense,
8 deliver; or possess with intent to manufacture, distribute,
9 dispense, or deliver a controlled substance, except when
10 it's authorized by law pursuant to a valid prescription or
11 the order of a licensed professional practitioner, such as a
12 physician, a dentist, a pharmacist, or any other person
13 authorized by law to distribute or to dispense controlled
14 substances while they are acting in the regular course of
15 their professional practice and in accordance with any legal
16 requirements.

17 A controlled substance is defined in the law as a
18 drug or other substance which is classified in Schedules I
19 through V in the South Carolina Code of Laws which
20 classifies various types of drugs.

21 Cocaine is a scheduled and classified drug under
22 the law.

23 And Section 44-53-210 of the Code of Laws provides
24 that cocaine is classified as a Schedule II controlled
25 narcotic substance.

1 Cocaine base means an alkaloidal cocaine or a free
2 base form of cocaine which is the end product of a chemical
3 alteration whereby cocaine in salt form is converted to a
4 form suitable for smoking.

5 Cocaine base is commonly referred to and known as
6 rock cocaine or crack cocaine.

7 Within the meaning of the statute the term
8 distribute refers to the delivery of a controlled substance.

9 Dispense means to deliver a controlled substance
10 to an ultimate user.

11 And deliver means the actual or constructive or
12 attempted transfer of a controlled substance.

13 Now, the State in this case is alleging that the
14 defendant violated the statute, which has been read to you,
15 by distributing a quantity of cocaine base, which is also
16 referred to as crack cocaine, to a person who was working in
17 an undercover capacity for the county sheriff's department.

18 The burden is on the State to prove to your
19 satisfaction beyond a reasonable doubt that the defendant,
20 James Ray Byers, Jr., distributed some quantity of crack
21 cocaine.

22 The unlawful distribution or delivery of the
23 controlled substance, in this case crack cocaine,
24 constitutes the offense known as distribution of crack
25 cocaine.

1 And, therefore, before the defendant could be
2 found guilty of that particular charge set forth in that
3 indictment, the evidence in this case would have to convince
4 you beyond a reasonable doubt that James Ray Byers did
5 distribute a controlled substance and that that controlled
6 substance was crack cocaine.

7 The defendant is also charged with distribution of
8 crack cocaine within a half-mile of a school. That is a
9 separate criminal offense, as you have been told, and that
10 is set forth in Section 44-53-445 of the Code of Laws. And
11 that statute provides that it shall be a separate criminal
12 offense and it shall be unlawful to distribute crack cocaine
13 while in, on, or within a one-half mile radius of the
14 grounds of a public or private elementary, middle, or
15 secondary school.

16 And, therefore, in this case in order for the
17 defendant to be found guilty of the offense of distribution
18 within one-half mile radius of an elementary school, it
19 would be necessary that the evidence in this case convinces
20 you beyond a reasonable doubt that the defendant did
21 distribute a controlled substance, that the controlled
22 substance was crack cocaine, and that the distribution of
23 crack cocaine took place in, on, or within a one-half mile
24 radius of the grounds of a public or private elementary
25 school, middle, or secondary school.

1 Now, ladies and gentlemen, I am not in any way
2 concerned with what your decisions are, but you are
3 instructed, as I have previously stated, that any decision
4 that you reach must be unanimous. All twelve of you must be
5 in agreement.

6 Madam Forelady, as you know, you are called upon
7 to preside over the jury deliberations simply to ensure that
8 they are carried out in some orderly fashion, but all jurors
9 are expected to participate, because the verdict, as you
10 know, is a unanimous and a consensus opinion of all twelve.
11 So, Madam Forelady, as you preside over the process in the
12 jury room, once you and your fellow jurors have reached a
13 unanimous decision as it relates to a particular indictment,
14 you will indicate that decision on the back of the
15 indictment. In the lower left-hand corner of the indictment
16 you will see the word verdict. And it's beneath that word
17 that you will indicate the jury's decision as it relates to
18 that charge.

19 With respect to each of the separate indictments,
20 you have two possible verdict forms. Those forms are guilty
21 and not guilty. So whichever that decision is, indicate it
22 in the space provided. You will also need to sign your name
23 as the foreperson, but you are the only juror that needs to
24 sign the verdict form. And you will also place the
25 appropriate date, which is the 20th of April.

1 And, of course, you have two indictments. You
2 have to indicate two separate decisions. And as I have told
3 you, they may be the same, or they may be different. That,
4 of course, will depend upon your determination of fact as it
5 relates to the elements of the crime and then your
6 application of the law.

7 Now, during the course of deliberations there may
8 come a time where you have some question about the facts or
9 the evidence in the case and you want to know if there is
10 something else out there that you could have to assist you
11 in resolving the case. The case is closed now. And as a
12 result, no additional evidence can be received. So even if
13 there is something out there that you might like to see or
14 hear or have, you can't have it, even if it exists, because
15 no additional evidence may be received.

16 If you have a question about the testimony of a
17 witness or fact that was testified to by a witness and you
18 think that that question could be answered by having
19 testimony replayed in whole, or in part, then you let me
20 know and I will make arrangements for you to have that
21 testimony replayed or reheard, or at least to be provided to
22 you in some fashion.

23 So with respect to additional evidence, none can
24 be received, even if it exists. But if you have questions
25 that can be answered by having testimony reheard, we can

1 make those arrangements for you.

2 And if you have any question about the law that is
3 applicable, I am always permitted to answer those questions.
4 So should you have a question about the law, you need an
5 additional instruction or clarification of what's been
6 provided, let me know and I can provide you with that
7 additional explanation or that clarification.

8 So, Madam Forelady, if at any time you need to
9 address some matter to me, if you will write it on a piece
10 of paper, give it to the bailiff and I'll respond to that
11 issue or answer that question.

12 Once y'all have reached your decision, indicate
13 the decisions on the back of the indictments, as I have
14 indicated, but you will hold onto the indictments which are
15 the verdict forms. You hold onto them and I'll receive them
16 from you after the jury comes back into the courtroom. But
17 when you have made your decision, notify the bailiff that
18 you have done so and we will bring you back.

19 Now, of course, your lunch has been ordered. It's
20 being prepared. You know, it should be here shortly, I
21 hope, but once you go back, don't begin deliberations. I
22 ever got to address some matters with the lawyers.

23 If I don't need to bring you back for any reason,
24 I'll send word by the bailiff that you can begin your
25 deliberations. And in that event, he will bring to the jury

1 room all the exhibits which have been admitted.

2 And you, Madam Forelady, he will also bring the
3 indictments which will serve as the verdict form.

4 Now, so far as the verdict is concerned, I'm
5 hoping that we can make arrangements to have the video disc
6 put on a computer so you can have it in the jury room. That
7 way you can look at it however you wish to. If we can't
8 make those arrangements, we will have to bring you back into
9 the courtroom for that purpose, but hopefully we will be
10 able to send it back with you.

11 When your lunch gets here, y'all can stop and eat
12 lunch and then resume deliberations, or you can deliberate
13 while you eat. That's up to you. I'm not going to tell you
14 how to do that.

15 So right now if you will please go to your jury
16 room, but do not begin deliberations until I send you word
17 to do so. In that event, I'll send back the evidence and
18 the verdict forms.

19 (Whereupon, at 12:30 p.m., the jury panel retired
20 to the jury room, awaiting instructions to begin
21 deliberations)

22 THE COURT: Are there any exceptions to the
23 instructions or requests for additions by the State?

24 MS. LESKANIC: No, Your Honor.

25 THE COURT: By the defendant?

1 MR. RHODEN: The only thing I have, Your Honor, is
2 that earlier when I made my directed verdict motion, I took
3 the position that 44-53-445 had been changed, and the change
4 would be applicable, and that change included the knowledge
5 requirement. And I certainly took it that your ruling was
6 that that change was not applicable. But just so the record
7 is clear in regard to jury instructions, I would ask the
8 court to reconsider that and to include in the jury
9 instructions the additional element that the State must
10 prove that the defendant had knowledge that the school or
11 playground was within one-half mile.

12 THE COURT: All right. But you would agree with
13 me that that was not an element of the offense in August of
14 2009?

15 MR. RHODEN: That is correct.

16 THE COURT: That's a recent amendment.

17 MR. RHODEN: Yes. My position is that the recent
18 amendment should be retroactive.

19 THE COURT: All right. I understand the argument,
20 but that request is still denied, however.

21 Let me ask y'all to verify the exhibits, please.

22 And do we have a computer to send back?

23 MS. LESKANIC: We do not have a clean computer,
24 Your Honor. We just have our two laptops that we use.

25 THE COURT: What's on them.

1 MS. LESKANIC: It shouldn't be much on mine,
2 because I'm not -- I mean --

3 THE COURT: Well, let's have a look at it, because
4 in the future y'all are going to have to have a way for the
5 jury to use. They out not have to come in here look at
6 evidence. They ought to be able to do that in the jury
7 room. We won't be able to introduce the evidence if you
8 can't send it back.

9 MS. LESKANIC: All right.

10 THE COURT: Why don't you show Mr. Rhoden your
11 computer and let's see if there is any reason why it can't
12 be used in the jury room.

13 (Off the record)

14 (Back on the record)

15 MS. LESKANIC: I think Mr. Rhoden is concerned
16 that mine has Internet wireless Internet access.

17 And he's offering his computer, Your Honor, that
18 has to be plugged in to have Internet access, and his does
19 not have a password, where mine does.

20 MR. RHODEN: Mine is -- this is the one that I
21 just use for court. It doesn't have much expensive stuff on
22 it. The only Internet access is by the plug.

23 THE COURT: Let's see which one you use.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: Bring the jury back into the
2 courtroom.

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT: All right, I had one quick matter I
6 need to address with you. We have a computer, and the disc
7 of that video is on that computer. Now, it's a private
8 computer, so it's not just a clean computer, so don't go
9 away from the disc. Don't go to any other source or
10 information in the computer. Just look at the -- we put it
11 on that computer so you would have it in the jury room and
12 that way you can look at it as often as you want to, stop
13 and talk. I guess -- how many people that know exactly what
14 to do with a computer? Okay. We have got plenty, good,
15 because I don't, but we are going to send that back with you
16 so you can look at it however you want to. It's already in
17 and it's ready to go. There's a little icon up there that
18 says play again, so all you got to do is hit that and it
19 will start. And then y'all can fool with it from there.

20 The other thing, I understand we have some smokers
21 on the jury, so you can smoke all you want to during
22 deliberations, but you cannot smoke in the jury room. So if
23 you want to smoke, as y'all perhaps know, you have to go
24 outside. But what I'm instructing you, deliberations cannot
25 take place unless everybody is in the jury room. So if

1 anybody is outside smoking, going to the bathroom, whatever,
2 deliberations have to stop so that all twelve are present
3 and able to participate.

4 All right. With that, you may retire to your jury
5 room and you can begin your deliberations when the bailiff
6 brings you the evidence and the verdict forms. Okay.

7 (Whereupon, at 12:46 p.m., the jury panel went to
8 the jury room, awaiting instructions to begin deliberations)

9 THE COURT: You can take that back and here is the
10 verdict forms.

11 All right. Tell the jury to begin deliberations
12 and notify us when they have concluded.

13 We will be at ease while they are deliberating.

14 (Whereupon, at 12:47 p.m., the jury panel was
15 instructed to begin deliberations)

16 (Whereupon, at 12:48 p.m., proceedings were
17 recessed, pending the verdict of the jury panel)

18 (Whereupon, at 4:03 p.m., proceedings were
19 reconvened)

20 THE COURT: All right, I understand the jury has
21 reached a decision in the Byers case.

22 Are we ready to receive that decision?

23 MS. LESKANIC: The State is ready, Your Honor.

24 MR. RHODEN: Yes, sir.

25 THE COURT: Bring them in, please.

1 (Whereupon, at 4:05 p.m., the jury panel returned
2 to open court to report the verdict)

3 THE COURT: Madam Forelady, have you and your
4 fellow jurors reached a unanimous decision?

5 JURY FOREPERSON: Yes, we have.

6 THE COURT: With respect to each indictment?

7 JURY FOREPERSON: Yes, sir, we have.

8 THE COURT: Have you indicated those decisions on
9 the back of the indictment?

10 JURY FOREPERSON: Yes, sir.

11 THE COURT: Did you sign your name as the
12 foreperson and date it?

13 JURY FOREPERSON: Yes, sir.

14 THE COURT: If you will please hand those verdict
15 forms up by way of the bailiff.

16 All right, you may publish the verdict.

17 THE CLERK: 2009-GS-11-1179, the State versus
18 James Ray Byers, Jr., indictment for distribution of crack
19 cocaine, the verdict is guilty. Signed by foreperson Carol
20 Ruppe.

21 As to indictment 2009-GS-11-1180, the State versus
22 James Ray Byers, Jr., indictment for distribution of crack
23 cocaine within one-half mile of school, the verdict is
24 guilty. Signed by foreperson Carol Ruppe.

25 Ladies and gentlemen of the jury, if this is the

1 verdict of you all, please indicate by raising your right
2 hand.

3 Thank you.

4 Does the defendant wish to have the jury polled?

5 MR. RHODEN: Yes, sir, Your Honor.

6 THE COURT: Poll the jury, please, ma'am.

7 THE CLERK: Juror 76, Carol Ruppe, please raise
8 your hand. Is this your verdict?

9 JUROR NUMBER 76: Yes, it is.

10 THE CLERK: Juror 19, Angelia Dover -- please
11 raise your hand as I call your name. Is this your verdict?

12 JUROR NUMBER 19: Yes.

13 THE COURT: Juror 16, Dale Davis.

14 JUROR NUMBER 16: Yes.

15 THE COURT: Raise your hand, please.

16 Juror 17, Deborah Davis, is this your verdict?

17 JUROR NUMBER 17: Yes, ma'am.

18 THE COURT: Okay. Juror 57, Rhonda Morris, is
19 this your verdict?

20 JUROR NUMBER 57: Yes.

21 THE CLERK: Juror 26, Daniel Frye, is this your
22 verdict?

23 JUROR NUMBER 26: Yes.

24 THE COURT: Juror 87, Melody Smith, is this your
25 verdict?

1 JUROR NUMBER 87: Yes, ma'am.

2 THE COURT: Juror 95, Pamela Turner, is this your
3 verdict?

4 JUROR NUMBER 95: Yes, ma'am.

5 THE COURT: Juror 51, Curtis Martin, is this your
6 verdict?

7 JUROR NUMBER 51: Yes.

8 THE COURT: Juror 20, Patricia Dunn is this your
9 verdict?

10 JUROR NUMBER 20: Yes, ma'am.

11 THE COURT: Juror 7, Benjamin Brackett, is this
12 your verdict?

13 JUROR NUMBER 7: Yes, it is.

14 THE COURT: Kathy Mullinax, is this your verdict?

15 JUROR NUMBER 60: Yes, ma'am.

16 THE CLERK: Okay.

17 THE COURT: All right. Any other matters that
18 need to be addressed with the jury present?

19 MR. RHODEN: No, sir.

20 MS. LESKANIC: Not from the State, Your Honor.

21 THE COURT: All right. Thank you, ladies and
22 gentlemen. That concludes your service. You are excused
23 for the balance of the afternoon. So for as any further
24 reporting is concerned, if you will call back after six
25 o'clock this evening to the number that you have on your

1 juror information pamphlet, you will receive that reporting
2 instruction.

3 Okay. Thank you again for your participation.
4 Have a good afternoon.

5 (Whereupon, at 4:10 p.m., the jury panel was
6 discharged)

7 THE COURT: Mr. Rhoden, did you have any matters
8 to address prior to the imposition of the sentence?

9 MR. RHODEN: Yes, Your Honor.

10 I would like to make on the same grounds set forth
11 in my motion for a directed verdict, we would move for a new
12 trial, Your Honor.

13 THE COURT: All right. That motion is denied.

14 Anything further on behalf of the State, as far as
15 imposition of sentence?

16 MS. LESKANIC: Yes, Your Honor.

17 The State did file a notice of life sentence
18 pursuant to Section 17-25-45, Section B. That was filed in
19 the Clerk of Court's office on March 17th, 2011. That was
20 served on the defendant while he was incarcerated at the
21 Cherokee County detention center. I have attached with that
22 motion his prior sentences that consists of at least two
23 prior serious offenses. Therefore, the State is seeking
24 life after this conviction.

25 THE COURT: All right. Mr. Rhoden, the solicitor

1 has indicated this they have filed a notice of an intention
2 to seek a life sentence pursuant to 17-25-45. Do you have
3 any objection to the imposition pursuant to that statute?

4 MR. RHODEN: Well, if I could think of a legally
5 sufficient objection I would make it, but it's my
6 understanding that it's mandatory. And I have reviewed the
7 record and I don't have any objections to the prior record.
8 I have checked that and it appears to be accurate, Your
9 Honor.

10 THE COURT: Okay. All right. Anything else you
11 need to tell me?

12 MR. RHODEN: No, sir, Your Honor.

13 THE COURT: All right. Mr. Byers, is there
14 anything that you would like to tell me prior to the
15 imposition of sentence?

16 THE DEFENDANT: I just apologize for what
17 happened, sir.

18 THE COURT: All right. On indictment 2009-1179
19 and 1180, indictments for distribution of crack cocaine,
20 third or subsequent offense, and distribution of crack
21 cocaine within a half-mile of a school, the sentence of the
22 court is on each that you, James R. Byers, Jr., be confined
23 to the South Carolina Department of Corrections for the
24 period of your natural life pursuant to 17-25-45.

25 Mr. Byers, you have a right to appeal the verdict

1 of the jury and the sentence of the court. You must file
2 any notice of your intention to appeal those decisions
3 within ten days of today's date. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Good luck to you.

6 MR. RHODEN: All right. Thank you, Your Honor.

7 THE COURT: You got a probation matter?

8 PROBATION AGENT LAUTER: Yes, sir, he has four
9 years active time remaining.

10 THE COURT: Wait just a minute. We have got a
11 probation matter here.

12 PROBATION AGENT LAUTER: He would have four years
13 remaining active time on two probation cases. We were just
14 wanting to see if we could have them run concurrent to the
15 sentence.

16 THE COURT: Okay, any objection to hearing that
17 now?

18 MR. RHODEN: No.

19 THE COURT: These are the violations?

20 PROBATION AGENT LAUTER: Yes, being convicted
21 today.

22 THE COURT: Yeah. Do you waive the service to the
23 warrant or citation?

24 MR. RHODEN: Yes.

25 THE COURT: Have you talked to your client about

1 that?

2 (Off the record)

3 (Back on the record)

4 MR. RHODEN: He waives.

5 THE COURT: All right. I find the defendant has
6 willfully failed to comply with the conditions of the
7 probation. Revoke it and run it concurrent with the
8 sentences imposed today.

9 MR. RHODEN: All right. Thank you, Your Honor.

10 MS. LESKANIC: Thank you, Your Honor.

11 MR. KENDALL: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 19th and 20th days of April, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 4, 2011



Michael R. Watts
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JAMES RAY BYERS, JR.,) 2009-GS-11-01179
7 DEFENDANT.) 2009-GS-11-01180
8) APRIL 21, 2011
9) GAFFNEY, SOUTH CAROLINA

10 B E F O R E:

11 THE HONORABLE J. DERHAM COLE, JUDGE.
12

13
14 A P P E A R A N C E S:

15 KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR
16 MATTHEW KENDALL, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 WILLIAM RHODEN, ESQUIRE
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
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WITNESSES

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(NO WITNESSES CALLED)

		EXHIBITS		
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3	CT-1	JUROR NOTE	4	
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1 (PROCEEDINGS, APRIL 21, 2011)

2 (Juror Note marked as Court's Exhibit No. 1 for
3 identification).

4 THE COURT: Ready?

5 MR. RHODEN: Yes.

6 If it please the court.

7 THE COURT: Yes.

8 MR. RHODEN: This is on Mr. James Byers case that
9 we tried yesterday.

10 My understanding that after court basically broke
11 yesterday that one of the bailiffs found a note in the jury
12 room that I want to have marked and made part of the record,
13 and I would like to renew or make another motion for a new
14 trial.

15 As Your Honor knows, we had a very unusual jury
16 selection in this case. And, once again, I think that the
17 process should have been stopped and we should have chosen a
18 new jury.

19 And obviously this note is of some importance, in
20 that it certainly reflects that at least somebody in the
21 jury room had some concerns about guilt. So, therefore, I
22 would ask that that be made part of the record and that the
23 court grant a new trial in this matter.

24 THE COURT: Ms. Leskanic, would you like to be
25 heard?

1 MS. LESKANIC: Yes, Your Honor. Thank you.

2 That note was found by Wayne Ellis, one of the
3 bailiffs in the courtroom. He brought that note to my
4 attention after the jury left the jury room. He said he had
5 found it in there. He wasn't sure if it was something we
6 needed or not.

7 After I received the note, I brought it to the
8 attention of Mr. Rhoden and to the court's attention.

9 It is the State's position that Mr. Ellis could
10 have thrown it in the trash. That was something that the
11 jury used or did not use during their deliberations, and we
12 are not privy to the jury deliberation process. I don't
13 know who wrote the note. I don't know in what context it
14 was written, but it had to go along with jury deliberation.

15 Now, the jury was out for I believe four hours, or
16 more, so certainly they had issues to discuss, and the
17 matters written down on that note may have been issues that
18 they discussed, but at some point the jury reached a
19 unanimous verdict. They came out, they delivered that
20 verdict to Your Honor. Mr. Rhoden requested that the jury
21 be polled. Each member of the jury was polled by the clerk
22 of Court, Ms. McBee. And each answer that the verdict of
23 guilty was their verdict and was still their verdict at the
24 time they were in the courtroom.

25 During the course of the trial the jury did come

1 out with one question, so they understood the process of if
2 they had a question for the court, that they could write a
3 note and that Your Honor would respond to them. At that
4 time they told us that they were at 11 to 1 and requested
5 what they should do, and I believe Your Honor said that they
6 should continue to deliberate. Mr. Rhoden and I both
7 initialed that note showing that Your Honor had gone over
8 that question and matter with us prior to sending the note
9 back into the jury room. This piece of paper did not come
10 out to Your Honor. It was not something that we were to be
11 made aware of by the jury, because they certainly knew the
12 process of making us aware of any questions that they had.

13 So it's the State's position, with all due
14 respect, that this was trash that could have been thrown
15 away. Since it was brought to my attention, I should bring
16 it to the attention of the court, but I do not believe it's
17 relevant to any decision of the jury.

18 THE COURT: All right. Well, assuming for the
19 purpose of the motion that this was a note which was
20 prepared by one of the jurors in this case during the course
21 of their deliberations, the note does not in any way
22 indicate that the defendant has been denied any fundamental
23 fairness or that the jury has failed to follow the law.
24 Clearly jurors during the course of deliberations might make
25 notes. They might express their thoughts to themselves by

1 writing on a piece of paper. They may or may not share
2 those thoughts with other jurors. I'm not certain, but the
3 jurors in this case gave this case a considerable amount of
4 deliberation.

5 I don't know -- assuming this note was made by a
6 juror in this case, I don't know what point this note was
7 even made. It might have been the moment they walked back
8 into the jury room. As you have indicated, Mr. Rhoden, you
9 believe that this note indicates that at least one of the
10 jurors had some concern about the defendant's guilt. Based
11 upon the deliberations, I think all twelve jurors had
12 concern about the defendant's guilt. That's what they are
13 supposed to have. They are supposed to determine whether or
14 not a defendant has been proven guilty beyond a reasonable
15 doubt. They have an obligation to be concerned about
16 whether or not a defendant is guilty of a crime alleged
17 against them by the State. This jury, in my view, took that
18 seriously. They deliberated for several hours before
19 returning a verdict. And all twelve jurors indicated by
20 raising their hands that they confirmed their decision when
21 asked if this was their verdict when they found the
22 defendant guilty. They were also polled individually and
23 each juror indicated that finding the defendant guilty was
24 their decision and it was still their decision. And so I
25 see no reason to overturn the jury's verdict and grant a new

1 trial. So your motion for a new trial is, therefore,
2 denied.

3 MR. RHODEN: Will Your Honor make that part of the
4 record?

5 THE COURT: The note, it's already been marked as
6 a Court's Exhibit, placed in an envelope. It will be in the
7 record.

8 MR. RHODEN: All right. Thank you, Your Honor.

9 (END OF REQUESTED TRANSCRIPT OF RECORD)

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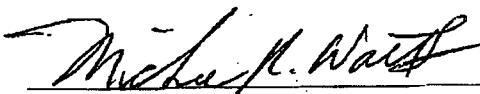
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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 21ST day of APRIL, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 14, 2011



Michael R. Watts
Circuit Court Reporter

7500

FORM 5

STATE OF SOUTH CAROLINA
COUNTY OF Cherokee IN THE COURT OF COMMON PLEAS

James Ray Byers #293715 13 APR 8 55 013CP-110335

Full name and prison number (if any) of Applicant.

BRANDY W. MCBEER

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber - C-I P.O. Box 205 Ridgeville S.C. 29472
2. Name and location of Court which imposed sentence General Sessions Cherokee County
3. Name(s) of co-defendant(s) (if any) N-A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-11-1179 distribution of crack cocaine
 - (b) 2009-GS-11-1180 distribution of crack cocaine within one-half mile of school
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 20 2011 Natural Life
 - (b) N-A

013CP-10335

- (c) N-A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N-A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N-A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, Judgment of Conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The State Of South Carolina Court Of Appeals
- ii. N-A
- iii. N-A
- (b) the result in each such Court to which you appealed:
- i. The Appeal was Affirmed
- ii. N-A
- iii. N-A
- (c) the date of each such result:
- i. March 27, 2013
- ii. N-A
- iii. N-A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2013-UP-121
- ii. N-A
- iii. N-A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N-A
- (b) N-A
- (c) N-A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2013 MAY 13 PM 8 55
BRANDY W. MOBER

013CP-110335

- (a) ineffective assistance trial Counsel
 (b) ineffective appellate Counsel, Batson denial
 (c) Fifth, Sixth, and Fourteenth amendment violations

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) trial attorney failed to act as my diligent advocate
 (b) appellate counsel failed to act as my diligent advocate
 (c) I was denied my constitutional rights

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N-A

ii. N-A

iii. N-A

iv. N-A

(b) the name and location of the Court in which each was filed:

i. N-A

ii. N-A

iii. N-A

iv. N-A

(c) the disposition thereof:

i. N-A

ii. N-A

iii. N-A

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CLERK OF COURT
SOUTH CAROLINA
JULY 13 PM 7 13
BRANDY W. MCDEE
JULY 8 55

013CP-110335

- iv. N-A
- (d) the date of each such disposition:
- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N-A
- ii. N-A
- iii. N-A
- iv. N-A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. The Batson Motion. [Batson v. Kentucky, 476 U.S. 79 (1986)]
- ii. N-A
- iii. N-A
- (b) the proceedings in which each ground was raised:
- i. At my trial, and on direct Appeal which led to a Oral Argument on March, 5, 2013
- ii.
- iii. N-A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N-A
- (b) N-A
- (c) N-A
17. Were you represented by an attorney at any time during the course of:

013CP-110335

- (a) your arraignment and plea? N-A
- (b) your trial, if any? ✓ Yes
- (c) your sentencing? ✓ Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓ Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N-A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. William G. Rhoden 221 E. Floyd Baker Blvd. Gaffney S.C. 29340
- ii. Dayne C. Phillips 1330 Lady Street, Suite 401 Columbia S.C. 29201-31
- iii. N-A
- (b) the proceedings at which each such attorney represented you:
- i. William G. Rhoden Represented me at my trial
- ii. Dayne C. Phillips Represented me on my direct appeal
- iii. N-A
19. State clearly the relief you seek in filing this application:
New Trial
20. Are you now under sentence from any other court that you have not challenged?
NO

2013 MAY 13 AM 8 55
CLERK OF COURT
JAMES H. HARRIS
BRANDY W. MCREE

STATE OF SOUTH CAROLINA)

013CP-110335

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Ray Byers

SWORN to and subscribed before me this 8th
day of May, 2013.

Yvette Blume (L.S.)
Notary Public

My Commission Expires:

8/20/2016

FILED IN OFFICE OF
CLERK OF COURT
JEROME COUNTY, S.C.
2013 MAY 13 AM 8:55
BRANDY W. MCBEE

013CP-110335

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James Ray Byers
Applicant

SWORN or affirmed to and subscribed before me this
8th day of May, 2013.

Yvette Blome
Notary Public

My Commission Expires: 8/20/2016

FILED IN OFFICE OF
CLERK OF COURT
MEMPHIS, TENN., S.C.
2013 MAY 13 PM 8 55
BRANDY W. MCBE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE	)	FOR THE SEVENTH JUDICIAL CIRCUIT
James Ray Byers, #293715 ,	)	2013-CP-11-0335
Applicant,	)	RETURN
v.	)	
State of South Carolina,	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief filed May 13, 2013, would respectfully show this Court:

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was true bill indicted to the October 2009 term of the Cherokee County Grand Jury for Distribution of Crack Cocaine (2009-GS-11-1179) and Distribution of Crack Cocaine Within Half-Mile of School or Park (2009-GS-11-1180). William Rhoden, Esquire, represented the Applicant. On April 19, 2011, Applicant proceeded to trial before the Honorable J. Derham Cole and jury. On April 20, 2011, Applicant was found guilty on both counts. Judge Cole sentenced Applicant to life without parole for Distribution of Cocaine Base-Third of Subsequent and life without parole for Distribution of Crack within one-half mile of a school.

A timely Notice of Appeal was filled and an appeal was perfected by Dayne C. Philips of the South Carolina Appellate Division of Indigent Defense. The South Carolina Court of Appeals affirmed Applicant's sentence and conviction. State v. Byers, Op. No. 2013-UP 121 (Filed March 27, 2013). The Remittitur was issued on April 12, 2013.

Attached herewith and incorporated herein by reference are the records of the Cherokee

County Clerk of Court regarding the subject conviction, records from the South Carolina Department of Corrections, Appellate Records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. "Trial Attorney failed to act as my diligent advocate."
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellate Counsel failed to act as my diligent advocate."
3. Due Process violation
 - a. "Fifth, Sixth, and Fourteenth amendment violations."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 334 S.E.2d 813. Respondent notes that it appears the Applicant appeared and pled guilty voluntarily without the assistance of counsel.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524

S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.* The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is

based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel, ineffective assistance, and due process violation.

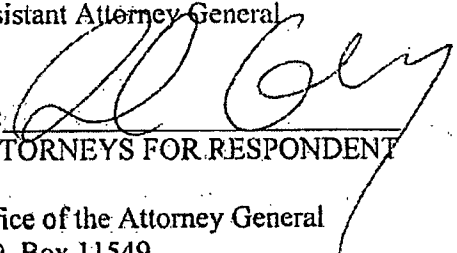
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

2013-CP-11-0335

JAMES RAY BYERS, #293715,

Applicant,

vs.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
Law Office of Leah B. Moody, LLC
PO Box 1015
Rock Hill, SC 29730

DATED this 17th day of March, 2014.



Caroline Kaiser, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF CHEROKEE } COURT OF COMMON PLEAS NONJURY

3
4 JAMES RAY BYERS,)
5 Applicant,)
6 vs.)
7 THE STATE OF SOUTH CAROLINA,)
8 RESPONDENT.)
9

TRANSCRIPT
OF
RECORD
2013-CP-11-335

10 January 14th, 2015
11 Spartanburg, South Carolina
12

13 B E F O R E :

14 THE HONORABLE DEADRA L. JEFFERSON, Judge.

15
16 A P P E A R A N C E S :

17 LEAH B. MOODY
18 ESQ.
Attorney for the Applicant

19 SUZANNE H. WHITE
20 ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Respondent's Exhibits</u>		

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P R O C E E D I N G S

THE COURT: This is James Ray Byers versus the State.
2013-11 -- 2013-CP -- what county is 11?

Is that Cherokee?

MS. WHITE: Cherokee County, Your Honor.

THE COURT: 11-335. It's before the Court on an
application for post-conviction relief.

William Rhoden, R-H-O-D-E-N, represented the Applicant
at trial before Judge Cole on April 19th through April
20th of 2011. He was found guilty on a count of
distribution of crack cocaine, 2009-GS-11-1179, and
proximity, 2009-GS-11-1180. Judge Cole sentence him to life
without parole for a distribution of cocaine base third and
life without parole on the distribution of crack within the
half-mile proximity of a school.

An appeal was filed and perfected and the sentence and
conviction were affirmed in an unpublished opinion on
March 27th of 2013 with a remittitur being issued on
April 12th, 2013.

He alleges several grounds for ineffective assistance,
trial counsel failed to act as my diligent advocate,
appellate counsel failed to act as my diligent advocate, and
a due process, due process, specifically Fifth, Sixth, and
Fourteenth Amendment violations.

James Byers - Direct examination
by Ms. Moody

1 Ms. Moody represents the Applicant. The state is
2 represented by Ms. White, and the witness, Mr. Rhoden, is
3 present.

4 Is the Applicant ready to proceed?

5 MS. MOODY: Yes, ma'am, Your Honor.

6 THE COURT: You may call your first witness.

7 MS. MOODY: Thank you, Your Honor.

8 I would call Mr. Byers to the stand.

9 THE COURT: Sir, if you would come to the witness stand
10 to be sworn.

11 Raise your right-hand, sir.

12 JAMES BYERS, being first duly
13 sworn, testified as follows:

14 THE COURT: You can put your right-hand down. Take
15 your seat. State your full name for the record.

16 THE WITNESS: James Ray Byers.

17 THE COURT: And, sir, spell your last name for the
18 court reporter please.

19 THE WITNESS: B-Y-E-R-S.

20 THE COURT: You may proceed, Ms. Moody.

21 MS. MOODY: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 DIRECT EXAMINATION

24 BY MS. MOODY:

25 Q Mr. Byers, please tell the Court where you are

James Byers - Direct examination
by Ms. Moody

1 currently incarcerated.

2 A Broad River Correctional Institution.

3 Q And you're incarcerated there on the charges which you
4 were convicted on, which is the distribution of crack
5 cocaine and the distribution of crack cocaine in a half
6 mile?

7 A Yes, ma'am.

8 Q Okay. And how long were you incarcerated for?

9 A Natural life.

10 Q Okay. Now, in this charge, who was your -- with these
11 charges, who was your attorney?

12 A William Rhoden over there.

13 Q And so did he -- was he your only attorney in your
14 case?

15 A On my appellate -- on direct appeal, I had appellate
16 counsel, Dane Phillips.

17 Q Okay. So, from the beginning, he's always been your
18 attorney?

19 A Yes, ma'am.

20 Q Okay. I'm just making it clear that there's no other
21 attorney that should be added to this application.

22 A Dane Phillips, the appellate attorney.

23 Q Right.

24 A That's it.

25 Q Okay. So in this particular case, you filed for your

James Byers - Direct examination
by Ms. Moody

1 relief and it is based on the grounds that your attorney was
2 ineffective assistance of counsel?

3 A Yes, ma'am.

4 Q Okay. And specifically you stated that your counsel
5 failed to act diligent on your behalf?

6 A Yes, ma'am.

7 Q And that -- well, your trial attorney didn't act
8 diligent on your behalf?

9 A Yes, ma'am.

10 Q Can you relate to the Court what exactly you mean by
11 diligent on your behalf?

12 A He -- like he failed, like, with my due process rights.

13 Q What do you mean by that?

14 A He didn't conduct a proper investigation, the proper
15 investigation that he should have.

16 Q Okay. And what investigation do you feel -- did you
17 feel that he should have done?

18 A As far as on, as for on -- in my indictments and on the
19 indictment, the warrants, the chain of, chain of custody,
20 all the investigations that he should have did that -- I
21 ain't saying that he didn't conduct no investigation. He
22 just didn't do a proper job. He didn't do as, as thorough
23 as he should have had he had enough proper time. He
24 wouldn't -- he didn't have even the time.

25 I mean he was only my lawyer for like a week and we

James Byers - Direct examination
by Ms. Moody

1 rushed right into Court, you know what I mean, within like
2 ten to within the process of I'm gonna ten to fourteen days
3 we went straight to Court.

4 Q Okay. Well, let's talk about that really.

5 You were charged with the distribution on
6 August 26th, 2006?

7 A That's one of the reason I say he didn't do a proper
8 investigation because the warrants say August the 26th of
9 2006, but I was currency -- currently incarcerated
10 August the 26th, 2006. I wasn't even on the street. I
11 was in prison and I asked him why didn't he challenge the
12 sufficiency of those warrants and he told me that they would
13 just say it was a typographical error.

14 Q Okay. Well, now, let's slow down. You talk really
15 fast.

16 Okay.

17 A Yes, ma'am.

18 Q At the time that you were incarcerated, can you please
19 repeat that Court -- that date the -- for the Court?

20 A I was incarcerated on August the 26th of 2006.

21 Q Okay. And how long had you been incarcerated?

22 A I had -- I was incarcerated since November the 5th of
23 2002. I was released on April the 1st of 2009.

24 Q Okay. So during the period of time that this --
25 apparently this distribution occurred, you're stating to the

James Byers - Direct examination
by Ms. Moody

1 Court that you could not have done that?

2 A No, I could not have did it on August the 26th of
3 2006.

4 Q Okay.

5 A Yes, ma'am.

6 Q All right. So, when you talked about this, this with
7 your lawyer, what, if anything, did you tell him as it
8 relates to the warrants?

9 A I told him that the warrants were not correct because I
10 couldn't have been on, I couldn't have been on the street.
11 I wasn't on the streets in August the 26th of 2006. I was
12 incarcerated during that time.

13 Q Okay. And then what, if any, investigation did he do?

14 A I don't know if he did any investigation. He tell me
15 that I got -- I think, I think he went back and got my
16 institutional records because he came back and told me -- he
17 was like I see you was locked up. I can tell that you was
18 locked up, but they just gonna say that that was a
19 typographical error.

20 Q Okay. So then you got an indictment, right?

21 A Yes, ma'am.

22 Q Okay. And on your indictment it has August 26th,
23 2009?

24 A Yes, ma'am.

25 Q Where were you in 2009?

James Byers - Direct examination
by Ms. Moody

1 A I was, I was free in 2009. I came home April 1st of
2 2009.

3 Q Okay. And so you agree that August follows April?

4 A Ma'am?

5 Q August follows April, correct?

6 A Yeah. Yes, ma'am.

7 Q Okay. Not consecutively, but just it comes after it.

8 A Yes, ma'am.

9 Q So, as to your indictment, did you receive a copy of
10 your indictment?

11 A Yes, ma'am.

12 Q All right. And so you went to trial on this case,
13 correct?

14 A I received a copy of my indictment after. Like I
15 received everything after like, you know what I mean.

16 Q After what?

17 A I went to Court. The only thing I had during the
18 process, the course of my incarceration was just the
19 warrants and I was just, you know what I mean, trying to let
20 him know, you know what I mean, the warrants couldn't have
21 been right. But I didn't know anything about an indictment
22 until after I like went to Court. That's when I was shown
23 an indictment, after I went to trial.

24 Q Okay. But when you went to trial, did you learn that
25 the timeframe that they were talking about was 2009?

James Byers - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q Okay. And so you said you were represented by your
3 lawyer for only a -- of a week.

4 Was he appointed to you?

5 A No, ma'am.

6 Q Okay. You hired him?

7 A Yes, ma'am.

8 Q Okay. And did you hire him when you got served with
9 your warrants?

10 Did anybody -- had you been talking to him when you got
11 served with your warrants?

12 A I -- it was after. I was already incarcerated, but I
13 had got served my warrants and then I hired him after, if
14 that's what you -- if that's your question. He was hired
15 after I was served my warrants.

16 Q Okay. And how soon after you got your warrants were
17 you -- did, did he start to represent you?

18 A I got my warrants in October of 2009. He didn't
19 represent me -- I hired him in I want to say April of 2011
20 or it was either February -- I mean March or either April.
21 It was late March, early April. I went to Court in April.
22 So it was like early April.

23 Q Okay. So this -- you know, this kind of sounds weird.
24 You said you only had him as your attorney for about a
25 week?

James Byers - Direct examination
by Ms. Moody

1 A Yes, ma'am.

2 Q What were you doing up until that time that you didn't
3 have an, an attorney cause you got charges in October?

4 A Yes, ma'am, I was---

5 Q Got the warrants served on you in October?

6 A Yes, ma'am.

7 Q What happened?

8 A I had made bond. I had made bond and then, when I came
9 back in the county for another charge, another charge that
10 they gave me a Court appointed attorney of Don Thompson or
11 whatever, but he wanted -- he act like he couldn't help me
12 do nothing. He was -- like every time I write him I
13 wouldn't get no responses back from him. I'd write the
14 Clerk of Court. I wasn't getting any responses back from
15 him or nothing and that's when I had to go to the help of my
16 family and ask them like to borrow money and everything to
17 even help come up with the retainer to hire him.

18 Q Okay. So let's go back for a minute.

19 When I originally asked you who else was your attorney,
20 you had a Court appointed attorney in the beginning?

21 A Yes, ma'am.

22 Q Okay. And it was Don Thompson?

23 A Yes, ma'am.

24 Q Okay. So did Don Thompson provide you with any of the
25 discovery that came from the State?

James Byers - Direct examination
by Ms. Moody

1 A No, ma'am.

2 Q Okay. So you didn't get to see any of your documents
3 as it relates to this case until you hired Mr. Rhoden?

4 A Yes, ma'am.

5 Q Okay. And when you hired Mr. Rhoden you had only a
6 copy of your warrants?

7 A Yes, ma'am.

8 Q All right. And had anybody sat down and told you what
9 the allegations were against you by the State?

10 A No, ma'am.

11 Q Okay. So when you hired Mr. Rhoden, what, if any,
12 meetings did you-all have to discuss your case?

13 A We had a meeting on, on April the -- I've got it here.
14 He came to see me in the county and he showed me the video
15 footage that was supposedly of this incident that supposedly
16 occurred or whatever and he was showing me warrants and I
17 was letting him know that it couldn't have been August the
18 26th and he was like why. I was like because I was locked
19 up in 2006.

20 And so he was like well, probably they gonna say that's
21 a typographical error, but I'll check into in anyway and
22 check your institutional record, and so that's when he went
23 back and found out that I was like -- he was like it
24 probably be 2009 that they gonna say that this happened.

25 So I was like well, all right, you know what I mean

James Byers - Direct examination
by Ms. Moody

1 because I ain't know, I ain't know, you know what I mean, he
2 still should of brought like after like I -- he still
3 suppose to challenge the sufficiency of those affidavits
4 because the affidavit was the sworn statement that they took
5 in front of the Grand Jury to even get me indicted to start
6 with.

7 The -- this warrant right here that -- both this
8 warrant rather that are August the 26th of 2006 on it is
9 the same warrant that they took in front of a judge 28-days
10 later after they served it to me on August the 1st. They
11 went 28-days later in front of a Grand Jury and got an
12 indictment on a false warrant.

13 If the warrant was false, how could they even get an
14 indictment?

15 They weren't even suppose to get an indictment on a
16 false warrant.

17 Q Now, what about the warrant makes it false other than
18 the date of 2006?

19 A They say I sold drugs to an undercover operative
20 working in a undercover capacity on Sixth Street of Cherokee
21 Avenue, and the video clearly shows that I didn't sell no
22 undercover operative anything. I might of sold something to
23 the boyfriend of an undercover operative, but I never sold
24 an undercover operative anything cause he---

25 Q That -- okay. Slow down.

James Byers - Direct examination
by Ms. Moody

1 When you say that you didn't sell anything to an
2 undercover operative, was the sale that you just indicated
3 you might have sold something to somebody else, was that on
4 the video as well?

5 A It didn't have me selling anything to anybody.

6 Q Okay.

7 A It don't have no transaction period on the video.

8 Q Okay. So you reviewed the video with your attorney
9 and, on the video, it had you doing nothing of the sort of
10 in any kind of sale?

11 A It had me standing there and what it looked like to be
12 a transaction, but nothing was passed. You can see nothing
13 registered to nobody. You see nobody get anything. You
14 don't see no drugs period on this whole film. It's like --
15 I think the film was like 37-minutes, 38-minutes long. You
16 don't see no drugs period on this whole film nowhere.

17 Q Okay. All right. And so what, if anything, did you
18 want your attorney to do with regard to the -- once you saw
19 the video, what else did you want him to do with regard to
20 challenging the fact that you were just on the video?

21 A I just wanted him to ask like why did Michael
22 Owensby was -- he was on the list like right here. He was
23 on the -- I asked him, during the trial, like when they gave
24 us our list of potential witnesses, I asked him like was all
25 these people suppose to testify and they was like yeah, you

James Byers - Direct examination
by Ms. Moody

1 know what I mean, these are the people who gonna testify
2 against you and Michael Owensby, the guy who was on the
3 drug -- the guy you see on the film, me and him was on the
4 film. We doing all this corresponding back and forth
5 talking and---

6 Q well, hold up.

7 You say corresponding.

8 You mean talking?

9 A Yes, ma'am.

10 Q Okay. So you-all are talking on the video?

11 A Yes, ma'am.

12 Q And go ahead.

13 A And I was informed that he gonna be able to -- he was
14 gonna come to Court and testify against me. He was there
15 that morning. He was there that morning, but he refused to
16 testify against me and I didn't even know that. He refused
17 to -- until after the trial, after my trial. He refused to
18 testify against me and took a contempt of Court just for not
19 testifying against me because he say I wasn't an informant.

20 I didn't buy anything from James, you know what I mean,
21 and I didn't even know my girlfriend was an informant at the
22 time. And so the next day she came and totally changed her
23 whole, her whole -- she switched her whole statement one
24 time. She said I didn't know James. I don't know James. I
25 don't, I don't know him. My boyfriend knows him and then

James Byers - Direct examination
by Ms. Moody

1 she turned right back around on another statement and say
2 oh, I sorry, I made a mistake. It was me who bought the
3 drugs.

4 But the, you know, video footage clearly shows
5 different. The video shows the true fact, true events that
6 happened that night.

7 Q Okay. So but what did you want your attorney to do
8 with regard to---

9 A I want him to object. He didn't object. He only asked
10 her questions. He never objected and -- to the perjury. He
11 let her get on the stand and just commit perjury. He never
12 said well, Your Honor, I object. She just committed perjury
13 or anything. He never questioned the sufficiency,
14 questioned the sufficiency of the indictments.

15 He never questioned whether I sold drugs to this
16 informant. He never questioned whether I sold drugs to the
17 informant's boyfriend or any of that. He never did any of
18 that, you know what I mean. That's---

19 Q well, what did he do in the trial?

20 A All he did was -- when he asked the questions and they
21 was like yeah. He never objected to nothing. He was like
22 okay and he was -- it's not like -- like I said, it's not
23 like I don't feel like he did a, a -- not a poor job because
24 he was like catching them in untruths, you know what I mean,
25 but he just wasn't pushing the -- he just wasn't like -- he

James Byers - Direct examination
by Ms. Moody

1 wasn't objecting to even after he would let them lie and he
2 was just like okay.

3 Q Wait a minute. Let me understand this.

4 When you said that he didn't object, and they were
5 telling something that was incorrect, untruthful, he was
6 questioning them, the witnesses at that time, and you wanted
7 him to object while he was questioning them?

8 A He didn't -- he was asking -- when, when he would ask a
9 question or they would or would say one thing, you know what
10 I mean, and then he would come back and ask another question
11 and they would answer it totally different like from---

12 Q So but I'm trying to understand.

13 You wanted him to object while he's asking the
14 questions?

15 A No, ma'am, I wanted him to object to the answers -- to
16 they answers.

17 Q You realize that when you're asking -- like I'm asking
18 you the questions now --

19 A Yes, ma'am.

20 Q -- I can't object to your answer cause I'm asking the
21 question---

22 A No, ma'am.

23 Q ---and that's their answer.

24 A Yes, ma'am.

25 Q Okay. So you wanted him to object at that point?

James Byers - Direct examination
by Ms. Moody

1 A No, ma'am.

2 Q Or did you want him to object when the State was asking
3 questions?

4 A Yes, ma'am.

5 Q Okay. So, he didn't object to the State's questions to
6 the witnesses?

7 A No, ma'am.

8 Q Okay. Is there any specific question that you wanted
9 him to object to?

10 A Kimberly Leskanic asked Felicia Jackson in my -- on my
11 motion -- I mean in my trial, during my trial, Kimberly
12 Leskanic asked -- she like I want to get it correct, Ms.
13 Felicia Jackson, during this cross-examination of Felicia
14 Jackson. She said I want to get it correct.

15 You just, a minute ago, you told us who -- that
16 Mr. Owensby bought the drugs and now you're telling -- we
17 want to be sure that you get that right that -- was it you
18 bought the drugs or Michael?

19 She said Michael.

20 So she went right back and it's like you sure and she
21 like yeah, I'm sure. It shows it right there on the video.
22 So she -- Kimberly Leskanic -- once Kimberly Leskanic pushed
23 play on the video again and then stopped the video, and then
24 whatever my -- Mr. Bill Rhoden was like Your Honor, why do
25 she keeping look over there at the defense table. why she

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1 keeping look over -- I mean why she keep looking at the
2 narcotic agent or whatever, and he told her like you don't
3 got to look over there at them. You don't got to look over
4 there at them.

5 So I don't know if they was making eye contact. I
6 don't know if she was making eye contact with the, with the
7 narcotics or what. But I just know, right after she had
8 just said that her boyfriend bought these drugs, when the
9 D.A. asked her the question, she turned right back around.
10 She said no, no, I'm sorry. I made a mistake. I bought the
11 drugs.

12 why didn't -- why wouldn't he say objection, Your
13 Honor, she just said one thing, you know what I mean, and
14 he, he's taking---

15 Q So what specifically about the objection -- about her
16 answer did you want him to object to?

17 A A lot.

18 why would she say -- he said she -- one minute she said
19 he bought the drugs from her boyfriend. Then the next
20 minute she turned around and say no, he bought the drugs
21 from me.

22 Q So you wanted him to object to her changing her answer?

23 A Yes, ma'am, to perjury.

24 Q Okay. Is there anything else you wanted him to object
25 to?

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1 A Yes, ma'am, I wanted him to object to Chris Wyatt when
2 Chris Wyatt -- well, not Chris Wyatt, but Officer Jason
3 Burgess. Officer Jason Burgess said that I sold, when he
4 got on the stand, Mr. Kimberly -- Ms. Kimberly Leskanic
5 questions Officer Jason Burgess about the events of this,
6 this night right here.

7 Officer Jason Burgess asked like -- was, was asked the
8 questions that why -- I mean what all had happened that led
9 up to involvement -- to this incident that happened that
10 night, and he was like -- he sat there on the stand and he
11 gave his account of what happened that night about how he
12 searched Felicia Jackson, how he sent Felicia Jackson to the
13 store, and how he did all this, and did all that, and then
14 my lawyer, when she asked who did you give the money to, and
15 he said I gave the money to Michael Owensby.

16 Michael Owensby wasn't his informant.

17 why would you give Michael Owensby anything?

18 Michael Owensby isn't the informant that you using in
19 this buy. Michael Owensby is the boyfriend of this
20 informant, the informant.

21 why would you give the informant the State's money, the
22 money?

23 Q And so I need you to slow down just a little bit.

24 Okay?

25 A Yes, ma'am.

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1 Q And so what specifically did you want him to object to
2 that -- in terms of the testimony?

3 That's what the officer was relaying to the Court of
4 what happened.

5 what did you want him to object to as it relates---

6 A I wanted to have, I wanted him -- to object to him to
7 having these warrants even admitted, the, the validity of
8 the warrant, because it couldn't -- you had to be -- it had
9 to be perjury. You had to be sitting there committing
10 perjury if you telling me that I gave a informant a
11 directive to go buy drugs, but then I gave the money to the,
12 the informant's boyfriend. I---

13 Q So wanted him to object to that testimony?

14 A Yes, ma'am.

15 Q Okay. Now, what else did you want him to object to?

16 A The, the indictments. It's like -- if he would of --
17 it's like I said. He didn't do a proper investigation
18 because if he would of did his proper investigation he would
19 of knew or understand that those indictments were like not
20 on the day that they said they got the indictments. Like I
21 said, I wrote to the South Carolina Court Administration,
22 which I got that right here. I would like that admitted
23 into evidence too.

24 But I got -- I wrote to the South Carolina Court
25 Administration and I asked them for the date that they --

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1 the calendar for the month of the dates that they saying
2 that these indictments were supposedly drawn up, on October
3 the 29th. I asked for the whole calendar. They sent me
4 the calendar for that month of October 29th.

5 They didn't---

6 Q Okay. Can you slow up now?

7 You want to submit to the Court the calendar---

8 A For the month of October of the Year 2009---

9 Q Okay.

10 A ---for the Grand Jury.

11 MS. MOODY: Your Honor, may I approach the witness?

12 THE COURT: Uh-huh. (Affirmative).

13 A I have another letter that I received from them too
14 that I would like to have submitted. That's the letter that
15 wrote from -- to them and that's the letter that they wrote
16 me back and this is the second letter that I wrote to them
17 and the second letter that they wrote me back.

18 In the second letter they told me it was---

19 Q Okay. Hold on one second.

20 A All right.

21 Q All right. So you wrote to the State Court
22 Administration on January -- on January 13th, 2012?

23 A Yes, ma'am.

24 Q So is that it?

25 A Yes, ma'am.

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1 MS. MOODY: Okay. Your Honor, may I have this letter
2 marked?

3 THE COURT: You need to show that to counsel.

4 I guess I'm a little at a loss as to what purposes he's
5 offering it.

6 MS. MOODY: He's challenging the indictment as to the
7 validity of the indictment saying -- well, basically he's
8 arguing that the indictment was not properly obtained from
9 the Grand Jury because there was no Grand Jury convening at
10 the time.

11 THE COURT: Well, the appropriate records would be with
12 Cherokee County.

13 MS. MOODY: I understand.

14 THE COURT: I'm not aware of any county reporting to
15 Court Administration when they hold Grand Jury, and having
16 been chief administrative judge, dates of the Grand Jury
17 change, and we don't report that to Court Administration as
18 far as I know. We do a schedule, but it changes. It can
19 change and, at our discretion, it can change.

20 So I would want the records from Cherokee County as to
21 when -- the reports have to be issued and they're signed by
22 the Grand Jury foreperson or they're placed on the record by
23 the Grand Jury foreperson. So that would be the appropriate
24 record to determine if, in fact -- and his indictments would
25 say true billed and they'd be signed by the Grand Jury

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1 foreperson and they would be dated.

2 MS. MOODY: Yes, ma'am.

3 THE COURT: So I would have to have some evidence that
4 that is false.

5 MS. MOODY: Well, we're on---

6 THE COURT: And I have Odell Mickel having signed for
7 each of -- well, no, that's something else. No. Yeah.

8 MS. MOODY: It's---

9 THE COURT: Odell Mickel, a true bill, 10/29/09.

10 MS. MOODY: Yes, Your Honor, and that's what I have as
11 well, but he's offering this as---

12 THE COURT: You'd have to get the records from Cherokee
13 County as to when their Grand Jury met and the reports of
14 their Grand Jury. I have no reason to question the
15 signature of a third party who absolutely has no interest in
16 this and who represents an independent body, that being the
17 Grand Jury.

18 MS. MOODY: I understand.

19 THE COURT: And I wouldn't take his letter anyway cause
20 it's hearsay and it's bolstering. So let's move on.

21 MS. MOODY: Well, Your Honor, this letter is only
22 asking him to write and give him back whether the Grand Jury
23 met.

24 THE COURT: Yeah, but Court Administration isn't the
25 protector of the records. They're not the Clerk of Court.

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1 They only have information that's discretionarily reported
2 to them.

3 No county has any duty to tell Court Administration
4 when they're meeting. That's a county function. Not a
5 state function, unless it's a State Grand Jury in which case
6 they have their own Clerk of Court.

7 MS. MOODY: No, it's not a State Grand Jury.

8 THE COURT: Yeah, and they have their own Clerk of
9 Court and they don't report to Court Administration when
10 they meet up. So if you want to get Cherokee's records and
11 supplement the record with that, that's fine. But I can't
12 take Court Administration's word as to whether the Grand
13 Jury met or not.

14 MS. MOODY: Yeah, I, I understand that.

15 THE COURT: They don't have any duty for it to be
16 reported to them and I don't know if their records are
17 complete.

18 MS. MOODY: I understand that, Your Honor. I ask the
19 Court allow this just to remain open.

20 THE COURT: I'll allow you to supplement the record if
21 you get the records from Cherokee County because, when the
22 Grand Jury meets, is a part of the Clerk of Court's file and
23 every time they meet they have to make a report to the chief
24 judge at the conclusion, or the presiding judge, at the
25 conclusion of their deliberations as to how many indictments

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1 were true billed, no billed, and what the results of that
2 were, and enter that into the record. They either do it in
3 writing or the Grand Jury foreperson states orally on the
4 record.

5 (Pause.)

6 MS. MOODY: Your Honor, okay.

7 So Mr. Byers?

8 A Yes, ma'am.

9 Q So you wanted your attorney to challenge the indictment
10 and that's based off of what you think that the Grand Jury
11 did not meet during the term of October 29th, 2009?

12 A Yes, ma'am.

13 Q And the information that you were gonna present to the
14 Court today was from the Court Administration?

15 A Yes, sir.

16 Q And the Court Administration couldn't give you an
17 answer as to whether it was convened?

18 A No, ma'am.

19 Q Okay. And so do you have, in your documents, do you
20 have anything from Cherokee County refuting that this
21 indictment was not obtained during the Grand Jury---

22 A I have---

23 Q ---session?

24 A I have right here a case file check list, Officer Jason
25 Burgess, and at the bottom of his check file list it say

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1 this is vital information that we must have before we can
2 present the case to the Grand Jury and comply with Rule 5
3 and prepare for prosecution, and on here he listed all the
4 items that he would need to go before a Grand Jury and get
5 an indictment. And one of those items was the SLED drug lab
6 results. But I got the SLED drug lab results right here
7 from Carmen J. Tucker saying that she didn't send them back
8 to Cherokee County until December the 31st.

9 so if they didn't get them back until December the
10 31st, then he still couldn't of---

11 Q December 31st of what year?

12 A 2009.

13 Q Okay.

14 A So he still couldn't of got an indictment in October of
15 2009 because he didn't even have the drugs back then. He
16 didn't even know it was drugs because he didn't -- it hadn't
17 even been tested then.

18 Q And there -- and so did you discuss that with your
19 attorney?

20 A I didn't know all this. I didn't know all this. I got
21 all this after, after, like after---

22 Q Well, did a drug report come within regard to your
23 case?

24 A Did a drug -- like all the -- everything that a drug
25 lab, with SLED reports, all that I got from my attorney

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1 afterward.

2 Q Yes.

3 But did you receive a drug report that said it was
4 drugs?

5 A Yes, ma'am.

6 Q Okay. So you not -- you're not refuting that it was
7 actually drugs?

8 A No, I'm not refuting that.

9 Q Okay. So, when you went to trial, did you-all have
10 that lab report?

11 A Yes, ma'am, we had this lab report.

12 Q Okay. And so what did you want your attorney to object
13 to at trial with regard to this indictment and with regard
14 to the validity of the indictment as to whatever term they
15 got it true billed?

16 A How could he get the indictment, like Jason Burgess
17 stated, that he went and got this indictment. He sent -- he
18 signed this right here. This is his case, case file
19 checklist. He signed this right here on October the 5th of
20 2009.

21 He went and got an indictment 23-days later, which
22 would of been -- well, 24-days later, which would of been
23 October the 29th, but on this paper right here he clearly
24 states he lists all the items that he need to get his
25 indictment, and one of those was the drug lab results. I

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1 want to know why didn't my lawyer question the -- you know
2 what I mean.

3 why didn't my lawyer question the indictment based on
4 well, how did you get an indictment if you were still
5 waiting on the drug lab results?

6 They hadn't come back yet. They haven't -- he didn't
7 even know it was drugs. It could of been anything up unto
8 this point right here, which even though when we got the
9 drug lab results back, it were drugs, but the indictment had
10 already been issued before you even knew it was drugs.
11 Before you even knew what it was, you already had went and
12 got an indictment.

13 Q Okay. And so your attorney didn't object to the
14 indictment during the trial?

15 A No, ma'am.

16 Q Okay. What other objections did you want your attorney
17 to object to?

18 A As far as, like I said, back to the, the warrant, the
19 issues on the warrants as far as my due process. My due
20 process rights were violated again when Officer Jason
21 Burgess included false information into his affidavit for
22 the arrest warrant signed by Judge Robert Howe or Cherokee
23 County Magistrate Court.

24 Q Well now what was false in terms of the warrant cause
25 you had the warrant at the time?

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1 A In his, in his affidavit he stated that I distributed a
2 controlled two -- a controlled substance to an operative
3 working in an undercover capacity to the Cherokee County
4 Sheriff's Office.

5 Q Okay. And are those all the objections you wanted your
6 attorney to object to at trial?

7 A Yes, ma'am.

8 Q Okay. But did he cross-examine the -- all the
9 witnesses?

10 A Yes, ma'am.

11 Q Okay. And did he ask any of the questions you wanted
12 him to ask or he did not ask the questions you wanted him to
13 ask?

14 A No, ma'am.

15 Q He didn't ask all the questions?

16 A He didn't ask all the questions.

17 Q What were the questions that you wanted him to ask?

18 A I wanted him to ask Jason Burgess how could he get an
19 indictment without the drugs, without it, without -- when,
20 when his case file checklist say one thing.

21 How could he get an indictment without the drugs and
22 then the---

23 Q You mean you wanted -- okay. You realize that the
24 solicitor gets the indictment?

25 A Yes, ma'am.

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by Ms. Moody

1 Q Okay. So you wanted your attorney to ask the officer
2 to get -- how did he get an indictment when---

3 A How did he -- yeah, how did he send this, how did he,
4 how did he send this information?

5 This was the information that he needed to get his
6 indictment.

7 How did he -- how could he get an indictment without
8 that information and---

9 Q Do you -- well, let me ask you this.

10 Do you understand, when there's an indictment that is
11 obtained, is by the State, the Solicitor's Office?

12 You understand that?

13 A Yes, ma'am.

14 Q Okay. So why would your attorney ask the officer,
15 Jason Burgess, Jason Burgess, how he got his indictment?

16 He's not -- he doesn't go to the Grand Jury to get the
17 indictment.

18 A Yes, ma'am. Well, really you right. Well, he could of
19 questioned the State. He could of questioned the, the
20 district attorney or Kimberly Leskanic how they got their
21 indictment, how did she---

22 Q In a motion hearing before the judge?

23 A In a motion hearing before the judge.

24 Q Okay.

25 A And he also could of filed the Franks hearing.

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1 You know what I mean?

2 Like I said, being that the Franks hearing, you know
3 Franks versus Delaware prohibits law enforcement from
4 putting untruthful facts or misrepresentations into
5 affidavits for risk. When this does occur, a Franks
6 guideline requires that the Court must analyze the
7 situation.

8 Q So at that -- let me back up on something.

9 Did you have a preliminary hearing with your appointed
10 counsel?

11 A No, ma'am, I didn't have a preliminary hearing period.

12 Q Okay. And so when you got to -- when you were
13 represented by Mr. Rhoden, you went straight into trial?

14 A Yes, ma'am.

15 Q Okay. And, at that point in time, your attorney
16 presented arguments on your behalf to the, to the Court?

17 A Yes, ma'am.

18 Q Okay. And did your attorney make any objections on
19 your behalf?

20 A Yes, ma'am.

21 Q Okay. And so he just didn't make all the objections
22 you wanted him to make?

23 A Yes, ma'am.

24 Q Okay. Outside of your warrant, outside of your
25 indictment, outside of the testimony that came from

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by Ms. Moody

1 Mr., excuse me, Felicia Jackson --

2 A Yes, ma'am.

3 Q -- were there any other things that you wanted your
4 attorney to object to?

5 A Yes, ma'am.

6 Q What other things were there?

7 A The SLED results came back and it said that the, the
8 weight of the drugs was 0.08 grains. The night of -- if
9 you're familiar with this -- if you read the trial
10 transcript that I was supposedly sold them a \$10.00 piece of
11 drugs, but the, the Exhibit No. 1 that was admitted into
12 evidence, the drugs was way more than what she saying she
13 received at SLED drugs. It was like over a hundred and
14 something dollars worth of drugs. It was almost---

15 Q But you knew that yourself?

16 A I told him while we was sitting there at trial. I was
17 like that ain't my drugs. I told him sitting beside him.
18 He---

19 Q Okay.

20 A ---told me sitting there beside him. He's like do you
21 want to represent yourself like. Do you want, do you want
22 to do this. That's what he told me.

23 Q So you knew that the weight of the drugs was more?

24 A When I seen it -- when I saw it, I knew it wasn't mine.
25 I told him sitting there beside me. I was like that's not

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1 my drugs. That's not, that's not what I gave him. That's
2 not what I gave him.

3 Q So you did give him something?

4 A Yes, I gave him something, but I didn't give them what
5 they brought to the courtroom.

6 Q Was that on the video?

7 A Well, no, they ain't have on the video giving him -- me
8 giving them anything.

9 Q Okay. Was there anything else that you wanted him to
10 object to?

11 A No, ma'am.

12 Q Okay. Now, what else did your attorney not do within
13 the course of your trial that you feel was deficient?

14 A I mean, like I said, everything else is like---

15 Q Well you have to relay this to the Court so they'll
16 know.

17 So what else did your attorney not do.

18 A I wanted him to -- also I wanted him to object to
19 Kimberly Leskanic's, when Kimberly Leskanic questioned
20 Officer Jason -- Office Chris Wyatt about, you know what I
21 mean, the chain of custody of the drugs because this, this,
22 this supposedly happened at 9:22 at night on August the
23 26th, and Officer Chris Wyatt's report states he was there
24 and he got these drugs out of the evidence vault the same
25 night, on August, August the 26th of 2009.

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1 But at the bottom of his report he stated that he
2 didn't deliver these drugs into Columbia until I want to
3 say -- let me see. Right here. I got it right here.
4 October the 9th.

5 So he kept the drugs well like -- well, he supposedly
6 left them in the evidence vault. He -- where did he have
7 them, in his car, or his house, or where?

8 That was never brought up for questioning, but my
9 lawyer questioned that, but when Kimberly Leskanic
10 questioned him, he was just like oh, I made a mistake and so
11 Chris -- Kimberly, Kimberly Leskanic was like so was it a
12 mistake like right here. This, this right here on the
13 paper, you filled the form out twice and you still make a
14 mistake, and he was like yeah.

15 But he never did, he never did say well, oh I made a
16 mistake, I got the drugs out of the evidence vault on this
17 date right here and took it to Columbia or I got it out on
18 this date and took it to Columbia. He never fixed the
19 mistake. He just left it a mistake.

20 Why would just leave it a mistake?

21 You never -- in the, in the chain of custody and it
22 states in the -- in State versus Sweeps, in his case, he
23 went and the State ruled in his favor because it said that
24 when an analyzed substance has passed through several hands,
25 the identity of individuals who acquired the evidence and

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1 what was done with the evidence between the taking and the
2 analysis must not be left to conjecture, and when Carmen J.
3 Tucker testified, she said that the drugs was wrapped inside
4 a brown paper napkin and everything. Nobody knows who put
5 these brown paper napkin or anything in there because it was
6 done through so many hands and everybody who touched those
7 drugs cause it supposedly have some type of, type of written
8 document, and the proper chain of custody wasn't conducted
9 and he never---

10 Q When you say that they're suppose to have some written
11 kind of document.

12 A Right here it says that if the identity of each person
13 handling the evidence is established and the manner of
14 handling it is reasonably demonstrated, no abuse of
15 discretion by the Trial Court is shown in admitting the
16 evidence absent proof of tampering, bad faith, or ill
17 motive.

18 You know what I mean?

19 Like if they can't prove and show that everybody who
20 touched these drugs, then it clearly shows that it's
21 somewhere along the line these drugs were mishandled
22 somewhere along the---

23 Q So -- okay. You wanted your attorney to object to the
24 chain, and all the people that they presented, that it did
25 not show---

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1 A A proper chain of custody.

2 Q ---everyone who touched the drug?

3 A Not everyone, but---

4 Q The drugs.

5 A ---the people who supposedly had it. Chris Wyatt
6 supposedly had these drugs outside of his presence from,
7 from -- he suppose to had these drugs in his presence from
8 the, to let him tell it from his report, from August the
9 26th all the way to October the 9th. That's when he took
10 it to Columbia, to SLED. He wasn't suppose to have those
11 drugs from August the 26th all the way to October 9th.

12 Q So you're saying that he shouldn't have been in
13 possession of those drugs that long time?

14 A No, ma'am.

15 Q Okay. You're saying that he should of gotten it to
16 SLED before then?

17 A The same day. As soon as he got it out of the evidence
18 drop box, he suppose to took it straight to Columbia that
19 same day. That's the, that's the, that's the procedure in
20 as far as I read. The procedure goes when they get it out
21 of the evidence drop box, it goes straight to SLED to be
22 analyzed or be tested whether it's a blood sample or drug
23 sample or anything that's gonna be tested is gonna be got
24 out of the -- it's gonna be left in the evidence drop box in
25 a sealed B.E.S.T. Bag until it's time for the transportation

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1 and that's what he is. He's a transportation officer for
2 the Cherokee County Sheriff's Office.

3 Q Okay. So you're saying that he took it out of the drop
4 box before---

5 A He took it out of the evidence drop box on August the
6 26th of 2009 so he say, and took it on October the 9th to
7 Columbia, but his time sheet shows that he got off work at
8 5:30 or 5:15 on October the 26th. So he wasn't even at
9 work that night at 9:30 when he saying he got these drugs
10 out on August the 26th. He wasn't even at work that day.
11 He wasn't even there.

12 Q Okay. And so did -- your attorney didn't object to
13 that --

14 A No, ma'am.

15 Q -- and that's where you feel that he was deficient in
16 his performance in the trial?

17 A Yes, ma'am.

18 Q Okay. Is there anything else?

19 A No, ma'am.

20 Q Okay. Now, after you -- you filed an appeal in this
21 case, correct?

22 A Yes, ma'am.

23 Q And there was one other issue that you had to deal with
24 in this case and that was the Batson motion?

25 A Yes, ma'am.

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1 Q Okay. Is that something that you wanted to complain
2 about to the Court?

3 A Like -- yes, ma'am. Yes, ma'am. Yes, ma'am.

4 Q Okay.

5 A Because---

6 Q Can you relay to the Court what your issue with the
7 Batson motion was?

8 A The State used all of they strikes, which is, which
9 they can use their strikes however they choose to do now
10 that I done investigate -- I mean more investigation on it,
11 they can use their strikes how they choose to. But they
12 used each and every one of they strikes against a black
13 juror, and the black juror that was admitted and sworn in,
14 you know what I mean, they never gave a race neutral reason
15 for letting her exit out.

16 we have one of the jurors who walked up and said Your
17 Honor, I don't want to be a part of this, and so he was like
18 can you give a reason for not wanting to be a part of this,
19 and she was like I feel comfortable, you know what I mean.
20 So---

21 Q Slow down and explain this.

22 The State struck the African-American jurors that were
23 in the jury pool, correct?

24 A Yes, ma'am.

25 Q Okay. And can you tell the Court what was the basis

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1 for them striking the jurors?

2 A Ms. Kimberly Leskanic said one of her reasons for
3 striking one of the black jurors was that he had a CDV and
4 an assault and a misdemeanor drug charge.

5 MS. WHITE: Your Honor, I'm sorry. I'm just gonna
6 object cause this was all handled in a pretrial motion and
7 ruling and dealt with, I believe, on appeal.

8 MS. MOODY: Yes.

9 THE COURT: It was dealt with in, in detail and the
10 Court affirmed it. So he would only be ineffective if he
11 failed to make a motion and he preserved it for appeal. So
12 I think it becomes a nullity at this point.

13 MS. MOODY: Right, but I'm just gonna---

14 THE COURT: I can't find that he's ineffective if he
15 made the appropriate motion and it was preserved and the
16 Court of Appeals ruled on it.

17 MS. MOODY: I understand that. I'm just going off my
18 conversation with my client, Your Honor.

19 THE COURT: No worries.

20 Q Okay. So -- well, can I wrap this up, Your Honor?

21 THE COURT: Yes, ma'am.

22 Q Okay. As---

23 THE COURT: The objection's sustained.

24 MS. WHITE: Thank you.

25 Q As to the Batson motion, your attorney preserved that

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1 for the record?

2 A Yes, ma'am.

3 Q Okay. And he filed -- you had an appeal filed in that
4 manner?

5 A Yes, ma'am.

6 Q Okay. And, in that matter, what happened with that
7 appeal?

8 A They granted me an argument on March the 5th of 2013
9 and Columbia -- I wasn't present. I wasn't there.

10 Q Uh-huh. (Affirmative).

11 A The only thing I know is I received the paper saying
12 that the State had affirmed that decision, affirmed the
13 decision of the State.

14 Q The Court affirmed that decision?

15 A Yeah, the Court affirmed that decision.

16 Q So when you talked -- you and I talked.

17 A Yes, ma'am.

18 Q You recall that.

19 And we talked about the Batson motion?

20 A Yes, ma'am.

21 Q And you added onto your application your appellate
22 counsel?

23 A Yes, ma'am.

24 Q Okay. Your issue with the appellate counsel only
25 relates to what was filed with the Court of Appeals?

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1 A Yes, ma'am.

2 Q Okay. And there were no other issues filed on your
3 behalf from your appellate counsel?

4 A Yes, ma'am.

5 Q So as far as your appellate counsel is concerned, you
6 don't have a post-conviction relief issue with her?

7 A No, ma'am.

8 Q Okay. Now, you're seeking relief from the Court today.
9 Can you please tell the Court what that relief is?

10 A I just want to be home with my family. I ain't want to
11 like---

12 Q What, what did you put in your application?

13 A I got it wrote out here. Like --.

14 Q Number 19, what did you say your relief for?

15 A A new -- to be granted a new trial.

16 Q Okay. And that's because you feel that you were
17 prejudiced in some kind of way?

18 A Yes, ma'am.

19 Q And can you tell the Court exactly how you think you
20 were prejudiced?

21 A My due process rights was violated by my lawyer not
22 properly investigating. I don't think he had inadequate --
23 I don't think he had adequate time to, to investigate my
24 case, you know what I mean, not to his fullest extent. Not
25 to his fullest extent. I don't think he was given the

James Byers - Direct examination
by Ms. Moody

1 proper amount of time to do all that he could have done, and
2 I feel like he may have been under more pressure by not, you
3 know what I mean, having a proper time to investigate, you
4 know what I mean, and I feel like he could of done a better
5 job had he been given the proper time to investigate.

6 Q And so you felt like the outcome would of been
7 different?

8 A Yes, ma'am.

9 Q Okay. As a not guilty?

10 A Yes, ma'am.

11 Q And is this based on your video?

12 A Yes, ma'am.

13 Q All right. Is there any other relief you're seeking
14 from the Court?

15 A That's it.

16 Q Okay.

17 A That's it.

18 MS. MOODY: No further question for this witness, Your
19 Honor.

20 Please answer any questions---

21 THE COURT: Any questions for the witness?

22 MS. WHITE: Just briefly, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. WHITE:

25 Q Mr. Byers, you do acknowledge that your counsel made a

James Byers - Cross-examination
by Ms. White

1 Batson motion and a motion to quash your indictment at the
2 beginning of your trial?

3 A I didn't know about -- I know about the Batson motion.
4 I ain't know he made a motion to indictment -- to quash the
5 indictment.

6 Q Okay. You would agree with me though if the record
7 says that he moved to quash -- I'm sorry. Quash the panel.
8 I'm sorry. I didn't mean to say quash the indictment.
9 Quash the panel for Batson and then also quash the panel
10 based on, as you mentioned, someone saying that she didn't
11 want to be on it and that they had to have someone else---

12 A I agree.

13 Q ---taken off?

14 A I agree.

15 Q Okay. And he also cross-examined, pretty extensively,
16 the witnesses about the fact that they couldn't have their
17 stories straight about the female that you said whether or
18 not she took the drugs or the other person took the drugs?

19 A I agree.

20 Q And he also cross-examined the officer about mistakes
21 that the officer had made in various paperwork and handling
22 of things, is that right?

23 A I agree.

24 Q Okay. And ultimately he also made a motion on your
25 behalf for a directed verdict, and then even tried a motion

James Byers - Cross-examination
by Ms. White

1 for new trial when there was an issue having to do with a
2 note in the jury room?

3 A I agree.

4 Q Okay. So he did all that for you.

5 You had hired him about a couple of weeks or a month
6 before the trial?

7 A Something like that.

8 Q Okay. And that was the time he had.

9 Did he ever work with you and potentially get you an
10 offer?

11 A Yes, ma'am.

12 Q Okay. And you, you declined to take the offer?

13 A No, it wasn't for this charge right here, no. He
14 didn't, he didn't work with me to get an offer for this
15 charge. He worked with me to get an offer for -- I had
16 six -- it was -- I think I had three distributions, three
17 school zones, a discharging a firearm into a dwelling, and a
18 discharging a firearm into a vehicle, which all got threw
19 out. Everything got threw out except for this one charge
20 right here. But I was never offered a plea bargain for this
21 one charge right here.

22 MS. WHITE: Okay. May I approach, Your Honor?

23 THE COURT: You may.

24 Q Mr. Byers, do you recognize that?

25 A Yes, ma'am, I have the same paper right here.

James Byers - Cross-examination
by Ms. White

1 Q Okay. And you acknowledge that it appears to be a plea
2 offer from the State on three distributions of crack cocaine
3 third, three proximity charges, discharging into a dwelling,
4 discharge into a vehicle?

5 A Yes, ma'am.

6 Q Okay. And this is dated April 11th---

7 A Yes, ma'am.

8 Q ---2011 and you have it signed saying that you---

9 A I refused that offer.

10 Q ---have rejected that?

11 You, you also noticed that they said that they were
12 seeking life sentences on the distribution of drugs?

13 A Yes, ma'am.

14 MS. WHITE: Okay. If I can make this, Your Honor---

15 THE COURT: Any objection?

16 MS. MOODY: No, Your Honor.

17 THE COURT: Mark it and admitted without objection.

18 MS. WHITE: Thank you very much.

19 (WHEREUPON, the plea offer was marked as Respondent's
20 Exhibit No. 1 and received into evidence at this time.)

21 Q So that plea offer actually encompassed all the pending
22 charges you had at the time?

23 A Yes, ma'am.

24 Q Okay. So Mr. Rhoden had secured a plea offer for you
25 that would take care of all your pending charges at the time

James Byers - Cross-examination
by Ms. White

1 and take life off the table?

2 A It would also entitle me to plead guilty and admit
3 guilt to things that I wasn't guilty for. So I couldn't
4 take it.

5 Q So you didn't want to take it cause you didn't want to
6 plead guilty if you weren't guilty to things?

7 A Yes, ma'am.

8 Q Okay.

9 A As far as not guilty, I couldn't plead guilty to
10 something I wasn't guilty for.

11 MS. WHITE: Okay. Thank you.

12 That's all I have, Your Honor.

13 THE COURT: Any redirect?

14 MS. MOODY: No, Your Honor.

15 THE COURT: Sir, you may step down.

16 Any further witnesses from the Applicant?

17 MS. MOODY: No other witnesses, Your Honor.

18 THE COURT: State may proceed.

19 MS. WHITE: Thank you, Your Honor.

20 We call Bill Rhoden to the stand.

21 THE COURT: Sir, if you would come to the witness
22 stand.

23 WILLIAM RHODEN, being first duly
24 sworn, testified as follows:

25 THE COURT: If you'd have a seat for me please, and

William Rhoden - Direct examination
by Ms. White

1 state your full name for the record spelling your last name
2 for the court reporter.

3 THE WITNESS: My name is William Gary Rhoden. Last
4 name is spelled R-H-O-D-E-N.

5 THE COURT: You may proceed.

6 MS. WHITE: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MS. WHITE:

10 Q Mr. Rhoden, do you recall when you were retained to
11 represent Mr. Byers on these charges?

12 A Yes, ma'am, I do. That would have been -- excuse me.
13 Let me pull out my notes. March the 2nd, 2011.

14 Q Okay. So that was about, it looks like, a month and a
15 half prior to the trial?

16 A That's correct.

17 Q All right. At the time you were retained, what charges
18 were you retained to represent him on?

19 A He had pending three distributions, three proximities,
20 discharging a firearm into a dwelling, and discharging a
21 firearm into a vehicle I believe.

22 Q And, in fact, are those the same charges that are
23 reflected on the plea offer that we have introduced into
24 evidence earlier?

25 A That's correct.

William Rhoden - Direct examination
by Ms. White

1 Q Okay. In regards to the incorrect, I guess, date on a
2 warrant of the 2006, does that -- do you recall that and
3 recall having a conversation with him at the time?

4 A Yes, I met with Mr. Byers several times before we went
5 to trial. He did point that out to me. Actually pulled out
6 my copies of the warrants. I actually have that date
7 highlighted on my copy. However, by the time, of course, I
8 represented him, he had been indicted. The indictments were
9 correct.

10 The date was 2006 on the warrants and it should of been
11 2009. He actually had two distributions and two proximities
12 that occurred on the same date. The two warrants for the
13 offense he was not tried for, but was pending, were correct,
14 2009, but these two warrants were 2006.

15 But in my estimation, the, the correct date on the
16 indictment, which had been true billed by the Grand Jury,
17 cured any defect in the warrant and, therefore, there was no
18 basis to make any, any motion, in my opinion.

19 Q Did you -- was there anything else having to do with
20 the indictment or the Grand Jury term that concerned you or
21 that you would of seen as a legal reason to move to quash?

22 A No, this information about the Grand Jury term was the
23 first I heard about it today. I mean the indictments were
24 regular on their face. I think it said October 29th as
25 the Grand Jury term that year. It was true billed, signed

William Rhoden - Direct examination
by Ms. White

1 by the foreman. The dates were correct in the indictment.
2 I didn't see any basis to make any motions to quash the
3 indictments.

4 Q Okay. In regards to the cross-examination of the
5 witnesses, you actually did cross-examine the female witness
6 about the fact that she kind of had given some
7 inconsistencies about who took the drugs and, and who
8 actually collected the drugs on the video?

9 A That's correct.

10 Can I put it in prospective here?

11 He had three distribution charges. This, quite
12 frankly, was the best case that the State had. The video
13 was pretty darn clear. However, there was pretty -- there
14 was two people involved. There was this female, Ms.
15 Jackson, and, and a Mr. Michael Owensby, who was kind of
16 tagging along.

17 We tried -- I tried to exploit, as best I could, who
18 actually received the drugs. Was it Mr. Owensby, was it Ms.
19 Jackson. I cross-examined her extensively concerning that.
20 You know, did she get the drugs, did he get the drugs, and,
21 and, you know, I've fully explored that issue at trial.

22 Q And, in fact, you also cross-examined the officers
23 about the mistakes you tried to exploit, I guess, in how
24 they had handled the evidence?

25 A Yeah, the, the officer who picked the drugs up from the

William Rhoden - Direct examination
by Ms. White

1 evidence locker, I got him to admit, on cross-examination,
2 that his dates were wrong on, on the forms. But, of course,
3 you know, the, the, the evidence was put in a B.E.S.T. Bag
4 and it was sealed, and, you know, there's no evidence of
5 tampering or sealing, the sealing of the B.E.S.T. -- but we
6 did try -- I did try to exploit those mistakes that, that
7 were made and pointed those out in, in trial.

8 Q In regards to a defense for this charge, was it simply
9 to show some holes in the State's case?

10 There was no alibi or anything?

11 A No alibi. Mr. -- the video, Mr. Byers was clearly on
12 the video. It was not one of those where there's some, you
13 know, wiggle room is this really him or is this not really
14 him. The video is -- probably the transaction itself lasted
15 forever it seemed in the courtroom. I'm sure it wasn't
16 forever, but, but the, the undercover operatives approached
17 him to buy drugs. He actually got a phone call on his cell
18 phone while they were standing there doing the transaction.

19 So the video was still rolling. So you see Mr. Byers
20 in the video for a, a very long time talking on the cell
21 phone, as he started the transaction, took the call,
22 completed the call, and then the transaction was completed.

23 So, you know, from a defense standpoint, you know, it's
24 -- it was a pretty, pretty devastating video.

25 Q And because of that, did you encourage him or is that

William Rhoden - Direct examination
by Ms. White

1 why you tried to obtain a plea deal for him?

2 A This was not a case to try. I mean it was not a case
3 to try. I advised him not to go to trial. I went to the
4 jail with my laptop. I played all three videos for
5 Mr. Byers.

6 I told Mr. Byers, in my estimation, two of the videos,
7 this being one of them, were good cases. This was a good
8 case. The, the other one was a pretty good case, maybe not
9 quite as good as this one, and the third was a little iffy,
10 but the video is not as good on the third case. I said we
11 might have a good fighting chance on that third case, but
12 this one does -- we don't want to try it. I, I advised him
13 over and over again not to go to trial on this.

14 Q And you obviously had him sign a sheet saying that he
15 was rejecting, on his own, this plea that he never took?

16 A Yes, and let me put that in prospective. I got the
17 plea offer on April, I think, maybe the 6th, whatever the
18 date is on that. I went over to the jail just so he was
19 clear what the offer was and we talked about it and that
20 might have been the time that I actually played the videos
21 for him so he would know for sure.

22 He didn't want to do it. But I, I distinctly remember
23 saying look, you know, here's my advice. You need to think
24 about this, you know. This is not a rash decision to make
25 rejecting this, this, this plea offer, and I think the 11th,

William Rhoden - Direct examination
by Ms. White

1 if I'm not mistaken, was a Monday where the offer was to
2 expire on April the 11th.

3 I went back to the jail to talk to him again on the
4 11th, and that is the date I got him to sign the
5 rejections of the offer because I was trying to get him to
6 take the offer because I thought that was in his, his best
7 interest to do.

8 Q Okay. Thank you very much, Mr. Rhoden.

9 That's all I have at this time, Your Honor.

10 THE COURT: You may proceed.

11 MS. MOODY: Thank you.

12 May it please the Court?

13 THE COURT: Yes, ma'am.

14 CROSS-EXAMINATION

15 BY MS. MOODY:

16 Q Mr. Rhoden, you indicated that he had the -- I believe
17 it's three distributions and three proximity charges?

18 A That's correct.

19 Q Okay. And of the three charges for distribution, were
20 any of them weaker than the others?

21 A Yes. Yes.

22 Q Okay. And this trial, was this the weakest trial or
23 was this the strongest case?

24 A No, this is their strongest case.

25 Q Okay. Before you went to trial, did you know which

William Rhoden - Cross-examination
by Ms. Moody

1 case they were gonna call?

2 Specifically which case?

3 A Yes, I did. They told me which one they were gonna try
4 if we tried it because it's, in my estimation, was the
5 strongest case and the State thought so too, yes. So I knew
6 which case we were gonna go to trial on if we had to try the
7 case. Sure.

8 Q Okay. And did you have the opportunity to speak with
9 Mr. Byers about which -- how you thought they might proceed
10 in terms of the strongest case being the first one and how
11 they would go with all his cases?

12 A Let me tell you what I told Mr. Byers. I remember very
13 clearly.

14 Q Please.

15 A I told Mr. Byers, you know, you know, LWOP, I mean life
16 without parole was on the table here, and I wanted him to
17 clearly understand. I said look, we have to beat all three
18 of these drug charges. We have to beat all three. It's not
19 two out of three we beat. We have to beat them all.

20 I said to him you might beat one because, in my
21 estimation, one of them was not that great of a case. Okay.
22 It -- they -- it was a prosecutable case, but it was not as
23 good as the other. The other two were good cases including
24 this one.

25 So I distinctly said look, you understand we have to

William Rhoden - Cross-examination
by Ms. Moody

1 beat all three or else the result will be the same, and, and
2 I, you know, I explained that to him the best I could.

3 But to answer your question specifically, one of the
4 cases was not a great case. This one was a real good case,
5 and the other one that occurred I think on this same date
6 maybe cause two, two distributions were on the same date,
7 was a good case. So we had two -- we had one good case, one
8 really good case, and one iffy case.

9 Q Okay. And despite your going over this information
10 with him, I believe the plea offer sheet that you had from
11 the State, he decided to sign that and reject that?

12 A Yes, and let me go one step further on the rejection.

13 Okay. We had -- these things that occurred during
14 trial, and, and I met -- I made a note, a note in my file,
15 you know, there, there was a little bit, you know, this,
16 this -- the Batson, and that, that -- it was a bizarre jury
17 selection.

18 Okay. I mean I been doing this 33 years. It was
19 probably the most bizarre jury selection I'd been through
20 because we had not one, but two jurors that came forward
21 kind of after the fact saying they had some reason that they
22 didn't feel like they could serve as a juror. That's why I
23 made the motion to quash the jury panel, one of the, one of
24 the reasons.

25 But what, what I was gonna say is, because of that, the

William Rhoden - Cross-examination
by MS. Moody

1 State actually revised their offer on the trial date, and
2 they revised it to 20 years. They said if you'll plead,
3 we'll, we'll do it as a 20 year sentence, negotiated plea.

4 I talked to Mr. Byers about that. He didn't want to do
5 that. I actually talked with his family that day when we
6 broke for lunch. I said please talk to him. He needs to do
7 the deal. Got back from lunch and he, he still was
8 rejecting the deal. So we, we continued with the trial.

9 MS. MOODY: Okay. I beg the Court's indulgence.

10 (Pause.)

11 Q Mr. Rhoden, from your file you have some handwritten
12 notes.

13 Do you recall meeting with Mr. Byers on April 19th,
14 2011?

15 A Yes, that was the date of trial.

16 Q Okay. Can you look at the notes?

17 It's kind of -- I don't know how to like, how they're
18 in your file.

19 May I approach the witness, Your Honor?

20 THE COURT: You may.

21 A Yeah, I'm, I'm probably looking at the same thing
22 you're looking at.

23 MS. MOODY: May I approach the witness, Your Honor?

24 THE COURT: You may.

25 Q I'm gonna give you these sheets.

William Rhoden - Cross-examination
by Ms. Moody

1 A Uh-huh. (Affirmative).

2 Yeah.

3 Q Can you---

4 A Yeah, same thing I'm looking at.

5 Q That's the same thing.

6 Can you tell us -- can you read that cause it's kind of
7 hard to?

8 I don't mean any offense.

9 A Yeah, this was, this was -- these were my notes on the
10 date of trial. It says trial date and it's April 19th,
11 2011.

12 Met with client one more time. Met with client one
13 more time on plea taking life off table. We -- actually the
14 solicitor and I had met with the judge prior to trial to
15 pre-try the case a little bit with the judge, and he, he
16 asked if there was any, you know, negotiations, pleas on the
17 table or anything, and basically said my client rejected the
18 plea. He indicated -- and cause the plea was -- you know,
19 it's kind of an open ended plea.

20 You know they were gonna let him plead to this and we'd
21 take our chances on what to get. There was no, you know,
22 negotiated sentence or, or whatever, and the judge indicated
23 he wasn't gonna max him out.

24 Q Okay. But on this date right here, I just wanted to
25 make sure I'm understanding this is consistent with what

William Rhoden - Cross-examination
by Ms. Moody

1 you're saying.

2 A Uh-huh. (Affirmative).

3 Q So, you, if convicted, explained that -- can you start
4 from that line and read that cause I can't make out the
5 signature, what it's saying?

6 A Okay. Let's see. I explained he must beat -- I put
7 both. He must beat both drug cases and that life -- and
8 that life -- okay. I explained to him he must beat both
9 drug cases. That means the proximity and the distribution
10 on this particular day. I mean this was the trial day.

11 Okay. So I'm talking about these particular charges.
12 I wanted him to fully know that, although I explained it to
13 him over and over again, that he had to beat these two cases
14 or it was life without parole cause that's what it said.
15 Explained -- said I explained he must beat both drug cases
16 and that life was mandatory, if convicted. Explained that
17 when---

18 Q Where are you reading from?

19 It's hard -- I'm sorry.

20 Life is mandatory if convicted.

21 A Right.

22 Q Explained---

23 A Explained that when we started trial, the offer was
24 back off the table. Okay. Says when we started trial offer
25 was off table.

William Rhoden - Cross-examination
by Ms. Moody

1 Q Okay. And you also told him---

2 A Also told him my advice was to plea.

3 Q Okay. And he does not?

4 A He does not want to plead. Wants to go to trial.

5 Q Okay. So when you're talking about you talked to him,
6 that's where -- this is your documentation of what you told
7 him regarding his case and what the offer was---

8 A Right.

9 Q ---in terms of the whole -- all of the charges?

10 A Right.

11 Q Okay.

12 A And that was occurring at the courthouse that day that
13 we were trying the case.

14 Q Okay. And so ultimately y'all went on to trial, and
15 throughout the course of the trial there were objections
16 that he wanted you to make and those objections -- I guess
17 you made some objections, but there were some objections as
18 to someone perjuring themselves?

19 Do you recall having---

20 A There was nobody -- yeah, here's, here's the deal.
21 okay?

22 Q Okay.

23 A We had two people out there during this transaction.

24 It was Ms. Jackson and Mr. Owensby. They were both

25 together. There was an issue of who actually got the drugs.

William Rhoden - Cross-examination
by Ms. Moody

1 You know, she said she got the drugs. At that point, on the
2 video, the actual hand-off of the drugs, you saw a hand.

3 Okay?

4 Q Uh-huh. (Affirmative).

5 A You didn't see the body that the hand was connected to
6 because, at that time, they were close together. So you saw
7 a hand come out and get it.

8 You know, our position was it was Mr. Owensby's hand
9 and not Ms. Jackson's hand, and that's where we were going
10 with all that cross-examination. She said it was hers and
11 it wasn't -- it's not like a perjury issue. I mean she said
12 it was hers and we were saying it was his.

13 Q Okay. All right. So on each of those instances you
14 heard him testify where he talks about perjury, it was more
15 so their testimony coming out on the witness stand and---

16 A Right.

17 Q ---you-all had a different position?

18 A Right. Exactly.

19 MS. MOODY: Okay. No further questions, Your Honor.

20 THE COURT: Any redirect?

21 MS. WHITE: Nothing further, Your Honor.

22 THE COURT: Sir, you may step down.

23 Any further witnesses from the State?

24 MS. WHITE: No, ma'am.

25 THE COURT: Any rebuttable testimony?

1 MS. MOODY: No, ma'am.

2 THE COURT: Any argument?

3 MS. MOODY: No, ma'am.

4 MS. WHITE: Nothing from the State, Your Honor.

5 THE COURT: So that we have clarity of the record, I
6 had my clerk call the Cherokee County Clerk of Court's
7 office and I have their Grand Jury records from October of
8 2009, and, in fact, I have their entire Grand Jury schedule
9 for January of 2009 through June 2009, and when it was
10 amended on 5/20 of '09, and they, in fact, met during the
11 week of October 29th.

12 I also have the Grand Jury report, which is -- which
13 accounts for all of the grand jurors who were present, and
14 that pursuant to the statute, all the -- that all that were
15 necessary. It only takes 12 votes of the Grand Jury. All
16 18 do not have to be present. On that date, 17 were
17 present, one was on vacation, and that report is signed by
18 the Grand Jury foreperson and was put on record at that
19 time, but that Grand Jury report, which is dated 10/28/09
20 and filed on the same date with the Clerk of Court's Office,
21 designates each individual indictment which was true billed.

22 Mr. Byers indictments are numbered 38, 39, 40, 41, 42,
23 and 43, which are Indictments 2009-GS-11-1176, 1177, 1178,
24 1179, 1180, and 1181. Those documents will be made Court's
25 Exhibits.

1 MS. MOODY: Thank you, Your Honor.

2 THE COURT: You welcome.

3 MS. WHITE: Thank you, Your Honor.

4 (WHEREUPON, the Grand Jury documents were marked as
5 Court's Exhibit No. 1 and received into evidence at this
6 time.)

7 THE COURT: So there's no question that the Grand Jury
8 appropriately met on that date, and that the indictments
9 were true billed at that time, which makes that issue a
10 nullity as those are official court records that are
11 maintained by the Clerk of Court for that county and whose
12 duty it is to maintain those records.

13 As regards to issues that have been raised by the
14 Applicant in his application for post-conviction relief, the
15 Court finds that he is failed to meet his burden of proof,
16 that being that his attorney was deficient, that his
17 performance fell below professional norms, and that, as a
18 result, he was prejudiced and that prejudice is defined by a
19 sufficient doubt by the Court or undermining the Court's
20 confidence in the outcome of the proceedings and I've not
21 heard anything up to this point that would do that.

22 The Applicant has made a great bit of deal about a
23 failure to object to the chain of custody. I've reviewed
24 the transcript in this case. I've read, in its entirety,
25 Detective or Officer Byers testimony, and there does not

1 appear to be any deficit in the chain of custody nor any
2 basis for his -- for counsel to have objected.

3 At no time is it indicated that Detective Byers -- I
4 mean Officer Byers details taking the drugs into custody
5 after the buy, placing them in a manila envelope where he
6 labeled it, and then placing it in a B.E.S.T. Bag, which is
7 required by SLED, which is sealed, and then placing it in
8 the evidence custodian for the county -- for the police
9 department's cares until such time that it was tested.

10 Case law is very clear that the chain only has to be
11 proven as far as practicable. You do not have to have every
12 single person in the chain to establish the chain of custody
13 sufficiently and I do not see any deficits in the record
14 regarding the chain of custody. So there would have been no
15 basis for his counsel to have objected.

16 I've reviewed the cross-examination of the witnesses,
17 and it appears that Mr. Rhoden very effectively
18 cross-examined the witnesses including drawing out
19 inconsistencies in their testimony as well as any deficits
20 in the thoroughness of the investigation of this case, and
21 as he put it, any mistakes, he sought to exploit them, to
22 the benefit of his client and he did that effectively.

23 The Applicant has testified that he failed to object
24 regarding perjured testimony. I can discern in the record
25 no evidence that anyone perjured themselves. There may of

1 been inconsistencies in testimony, but that's why we have
2 examination, both direct, cross, and redirect. Those are
3 things you argue in a summation and they're not something
4 you would object to as there would of been no basis for him
5 to have interposed an objection to the testimony, and also
6 there would of been no basis for him to brought up any
7 deficiencies in an indictment before a jury as the jury does
8 not consider the sufficiency of an indictment. That's a
9 legal issue for the Court. So there would have been no
10 basis for him to have objected or to have brought that
11 before the jury as that would not have been allowed.

12 I can not discern, after reviewing the affidavit, any
13 falsehoods in the arrest warrant. He indicates there may of
14 been some inconsistencies in the date, but his counsel is
15 correct that once the indictments were procured and the
16 correct indictment -- correct dates were in there, that it
17 would have superceded any arrest warrant, and, frankly, even
18 if -- let's say, for argument sake, he was right, they were
19 defective, it was dismissed. The Solicitor's Office would
20 of just directly indicted him. It just all becomes circular
21 sort of logic that really makes no sense because an
22 indictment, an indictment is simply a notice document.

23 It does not confer jurisdiction. It simply puts you on
24 notice as to what the State is charging you with and what
25 charges you have to answer to so that you can be prepared

1 for trial.

2 So there was no basis to suppress the warrant. There
3 was no basis for a Franks hearing. While he testified he
4 did have a prelim, I don't know why he didn't have one, but
5 those have to be done within a certain amount of days and
6 they really are perfunctory in nature as well, and, at the
7 time that he hired Mr. Rhoden, it would of been too late to
8 have a preliminary hearing and to request one.

9 He's also raised an issue regarding how could he have
10 been indicted prior to the SLED results coming back. It is
11 rare that you wait until SLED reports come back to indict
12 someone. Officers, with their experience, can testify
13 before the Grand Jury that the drug was presumptively a
14 substance based on their education -- based on their
15 experience and I'm certain that that's probably what
16 happened in this instance as well.

17 Frankly, in the Grand Jury proceeding, the fact that a
18 CI or that the officer observed a CI buy would of been
19 sufficient to have sustained an indictment. You don't have
20 to wait for the SLED report to come back.

21 SLED reports are generally relied on as to presumptive
22 weight, but rarely, if ever, do SLED results come back that
23 the substance is not what it's purported to be. Most times
24 they know whether it's an analogue or some other substance
25 and it would be charged as such.

1 So there's no requirement that the SLED report come
2 back before he is indicted, and I can discern no rule or
3 statute that requires that.

4 He's also indicated that his lawyer didn't ask the
5 questions he wanted him to ask. A lawyer is bound
6 professionally to do what he feels or she feels is
7 appropriate to zealously advocate their client, and while
8 they can take their client's preferences into consideration,
9 they don't have to do everything the client tells them to do
10 especially if it's contrary to their best interest.

11 And so while matters of strategy and other things can
12 be discussed with a client and should be discussed with a
13 client, the client's preference really has nothing to do
14 with how ultimately a case is handled. A lawyer can take
15 that into consideration, but contrary to what we see on
16 television, a lawyer is not a puppet to be told what to do.
17 They have a professional obligation. That's why they have
18 superior education to the system and the problem sometimes
19 with the legal system, unlike the medical system, is it
20 looks so easy. Everybody thinks they can do it. They
21 can't.

22 It takes an inordinate amount of experience and
23 knowledge to handle the legal system, and there are
24 consequences to every decision that you make. So you can
25 not, as a lawyer, listen to a lay person tell you what to do

1 when you know the consequence would be adverse to their best
2 interest and contrary to the rules, and when you have not
3 only a good faith, but an ethical obligation only to raise
4 things that have merit before the Court as you run the risk
5 of, of calling your credibility, as a lawyer, into question
6 as well as damaging your client in the process.

7 He appropriately raised the Batson motion, made a
8 motion to quash the panel, and that was preserved for the
9 record. It was ruled upon by the Court of Appeals. So
10 there is no basis for an ineffective claim based on that.

11 He also made a motion for new trial, which he
12 appropriately preserved for the record, and he also fully
13 communicated to his client all plea offers that were
14 extended by the State, which is clear in that exhibit --
15 from the exhibit that they were communicated and rejected it
16 appears in Mr. Byers own handwriting.

17 This plea offer has been rejected by the defendant;
18 James Byers -- well, may not be in his handwriting, by the
19 defendant, James Byers, on the 11th day of April, 2011. He
20 clearly signs it on the line indicating that he has rejected
21 what is a substantial plea offer that clearly enured to his
22 benefit especially when he's facing LWOP.

23 And in terms of strategy, his lawyer is absolutely
24 correct, and I've seen this happen many times. While there
25 may be one weak case from the State, the State always has a

1 disproportionate advantage cause they got at least three or
2 four times to try to get you. So if they lose one, they're
3 just gonna try him and try him until they get one. And the
4 odds are in their favor because, if they have five cases and
5 four of them are weak, they are gonna prevail on one of
6 them.

7 It's just like when you have a new trial. In most
8 instances the State prevails because they have resources and
9 then also because they, after reviewing the transcript, I
10 wouldn't say the deck is stacked in their favor, but they,
11 they are keenly aware that they have the burden of proof in
12 the case and that the defendant or Applicant doesn't have
13 any burden of proof, and they just tend to try cases better
14 the second time around because they talked to jurors. They
15 find out what the deficits were in their cases and they just
16 try it better and they end up prevailing a second time
17 around.

18 But in any event, even if there was one weak case,
19 there were two strong cases. So as the State often does,
20 they simply bided their time, tried their best case, and
21 figured if we get a win on this one, we don't have to deal
22 with the others. But if we lose this one, so be it. We'll
23 try the next one and we'll try the next one until we get the
24 achieved result, which is life without the possibility of
25 parole.

1 Now, videos in and of themselves are
2 self-authenticating once they can be -- once there's no
3 question regarding the fact that they purport to show what
4 is being argued they show, and there's no contention in this
5 record that there was a video of this transaction. What the
6 transaction showed was clearly a matter of fact for the jury
7 to discern, and while there may of been inconsistencies in
8 that video, at least in the Applicant's perception, those
9 are issues for his counsel to argue, which he did in
10 closing.

11 The other thing is it really makes no appreciable
12 difference who he sold the drugs to. The CI was the person
13 in the nature of the young lady, but they also searched Mr.
14 Owensby, and, to some extent, it was a conspiracy to obtain
15 drugs. They don't have to charge a co-conspirator. He
16 could testify that he got the drugs from you and that would
17 of been sufficient to have supported the sale. But you have
18 a video and that's pretty damaging evidence. It's hard to
19 overcome, almost never overcome, especially if it's a good
20 video. Some of them are bad videos. They're horribly
21 grainy. Sometimes they're out of focus. Sometimes you
22 really can't hear their conversations, but it appears that
23 this was a particularly good video, which in and of itself
24 would be sufficient to have sustained the jury's verdict.

25 Counsel was prepared to go to trial. There was not

1 anything based in this record, in my estimation, even though
2 he hired his lawyer approximately a month and a half prior
3 to trial. There's nothing particularly difficult about this
4 case. It was straightforward in its nature. He really did
5 not have any viable defense, and Mr. Rhoden testified he was
6 prepared and ready to go forward, and, in his advice to his
7 client, which I think was completely appropriate advice,
8 advice, this was not a case for trial, that his efforts
9 could be more fully utilized trying to work out a plea deal
10 for him and he did that and he rejected it, and, you know,
11 that's the peculiarity of exercising your right to a trial,
12 and I'm a great believer in the trial system.

13 I would never discourage anyone from exercising their
14 right to a jury trial and holding the State to its
15 requirement to proving your guilt beyond a reasonable doubt,
16 but you have to know that that sword cuts both ways. It's a
17 big risk you take. You either win big or you lose big.
18 When you are acquitted you've won big. When you are
19 convicted you lose big, and your stakes in this were very
20 high, and, as a young man, you took a great chance against
21 the advice, competent advice, of your attorney, and I think,
22 at this point, it is a -- just a case of hindsight is 20/20
23 and it's an unfortunate result that, in South Carolina, life
24 without parole means just that, life without parole.

25 Based on what is been presented to the Court, the

1 application is denied. The Attorney General is to provide
2 the Court with a proposed order within 20-days of today. A
3 copy of that is to be provided to Ms. Moody, and by the same
4 means and method that it is sent to the Court. If there's
5 anything you want to add to the order, please feel free to
6 do that.

7 Thank you-all very much.

8 MS. MOODY: Thank you, Your Honor.

9 MS. WHITE: Thank you, Your Honor.

10 THE COURT: Thank you.

11

12

13 * * *END OF REQUESTED TRANSCRIPT OF RECORD* *

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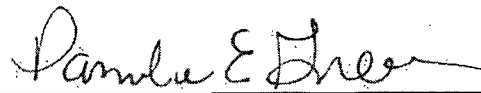
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Cherokee County, South Carolina, on the 14th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 10th, 2015



PAMELA E. GREEN, Court Reporter

RECEIPT FOR EXHIBITS

Case No. 13-CP-11-335
 Plaintiff: James Byers
 Defendant: State
 Date Trial Started: 1/14/2015

Judge Jefferson
 Plt's Atty. L. Moody
 Def's. Atty. S. White
 Date Trial Ended: 1/14/2015

Received of Pam Green, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
<u>State</u>	<u>Court</u>	
1 <u>plea offer</u>	1 - <u>Grand jury report</u>	
2	2 - <u>Grand jury report</u>	
3		
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FILED IN OFFICE OF
 CLERK OF COURT
 STANTON COUNTY, S.C.
 2015 JAN 29 PM 12:38
 BRANDY W. MCBEE

This 29 day of January, 2015.

Page 1 of 1

By: Brandy W. McBe
 Stanton County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

Attorney Bill RhodenDate 4/6/11STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEEIN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

State of South Carolina

v.

James Byers
Defendant.

Warrant(s) _____

The above-named Defendant has been charged with:

1. Dist. Crack 3d x3 → Seeking Life Sentence
2. Dist Crack 1/2 mile x3 → Seeking Life Sentence
3. Disch. into Dwelling
4. Disch into Vehicle
5. _____

The State makes the following Plea Offer:

Dist Crack 3d x2 (15-30y)Dist Crack 1/2 x2 (10-15)Disch. into dwelling (0-10)Disch. into vehicle (0-10)

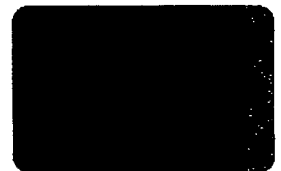
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CLERK OF COURT
JUDICIAL CIRCUIT
SEVENTH
S.C.
2015 JAN 29 PM 12 38
BRANDY W. MCBEE

This Offer expires on the 11 day of April, 2011 @ 5 pm.

This plea offer has been
rejected by the defendant,
James Byers on the 11th of April
2011.

James R Byers

Kimberly L. Leskaniemi
Kimberly L. Leskaniemi



January 2009 - June 2009

(10)

January 5

January 12 CPNJ

January 12 PCR/Spartanburg

January 19 Grand Jury

January 19

January 22 1st/2nd Appearance

January 25 General Sessions

February 2, 3 CP Motions/Appeals

February 9 General Sessions

February 16

February 19 1st/2nd Appearance

February 23 Common Pleas

March 2

March 5 Grand Jury

March 5

March 9 CPNJ

March 16 General Sessions

March 23

March 26 1st/2nd Appearance

March 30

March 30

March 30

April 6 Common Pleas

April 6 PCR/Spartanburg

April 13 Grand Jury

April 13

April 16 1st/2nd Appearance

April 20 General Sessions

April 27 CP Motions/Appeals

May 4

May 11

May 14 Grand Jury

May 14

May 18, 19 CPNJ

May 21 1st/2nd Appearance

May 25 General Sessions

May 25 PCR/Spartanburg

June 1

June 8 Common Pleas

June 15 General Sessions

June 22

June 25 1st/2nd Appearance

June 29

Administrative Judge

Common Pleas: J. Mark Hayes

General Sessions: Roger L. Couch

The Honorable Roger L. Couch

The Honorable J. Derham Cole

Ellis/Bolin/Gee/Wilkins

Gee/Bolin

The Honorable Lee S. Alford

Couch

The Honorable J. Derham Cole

The Honorable Benjamin H. Culbertson

J. Mark Hayes

Ellis/Gee

The Honorable Kristi Lea Harrington

J. Mark Hayes

Wilkins

The Honorable J. Mark Hayes

The Honorable J. Mark Hayes

Ellis/Bolin

J. Derham Cole

The Honorable Benjamin H. Culbertson

The Honorable Roger L. Couch

Wilkins

Gee/Bolin

The Honorable J. Derham Cole

The Honorable J. Derham Cole

Ellis/Bolin

Wilkins

The Honorable J. Mark Hayes

Ellis/Gee

The Honorable Roger L. Couch

The Honorable J. Mark Hayes

Wilkins

The Honorable J. Mark Hayes

Ellis/Bolin

The Honorable Roger L. Couch

The Honorable J. Mark Hayes

Wilkins

The Honorable J. Derham Cole

Wayne Ellis

The Honorable Kristi Lea Harrington

Bolin/Ellis

FILED IN OFFICE OF

CLERK OF COURT

CHEROKEE COUNTY, S.C.

2015 JAN 29 PM 12:28

CHANDY W. MEE

Court Exhibit 1

2015 JAN 29 PM 12:28

CHANDY W. MEE

July 2009 - December 2009

Amended 05/20/09

(Discard previously issued schedules)

Administrative Judges: J. Mark Hayes/Common Pleas Roger L. Couch/General Sessions

TERM	COURT	JUDGE	REPORTER	BAILIFF
July 6				
July 9	1 st /2 nd Appearance			Bolin/Gee
July 13	General Sessions	Roger L. Couch		
July 20	CPNJ	Roger L. Couch		
July 27	PCR/Spartanburg	J. Mark Hayes		
July 30	Grand Jury			Ellis
August 3				
August 10	General Sessions	Roger L. Couch		
August 17				
August 20	1 st /2 nd Appearance			Gee/Ellis
August 24				
August 27	Grand Jury			Bolin
August 31	Common Pleas	J. Mark Hayes		
September 8 and 9	CPNJ	J. Mark Hayes		
September 10	1 st /2 nd Appearance			Ellis/Bolin
September 14	General Sessions	Roger L. Couch		
September 14	PCR	J. Derham Cole		
September 24	Grand Jury			Gee
September 28				
October 5				
October 8	1 st /2 nd Appearance			Bolin/Gee
October 12 and 13	CPNJ	J. Derham Cole		
October 19	General Sessions	Roger L. Couch		
October 26				
October 29	Grand Jury			Lovingood
November 2	Common Pleas	J. Derham Cole		
November 2	PCR (Spartanburg)	Roger L. Couch		
November 9				
November 12	1 st /2 nd Appearance			Gee/Ellis
November 16	General Sessions	J. Derham Cole		
November 23				
November 30	Motions and Appeals	J. Derham Cole		Ellis/Bolin
December 3	Grand Jury			Ellis
December 7	General Sessions	J. Derham Cole		
December 7	PCR (Spartanburg)	Brooks Goldsmith		
December 14	CPNJ	J. Mark Hayes		
December 17	1 st /2 nd Appearance			Bolin/Gee
December 21				
December 28				

GRAND JURY REPORT ON INDICTMENTS PRESENTED
CHEROKEE COUNTY

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

10.29.2009

DATE

2009 OCT 29 A 10:12

The Grand Jury of Cherokee County met on the above date and the following Indictments are reported as True Bills.

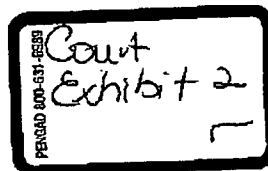
BRANDY W. MCBEE

1. 2009-GS-11-1140 Ralph Thomas Chapman
2. 2009-GS-11-1141 Anthony Lamar Garrett
3. 2009-GS-11-1142 Gael Hunt
4. 2009-GS-11-1143 Thomas Backlear
5. 2009-GS-11-1144 " "
6. 2009-GS-11-1145 Jacobie Brishaud Cathcart
7. 2009-GS-11-1146 " "
8. 2009-GS-11-1147 Anita Anne Crosby
9. 2009-GS-11-1148 Leonard Herbert Finck
10. 2009-GS-11-1149 Lewis Edward Finck
11. 2009-GS-11-1150 Timothy Scott Hopper
12. 2009-GS-11-1151 Timothy Scott Hopper
13. 2009-GS-11-1152 " "
14. 2009-GS-11-1153 " "
15. 2009-GS-11-1154 Veronique Cherielle Hughes
16. 2009-GS-11-1155 Brandon Earl Jude
17. 2009-GS-11-1156 Lucille Hopper McClair
18. 2009-GS-11-1157 Calvin Eugene Miller

BRANDY W. MCBEE

2:15 PM 12:38

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CLERK OF COURT
CHEROKEE COUNTY, S.C.



19. 2009-GS-11-1158	Calvin Eugene Miller
20. 2009-GS-11-1159	Patricia Mobley
21. 2009-GS-11-1160	Judith Gail Robbs
22. 2009-GS-11-1161	" " "
23. 2009-GS-11-1162	" " "
24. 2009-GS-11-1163	Timothy David Smith
25. 2009-GS-11-1130	Barbara Jean Ruff Stroud
26. 2009-GS-11-1164	Stacey Denise Wilcox
27. 2009-GS-11-1165	" " "
28. 2009-GS-11-1166	Jana Leigh Best
29. 2009-GS-11-1167	" " "
30. 2009-GS-11-1168	Ronnie Bonner
31. 2009-GS-11-1169	" "
32. 2009-GS-11-1170	" "
33. 2009-GS-11-1171	" "
34. 2009-GS-11-1172	Christopher Dale Brazzle
35. 2009-GS-11-1173	" " "
36. 2009-GS-11-1174	" " "
37. 2009-GS-11-1175	Ray Lee Brown
38. 2009-GS-11-1176	James Ray Byers, Jr.
39. 2009-GS-11-1177	" " " "
40. 2009-GS-11-1178	" " " "
41. 2009-GS-11-1179	" " " "

42. 2009-GS-11-1180
 43. 2009-GS-11-1181
 44. 2009-GS-11-1182
 45. 2009-GS-11-1183
 46. 2009-GS-11-1184
 47. 2009-GS-11-1185
 48. 2009-GS-11-1186
 49. 2009-GS-11-1187
 50. 2009-GS-11-1188
 51. 2009-GS-11-1189
 52. 2009-GS-11-1190
 53. 2009-GS-11-1191
 54. 2009-GS-11-1192
 55. 2009-GS-11-1193
 56. 2009-GS-11-1194
 57. 2009-GS-11-1195
 58. 2009-GS-11-1196
 59. 2009-GS-11-1197
 60. 2009-GS-11-1198
 61. 2009-GS-11-1199
 62. 2009-GS-11-1200
 63. 2009-GS-11-1201
 64. 2009-GS-11-1202

James Kay Byers, Jr.
 " " " "

Myra Dawn Conner

Myra " "

Gerry Jerome Davis

Rosalind Yvette Dawkins

Sammy Lynn Dotson

Patricia Wright Garcia

" " "

Kenneth Wayne Hall

Ruth Harris

" "

" "

" "

Damico Denez Hough

" " "

Megan Wallace Hooter

" " "

" " "

" " "

Gregory James Hull

Ervin John Lawson

" " "

65. 2009-GS-11-1203	Daniel Yermaine Logan
66. 2009-GS-11-1204	Stank Logan
67. 2009-GS-11-1205	" "
68. 2009-GS-11-1206	David Benjamin McSwain
69. 2009-GS-11-1207	" "
70. 2009-GS-11-1208	" "
71. 2009-GS-11-1209	Crystal Michelle Mayberry
72. 2009-GS-11-1210	" "
73. 2009-GS-11-1211	" "
74. 2009-GS-11-1212	Paula Rose Merrick
75. 2009-GS-11-1213	" "
76. 2009-GS-11-1214	Johnathan Matthew Mullinax
77. 2009-GS-11-1215	" "
78. 2009-GS-11-1216	" "
79. 2009-GS-11-1217	Jennifer Nesbitt
80. 2009-GS-11-1218	" "
81. 2009-GS-11-1219	Garon Jason Norris
82. 2009-GS-11-1220	" "
83. 2009-GS-11-1221	Daniel Charles Panther
84. 2009-GS-11-1222	" "
85. 2009-GS-11-1223	Brandon Coldel Peeler
86. 2009-GS-11-1224	" "
87. 2009-GS-11-1225	Gabriel Shane Pennington

88. 2009-GS-11-1226	Kiker Travis Pennington
89. 2009-GS-11-1227	Thomas Andrew Petty, Jr.
90. 2009-GS-11-1228	" " " "
91. 2009-GS-11-1229	Kevin Edward Poole
92. 2009-GS-11-1230	Kevin Edward Poole
93. 2009-GS-11-1231	" " "
94. 2009-GS-11-1232	" " "
95. 2009-GS-11-1233	" " "
96. 2009-GS-11-1234	Steven Craig Quinn
97. 2009-GS-11-1235	" " "
98. 2009-GS-11-1236	James Glenn Sapoch, III
99. 2009-GS-11-1237	Naikia Smith
100. 2009-GS-11-1238	Naikia Smith
101. 2009-GS-11-1239	Janna Anne Sprouse
102. 2009-GS-11-1240	" " "
103. 2009-GS-11-1241	Jeron Kennard Stevenson
104. 2009-GS-11-1242	" " "
105. 2009-GS-11-1243	" " "
106. 2009-GS-11-1244	" " "
107. 2009-GS-11-1245	" " "
108. 2009-GS-11-1246	" " "
109. 2009-GS-11-1247	" " "
110. 2009-GS-11-1248	Kisha Tate

111. 2009-GS-11-1244 Keisha Tate
112. 2009-GS-11-1250 Keisha Tate
113. 2009-GS-11-1251 Keisha Tate
114. 2009-GS-11-1252 " "
115. 2009-GS-11-1253 " "
116. 2009-GS-11-1254 James Bernard Thompson, Jr.
117. 2009-GS-11-1255 " " " "
118. 2009-GS-11-1256 Chainety Dena Walker
119. 2009-GS-11-1257 " " "
120. 2009-GS-11-1258 " " "
121. 2009-GS-11-1259 Jerome Nathan Walker
122. 2009-GS-11-1260 " " "
123. 2009-GS-11-1261 " " "
124. 2009-GS-11-1262 Brandon James White
125. 2009-GS-11-1263 Rachel Susan Wolfe
126. 2009-GS-11-1264 " " "
127. 2009-GS-11-1265 Markus Bernard Woods
128. 2009-GS-11-1266 Samuel Decator Wray, Jr.
129. 2009-GS-11-1267 " " " "
130. 2009-GS-11-1268 Donnie Graham Jeffers, Jr.
131. 2009-GS-11-1269 " " "
132. 2009-GS-11-1270 Christy Ann Keller
133. 2009-GS-11-1271 " " "

134. 2009-GS-11-	1272	Christy Ann Keller	
135. 2009-GS-11-	1273	" " "	
136. 2009-GS-11-	1274	Johnathan Bernard Kesler	
137. 2009-GS-11-	1275	" " "	
138. 2009-GS-11-	1276	" " "	
139. 2009-GS-11-	1277	" " "	
140. 2009-GS-11-	1135	Johnny Manuel Gilliam	
141. 2009-GS-11-	1136	Gerry Martin	
142. 2009-GS-11-	1137	Darrell Simmons	
143. 2009-GS-11-	1138	" "	
144. 2009-GS-11-	1139	" "	
145. 2009-GS-11-			
146. 2009-GS-11-			
147. 2009-GS-11-			
148. 2009-GS-11-			
149. 2009-GS-11-			
150. 2009-GS-11-			
151. 2009-GS-11-			
152. 2009-GS-11-			
153. 2009-GS-11-			
154. 2009-GS-11-			
155. 2009-GS-11-			
156. 2009-GS-11-			

THE FOLLOWING INDICTMENTS WERE FOUND TO BE NO BILLS.

1. STATE VS. _____ GS-11 _____
2. STATE VS. _____ GS-11 _____
3. STATE VS. _____ GS-11 _____
4. STATE VS. _____ GS-11 _____
5. STATE VS. _____ GS-11 _____

III. BY OUR SIGNATURE HERETO, AT LEAST TWELVE (12) OF THE EIGHTEEN (18) GRAND JURORS CONCURRED IN THE FINDINGS IN THEIR REPORT.

1. <u>Odell Muller</u> FOREPERSON	11. <u>Whitney T. Cox</u>
2. <u>Jim Seaton</u>	12. <u>Timothy Hurler</u>
3. <u>Robert S. Love</u>	13. <u>Quentin J. Henry</u>
4. <u>Julie W. Soth</u>	14. <u>Barbara Mulvaney</u>
5. <u>Heidi Collier</u>	15. <u>James H. Hall Jr.</u>
6. <u>Patsy Dejon</u>	16. <u>Pyrra Davis</u>
7. <u>Sammy Burgess</u>	17. <u>Mad. King</u>
8. <u>Robin Childs</u>	18. _____
9. <u>Jim Billingsley</u>	
10. <u>Ken Hill</u>	

IV. GRAND JURORS ABSENT: (NAME AND REASON ABSENT)

1. Joan Conner - vacation
2. _____
3. _____

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

James Ray Byers, #293715,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2013-CP-11-0335

ORDER OF DISMISSAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAY 1 10 11 16
BRANDY W. MOORE

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Leah B. Moody, Esquire
Suzanne H. White, Esquire
William G. Rhoden, Esquire
January 14, 2015
Pamela E. Green

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 13, 2013. The Respondent made its Return on or about March 17, 2014. An evidentiary hearing into the matter was convened on January 14, 2015, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. William G. Rhoden, Esquire, (Counsel) also testified. This Court also had before it a copy of the records of the Cherokee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate records, and the trial transcript.

1/27/27
JRG

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted by the October 2009 term of the Cherokee County Grand Jury for Distribution of Crack Cocaine—Third or Subsequent Offense¹ (2009-GS-11-1179) and Distribution of Crack Cocaine Within Half-mile of School or Park (Distribution Proximity)² (2009-GS-11-1180). William G. Rhoden, Esquire, represented the Applicant. On April 19, 2011, the Applicant proceeded to trial before the Honorable J. Derham Cole. On April 20, 2011, the Applicant was found guilty by a jury trial of both counts. Judge Cole sentenced the Applicant to concurrent sentences of life without possibility of parole (LWOP) for Distribution of Crack Cocaine—Third or Subsequent Offense and Distribution of Crack Cocaine Within One-half Mile of a School or Park. Judge Cole also found that the Applicant had willfully violated the terms of his probation on two (2) active probationary sentences, revoked the Applicant's probation in full, and ran his active sentences concurrent with the instant sentences (Tr. 278:7-278:8).³

The Applicant filed a timely Notice of Appeal and his appeal was perfected by Dayne C. Philips, Esq. of the South Carolina Appellate Division of Indigent Defense. The South Carolina Court of Appeals affirmed the Applicant's sentence and conviction. State v. Byers, Op. No.

¹ Distribution of Crack Cocaine is a serious felony and "for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than fifteen [(15)] years nor more than thirty [(30)] years, or fined not more than fifty thousand dollars [(\$50,000.00)], or both." S.C. CODE ANN. § 44-53-375 (2009); S.C. CODE ANN. § 17-25-45(C)(2)(a) (2009).

² Pursuant to the proximity laws, "[w]hen a violation involves the distribution, sale, manufacture, or possession with intent to distribute crack cocaine, the person is guilty of a [serious] felony and, upon conviction, must be fined not less than ten thousand dollars [(\$10,000.00)] and imprisoned not less than ten [(10)] nor more than fifteen [(15)] years." S.C. CODE ANN. § 44-53-445(B)(2) (2009); S.C. CODE ANN. § 17-25-45(C)(2)(b) (2009).

³ The Applicant does not challenge his probation hearing or sentencing before this Court on collateral review.

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2013-UP 121 (Filed March 27, 2013), *available at*, 2013 WL 8507821. The Remittitur was issued on April 12, 2013.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. "Trial Attorney failed to act as my diligent advocate."
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellate Counsel failed to act as my diligent advocate."
 - b. "Batson denial"
3. Due Process violation
 - a. "Fifth, Sixth, and Fourteenth amendment violations."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

Summary of the Testimony

The Applicant testified that he retained Counsel to represent him on the subject charges, but that Counsel failed to conduct a proper investigation into the faulty indictments and chain of custody. The Applicant testified that one of the warrants referenced the date of the offense as August 26, 2006, but the Applicant stated that he was in jail on that date. The Applicant further claimed that he was in jail on the date he was indicted by the grand jury—October 29, 2009—and that Counsel told him that the State would claim that the date was simply an inconsequential

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typographical error. The Applicant further claimed that according to a published calendar, the grand jury did not convene on October 29, 2009. The Applicant alleged that he told Counsel the State would claim the offense occurred in 2009. The Applicant testified that he hired Counsel to represent him in early April 2011, approximately a few weeks or a month prior to his trial, but he received the warrants in October, 2009. The Applicant testified that he was originally appointed attorney Don Thompson to represent him on the charges, but to his knowledge, Thompson never received any discovery materials. The Applicant clarified that he reviewed the discovery after he hired Counsel.

The Applicant also testified that he did not have a preliminary hearing. The Applicant testified that he was arrested again, at which time he viewed the video footage with Counsel. The Applicant testified that he met with Counsel in April 2011 and at that time viewed the video footage of the Applicant selling drugs to the confidential informant. The Applicant testified that on the video, he did give something to the confidential informant, but it was not the amount of drugs that the State brought to court. The Applicant testified that the other male on the video was Michael Owensby, whom the Applicant was informed would testify at trial. However, the Applicant testified that he found out that Owensby did not want to testify and Owensby ultimately did not testify. The Applicant claimed that based on the video evidence, the outcome of his trial would have been different and thus he was prejudiced.

The Applicant alleged that Counsel failed to object to the testimony of witness Felicia Jackson, whom he claimed perjured herself. The Applicant further claimed that Counsel never questioned Jackson about whether she sold drugs to the informant. Although the Applicant admitted Counsel cross-examined all witnesses, he claimed Counsel failed to effectively cross-examine witness Jason Burgess. Further, the Applicant testified that he wanted Counsel to object

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to Officer Burgess' testimony and validity of the warrant and indictments, as well as the SLED agent's testimony and report, including chain of custody. The Applicant testified that the SLED report was not issued until trial and after he was indicted, so he believes that the indictment was improper because the grand jury would not have had that information. The Applicant further testified that his due process rights were violated based on the false affidavit supporting the arrest warrants.

While the Applicant acknowledged his appellate counsel resolved the Batson issue on appeal and admitted that Counsel made a Batson motion and motion to quash the panel at trial, the Applicant claimed that Counsel was ineffective for failing to make the proper motion regarding jury selection. The Applicant further admitted that Counsel moved for a directed verdict; renewed his motions, preserving them for appellate review; renewed his motions at the end of trial; and moved for a new trial prior to sentencing and again after sentencing, based on discovery of a note in the jury room, implicating the constitutionality of the panel. The Applicant further admitted that Counsel engaged in extensive cross examination of the witnesses based on the truth of their statements and mistakes in handling paperwork and the case in general. The Applicant stated that he received a guilty plea offer on April 11, 2011, to plead guilty to three (3) Distribution of Crack charges, three (3) Distribution Proximity charges, and two (2) firearm charges—Discharging a Gun in a Residence and Car. The Applicant further testified that all other charges would be dismissed, but that he was not offered a plea negotiation on those charges. The Applicant admitted that he rejected the plea offer in writing because he refused to plead guilty to crimes he did not commit. Thereafter, he received notice that the State was seeking LWOP at trial.

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Counsel, William G. Rhoden, testified that he has been handling criminal cases for approximately thirty-three (33) years. He was retained on March 2, 2011—one and one half (1.5) months prior to trial—to represent the Applicant on three (3) charges of Distribution of Crack Cocaine, three (3) Distribution Proximity charges, Discharge of a Firearm into a Dwelling, and Discharge of a Firearm into a Vehicle. Counsel testified that he met with the Applicant several times prior to trial and addressed the incorrect dates on the indictments with the Applicant. Counsel clarified that the indictments were correct at the time they were issued; Counsel testified that the warrants that stated the crime occurred in 2006 were wrong, but that the correct indictments cured the defect. Therefore, Counsel testified, the indictments were correct on their face and he found no good-faith, legal basis to object. Counsel further clarified that two (2) Distribution and two (2) Distribution Proximity charges occurred on the same date and that the warrants for the other charges never went to trial. Therefore, Counsel testified he found no basis to object. Counsel also testified that the Applicant never informed him that there was an issue regarding convening the grand jury, today was his first time hearing of it and that he had no basis to move to quash the indictments.

Counsel further testified that the Applicant had no defense because the State's video evidence was "pretty darn clear." Counsel summarized that the video clearly depicted the Applicant while the undercover officer approached the Applicant to initiate the drug transaction. While the Applicant got a call on his cell phone during the transaction, which transpired for a "long time," Counsel opined that "from the defense's standpoint" it was a "pretty devastating video." Counsel further testified that he advised and urged the Applicant not to go to trial and attempted to negotiate a plea deal because "this was not a case to try." Counsel testified that the issue at trial became who actually got the drugs, but that he cross-examined all witnesses—

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especially Jackson—thoroughly and was able to “fully exploit the issue at trial” to the Applicant’s benefit.

Counsel testified that the State had a video for each distribution charge and two (2) of the videos were very strong evidence for the State. Counsel testified he took his laptop to the jail and showed each of the State’s videos to Applicant. Counsel advised the Applicant that the State had one “pretty good” case, one “good” case, and an “okay” case where he and the Applicant “might have a good fighting chance.” Counsel testified that he informed the Applicant that the State would try each Distribution case separately. Counsel further advised that the defense would need to beat all three (3) Distribution charges to avoid LWOP that the Applicant could still receive a life sentence even if they beat one (1) charge. Counsel testified that he wanted the Applicant to clearly understand his odds and that LWOP was on the table. Counsel further testified that the present trial was the State’s strongest case against the Applicant and that the State informed Counsel that they were going to trial on the instant case beforehand. Consequently, Counsel testified, he was prepared for trial.

Counsel negotiated a plea offer from the State for an “open ended” plea with the State declining to seek LWOP, which was set to expire on April 11, 2011. Counsel testified that he and the Solicitor had a pretrial conference with the trial judge, where the judge indicated that pursuant to a straight up plea, he likely would not award the Applicant the maximum penalty. Counsel communicated the State’s offer to the Applicant at the same time he watched the videos with the Applicant at the jail. Counsel further testified that he advised the Applicant to think about the offer and advised him against making a “rash” decision to reject the offer. Counsel testified he advised the Applicant “over and over” and on multiple occasions about the strength of the State’s cases based on the video evidence; about how LWOP would be mandatory if the

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Applicant was convicted at trial; about how the Applicant must beat both drug cases—Distribution and Proximity—and that his advice was to plead guilty. Counsel testified that on his second visit to the jail after giving the Applicant time for reflection the Applicant advised him he wished to reject the offer. He testified as a result of this decision he had the Applicant sign a rejection letter. Counsel testified that going to trial was against his advice.

Counsel had notes in his file dated April 19, 2011, indicating that he met with the Applicant again on the day of trial to discuss the plea deal where the possibility of life would be off of the table. Counsel testified that the State revised their offer to a twenty (20) year negotiated plea on the day of jury selection. Counsel also spoke with the Applicant's family in an attempt to have them convince the Applicant to accept a plea offer and that after the Applicant had thought about the deal over lunch, he rejected the offer and they proceeded to trial. Counsel further advised the Applicant that after trial began, his plea offer would be off the table. Counsel again advised the Applicant to plead, which the Applicant rejected.

At trial, Counsel testified that there were several issues with the jury selection, which was "the most bizarre" jury selection he had "ever seen in thirty three (33) years in practice." Counsel clarified that after selection, two (2) jurors approached him to state that they did not want to sit on the panel; thus, Counsel testified, he made a motion to quash the panel. Counsel testified he tried to preserve all objections and arguments for appellate review.

Counsel testified that at his client's behest he objected to the line of testimony and tried to fully cross-examine the female confidential informant, Jackson and the other officer, Burgess about "who actually got the drugs" and was involved in the sale. Counsel clarified that perjury was not at issue just because the video did not clearly depict who exactly handled the drugs. However, Counsel testified that the case was the best one the State had with a clear video of the

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Applicant completing the drug transaction.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. This Court found the testimony of Counsel to be more credible than the testimony of the Applicant as to all allegations raised in the application and at the hearing.

In a PCR action, "the burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at

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668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625 (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068).

In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065. There is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance and the "defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.* This Court finds that the Applicant has failed to meet his burden of proof as to this claim.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); *Underwood v. State*, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing *Goodson v. U.S.*, 564 F.2d 1071 (4th Cir. 1977)). See *Stokes*, 308 S.C. at 548, 419 S.E.2d at 778-79 (finding counsel's decision not to call witnesses reasonable where their testimony would have been of no value to the case and witnesses were not

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credible); Abney v. State, 408 S.C. 41, 51, 757 S.E.2d 544, 549 (Ct. App. 2014) ("While trial counsel should consult with his client, the final decision on strategy belongs to counsel."); Moore v. State, 399 S.C. 641, 723 S.E.2d 871, 873 (2012) (citing Florida v. Nixon, 543 U.S. 175, 187, 125 S. Ct. 551 (2004) ("Attorneys have a duty to consult with their clients regarding 'important decisions,' including questions of overarching 'defense strategy.' . . . This does not require counsel to obtain the defendant's consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights [to plead guilty, waive a jury, testify on his own behalf, or take an appeal] cannot be made for the defendant by surrogate").

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

This Court finds Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. This Court finds Counsel provided credible testimony during the Applicant's evidentiary hearing. Counsel conferred with the Applicant and discussed the pending charges, his constitutional rights, the elements of the charges and what the State was required to

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prove, the Applicant's version of the facts, the penalty ranges associated with the charged offenses, and the Applicant's defenses he could present at trial. The record also reflects that Counsel fully argued all motions on the Applicant's behalf and zealously advocated on his client's behalf. This Court finds that Counsel fully communicated all plea offers and although there was a fairly short time period between his hiring and trial, this Court finds Counsel was prepared to proceed to trial. This case was a straightforward case and as Counsel testified, there was clear video evidence. This Court finds that the Applicant has failed to meet his burden of proof and has not presented any evidence of any deficient conduct on Counsel's behalf that would have undermined the jury's verdict.

Failure to Challenge the Affidavit and Indictment

The Applicant alleges Counsel was ineffective for failing to adequately challenge the affidavit and indictments associated with the charged offenses. Specifically, the Applicant alleges the grand jury did not convene during October 2009, during the time when the Applicant was incarcerated on the present offenses. Thus, the Applicant argues, the grand jury could not have indicted him on October 29, 2009, as recorded on the indictments. The Applicant further alleges the affidavits underlying the warrants incorrectly state the date of offense as August 26, 2006, not August 26, 2009. Additionally, the Applicant argues that the affidavits are invalid because the SLED reports that confirm the substance allegedly distributed was crack cocaine were not completed or returned until shortly before trial. Therefore, the Applicant challenges the officer's ability to affirm that the substances were in fact crack. Based on a review of the subject indictment and arrest warrants, as well as the October 2009 Cherokee County Grand Jury Report and the record, this Court can discern no basis for Counsel to challenge the indictments.

This Court finds that an indictment is purely a notice document:

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Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. CODE ANN. § 17-19-20 (2012). "The primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, by apprising him of the elements of the offense, and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted." State v. Smalls, 364 S.C. 343, 346-47, 613 S.E.2d 754, 756 (2005). The court

should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged.

State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005) (citing State v. Wilkes, 353 S.C. 462, 578 S.E.2d 717 (2003)). "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." Id. (citing State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)). "[W]hether the indictment could be more definite or certain is irrelevant." Id. (citing State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003)). See also State v. Tumbleston, 376 S.C. 90, 97-98, 654 S.E.2d 849, 853 (2007) (citing Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005)) (noting that all of the surrounding circumstances must be weighed to make an accurate determination of whether the defendant was prejudiced by a lack of notice and an insufficient indictment).

Further, "[w]here time is not an essential element of the offense, the indictment need not specifically charge the precise time the offense allegedly occurred." State v. Wingo, 304 S.C.

173, 175, 403 S.E.2d 322, 323 (Ct. App. 1991). "In such a case, however, the indictment must show the offense was committed prior to the finding of the indictment." Id. (citing State v. Gregory, 191 S.C. 212, 4 S.E.2d 1 (1939)).

In a post-conviction relief action, an Applicant challenging the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. CODE ANN. § 17-19-90 (2003) ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.").

This Court finds that based on a facial review of the indictments and Counsel's credible testimony regarding his and the Applicant's trial preparation, the Applicant was fully aware of the charges he was facing and suffered no surprise or prejudice by proceeding to trial on the indictments. Counsel further advised the Applicant that the incorrect date on the associated warrants would not be an issue because the indictments were correct. The indictments superseded any mistake in the arrest warrants regarding the date and cured any defect. See Thompson v. State, 251 S.C. 593, 596, 164 S.E.2d 760, 761 (1968) (alleged invalidity of warrant and warrant proceedings does not preclude indictment by grand jury sufficient to give jurisdiction to the court of general sessions). Cf. Prosser v. Parsons, 245 S.C. 493, 498, 141 S.E.2d 342, 345 (1965) (citing 5 Am. Jur. (2d), Arrest, § 22.) ("The legality of an arrest without warrant does not depend on the final results of the charge on which the arrest was made."); State v. McCoy, 255 S.C. 170, 173, 177 S.E.2d 601, 603 (1970) (citing 5 Am. Jur. (2d) 796, Arrest, § 16) ("The fact that an original arrest may have been unlawful does not affect the jurisdiction of the court, nor is it a ground for quashing the information. And it does not preclude trial of the

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accused for the offense."'). Thus, the Applicant's argument is without merit.

Further, this Court reviewed the calendar and records of the Cherokee County Grand Jury, which reveal that the Cherokee County Grand Jury signed a report and true-billed each of the Applicant's indictments on October 29, 2009. See Court's Exhibit #1. Thus, the Applicant's assignment of error is without merit.

Moreover, as to the Applicant's argument that the affidavit is invalid because the officer had not yet obtained the SLED report confirming that the substance was crack, at trial, the State presented the eyewitness testimony of Officer Jason Burgess, who was present during the controlled-buy and swore the affidavits associated with the Applicant's warrants and indictments (Tr. 145:14-152:11). Officer Burgess testified as to the substance confiscated as a result of the controlled-buy and attested to the chain of custody. Id. Further, Counsel cross-examined Burgess regarding discrepancies between Burgess' report and the confidential informant's testimony; whether the confidential informant was searched; and whether law enforcement followed the proper chain of custody (Tr. 152:17-167:14). The State also produced the eyewitness testimony of Officer Todd Parker, who testified as to the details of the controlled-buy; the crack substance obtained by the confidential informant; and the chain of custody of the drugs (Tr. 84:17-85:23; 99:15-100:4). Likewise, Counsel effectively cross-examined the officer (Tr. 96:8-99:11; 102:4-104:7). The State also produced the chain of custody testimony of Officer Chris Wyatt (Tr. 182:21-190:7; 194:17-196:17), who was similarly cross-examined by Counsel (Tr. 190:14-194:14; 196:21-24). Ultimately, the State presented the testimony of SLED scientist and expert, Carmen Janine Tucker, who affirmed that the substance was 0.08 grams of crack cocaine and confirmed the proper chain of custody (Tr. 197:13-204:4; 212:15-216:11). Counsel likewise

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cross-examined the State's SLED scientist (Tr. 204:21-212:12; 216:15-218:7).⁴ Additionally, this Court notes that law enforcement's sound practice to field-test substances, which then return presumptive positive or negative results affirming or negating narcotic or drug properties, supports the personal knowledge requirement of swearing an affidavit. See generally S.C. CODE ANN. § 17-13-140 (2009); State v. Williams, 262 S.C. 186, 203 S.E.2d 436 (1974); State v. Viard, 276 S.C. 147, 150-51, 276 S.E.2d 531, 532 (1981), *abrogated on other grounds*, State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999). Therefore, this Court can discern no prejudice to the Applicant for Counsel's failure to object to the sufficiency of the affidavits.

Finally, Counsel's decision not to request a Franks hearing was a valid strategic decision. See Roseboro, 317 S.C. at 294, 454 S.E.2d at 313; Underwood, 309 S.C. at 562, 425 S.E.2d at 22 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79. The Applicant's assertions that Counsel failed to defend him by properly challenging the search warrant are without merit. The Applicant presented no evidence regarding whether false information supporting the affidavit had been recklessly or intentionally included in the affidavit, or whether exculpatory information was recklessly omitted from the affidavit under Franks v. Delaware, 438 U.S. 154 (1978). Franks v. Delaware holds:

where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the

⁴ This Court notes that while Counsel stipulated to the State's SLED scientist's qualification and admission as an expert in her field, Counsel's decision was a valid, tactical matter of strategy and the Applicant would have had no basis to challenge her qualifications and admission at trial, on appeal, or on collateral review before this Court. See Roseboro, 317 S.C. at 294, 454 S.E.2d at 313; Underwood, 309 S.C. at 562, 425 S.E.2d at 22 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 778-79.

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search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Franks, 438 U.S. at 155–56. The Applicant failed to articulate that Counsel was ineffective for failing to successfully suppress the search warrant under Franks v. Delaware. The Applicant failed to highlight any evidence of falsehoods appearing in the arrest warrant, so a Franks hearing would have been unnecessary. See State v. Missouri, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999).

Additionally, this Court makes the following observations: Insofar as the Applicant asserts Counsel was ineffective for failing to argue the warrant and indictment to the jury, the sufficiency of an indictment is a question of law for the court. Even if the SLED report had been made available to the Applicant at the time the officer swore the affidavit, the substance would have still tested as crack cocaine, and it is unlikely a trial court would have suppressed the warrant or overturned the indictment. Therefore, the Applicant's allegations that Counsel was ineffective for failing to challenge the affidavits, warrants, and indictments are without merit.

Failure to Challenge SLED Report

The Applicant broadly asserts that Counsel was ineffective for failing to challenge the admission and results of SLED's report that the substance confiscated as a result of the controlled-buy was crack cocaine. As expounded above, the Applicant has no basis to challenge the authenticity or accuracy of the SLED report or chain of custody associated with its accuracy and admission. This Court also finds that Counsel was not ineffective for failing to object to or attack the drug testing methodology, the chain of custody, or the qualifications of the SLED experts. Counsel had no good faith or legal basis on which to challenge the testing. Based on this Court's review of the record, there is no indication that the drug evidence was not properly preserved. Moreover, this Court finds that Counsel adequately cross-examined the SLED expert

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within the normal range of competency, especially considering his constraints regarding the uncontradicted certainty of the scientific testing.

Moreover, nothing in the record indicates that law enforcement did not follow and the State consequently did not prove an accurate and complete chain of custody. "[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205-06 (2007) (citing Benton v. Pellum, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957)). "Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." Id. (citing Benton, 232 S.C. at 33-34, 100 S.E.2d at 537). "Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive. Id. (citing State v. Taylor, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004)). However, "[t]estimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. . . . Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." Id.

"A complete chain of evidence must be established as far as practicable, tracing possession from the time the specimen is taken from the [source] to the final custodian by whom it is analyzed." State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (citing State v. Cribb, 310 S.C. 518, 426 S.E.2d 306 (1992); Raino v. Goodyear Tire & Rubber Co., 309 S.C. 255, 422 S.E.2d 98 (1992); State v. Kahan, 268 S.C. 240, 233 S.E.2d 293 (1977)). "Proof of

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chain of custody need not negate all possibility of tampering so long as the chain of possession is complete.” Id. (citing State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990)). Additionally, the value of the specimen is a credibility determination for the jury, not an impediment to admissibility:

In applying this rule, our Supreme Court has found evidence inadmissible only where there is a missing link in the chain of possession because the identity of those who handled the specimen was not established at least as far as practicable. . . . On the other hand, where the identity of persons handling the specimen is established, the Supreme Court has found that evidence regarding its care goes only to the weight of the specimen as credible evidence. . . . In other words, where there is a weak link in the chain of custody, as opposed to a missing link, the question is only one of credibility and not admissibility.

State v. Horton, 359 S.C. 555, 567–68, 598 S.E.2d 279, 286 (Ct. App. 2004) (citing Carter, 344 S.C. at 424, 544 S.E.2d at 837).

Further, this Court finds that Counsel’s strategic trial decision not to challenge scientific evidence is valid. See Roseboro, 317 S.C. at 294, 454 S.E.2d at 313; Underwood, 309 S.C. at 562, 425 S.E.2d at 22 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 778–79. Our courts are understandably wary of second-guessing defense counsel’s trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel’s choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel’s performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

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Accordingly, the Applicant's argument is without merit.

Failure to Effectively Cross-Examine Witnesses and Failure to Object

The Applicant alleges that Counsel was ineffective for failing to adequately cross-examine the State's witnesses and failing to object to certain proffered testimony. Specifically, the Applicant alleges that Counsel should have zealously questioned the confidential informant, Felicia Jackson and Officer Burgess regarding allegedly perjured testimony about which party physically controlled the drugs during the controlled-buy.

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005); McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Strickland, 466 U.S. at 693, 104 S. Ct. at 2067. Where counsel articulates a valid strategic reason for his action or inaction, based on an objective standard of reasonableness, counsel's performance should not be found ineffective. See Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

Counsel effectively cross-examined crucial prosecution witnesses and elicited the deficits, inconsistencies, and mistakes in their testimony. Specifically, Counsel questioned the confidential informant by walking-through and detailing each frame of the State's videotape evidence, thus promoting the defense's theory of the case that the Applicant did not physically participate in the ultimate drug transaction (Tr. 120:17-137:7). Consequently, the record reveals no evidence of perjured testimony, as Counsel highlighted inconsistencies during cross-

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examination. As expounded above, this Court finds Counsel adequately cross-examined the State's witnesses, including: the testimony of confidential informant, Felicia Jackson (Tr. 111:23-119:19; 120:17-137:7; 142:17-145:7); the eyewitness testimony of Officer Jason Burgess (Tr. 152:17-167:14); the eyewitness testimony of Officer Todd Parker (Tr. 96:8-99:11; 102:4-104:7); the chain of custody testimony of Officer Chris Wyatt (Tr. 190:14-194:14; 196:21-24); the testimony of SLED scientist and expert, Carmen Janine Tucker (Tr. 204:21-212:12; 216:15-218:7).

Moreover, the Applicant has failed to produce any favorable evidence or testimony proving his assertions. "Our Courts have repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing Pauling v. State, 31 S.C. 606, 503 S.E.2d 468 (1998); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995); Underwood v. State, 309 S.C. 345, 495 S.E.2d 768 (1998)). Accordingly, the Applicant has failed to establish prejudice resulting from Counsel's failure to further cross-examine the State's witnesses. This Court can discern no basis to further question the State's witnesses regarding their uncontradicted testimony, which was corroborated by clear, direct videotape evidence.

Thus, this Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

Failure to Obtain Preliminary Hearing

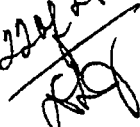
The Applicant asserts that he was denied a preliminary hearing. By the time the Applicant retained Counsel, on March 2, 2011 one and one-half (1.5) months before trial, the Applicant was already indicted by the grand jury and, by operation of law, the Applicant was

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[Signature]

precluded from requesting a preliminary hearing. Thus, Counsel cannot be deficient for failing to request a preliminary hearing. "Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial." Rule 2(a), SCRCrimP. "Notice shall be given orally and also by means of a simple form providing the defendant an opportunity to request a preliminary hearing by signing the form and returning it to the advising magistrate. In all cases, the request for a preliminary hearing shall be made within ten days after the notice." *Id.* "The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held." Rule 2(b), SCRCrimP. Further, the rule contemplates that a criminal defendant may request and appear at a preliminary hearing *pro se*. *Id.* See *State v. Hawkins*, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct. App. 1992) (holding trial court did not err in refusing to quash defendant's indictments for failure to receive a requested preliminary hearing because he was indicted before a preliminary hearing was held). Thus, the Applicant's assertion of error is without merit.

Failure to Adequately Challenge Jury Selection and Empanelling

The Applicant alleges Counsel was ineffective for failing to adequately challenge jury selection and empanelling of his jury. Counsel's credible testimony and the transcript reveal that Counsel appropriately raised, preserved and argued a Batson motion, moved to quash the jury panel, and then subsequently made a motion for new trial on that basis (Tr. 44: 19-60:20; 276:7-13; Tr. Vol. III: 4:8-8:8). Moreover, on direct review, the Court of Appeals addressed the issues regarding the Applicant's jury panel and affirmed his convictions and sentence. See *State v. Byers*, Op. No. 2013-UP 121 (Filed March 27, 2013), available at, 2013 WL 8507821.

22-2012-27


Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

At the hearing, the Applicant acknowledged that Appellate Counsel addressed the Batson issue in the appellate brief. The Applicant stated that he had no issue with Appellate Counsel. Therefore, this Court finds that this claim is voluntarily abandoned and dismissed.

Due Process Violations and Prejudice

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Although the Applicant raised constitutional violations in his application, he failed to present any testimony or evidence in support of this claim. This Court finds that the Applicant voluntarily abandoned this claim and it is dismissed.

The Applicant alleges that his conviction was influenced by the State's video evidence and that, but for the video evidence implicating him, his trial would have been different. "In order to prevail on a claim of ineffective assistance of counsel, petitioner must demonstrate that but for counsel's ineffectiveness, there is a reasonable probability the result of the trial would have been different." Palacio v. State, 333 S.C. 506, 511 S.E.2d 62 (1999). This Court finds that the Applicant has failed to meet his burden of proof. The Applicant has provided no evidence or argument supporting the contention that the damaging effect and nature of the video is in any way connected to Counsel's ineffective representation.

This Court further observes that: The State had a sizeable and disproportionate advantage over the Applicant—the State produced clear, direct evidence of the Applicant's guilt through self-authenticating and admissible *res gestae* video evidence. The overwhelming evidence of the Applicant's guilt presented by the State at trial negates any claim that Counsel's performance could have reasonably affected the outcome of the Applicant's trial. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding no reasonable probability the result of trial would have been different had counsel's performance not been deficient where there is overwhelming evidence of guilt).

Even had Counsel obtained an acquittal, the State made clear to both Counsel and the Applicant that it intended to try each Distribution and Proximity charge consecutively until the

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Applicant was convicted and the State could accomplish the result of the mandatory LWOP sentence. Thus, based on the procedural posture of the Applicant's cases, the Applicant cannot demonstrate enduring prejudice based on Counsel's strategic trial decisions. The video evidence was sufficient to reasonably sustain a jury's verdict of conviction and, even with Counsel's zealous closing arguments, made an appreciable difference in the Applicant's ultimate conviction. Counsel was thoroughly prepared for trial and was objectively competent. This Court notes that hindsight is not the standard for vacating convictions on collateral review pursuant to Strickland and that the Applicant ultimately risked conviction by rejecting an attractive plea offer against Counsel's competent advice.

All Other Allegations

As to any and all allegations that the Applicant raised in the application and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations, which are denied and dismissed.

CONCLUSION

This Court finds in regards to the allegations of ineffective assistance of counsel, Applicant's testimony as a whole was not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness. This Court finds that the Applicant failed to meet his burden of proof to support his claims. Therefore, they are denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under

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prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

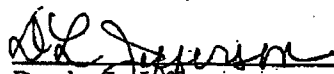
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. The Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

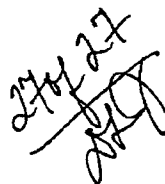
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AND IT IS SO ORDERED this 29th day of April, 2015.


Deadra L. Jefferson
Presiding Judge
Seventh Judicial Circuit

Charleston, South Carolina
At Chambers

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2015 MAY 1 PM 11 16
BRANDY W. NOBEE

27 

WITNESSES

Cherokee County Sheriff's Office

[Signature]

ARREST WARRANT NUMBER

M131703

ACTION OF GRAND JURY

TRUE BILL

Odell Mickle
Foreperson of Grand Jury

Date: *10-29-09*

VERDICT

Guilty

Foreperson of Petit Jury *Carol O. Rupp*
Date: *4-20-11*

DOCKET NO. **GS-11-1179**

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2009

TERM

THE STATE

VS.

James Ray Byers Jr.

Indictment for

DISTRIBUTION OF CRACK COCAINE

SC Code: 44-53-375

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

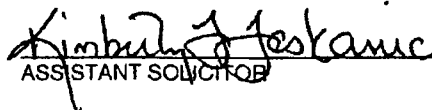
INDICTMENT

At a Court of General Sessions, convened on OCT 29 2009, the
Grand Jurors of Cherokee County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

That James Ray Byers Jr., did in Cherokee County on or about August 26, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a schedule II controlled substance under provisions Code §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, such distribution not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Cherokee

STATE

INDICTMENT/CASE#: 09-GS-11-1179

James R. Byers, Jr.

A/W#: M131703

AKA:

Date of Offense:

Race:

Sex:

Age: 28

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

S.C. Code §:

CDR Code #:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☐ PLEADS

TO:

In violation of §

44-53-375

of the S.C. Code of Laws, bearing CDR Code #

3039

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

J. L. Kamm

11837

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

1 year

days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

of \$

; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211 (A)(1)(Conv. Surcharge)

§14-1-211 (A)(2)(DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ea

\$5

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

ARREST WARRANT

M-131703

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

THE STATE

against

James Ray Byers, Jr

Address:

Gaffney, SC 29341

Phone: SSN:

Sex: M Race: B Height: Weight:

DL State: SC DL #:

DOB: Agency ORI #: SC0110000

Prosecuting Agency: Cherokee County Sheriff

Prosecuting Officer: Jason Burgess - 0006

Offense: Drugs / distribution of cocaine base, 1st

Offense Code: 3014

Code/Ordinance Sec: 44-53-0375 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

James Ray Byers Jr.

10-1-09

Signature of Constable/Law Enforcement Officer

33084 / 118

RETURN WARRANT TO:

Cherokee County Magistrate

312 East Frederick Street

Gaffney, SC 29340

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

Personally appeared before me the affiant Jason Burgess

who

being duly sworn deposes and says that defendant James Ray Byers, Jr

did within this county and state on or about 08/26/2006

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Cherokee)
in the following particulars:

DESCRIPTION OF OFFENSE Drugs / distribution of cocaine base, 1st

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on August 26, 2006 in the city/county of Cherokee, one James Ray Byers Jr did knowingly and without authorization
Distribute Crack Cocaine, a Schedule II Controlled Substance to an operative working in an undercover capacity for the Cherokee
County Sheriff's Office. Incident occurred at 6th St. and Cherokee Ave. Warrant based on investigation by the Cherokee County
Sheriff's Office.

Case #2009-002765

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

Affiant's Address 312 E. Frederick St.

Gaffney, SC 29340-

Affiant's Telephone (864)489-4722

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/26/2006 defendant James Ray Byers, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / distribution of cocaine base, 1st

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 09/15/2009

(L.S.)

Signature of Issuing Judge
Robert Howell

Judge Code: 5882

Judge's Address Cherokee Magistrate's Court

Gaffney, SC 29342

Judge's Telephone (864)487-2533

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

420

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
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Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

WITNESSES

Cherokee County Sheriff's Office

Trey Gowdy

ARREST WARRANT NUMBER
M131704

ACTION OF GRAND JURY

TRUE BILL

Odell Miller
Foreperson of Grand Jury

Date: *10-29-09*

VERDICT

Guilty

Foreperson of Petit Jury *Carl D. Ruppe*

Date: *4-20-11*

DOCKET NO.

00-65-11-1180

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 29 2009

TERM

THE STATE

vs.

James Ray Byers Jr.

Indictment for

DISTRIBUTION OF CRACK COCAINE
WITHIN ONE-HALF MILE OF
SCHOOL/PARK

SC Code: 44-53-445

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

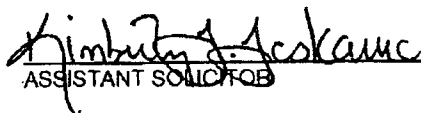
At a Court of General Sessions, convened on OCT 29 2009, the

Grand Jurors of Cherokee County present upon their oath:

DISTRIBUTION OF CRACK COCAINE
WITHIN ONE-HALF MILE OF PARK

That James Ray Byers Jr., did in Cherokee County on or about August 26, 2009, distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, a controlled substance, to wit: A quantity of Crack Cocaine, a schedule II controlled substance, in violation of § 44-53-445, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, within one-half mile of Mary Bramlett Elementary School, Gaffney, South Carolina, such distribution not have been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SHERIFF

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

AKA:

Race:

Sex:

Age:

DOB:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

In violation of §

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☐ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solidified

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

Whereupon, the Defendant is committed to the

☐ State Department of Corrections☐ County Detention Center,

for a determinate term of

1 life

days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

plus costs and assessments as applicable;

the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

☐ The Defendant is to be placed on 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 PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.
§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
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 6.90
	\$	\$ 236.90

Clerk of Court/Deputy Clerk _____

Court Reporter: _____

Presiding Judge _____

Judge Code: _____

Sentence Date: April 30, 2011

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

09-GS-11-1180

AW#:

M131704

Date of Offense:

8/26/09

S.C. Code §:

44-53-445(b)(2)

CDR Code #:

0108

SENTENCE SHEET

ARREST WARRANT

M-131704

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

THE STATE

against

James Ray Byers, Jr

Address:

Gaffney, SC 29341

Phone:

Sex: M Race: B Height: Weight:

DL State: SC DL #:

Agency ORI #: SC0110000

Prosecuting Agency: Cherokee County Sheriff

Prosecuting Officer: Jason Burgess - 0006

Offense: Drugs / Distribute crack cocaine near school

Offense Code: 0108

Code/Ordinance Sec: 44-53-0445(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James Ray Byers Jr.

on 10-1-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Cherokee County Magistrate

312 East Frederick Street

Gaffney, SC 29340

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

Personally appeared before me the affiant Jason Burgess

being duly sworn deposes and says that defendant James Ray Byers, Jr

did within this county and state on or about 08/26/2006

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Cherokee) violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Distribute crack cocaine near school

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on August 26, 2006 in the city/county of Cherokee, one James Ray Byers Jr did within one-half mile of Mary Bramlett Elementary School distribute crack cocaine a schedule II controlled substance. Incident occurred at 6th St and Cherokee Ave. Warrant based on Case #2009-002765.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Cherokee

Affiant's Address 312 E Frederick St.

Gaffney, SC 29340-

Affiant's Telephone (864)489-4722

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/26/2006 defendant James Ray Byers, Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Cherokee) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Distribute crack cocaine near school

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me

on 09/15/2009

Signature of Issuing Judge

Robert Howell

Judge Code: 5882

Judge's Address Cherokee Magistrate's Court

Gaffney, SC 29342

Judge's Telephone (864)487-2533

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)
 Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

CODEFENDANTS

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James R. Byers, Jr., Appellant.

Appellate Case No. 2011-190694

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2013-UP-121
Heard March 5, 2013 – Filed March 27, 2013

AFFIRMED

Appellate Defender Dayne C. Phillips, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, Assistant Attorney
General Christina J. Catoe, all of Columbia, and Solicitor
Barry Barnette, of Spartanburg, for Respondent.

PER CURIAM: Appellant James R. Byers seeks review of his convictions for distribution of crack cocaine and distribution of crack cocaine within one-half mile of a school. Byers argues that the trial court erred in denying his *Batson* motion.¹ We affirm.

1. As to Juror # 50, the prosecutor stated that when the Clerk of Court asked whether the State wanted to approve Juror # 50, this juror was looking at the defense table and smiling in that direction, and, thus, the prosecutor did not feel this juror could be fair. "The demeanor of a prospective juror is generally a race-neutral reason for employing a peremptory challenge." *State v. Cochran*, 369 S.C. 308, 317, 631 S.E.2d 294, 299 (Ct. App. 2006) (citing *State v. Tucker*, 334 S.C. 1, 8, 512 S.E.2d 99, 102 (1999))). Because the prosecutor's reason for striking Juror # 50 was race-neutral on its face, the burden shifted to Appellant to show that the reason offered for the strike was a mere pretext to engage in purposeful racial discrimination. *See Cochran*, 369 S.C. at 314-15, 631 S.E.2d at 298 ("If a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination." (quoting *Purkett v. Elem*, 514 U.S. 765, 767 (1995))). Appellant did not carry this burden.

Further, the trial court should uphold the striking of a juror based on demeanor and disposition unless the trial court makes an express finding contrary to counsel's stated perception of the juror's demeanor and disposition. *Id.* at 318, 631 S.E.2d at 300. Moreover, the fact that the prosecutor asked the trial court to seat a black female juror before she was ultimately excused for other reasons supports the trial court's determination that the State did not engage in purposeful discrimination. *See State v. Ford*, 334 S.C. 59, 66, 512 S.E.2d 500, 504 (1999) (noting that although the appellant exercised most of his strikes against white jurors, he did not strike every white juror); *id.* (holding the fact that appellant used most of his challenges to strike white jurors was not sufficient, in itself, to establish purposeful discrimination).

Finally, evaluation of a prosecutor's credibility lies within the trial court's province. *See State v. Shuler*, 344 S.C. 604, 615-16, 545 S.E.2d 805, 810-11 (2001) ("Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and 'evaluation of the prosecutor's mind lies peculiarly within a trial judge's province.'" (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991))).

¹ *Batson v. Kentucky*, 476 U.S. 79 (1986).

Based on the foregoing, there is support in the record for the trial court's finding that the prosecutor's reason for striking Juror # 50 was not a pretext. Therefore, the trial court's denial of Appellant's *Batson* motion on the basis of this particular strike was not clearly erroneous. See *Shuler*, 344 S.C. at 620, 545 S.E.2d at 813 ("A finding is clearly erroneous if it is not supported by the record."); *id.* at 615, 545 S.E.2d at 810 ("Appellate courts give the trial judge's finding great deference on appeal, and review the trial judge's ruling with a clearly erroneous standard.").

2. Appellant argues the trial court improperly found the State's strike against Juror # 50 to be constitutional without any indication of whether this juror actually smiled at the defense table. However, defense counsel did not dispute this fact before the trial court. Therefore, it is not preserved for our review. See *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party may not argue one ground at trial and an alternate ground on appeal.").

3. As to Juror # 83, the prosecutor struck this juror because she believed he had convictions for driving under the influence, criminal domestic violence, possession of marijuana, and possession of stolen goods. Defense counsel conceded that the prosecutor's recitation of this criminal history was not a pretext for discrimination. After the prosecutor discovered that Juror # 83 did not have any convictions, she acknowledged her mistake. Nonetheless, the trial court concluded that the prosecutor did not exercise her strike against Juror # 83 in an unconstitutional manner, and defense counsel did not seek a remedy for the prosecutor's mistake. Therefore, Appellant may not complain of this mistake for the first time on appeal. See *State v. Johnson*, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue on appeal.").

AFFIRMED.

FEW, C.J., and GEATHERS and LOCKEMY, JJ., concur.