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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Honorable R. Knox McMahon, Circuit Court Judge

GREGORY ALLAN IVERY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001723

APPENDIX

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1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
2 COUNTY OF GREENVILLE) 2011-GS-23-9810, 9811
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Gregory Allan Ivery)

8 October 11, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE WILLIAM SEALS, Judge.

12 A P P E A R A N C E S

13 LAUREN DAVIS PRICE, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 ERNIE HAMILTON, Esquire
17 Attorney for Defendant

18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

1

2

I N D E X

3

WITNESS

DR

CR

RED

REC

4

Russell Irvin

39

44

5

Charles Cothran

47

70

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James Grant

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Kara Bennick

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James Armstrong

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Carles Cothran (recalled)

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P R O C E E D I N G S

THE COURT: Solicitor, call your next case.

MS. PRICE: Thank you, Your Honor. This the
State versus Gregory Allan Ivery.

THE COURT: Members of the jury panel, you
have been qualified to serve as jurors this week.
However, at this point in time, I need to make sure that
you are qualified to serve on a particular case. In that
regard, I'm going to need to ask you certain questions and
remember that you are under oath. You need to respond if
any of these questions apply to you. And also for your
convenience, if you would like to answer a question up
here instead of out there, I have no problem with that,
but I need you to respond one way or the other.

In this particular case, the State of South
Carolina alleges that Gregory Allan Ivery did in
Greenville County on or about the 30th day of June, 2011
distribute, dispense, deliver or aid and abet or conspire
to deliver to distribute dispense or deliver to an uncover
operative a quantity of cocaine base, crack cocaine, a
controlled substance such distribution in violation of our
laws.

Furthermore, the State of South Carolina
alleges that Gregory Allan Ivery did in Greenville County
on or about the 30th day of June 2011 distribute a

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1 quantity of cocaine base, crack cocaine, a controlled
2 substance by being within one half mile proximity of
3 Nickeltown Community Center. This also being in violation
4 of the laws of this state.

5 Now, in this regard, has any member of the
6 jury panel heard anything about this case, read anything
7 about this case, talked to anybody that knows anything
8 about this case? If you have any knowledge, no matter how
9 insignificant to you about this case, I need for you to
10 stand.

11 (No response.)

12 No one stood.

13 Would the defendant, Mr. Gregory Allan Ivery
14 please stand and face the jury panel?

15 Thank you, very much, you may be seated.

16 Is there any member of the jury panel related
17 by blood or marriage or has a close personal or social
18 relationship with the defendant, Mr. Gregory Ivery in this
19 case? If so, please stand.

20 (No response.)

21 No one stood.

22 Solicitor, would you please stand and face
23 the jury panel and introduce yourself.

24 MS. PRICE: Good afternoon, my name is ---
25 Price. I'm with the Greenville County Solicitor's Office.

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1 THE COURT: Thank you, very much.

2 Is there any member of the jury panel related
3 by blood or marriage or has a close personal or social
4 relationship with the solicitor in this case. If so,
5 please stand.

6 (No response.)

7 No one stood.

8 Would the defense attorney, Mr. Ernie
9 Hamilton, please stand and introduce yourself.

10 MR. HAMILTON: Thank you, Your Honor. Good
11 morning, ladies and gentlemen, my name is Ernie Hamilton.
12 I'm an attorney here in Greenville. I've been practicing
13 law for over 30 years and was a prosecutor for over 20
14 years in Greenville.

15 THE COURT: Thank you very much.

16 Is any member of the jury panel related by
17 blood or marriage or has a close personal or social
18 relationship with the defense attorney, Mr. Ernie
19 Hamilton, in this case or has been represented by him at
20 any point in time, if so, please stand.

21 (No response.)

22 No one stood.

23 The witnesses for the State in this case will
24 be a Mr. James Armstrong with the Greenville County
25 Department of Public Safety, Kara Bennick with the

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1 Greenville County Sheriff's Office, Detective Kay Cothran,
2 Greenville Police Department, Detective R. Irvin,
3 Greenville Police Department and Mr. James Grant.

4 In this regard, is any member of the jury
5 panel related by blood or marriage or has a close personal
6 or social relationship with any of these witnesses. If
7 so, please stand.

8 (No response.)

9 No one stood.

10 Is any member of the jury panel related by
11 blood or marriage to any law enforcement officer? If so,
12 please stand. That could be a policeman, sheriff, highway
13 patrol, SLED, FBI.

14 What is your name and your number?

15 JUROR MOTES: Sheila Motes, 165.

16 THE COURT: How does that question apply to
17 you?

18 JUROR MOTES: My husband is an investigator.

19 THE COURT: Taking that into account, if you
20 were selected to serve as a juror in this case, could you
21 be fair and impartial not only to the State but to the
22 defense as well?

23 JUROR MOTES: Yes.

24 THE COURT: Would you be fair to both sides
25 if you were selected as a juror in this case?

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1 JUROR MOTES: Yes, sir.

2 THE COURT: Anybody else?

3 (No response.)

4 Is any member of the jury panel aware of any
5 bias or prejudice before or against the State in this
6 case, if so, please stand?

7 (No response.)

8 No one stood.

9 Is any member of the jury panel has formed an
10 opinion as to the guilt or innocence of the defendant in
11 this case? If so, please stand.

12 (No response.)

13 No one stood.

14 Is there any member of the jury panel who is
15 a member of or a contributor to any group who has a
16 primary concern with the promotion of law enforcement or
17 victim's rights not limited to MAD, SAD, CAVE, Citizens
18 Against Violent Crimes?

19 (No response.)

20 No one stood.

21 Is there any member of jury panel who knows
22 of any reason whatsoever why they could not give the
23 parties in this case a fair and impartial trial? If so,
24 please stand.

25 (No response.)

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1 No one stood.

2 Has any member of the jury panel or any
3 member of your family ever been prosecuted by the
4 solicitor or the solicitor's office regardless of whether
5 or not the case was dismissed or tried or whatever? If
6 so, please stand.

7 (No response.)

8 No one stood.

9 Anything else from the State or the defense?

10 MS. PRICE: Nothing from the State.

11 MR. HAMILTON: Nothing from the defense.

12 THE COURT: Thank you. I find this jury
13 qualified for this case. Let's get 12 jurors and one
14 alternate.

15 THE CLERK: Yes, sir.

16 When I call you names, please bring your
17 belongings, come up here and stand in front of the
18 attorneys. If you are selected, you will just go on to
19 the jury box.

20 Juror No. 240, Khang Van.

21 What says the State?

22 MS. PRICE: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. HAMILTON: Swear the juror.

25 THE CLERK: Thank you. You may be seated in

State versus Ivery

1 the jury box.

2 Juror No. 162, Pamela Moore.

3 What says the State?

4 MS. PRICE: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. HAMILTON: Swear Ms. Moore.

7 THE CLERK: You may be seated in the jury
8 box.

9 Juror No. 108 Betty Harvey.

10 What says the State?

11 MS. PRICE: Please present the jury.

12 THE CLERK: What says the defense?

13 MR. HAMILTON: Please excuse the juror.

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

15 You have been excused from the trial of this case.

16 Juror No. 199, Angela Schwartz.

17 What says the State?

18 MS. PRICE: Please excuse the juror from the
19 trial of the case.

20 THE CLERK: Thank you. You may be seated
21 from the trial of this case.

22 Juror No. 21, Joshua Ashe.

23 What says the State?

24 MS. PRICE: Please excuse the juror.

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

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1 You're excused from the trial of this case.

2 Juror No. 215, Jayne Smith.

3 What says the State?

4 MS. PRICE: Please present the jury.

5 THE CLERK: What says the defense?

6 MR. HAMILTON: Swear the juror.

7 THE CLERK: Thank you. You may be seated in
8 the jury box.

9 Juror No. 165, Sheila Motes.

10 What says the State?

11 MS. PRICE: Please present the jury.

12 THE CLERK: What says the defense?

13 MR. HAMILTON: Excuse the juror from the
14 trial of this case.

15 THE CLERK: Thank you. You may be seated.
16 You have been excused from the trial of this case.

17 Juror No. 53, Jayne Cleveland.

18 What says the State?

19 MS. PRICE: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. HAMILTON: Swear the juror.

22 THE CLERK: Thank you. You may be seated in
23 the jury box.

24 Juror No. 233, Stephen Taylor.

25 What says the State?

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1 MS. PRICE: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. HAMILTON: Please excuse the juror.

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

5 You have been excused from the trial of this case.

6 Juror No. 232, Allen Taylor.

7 What says the State?

8 MS. PRICE: Please present the jury.

9 THE CLERK: What says the defense?

10 MR. HAMILTON: Excuse Mr. Taylor.

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

12 You have been excused from the trial of this case.

13 Juror No. 181, Alice Piepho.

14 What says the State?

15 MS. PRICE: Please present the jury.

16 THE CLERK: What says the defense?

17 MR. HAMILTON: Swear the juror.

18 THE CLERK: Thank you. You may be seated in

19 the jury box.

20 Juror No. 246, Michael Whitaker.

21 What says the State?

22 MS. PRICE: Please present the jury.

23 THE CLERK: What says the defense?

24 MR. HAMILTON: Swear the juror, Mr. Whitaker

25 THE CLERK: Thank you. You may be seated in

State versus Ivery

1 the jury box.

2 Juror No. 30, Bruce Berryhill.

3 What says the State?

4 MS. PRICE: Please present the jury.

5 THE CLERK: What says the defense?

6 MR. HAMILTON: Swear the gentlemen.

7 THE CLERK: Thank you. You may be seated in

8 the jury box.

9 Juror No. 228, Kim Summers.

10 What says the State?

11 MS. PRICE: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. HAMILTON: Swear the juror.

14 THE CLERK: Thank you. You may be seated in

15 the jury box.

16 Juror No. 253, Andrea Cheslak.

17 What says the State?

18 MS. PRICE: Please present the jury.

19 THE CLERK: What says the defense?

20 MR. HAMILTON: Swear the juror.

21 THE CLERK: Thank you. You may be seated in

22 the jury box.

23 Juror No. 179, Lataya Peronet.

24 What says the State?

25 MS. PRICE: Please present the jury.

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1 THE CLERK: What says the defense?

2 MR. HAMILTON: Swear the juror.

3 THE CLERK: Thank you. You may be seated in
4 the jury box.

5 Juror No. 258, Brittany Stalter.

6 What says the State?

7 MS. PRICE: Please present the jury.

8 THE CLERK: What says the defense?

9 MR. HAMILTON: Swear the juror.

10 THE CLERK: Thank you. You may be seated in
11 the jury box.

12 Juror No. 225, Rodriguez Saurez.

13 What says the State?

14 MS. PRICE: Please present the juror.

15 MR. HAMILTON: Excuse the juror in this case.

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

17 You have been excused from the trial of this case.

18 Juror No. 169, Richard Myers.

19 What says the State?

20 MS. PRICE: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. HAMILTON: Swear the juror.

23 THE CLERK: Thank you. You may be seated in
24 the jury box.

25 THE CLERK: Juror No. 142, Shane Looper.

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1 What says the State?

2 MS. PRICE: Please present the juror.

3 THE CLERK: What says the defendant?

4 MR. HAMILTON: Please present Mr. Looper.

5 THE CLERK: Thank you. You may be seated in
6 the jury box.

7 THE COURT: Any objections to the jury and
8 the process to which they were drawn?

9 MS. PRICE: Nothing from the State.

10 THE COURT: From the defense?

11 MR. HAMILTON: Nothing from the defense.

12 THE COURT: Thank you, very much. Everybody
13 will remain seated. The rest of the jury is excused for
14 the week. You're free to go.

15 (Jury panel exits the courtroom.)

16 Mr. Whitaker, I will appoint you the
17 foreperson for the jury and the spokesman for the jury.

18 Madam Clerk, please swear the jury.

19 THE CLERK: Yes, sir.

20 If you would please stand and raise your
21 right hand. The response to the oath is, I will.

22 You shall well and truly try the case
23 2011-GS-23-9810, the State versus Gregory Allan Ivery
24 indicted for distribution of cocaine base within a one
25 half mile of a school or a park, and 9811, distribution of

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1 cocaine base, crack cocaine and a true verdict rendered
2 according to the evidence so help you God.

3 JURY PANEL: (Collectively) I will.

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

5 THE COURT: Members of the jury panel, at
6 this time we need to take up some matters of law so we can
7 streamline this case for you. So I'm going to send you
8 back to the jury room and I'm going to also order lunch.
9 That way you can stay and we can pick up and start
10 working. When lunch comes, we can take a break, and then
11 we can get back on it. That way we can get you out as
12 soon as possible, maybe today. If not today, first thing
13 in the morning.

14 One thing I need to tell you, do not discuss
15 anything about this case. You have not heard the case and
16 you have not heard the law from me so it would be improper
17 for you to start deliberating on this case at this point
18 in time. So when you go back in the jury room, if you
19 would like to just get to know each other and talk about
20 the game, the weather, anything you want to but nothing
21 about the case. Can you do that for me? Thank you.
22 We'll be with you shortly.

23 (Jury exits the courtroom.)

24 THE COURT: Any pretrial from the State?

25 MS. PRICE: Your Honor, there is. We have a

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1 Neil v. Biggers hearing that we need to take up.

2 THE COURT: Proceed.

3 MS. PRICE: James Grant.

4 THE CLERK: Would you please place your left
5 hand on the Bible and raise your right to be sworn.

6 JAMES GRANT, having been sworn, testified as
7 follows:

8 Thank you. You may be seated.

9 THE WITNESS: I already told them, I'm not
10 going to testify.

11 THE COURT: Just go ahead and have a seat.

12 DIRECT EXAMINATION

13 BY MS. PRICE:

14 Q. Mr. Grant, can we agree that your name is James
15 Grant?

16 A. I told you no disrespect to the judge or the
17 court, I told her I ain't got nothing to say about none of
18 them. I ain't going to testify or nothing. I'm just
19 going to do my time.

20 Q. You're not going to state your name for the
21 record.

22 A James Grant.

23 Q. Your name is James Grant.

24 A. Yes.

25 Q. Mr. Grant, did you act as a confidential

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1 informant on June 30, 2011?

2 A. No, I didn't. I told you that I don't have
3 nothing else to say.

4 Q. Excuse me, sir.

5 A. I don't have nothing else to say to you.

6 Q. Did you have a chance to see or observe the
7 person who sold you drugs that day?

8 A. (No response.)

9 MS. PRICE: Your Honor, I would ask that you
10 direct the witness to answer my question.

11 THE COURT: You need to answer the question.

12 THE WITNESS: I just told her I ain't got
13 nothing to say. I'm not testifying.

14 MS. PRICE: At this time, we will discontinue
15 the Neil v. Biggers hearing and bring this CI out in our
16 case in chief.

17 THE COURT: Sounds good. Go ahead on and
18 take him back.

19 (Witness exits the courtroom.)

20 MS. PRICE: Your Honor, for the purposes of
21 establishing reliability, would Your Honor be inclined to
22 hear testimony from Detective Cothran at this time?

23 THE COURT: Sure.

24 MS. PRICE: The State calls Detective Cothran
25 to the stand.

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1 THE COURT: Detective, please come forward to
2 be sworn. Place your left hand on the Bible and raise
3 your right.

4 CHARLES COTHRAN, having been duly sworn,
5 testified as follows:

6 Thank you. You may be seated.

7 State your name for the record.

8 THE WITNESS: My name is Detective Charles E.
9 Cothran.

10 DIRECT EXAMINATION

11 BY MS. PRICE:

12 Q. Detective Cothran, who do you work for?

13 A. I work for the Greenville Police Department.

14 Q. How long have you been in law enforcement?

15 A. Approximately seven years.

16 Q. What are your duties?

17 A. My current duties I'm assigned to the violent
18 crimes unit. I receive cases, follow up investigations,
19 trace down leads, basically do follow up investigations on
20 violent crimes.

21 Q. Did you conduct an investigation on June 2011 in
22 which you used a confidential informant?

23 A. Yes, I did.

24 Q. Can you tell me the name of your target that day?

25 A. The name of the target that day was a subject by

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1 the street name of Bread which is also Mr. Gregory Ivery.

2 Q. Were you successful in your undercover op that
3 day?

4 A. We were.

5 Q. And did you, after the buy occurred conduct a
6 photographic line-up display in this case with the
7 confidential informant?

8 A. Yes, I did.

9 Q. And who was that confidential informant?

10 A. The confidential informant is Mr. James Grant.

11 Q. Did you put together the photo line-up?

12 A. I prepared it, yes.

13 Q. And how many photos were in your line-up?

14 A. There were six individuals in the photo line-up.

15 Q. Was the defendant included in the line-up?

16 A. He was.

17 Q. Were the other five people all similar in
18 physical description to this defendant?

19 A. Yes, ma'am, they were.

20 Q. In what way?

21 A. They were all the same race. They had similar
22 facial features. The printout was printed in black and
23 white so you can disguise skin tone so that wouldn't be an
24 issue.

25 Q. Who did you show the line-up to?

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1 A. I presented it to the confidential informant,
2 James Grant.

3 Q. Around what time? How soon in proximity to after
4 the buy conducted was the confidential informant presented
5 with this photographic line-up?

6 A. Immediately.

7 Q. How did you present the line-up to Mr. Grant?

8 A. We have a photo line-up affidavit and I can't
9 quote it. The way I present that photo line-up affidavit
10 is that I read sentence in it. It advises the
11 confidential informant witness/victim not to be compelled
12 in any way to indicate someone without absolute certainty.

13 (marked State's Exhibit No. 1 for
14 identification.)

15 BY MS. PRICE:

16 Q. I'm showing you what's been marked as State's
17 Exhibit 1 only for the purposes of identification in this
18 pretrial motion. Can you tell me what you are looking at?

19 A. In regards to what I read the informant?

20 Q. Do you recognize the document I gave you?

21 A. Yes. This is an affidavit of photographic line-
22 up identification that I printed out.

23 Q. Okay. How do you recognize it to be the one you
24 gave that night?

25 A. It has my name printed on it and my signature on

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1 that document.

2 Q. Can you publish to the court what that affidavit
3 states, please?

4 A. It says, "City of Greenville Police Department
5 Affidavit of Photographic Identification, Case No.
6 11-55552, date June 30, 2011, time 13:00, location, [REDACTED]
7 North Main Street."

8 The statement below says, "I understand that
9 I am going to view a six-person photo line-up which may or
10 may not contain the perpetrator of my incident. I should
11 not feel compelled to pick someone from the line-up."
12 Signature and Mr. James Grant's signature.

13 Then it says, "I, James Grant," which is
14 typed, "have viewed a group of six photographs this 30th
15 day of June, 2011 from which I have positively identified
16 photograph No. 4 as being the person who sold me cocaine
17 base," and in parenthesis, "(crack). This line-up was
18 presented to me by Detective K Cothran of the Greenville
19 City Police Department." And then has Mr. James Grant's
20 signature below the paragraph and then my signature down
21 at the bottom as a witness.

22 Q. After presenting Mr. Grant with the affidavit and
23 having him read and sign it, did you tell him he should
24 pick a picture out of the line-up?

25 A. No. After I read him the statement about not

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1 feeling compelled, I reiterated my point that if the
2 person that sold you crack is not in the line-up, don't
3 circle anyone. I gave him brief instructions to circle
4 the photograph if he's in the picture or in the line-up to
5 initial and date inside that circle if the perpetrator was
6 there.

7 Q. Did you exert any pressure on Mr. Grant to pick
8 someone out of that line-up?

9 A. No, I did not.

10 Q. Did you suggest to him any time which photograph
11 he should select?

12 A. No, I did not.

13 Q. Did you in any way influence the witness as to
14 which photograph to select?

15 A. I did not.

16 Q. Did he select a photograph of the person who had
17 sold him crack cocaine that day?

18 A. Yes, he did.

19 Q. And whose photograph was selected?

20 A. Mr. Gregory Ivery.

21 Q. How certain or confident did Mr. James appear to
22 you at that time?

23 A. He was very confident without hesitation. The
24 way I do my line-ups is he can't see it until after I go
25 over the affidavit. I'll flip it over and go like that

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1 and he immediately pointed and I advised him as I had
2 earlier to circle, initial and date.

3 Q. You did ask him then to make some marks
4 indicating his choice?

5 A. Yes. I asked him to circle the photograph as I
6 explained to him before, initial, and date.

7 (marked as State's Exhibit No. 2 for
8 identification.)

9 BY MS. PRICE:

10 Q. I'm showing you what's been marked as State's
11 Exhibit No. 2. Would you please tell me what that
12 document is? Are you familiar with it?

13 A. Yes. This is the photo line-up that I had
14 prepared for Mr. James Grant to view.

15 Q. And how do you recognize that?

16 A. It's got my handwriting on the top and also the
17 way I number my photographs.

18 Q. Are there identifying marks or signatures
19 indicating what choices made?

20 A. Yes, there's a circle around the subject in
21 position No. 4. It has a J and a G initial and a date of
22 6/30/11.

23 Q. Does that initial appear to make the initials
24 that are in the photographic affidavit?

25 A. Yes, it does.

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1 Q. Did Mr. Grant at any time select the photograph
2 or identify any other individual in that line-up or any
3 other line-up?

4 A. No, he did not.

5 Q. Was there any other line-up done?

6 A. No, there was not.

7 Q. Did he ever suggest that anyone other than this
8 defendant who he chose in the line-up committed this
9 crime?

10 A. He did not.

11 Q. Thank you. Please answer any questions
12 Mr. Hamilton may have for you at this time.

13 A. Sure.

14 THE COURT: Mr. Hamilton.

15 MR. HAMILTON: May it please the Court.

16 THE COURT: Sure.

17 CROSS-EXAMINATION

18 BY MR. HAMILTON:

19 Q. Officer, you started off by saying this is a
20 target situation? Your investigation had Mr. Ivery as the
21 target individual?

22 A. I believe the solicitor asked me if there was a
23 specific target.

24 Q. Yes. And was there a specific target, true?

25 A. Yes.

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1 Q. And the reason why this person was targeted is
2 because of what information you had?

3 A. The information we received on a majority of the
4 cases are from outside sources. We received information
5 from Mr. Grant that he knew your defendant and that he
6 could purchase cocaine base from him.

7 Q. So Mr. Grant came to you and said that he knew
8 Mr. Ivery in the picture?

9 A. No. Mr. Grant came to me prior to ever seeing
10 any of this and said he knew someone he could buy crack
11 cocaine from. I asked him to arrange that deal after
12 signing him up as a confidential informant which he did.

13 Q. Okay. Now, but the target was Mr. Ivery?

14 A. Yes.

15 Q. And Mr. Grant knew Mr. Ivery?

16 A. Yes.

17 Q. So that photo line-up is just something that you
18 did because he knew before you put the pictures down who
19 Mr. Ivery was?

20 A. I can't answer for Mr. Grant but, yes, he did
21 know ---

22 Q. You knew before you put the photo line-up who you
23 wanted him to pick out.

24 A. Photo line-up confirms who Mr. Grant said Gregory
25 Ivery was for my purposes.

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1 Q. Yes. But what I'm saying is your presentation is
2 he didn't know who the person was and he picked out that
3 this is the guy. He knew who it was all before he even
4 left your office is what I'm trying to get you to admit to
5 and you knew who your target was Ivery. So the photo
6 line-up and him circling that has nothing to do with him
7 having an independent ---

8 A. It confirms -- my investigation when I was
9 contacted by James Grant and advised by Mr. Grant that he
10 could purchase cocaine base or crack from Mr. Ivery, I
11 began researching who Gregory Ivery was in an attempt to
12 identify him pre-buy before we ever gave Mr. Grant any
13 money or anything so that I would know who potential
14 substances from. We do that for safety reasons for the CI
15 so that we know who our target is prior to if they're
16 violent, if they have any tendencies we may need to know
17 about.

18 This line-up was presented to Mr. Grant for
19 the sole purpose of identifying the person he had just
20 bought crack from.

21 Q. And my question is, being a target, was he
22 identified to you as the target?

23 A. Not prior to the buy.

24 Q. Not prior to the buy. You had no information ---

25 A. I had it but I had not shared that with

State versus Ivery

1 Mr. Grant.

2 Q. You knew Mr. Ivery before you shared anything
3 with Mr. Grant?

4 A. Correct.

5 Q. And then when he came to you about Mr. Ivery, you
6 put this line-up together?

7 A. No, that's not what I'm saying.

8 Q. I'm asking.

9 A. For clarification purposes, Mr. Grant contacted
10 me and said he can buy crack cocaine from Mr. Ivery. At
11 that point, I began researching who Mr. Ivery was. I
12 identified who I believed Mr. Grant was referring to as
13 Mr. Ivery who I believed. I had no confirmed it at any
14 point. Mr. Grant contacts me, I say, set up a deal. He
15 sets up a deal and comes to my office. We arrange the
16 deal. The deal is made. He returns to the office. A
17 photo line-up and affidavit is presented to Mr. Grant to
18 confirm who I believe Mr. Ivery to be. This was the first
19 confirmation of what my research pre-buy -- basically this
20 is nothing more than a confirmation of who I suspected the
21 informant was referring to when he said Gregory Ivery.

22 It actually took me a little bit because
23 Mr. Ivery doesn't spell his name I-V-O-R-Y.

24 Q. You was going by that name?

25 A. Right. I search Gregory or Greg I-V-O-R-Y. I

State versus Ivery

1 was able to identify him through basically investigative
2 techniques. Greg could be short for Gregory.

3 Q. The first time you ever heard of Gregory Ivery
4 was when Mr. Grant ---

5 A. I was familiar with him.

6 Q. Absolutely. Absolutely. You were very familiar
7 with him.

8 A. No very.

9 MR. HAMILTON: Thank you. Nothing further.

10 THE COURT: Anything further from the State?

11 MS. PRICE: Nothing further for this witness,
12 Your Honor.

13 THE COURT: You may step down. Do you have
14 any more witnesses?

15 MS. PRICE: Not with regard to this hearing,
16 Your Honor.

17 THE COURT: Would you like to call any
18 witnesses, Mr. Hamilton?

19 MR. HAMILTON: No, Your Honor.

20 THE COURT: Would you let me look at the
21 line-up, if you will.

22 (The Court viewing photographic line-up.)

23 For the record based on what I have seen and
24 what I have heard, I find that the out of court
25 identification process was not unduly suggestive and I

State versus Ivery

1 find it reliable.

2 MS. PRICE: Thank you, Your Honor.

3 THE COURT: Any other pretrial matters from
4 the State or the defense?

5 MS. PRICE: Nothing from the State.

6 MR. HAMILTON: Your Honor, your finding is
7 that this can be presented without it being verified by
8 the person who identified this?

9 THE COURT: I made my ruling based on the
10 evidence and the testimony and the photographs presented
11 to me at this hearing.

12 MR. HAMILTON: And she can present this
13 evidence ---

14 THE COURT: Through that man right there.
15 All I'm saying is it is reliable. It's not unduly
16 suggestive by any means. Now how the jury takes it is up
17 to them. Whether they believe it or not -- you will
18 certainly be given all the cross-examination that you
19 need. Other than that, it's coming in for what it is.

20 Do you have any pretrial matters?

21 MR. HAMILTON: No, Your Honor.

22 (Whereupon, there was lunch recess.)

23 THE COURT: Bring in the jury.

24 (Jury enters the courtroom.)

25 Ladies and gentlemen of the jury panel, we

State versus Ivery

1 are getting ready to start this case but before we do we
2 are going to talk to you informally to give you what I
3 call a little bit of back pocket knowledge, a little
4 information up front that you can put in your back pocket
5 while you're sitting on the jury in this trial.

6 At the end of this trial, however, I will
7 give you the charge on the law in great detail. I will
8 read it to you in detail at that time, but for now, I want
9 to go over a few minor things.

10 The first thing I want to go over is that the
11 defendant is innocent until proven guilty. He doesn't
12 have to prove anything. The burden of proof is on the
13 State of South Carolina to prove the defendant guilty
14 beyond a reasonable doubt in regards to these charges.
15 Furthermore, you may ask yourselves what is your role,
16 what is my role? You are the judge of the fact and I am
17 the judge of the law. In that regard and what that means
18 is that you determine what the facts of this case are and
19 nobody else. It's not my turf, the turf of the lawyers or
20 anybody in the audience. Only you determine what the
21 facts of the case are.

22 You may ask yourself, how do I do that? What
23 you do is you look at the evidence. Evidence is made up
24 of two things, it's made up of the witnesses that come
25 over here and are sworn in, hand on the Bible, raise your

State versus Ivery

1 right hand and swear to tell the truth and nothing but the
2 truth. You listen to all the witnesses. And you will
3 also look at any documents submitted into the record as
4 evidence. That could be pictures, it could be weapons, it
5 could be drugs, it could be balloons, posters, anything
6 like that submitted into the record as evidence.

7 In regard to the witnesses, I'm going to tell
8 you one thing right off the bat. It is your job to judge
9 their credibility and their believability. You believe,
10 if you like, all that a witness tells you. If you like,
11 you can believe nothing a witness tells you. You can
12 believe part of what a witness tells you. You can believe
13 one witness against many or many against one. That is
14 your job and your job alone.

15 I am the judge of the law. I have a two role
16 function. One is to make sure this defendant gets a fair
17 trial. I don't know them. I'm going to rule based on the
18 law as I see it and give them a fair trial. And, two, as
19 judge of the law I'm going to charge you on the law
20 applicable to this case. In that regard, I want you to
21 understand that you have to accept that law as I charge it
22 to you. In other words, if you have any preconceived
23 ideas as to what you think the law is or what the law
24 ought to be and it doesn't agree with what I tell you the
25 law is, you have to abandon those preconceptions and you

State versus Ivery

1 have to accept the law as I give it to.

2 Only when I tell you to begin deliberations
3 will you take the facts as you find them, the law as I
4 give it to you, put the two together and arrive at a
5 verdict there from.

6 Another thing I want to tell you is what the
7 lawyers tell you is not evidence. They are advocates for
8 their clients, spokesperson for their clients. Evidence
9 is any documents that are admitted into the record or
10 witnesses that come over here and testify.

11 Another thing I want to tell you like I told
12 you before you went into the jury room at no point in time
13 during this trial until I tell you to do you begin your
14 deliberations in any manner whatsoever. It's very
15 important that you hear everything the State has to say
16 and everything they have to present. It's very important
17 that you then hear from the defense and everything they
18 have to present.

19 It's equally important that you hear from me.
20 You're going to need all of this before you start your
21 deliberations to make a determination. So when you go
22 back into your jury room if you'd like to talk about the
23 Clemson game, Carolina game, introduce yourselves, your
24 family, or anything you want to talk about but this case
25 until I specifically tell you to begin your deliberations.

State versus Ivery

1 Furthermore, if we don't finish today and you
2 go home tonight, don't go out to the scene, don't try to
3 visit the scene, don't try to interview witnesses, don't
4 get on the computer and Google anybody's name. You need
5 to get everything you need right here in this courtroom
6 and nowhere else, that way I can make sure you're getting
7 it properly like you should according to the law.

8 For the most part, you just need to sit back
9 and relax and listen to it as it comes to you. If at any
10 point in time you need a break, need something to eat,
11 something to drink, something comes up, you just need to
12 let me know or let a bailiff know and at the appropriate
13 time I'll try to stop and make sure you're taken care of.

14 Everybody ready.

15 I call on the State.

16 MS. PRICE: Thank you, Your Honor, may it
17 please the Court.

18 Ladies and gentlemen of the jury, my name is
19 Lauren Price and I'm a prosecutor with the Thirteenth
20 Circuit Solicitor's Office here in Greenville County.
21 It's my job to prosecute persons charged with violating
22 the laws of our State.

23 Seated with me here today is Detective
24 Cothran with the Greenville County Police Department and
25 my personal investigator Ms. Kelly O'Donnell. They are

State versus Ivery

1 going to be seated with me throughout the trial.

2 I thank you all for being here today. Now,
3 you all have lives outside of this courtroom and it's late
4 in the week, but I appreciate you taking time out of your
5 lives to assist us with this case today. It's an
6 important case. It's important to the State. It's
7 important to this defendant and I hope it's important to
8 you today as well.

9 I'm happy to tell you that we believe it will
10 be a very brief case and I will try to keep things as
11 brief as possible in the interest of your time.

12 Ladies and gentlemen, as the State it's my
13 job to prove the charges against this defendant beyond a
14 reasonable doubt. A reasonable doubt is simply a doubt
15 which would cause a reasonable person to hesitate to act.
16 It doesn't mean beyond all doubt. It simply means that
17 you are firmly convinced.

18 Ladies and gentlemen, you've already heard
19 and you'll hear again that this defendant, Gregory Ivery,
20 is charged with possession with intent to distribute crack
21 cocaine. I think everyone is probably familiar with what
22 crack cocaine is and in our State it is considered an
23 illegal narcotic drug.

24 You're going to hear that on June 30 of 2011
25 detectives with Greenville County Police Department relies

State versus Ivery

1 on the assistance of a confidential informant to conduct a
2 controlled drug transaction at this defendant's residence
3 on [REDACTED] Street in Greenville County.

4 You're going to hear that that confidential
5 informant was provided with \$140 in government funds; that
6 he went to the defendant's residence and then he purchased
7 what later lab tested positive as 1.7 grams of cocaine
8 base, which is known as crack cocaine.

9 You're going to hear that this confidential
10 informant was wired at the time, that all of this was
11 recorded on video and audio at the time, and you'll have
12 an opportunity to view that. You'll also see and hear
13 from the detective and you'll hear that the informant
14 identified this defendant in a photo line-up, and that the
15 transaction was recorded on an affidavit by the
16 confidential informant.

17 Now, we're going to prove this charge to you
18 against the defendant today through the use of witness
19 testimony, the use of law enforcement testimony, and the
20 presentation of physical evidence.

21 After the presentation of all of the evidence
22 today, I submit to you that you will be firmly convinced
23 of this defendant's guilt and you won't hesitate to act in
24 finding his guilty.

25 I said it would be brief and I believe it's a

State versus Ivery

1 pretty straight forward case. Thank you for your time and
2 your attention.

3 THE COURT: Thank you. Mr. Hamilton.

4 MR. HAMILTON: May it please the Court.

5 THE COURT: Thank you.

6 MR. HAMILTON: Madam Prosecutor.

7 MS. PRICE: Yes, sir.

8 MR. HAMILTON: Ladies and gentlemen of the
9 jury, again, my name is Ernie Hamilton. I'm going to
10 thank you for the service that you are about the perform
11 and I agree with the prosecutor that this is an important
12 case particularly important to my client, Gregory Ivery.

13 He's here alone. The State has expert
14 witnesses and lab specialists and all this evidence, we're
15 here asking you and as the Judge instructed you to listen
16 to the evidence that comes from the witness stand. That's
17 where you'll find the evidence.

18 My client comes to you not guilty and he has
19 nothing to prove. He has nothing to prove. It would be
20 hard to prove that you're innocent to a lot of different
21 things so the State has the burden of proving -- the
22 burden has shifted to the government to prove that he
23 committed the crime. The have accused him of committing a
24 crime so they should have the burden of proving him
25 guilty. A defendant should never have to prove his or her

State versus Ivery

1 own innocence. That's the law in this State.

2 Beyond a reasonable doubt, that's just a
3 doubt for -- if you have any doubt, not any doubt, but a
4 substantial reason that what has been shown to you does
5 not satisfy you that he is guilty of anything. And part
6 of the reason is based on what the prosecutor has told you
7 that they've got photos and videos, but this is 2012 and
8 with those photo opts and crops on computers, you can
9 manipulate pictures to any kind of way to serve your
10 purpose.

11 Because part of the information that you will
12 have is that my client was targeted for some reason. He
13 was targeted and therefore the police officers are going
14 to tell you that they put together a case and sent
15 somebody out and you got these pictures and they knew from
16 the beginning who they was looking for. But they going to
17 tell you that they got all these pictures here but they
18 already knew who they was looking for from the start but
19 this is just to show you that they are trying to be
20 (inaudible) just picking him out of a crowd.

21 What I'm going to ask you to do is follow the
22 law, listen to the testimony because the Judge told you
23 that he's the law giver and you're the fact finders. And
24 how do you find the facts? You listen to the evidence and
25 the credibility and believability of the witnesses.

State versus Ivery

1 You have to determine why a witness is
2 telling you something or why is he holding back this or
3 presenting this and how he is testifying. Why would he
4 say on thing this time and then say another thing another
5 time and which one it is. I believe that this case is a
6 case of deception by the government on people.

7 MS. PRICE: Your Honor, I'm going to object
8 unless Mr. Hamilton has some evidence that he's going to
9 put into the record with regard to that then this is
10 inappropriate argument at this time.

11 THE COURT: I'm going to overrule your
12 objection but don't argue in your case. Just introduce it
13 and move on.

14 MR. HAMILTON: Thank you, Your Honor.

15 At the same time -- I believe the prosecutor
16 made a misstatement by saying he's charged with possession
17 with intent to distribute. I believe His Honor will give
18 you the indictment which says, distribution. I don't
19 think it's intent to distribute. So people say things and
20 misspeak and there are a lot of things to go on in this
21 case and you listen carefully to the witnesses and what
22 they have to gain. That's the key to this thing.

23 What would a witness have to gain from the
24 testimony?

25 That's all I have. Thank you.

Irvin - Direct

1 THE COURT: Solicitor, call your first
2 witness.

3 MS. PRICE: Thank you, Your Honor. The State
4 would call Detective Irvin to the stand.

5 THE CLERK: Detective Irvin, if you would
6 come forward to be sworn in, please.

7 Please place your left hand on the Bible and
8 raise your right.

9 RUSSELL IRVIN, having been duly sworn,
10 testified as follows:

11 Thank you. You may be seated. Please state
12 your name for the record.

13 THE WITNESS: Russell Irvin.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MS. PRICE:

17 Q. Detective Irvin, I'm going to stand back here to
18 make sure everybody is hearing what you're saying. Where
19 do you work?

20 A. Greenville Police Department.

21 Q. And how long have you worked with the GPD?

22 A. Since 2003, nine years.

23 Q. What position do you currently hold?

24 A. I'm a detective in Vice and Narcotics Unit.

25 Q. What sort of duties are involved in that

Irvin - Direct

1 position?

2 A. We take complaints from the community, drug
3 related complaints, conduct drug investigations.

4 Q. Were you working for the Greenville Police
5 Department in that capacity on June 30, 2011?

6 A. I was.

7 Q. And where were you working?

8 A. In the Vice and Narcotics Unit.

9 Q. At what specific area that day, where were you
10 located on June 30th?

11 A. I was working in the office that day. We
12 conducted a drug investigation on [REDACTED] Street, which is
13 in the Nickletown Community.

14 Q. And did that drug investigation result in charges
15 being brought against this defendant?

16 A. It did.

17 Q. How did you become involved in that
18 investigation, sir?

19 A. I was informed through Detective Cothran that
20 there was a confidential informant at the office who was
21 going to conduct a controlled purchase of narcotics. That
22 informant drove himself to our office. Whenever we have
23 an informant that is going to assist us with an
24 investigation, if they drive their vehicle to our office
25 and they're going to use that vehicle to facilitate the

Irvin - Direct

1 controlled purchase, we always go out and search that
2 vehicle that they arrived in to insure there is no
3 narcotics in the vehicle they brought with them. When I
4 say search the vehicle, that includes everything in the
5 vehicle, all the contents, whether it be locked container
6 or compartments in the vehicle.

7 Q. And what was he driving that day?

8 A. I'm not sure of the year of the model but it was
9 a Jeep Grand Cherokee.

10 Q. And that vehicle was not provided to him by the
11 Greenville Police Department?

12 A. No.

13 Q. That was his own vehicle?

14 A. Right. The vehicle he arrived in to our office.

15 Q. And you said it's common practice for y'all to
16 search the vehicle?

17 A. Yes.

18 Q. Why is that?

19 A. Well, it protects the integrity of the
20 investigation. We want to insure that he is not bringing
21 drugs with him and does not have his own drugs during the
22 investigation. By doing this we can say that when the
23 informant goes to our target location or buys from the
24 individual we're investigating and he returns to our
25 office and he has his narcotics with him, we know there is

Irvin - Direct

1 only one place that those drugs stem from and that's the
2 target of the investigation.

3 Q. And that individual, the CI, would be monitored
4 the entire time this is occurring?

5 A. We watch them go to the target location and we
6 watch them go leave and return to our office. They are
7 under surveillance the entire time.

8 Q. Did you search this confidential informant's
9 vehicle?

10 A. I did.

11 Q. Did you find anything?

12 A. I did not.

13 Q. No contraband?

14 A. No.

15 Q. You looked in all the closed compartments?

16 A. Yes, conducted a thorough search of the vehicle.
17 Like I said all open and closed containers, locked or
18 unlocked throughout the vehicle.

19 Q. After you searched the vehicle, what occurred?

20 A. I went back inside the vehicle. The vehicle was
21 parked in our parking lot. I went back inside and just
22 waited for Detective Cothran to let me know that he and
23 the informant were ready to go and make the purchase.
24 Then I drove to an area close by to where the purchase was
25 made. We monitored the transaction over what we call a

Irvin - Cross

1 wire, a recording device that allows us to listen to it as
2 it's going on.

3 Q. And after the buy occurred, what was your roll?

4 A. I returned to my office and the informant
5 returned to the office and just like I do at the beginning
6 of the buy, I conducted a second search of his vehicle to
7 insure there was nothing in the vehicle, to make sure that
8 everything was turned over to us was what he purchased and
9 he was not keeping anything for himself.

10 Q. When you say keeping anything for himself, what
11 are you referring to?

12 A. The narcotics that he purchased. He buys a
13 quantity of narcotics from our target, he turns that
14 evidence over to the detective, in this case Detective
15 Cothran. We want to make sure that he is not keeping any
16 of these narcotics for himself, again, just to keep the
17 integrity of the investigation.

18 Q. Did you write a report in this case?

19 A. I did not.

20 Q. Why not?

21 A. As is typical the case agent usually documents
22 the actions of the officer, the detective, who was
23 searching the vehicles, in this case Detective Cothran
24 documented in his report what I did.

25 Q. If you had found something in the vehicle, would

Irvin - Redirect

1 you have documented it?

2 A. Oh, certainly, yes.

3 Q. How would you have gone about documenting it?

4 A. I would have done a supplemental report to
5 Detective Cothran's original case file and his original
6 report in the case.

7 Q. But in this case, the vehicle was found to be
8 completely free of drugs before and after the
9 investigation?

10 A. Correct.

11 Q. So you had no indication that there was any kind
12 of set up or ---

13 A. No, not at all.

14 Q. Anything with regard to the CI that led you to
15 believe there was anything amiss?

16 A. No.

17 Q. Thank you, Detective. Please answer any
18 questions has for you at this time.

19 THE COURT: Mr. Hamilton.

20 CROSS-EXAMINATION

21 BY MR. HAMILTON:

22 Q. Officer, you're saying that you searched this car
23 and you know who the target individual was?

24 A. I don't remember at the time I searched the
25 vehicle I knew who the target was or not because of the

Irvin - Redirect

1 length of time that has passed.

2 Q. But narcotics investigation unit you were called
3 in just to search the vehicle?

4 A. Well, we all work at the same office and the
5 office is a rather small office so whenever an informant
6 arrives in our office the case agent talks and discusses
7 things with the informant and he normally asks another
8 detective in the office to go out and search the vehicle.
9 Because we're aware that a buy is about to be made but
10 sometimes we don't know who our target is that we're going
11 to make the buy from.

12 Q. Now, there are compartments in the vehicle that
13 are creative and you can hide drugs anywhere in an
14 automobile, right? You searched every inch of the
15 vehicle?

16 A. I didn't search every inch but I searched
17 everything that accessible short of taking the vehicle
18 apart.

19 MR. HAMILTON: That's all I have.

20 REDIRECT EXAMINATION

21 BY MS. PRICE:

22 Q. Short of taking the vehicle apart, would anybody
23 have had the opportunity to take the vehicle apart in the
24 time between you searching it the initial time and the
25 time the vehicle was returned?

Cothran - Direct

1 A. No. The vehicle sits in our parking lot until
2 the informant gets in it and leaves. Once he leaves our
3 office, we are either following him or surveilling him in
4 some way the entire time. So there is no way that anyone
5 could have accessed any type of secret compartment or
6 anything like that.

7 Q. Thank you very much.

8 MS. PRICE: Your Honor, I would ask that this
9 witness be excused.

10 MR. HAMILTON: No objection.

11 THE COURT: You're excused. Thank you for
12 coming.

13 We have a question from the jury in the first
14 case.

15 (Whereupon, there was a brief recess.)

16 Bring the jury back in.

17 (Jury re-enters the courtroom.)

18 Ladies and gentlemen, I'd like you to know
19 that we're going to try to finish this case today.

20 Call your next witness.

21 MS. PRICE: Thank you, Your Honor. The State
22 calls Detective Cothran to the stand.

23 THE CLERK: Detective, would you please come
24 forward to be sworn in, please. Place your left hand on
25 the Bible and raise your right hand.

Cothran - Direct

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

3 Thank you. You may be seated. State your
4 name for the record.

5 THE WITNESS: Yes. My name is Charles Keith
6 Cothran.

7 DIRECT EXAMINATION

8 BY MS. PRICE:

9 Q. Detective, I'm going to stand back here, again,
10 and ask you who you work for?

11 A. I work for the Greenville Police Department.

12 Q. And how long have you worked for the GPD?

13 A. Approximately seven years.

14 Q. What position do you hold?

15 A. I am currently assigned to the Investigation
16 Division.

17 Q. Is that the position you held on June 30, 2011?

18 A. No, it is not. On June 30th, 2011, I was
19 assigned the Vice and Narcotics Investigation Division.

20 Q. On June 30, 2011 under that assignment, were you
21 still a detective?

22 A. I was.

23 Q. And as a detective in that unit, what sorts of
24 duties and responsibilities were involved with you job?

25 A. In the Vice and Narcotics Unit we take in

Cothran - Direct

1 community complaints about various activities, typically
2 drug related activities. We also investigate subjects
3 that are known drug users, sellers, and work information
4 we receive from various sources.

5 Q. And did you receive information from a source on
6 June 28, 2011?

7 A. Yes, I did.

8 Q. Who was that source?

9 A. That source was a documented confidential
10 informant that I had signed up and his name was James
11 Grant and the information he provided me was he knew a
12 subject by the name of Red and his street name was Red and
13 his government name was Greg Ivery and that he could
14 purchase crack cocaine from this subject.

15 Q. At the time he gave you this information, did he
16 have you sign an agreement to work as a confidential
17 informant with you?

18 A. I don't remember if that was on the actual 28th.
19 I don't remember when he signed up. I'd have to seen that
20 form but he did sign a -- we have a packet that we have
21 informants sign. It's got a lot of information that's
22 kind of irrelevant for this case. The purpose of speed,
23 there's an informant agreement with various statements of
24 things they will not do while they are working for the
25 police department as a police undercover operative.

Cothran - Direct

1 Q. I'm going to show you what's been marked as
2 State's Exhibit 7 through 7b. Could you tell me if you're
3 familiar with those documents?

4 A. Yes, these are from the confidential informant
5 packet that we present to all of our informants. One of
6 those is an agreement, I believe it's State's 7. It's an
7 agreement that an informant would have to sign that
8 basically says that what his role will be and the
9 information he is sharing, that we cannot, as law
10 enforcement officers, make him, force him, promise him or
11 do anything to otherwise persuade him to do anything
12 against his will and that any cooperation he provides us
13 will be made known to the Solicitor's Office.

14 The second one is our City Police Department
15 informant agreement, 7a and 7b and this is the form that
16 basically goes through various -- the agreement between
17 myself and Mr. Grant is what it is.

18 Q. And what date did he sign the agreement to work
19 as a confidential informant?

20 A. This is dated June 22, 2011.

21 Q. On what date did you determine you would start an
22 investigation against this defendant based on the
23 information that confidential informant provided to you?

24 A. Mr. Grant, the confidential informant signed up
25 on the 22nd. On the 28th of June he contacted me and

Cothran - Direct

1 advised me about Mr. Ivery and told me that he could
2 purchase a quantity of crack from him. I told him to
3 arrange a deal for June 30th and to come to the office on
4 that day.

5 Q. And did he make that arrangement?

6 A. He made that arrangement and he did come to the
7 office per my instructions.

8 Q. And when with whom was this purchased planned?

9 A. This purchase was planned between the informant
10 and Mr. James Grant and Mr. Ivery.

11 Q. And the informant was the person who proposed
12 this defendant as the subject of this investigation?

13 A. Correct.

14 Q. Why would you use the subject that was brought to
15 you by the confidential informant?

16 A. Well, informants are privy to information that a
17 lot of times law enforcement we just don't have the
18 information. Obviously the informant is going to be more
19 familiar with whom they're purchasing. They're going to
20 know the subjects better. They have information we don't
21 have and a lot of times in the drug industry as me and you
22 are probably well aware it's not easy for an undercover
23 cop to just walk up to some random individual and purchase
24 any type of drug. So we use the information they provide
25 us to begin an investigation.

Cothran - Direct

1 Q. So it's easier for a CI based on the familiarity
2 with somebody to sometimes infiltrate?

3 A. Yes.

4 Q. What happened on June 30, 2011? I want you to
5 start from the very beginning when the confidential
6 informant arrived at your office?

7 A. Well, on June 30, 2011, the informant arrived at
8 the Vice and Narcotics Office at approximately 11:40 in
9 the morning. When he arrived, he called me, I met him at
10 the door and took him to the interview room where he
11 couldn't be observed by any passersby. While I was
12 speaking with him he gave some of the details about how
13 the buy would go, how we would get there. He told me he
14 was using his car.

15 Q. Is it also your policy for him to typically use
16 the car that the CI brings to the Vice and Narcotics
17 Office?

18 A. Yes. We won't allow them to use one of our
19 vehicles without one of us being the operator of the
20 vehicle. I think that's pretty clear cut as to why we do
21 that.

22 Q. Did you search the confidential informant, this
23 individual, while he was in your office?

24 A. I did search his person, his pockets, completely
25 from head to toe. He had nothing on him as far as

Cothran - Direct

1 contraband.

2 Q. And why would you search him?

3 A. As the earlier detective mentioned, we do it for
4 the integrity of the case. We want to make sure they
5 don't arrive with any contraband of any type whether
6 that's drugs or paraphernalia. We want to make sure for
7 the purpose of our investigation that they informant and
8 the information he's providing when he arrives at this
9 location that the drugs did come from the subject in
10 question.

11 Q. And there was nothing located on his person?

12 A. He had no contraband whatsoever.

13 Q. What happened after you searched the confidential
14 informant?

15 A. After searching him, I asked Detective Irvin to
16 search his vehicle. I also would have equipped the
17 confidential informant with a audio recording device and a
18 video and audio recording device. We monitor the audio
19 during the investigation.

20 Q. And why do you do that?

21 A. Again, we do that for evidentiary purposes to
22 make sure that we capture evidence for our investigation
23 and we also do it so that we can monitor the transaction
24 because of the elicited connection between drugs and
25 violence. We want to make sure that our CI, our informant

Cothran - Direct

1 is safe during the transaction. So that who he is
2 purchasing it from isn't going to rob him or hurt him or
3 something.

4 Q. Did you test the audio video to make sure it was
5 working?

6 A. Yes. We turn it on and we'll prep it and our
7 listening boxes we flip it on to make sure we can hear
8 them clearly.

9 Q. When you say these audio recording devices and
10 these video recording devices, were they hidden on this
11 person? Without getting into specifics because I know we
12 have a safety issue to deal with ongoing investigations in
13 this county, were they hidden?

14 A. Yes, they are hidden.

15 Q. So a casual observer would not be able to notice
16 that this person is wired?

17 A. No.

18 Q. Was the confidential informant given anything?

19 A. Yes. When he first arrived I asked him what he
20 talked to Mr. Ivery about and he explained that he was
21 going to buy \$140 worth of crack cocaine from him. I went
22 and got \$140 of police funds, make a photocopy of that
23 money and he was given that \$140 of police funds for the
24 purpose of purchasing that crack cocaine from Mr. Ivery.

25 Q. I'm showing you what's marked State's Exhibit 8.

Cothran - Direct

1 Are you familiar with this exhibit?

2 A. Yes. It's the photocopy of the funds that the
3 confidential informant was given to purchase crack cocaine
4 from Mr. Ivery.

5 Q. And how can you be certain that that's the
6 photocopy that was made that day?

7 A. The case number is written at the top and it's in
8 my handwriting.

9 Q. Can you explain briefly what GPD funds are?

10 A. It's the funds that we have for purchasing drugs,
11 using informants or undercover buys. We have a designated
12 account that the police department manages. Those funds
13 are tracked and monitored to make sure that they are used
14 properly. We have a limited amount of funds so we have to
15 carefully and obviously make wise decisions when we
16 purchase drugs.

17 Q. What happened after you gave this individual,
18 this confidential informant, this \$140?

19 A. He was given the \$140. I advised the other
20 detectives that work in the Vice and Narcotics Unit where
21 we were going. Again that information was obtained from
22 the informant before we ever got started. I asked him to
23 go get in the area. Myself and other detectives then went
24 outside of our office, the informant then got in his
25 vehicle and he actually followed us to the deal location.

Cothran - Direct

1 I actually watched him turn to the incident location which
2 is [REDACTED] Street. I watched him in my rear view mirror
3 turn onto [REDACTED] Street.

4 Q. What was the exact incident location?

5 A. The exact incident location was [REDACTED] Street,
6 Greenville, South Carolina.

7 Q. Do you know that to be the residence of anyone
8 who is in the courtroom today?

9 A. Yes. It's where Mr. Ivery lived.

10 Q. Does anyone else live at that residence with him
11 that you're aware of?

12 A. I believe it was his grandmother or other maybe.

13 Q. So after you peel off, what do you hear?

14 A. We can hear the informant speaking with anyone.
15 When the informant arrived, initially, Mr. Ivery wasn't at
16 home at the time. He remained in the driveway for a brief
17 period of time. So I contacted him because I was under
18 the impression that Mr. Ivery would be there. I asked him
19 to wait and see if Mr. Ivery would arrive. Shortly after
20 that, he did arrive. He told Mr. Ivery that he wanted to
21 get the \$140 worth of crack, gave Mr. Ivery the \$140 of
22 police funds. Mr. Ivery then went inside and retrieved
23 the crack cocaine, brought it back out to the informant.
24 The crack cocaine was in a small plastic bag. He handed
25 him the crack cocaine and at that point the informant left

Cothran - Direct

1 and was followed back to the Vice and Narcotics office.

2 Q. And you observed this transaction; is that
3 correct?

4 A. I didn't see it physically, but I can hear it.

5 Q. At some point in time, did you review your video?

6 A. Yes. When we got back to the office, I escorted
7 the confidential informant back into the same interview
8 room we were in previously, asked Detective Irvin to
9 conduct a search of the vehicle, a post buy search of the
10 vehicle. I then turned all of the audio and video
11 recording devices off, all that equipment off, removed it,
12 conducted a search of the informant's person and did not
13 locate any contraband. The drugs he had purchased he had
14 already given to me and these drugs remained in my
15 possession and control until I took them to property and
16 evidence.

17 Q. Did you have your confidential informant identify
18 this individual that has sold him the crack by any
19 particular means once he returned to your office?

20 A. Yes. When the informant called me on the 28th
21 and told me he knew a subject by the name of Red, Gregory
22 Ivery, I began to research it on the 28th to attempt to
23 identify a person that we may be purchasing the drugs
24 from. I did that for a couple of reasons. One is it's
25 always good to know who the subject of the investigation

Cothran - Direct

1 is prior to arriving and that helps us with the integrity
2 of the case and the safety of the informant. So I
3 prepared who I believed at the time who Mr. Ivery was.

4 The way I came across Mr. Ivery's actually
5 identify is I ran it through a database with that address
6 and that address came back with that name and I prepared a
7 photo line-up from a picture that I was able to locate of
8 Mr. Ivery.

9 Q. Did you show a photo line-up to the confidential
10 informant, Mr. Grant?

11 A. I did. Immediately after I retrieved the drugs
12 from him, searched him, I went back to gather my
13 paperwork that I would need for him to complete. I had
14 that photo line-up prepared. I went in and I advised him
15 of what's called a photo line-up affidavit which tells him
16 he should feel compared to circle anyone or any of the
17 pictures unless he was absolutely certain that's the
18 person was the perpetrator.

19 Q. Did he indicate he understood the line-up that
20 you presented to him?

21 A. Yes, he did. And he actually signed saying he
22 did.

23 Q. And did he choose an image that was on your line-
24 up?

25 A. He did. He selected the person that was in

Cothran - Direct

1 position number 4.

2 Q. And who was in position number 4?

3 A. Gregory Ivery.

4 MR. HAMILTON: Your Honor, I'm going to
5 object to him saying who he selected without that person
6 being here who actually done the selection.

7 THE COURT: Overruled.

8 BY MS. PRICE:

9 Q. And he circled image No. 4?

10 A. He circled image No. 4 and the instruction I gave
11 him to initial and date inside of that circle he did as I
12 told him to do.

13 Q. When you say did as you told him to do, you told
14 him to make a mark not directing him what picture to
15 chose?

16 A. Right. At no point in time did I suggest or try
17 to compel or advise him that Mr. Ivery was the person that
18 he needed to circle. It took the line-up, it's on a
19 piece of paper, after we went through the affidavit, he
20 didn't see it up until I presented it. I flip it over, I
21 slid it to him, I didn't say anything. He, without
22 hesitation, indicated No. 4. I said will you please
23 circle, initial and date if that's the person that just
24 sold you crack. He circled, initialed and dated it.

25 Q. Did you have him sign a statement at any point in

Cothran - Direct

1 time saying what occurred that day?

2 A. Yes, we take statement from them to get their
3 account of what took place and he did complete a
4 statement.

5 Q. He signed it as well?

6 A. Yes.

7 Q. Did you threaten him in any way or coerce him to
8 make that statement?

9 A. No. The way we do it is we ask him will you give
10 us a statement about what happened. We present them with
11 a statement and they fill it out.

12 Q. I'm showing you what's been marked as State's
13 Exhibit 1, 2 and 6. Can you tell me if you're familiar
14 with those document?

15 A. Yes, I am. Exhibit 6 is the informant or
16 operative statement and I know it's mine because it's got
17 my signature at the bottom and it's a statement from
18 Mr. Grant. I believe it's Exhibit 2 is the photo line-up
19 that I presented to the confidential informant where he
20 circled, dated, and initialed the person in position No.
21 4.

22 Q. Detective, how did you present it to him because
23 that is the original copy of your photo line-up, is it
24 not?

25 A. Yes.

Cothran - Direct

1 Q. How did you present it to him?

2 A. This is the line-up affidavit that I explained to
3 you moments ago. I reviewed the statement at the top and
4 it says, "I understand that I am going to view a
5 six-person photo line-up which may or may not contain the
6 perpetrator of my incident that I should not feel
7 compelled to pick someone from the line-up." The
8 informant signed it and then following that it basically
9 says that, "I, James Grant," who is the informant, "viewed
10 the group of six photographs this 30th day of June, 2011
11 from which I have positively identified photograph No. 4
12 as being the person who sold me cocaine base." And then
13 in parenthesis it says, (crack). Then it says, "The line-
14 up was presented to me by Detective Cothran." And then
15 James signed it down at the bottom and I signed it here.

16 He would have read this first sentence that I
17 read and once he indicated that he understood, I slide
18 that to the side. There's a portion that's got the
19 photograph numbers filled out at that point. This is the
20 line-up I had. I pulled it over, I slide it in front of
21 him and he immediately points to No. 4 and he circles
22 dates and initials as I ask him to.

23 Q. Was there any hesitation on his part?

24 A. There was no hesitation whatsoever.

25 Q. Did he appear to be confused?

Cothran - Direct

1 A. No, he was, you know, very clear that that was
2 the person that he was referring to as Gregory Ivery.

3 Q. Was he impaired at any way when this was
4 happening? Did he appear to be intoxicated?

5 A. He was sober as far as the investigation goes.
6 If we have any inclination that someone is not sober prior
7 to an investigation, prior to a buy, we will not continue.
8 That's pretty clear cut why you would not continue in that
9 situation.

10 Q. After you presented the confidential informant
11 with this affidavit and he gave a statement and you did
12 the line-up, did you give him anything in exchange for his
13 work?

14 A. The reason that Mr. Grant had come to the police
15 to start with is because he had been charged with
16 shoplifting and he had asked for some assistance and
17 anything we could do. I agreed to tell the Solicitor's
18 Office and earlier, I don't know if you recall, I went
19 through that agreement that I couldn't promise him
20 anything. I would advise of his cooperation with law
21 enforcement.

22 Q. Aside from advising my office that he was
23 cooperating with law enforcement, did you give him any
24 currency?

25 A. Yes. Well, not with this buy, I don't believe.

Cothran - Direct

1 Q. Not on this occasion. What did you do after the
2 confidential informant, Mr. Grant, left?

3 A. After Mr. Grant left and the case was over as far
4 as his involvement, I field tested the drugs. The field
5 test came back positive for cocaine base. I filled out a
6 lab request and a property and evidence sheet and took the
7 drugs to property and evidence.

8 Q. What is a field test?

9 A. A field test is basically provided to law
10 enforcement so that it establishes probable cause to
11 believe the drugs that are located are a specific type of
12 drug. In this case it was tested for cocaine base which
13 crack has cocaine in it.

14 Q. I'm showing you what's been marked as State's
15 Exhibit 5. Without removing what's in the envelope, tell
16 me if you recognize the item that's in here, please.

17 A. These are the drugs that we purchased on June
18 30th from Mr. Ivery?

19 Q. How do you recognize them?

20 A. It's in a sealed bag and in that bag I see the
21 case number with my initials and the date and the case
22 number is the same case as the one that's being tried
23 today.

24 Q. Was there -- you said you put this in P&E?

25 A. Correct.

Cothran - Direct

1 Q. What is P&E?

2 A. Property and evidence. They are our index
3 custodian. They are the ones that insure that everything
4 is logged and kept secure and safe until the case is
5 eventually ended.

6 Q. Did you place anything else in property and
7 evidence?

8 A. I did. I placed a copy of the audio and video
9 recordings.

10 Q. I'm showing you Exhibits 9 and 10, are you
11 familiar with those documents?

12 A. I am.

13 Q. And what are those, sir?

14 A. State's Exhibit 9 is a plastic bag containing a
15 white rock like substance. It's my handwriting, my
16 initials, my signature and it's June 30 and clocked in at
17 12:53. And this one is also June 30th, my handwriting, my
18 initials my signature and it's a DVR Memorex DVDR.

19 Q. All right. And with regards to that DVR, did you
20 review it?

21 A. Yes, I review all of audio and video recording to
22 determine what it has captured, if it has captured
23 anything of value and the value of it. The way I review
24 it is I take it from the device, put it on my computer and
25 I play it. I make a copy of the exact recording from the

Cothran - Direct

1 device and I place it in property and evidence.

2 Q. Let's get back to the drugs that you were given
3 by the confidential informant. How was that crack
4 packaged when it was given to you by the CI?

5 A. It was in a plastic bag.

6 Q. Did your training and experience lead you to any
7 conclusion about the packaging?

8 A. The packaging was consistent with what I had
9 observed in the past with drugs being packaged. It's
10 typically the corner of the plastic bag. It's usually
11 wrapped very tight and tied.

12 Q. Where did this sale occur again?

13 A. ■■■■■ Street.

14 Q. And do you know it to be within one half mile of
15 a school or community center?

16 A. Yes. There is a community located on Rebecca
17 Street. It's definitely less than half of a mile. It's
18 probably and eighth of a mile if it's that far.

19 Q. How can you be certain?

20 A. I'm certain one because that particular area, a
21 patrol area where I was assigned to that area. And I also
22 took a -- we have a map that we can use and we can drag a
23 tape measure or a ruler and it will give us an
24 approximately distance and it was definitely within less
25 than half of a mile.

Cothran - Direct

1 Q. And you reviewed the video recording and after
2 you had reviewed the video and audio, did you form an
3 opinion as to who the individual was you were seeing on
4 that video?

5 A. Yes, my preliminary investigation started on June
6 28th. I had observed pictures of Mr. Ivery prior to every
7 going to the location and when I watched the video, you
8 could see Mr. Ivery in the video several different times,
9 but one time he's walking towards the confidential
10 informant. The other time he is coming back away from the
11 house.

12 Q. The video equipment was working properly when
13 these events took place? There was nothing ---

14 A. Yes, it was properly working.

15 Q. It recorded the events that you testified to
16 today?

17 A. That's correct.

18 Q. Detective, I'm showing you what's been marked as
19 State's Exhibit 4. Do you recognize that?

20 THE COURT: Solicitor, do you think this is a
21 good time to take a break?

22 MS. PRICE: Yes, sir, absolutely.

23 THE COURT: Everyone remain seated. Ladies
24 and gentlemen, please return to your jury room and have
25 lunch, bathroom break or whatever but don't discuss the

Cothran - Direct

1 case and then we'll come back and pick back up.

2 Everybody else remain seated.

3 (Jury exits the courtroom for a lunch break.)

4 Mr. Cothran, you can take a break, use the
5 restroom but don't talk to anybody. I want you to imagine
6 yourself sitting right here on this witness stand.

7 THE WITNESS: Yes, sir.

8 THE COURT: Alright, we'll be at ease for
9 about 30 minutes.

10 THE BAILIFF: Please remain seated.

11 THE COURT: Solicitor, you may continue.

12 MS. PRICE: Thank you, Your Honor.

13 BY MS. PRICE:

14 Q. I think where we left off I was asking you
15 whether the video and audio equipment to your knowledge
16 was working properly.

17 A. It was.

18 Q. And it recorded the events that you testified to
19 today?

20 A. Yes, it did.

21 Q. I want to you show you what's been marked as
22 State's Exhibit No. 4. Are you familiar with this object?

23 A. Yes. This is the copy of the video and audio
24 from the confidential informant purchase.

25 Q. Have you reviewed it?

Cothran - Direct

1 A. Yes, I reviewed it.

2 Q. And is it a fair and accurate depiction of the
3 events that took place on June 20, 2011?

4 A. It is.

5 MS. PRICE: At this time, Your Honor, the
6 State would like to move Exhibit 4 into evidence and we
7 request permission to publish it to the jury.

8 THE COURT: Any objection?

9 MR. HAMILTON: Your Honor, I would object to
10 it. He's saying that -- he's not authenticating what he
11 saw in the video as to him being there. He looked at it
12 but he wasn't the one in the video. How can he
13 authenticate something that he was not there to see?

14 THE COURT: I'll overrule your objection.
15 It's in evidence and it may be published.

16 MS. PRICE: Thank you, Your Honor. I beg the
17 Court's indulgence while I get this playing.

18 (Video marked as State's Exhibit No. 4 for
19 identification was admitted into evidence.)

20 I'd like to publish to the jury at this time.

21 (Video was played for the jury in open
22 court.)

23 BY MS. PRICE:

24 Q. Detective Cothran, again, was that a true and
25 accurate representation that occurred on June 30, 2011?

Cothran - Direct

1 A. Yes, it is.

2 Q. I noticed that there were several phone
3 conversations that the confidential informant made during
4 the course of the buy. Were any of those to you, sir?

5 A. I called him and I can't recall if he called me
6 to discuss how long it would be. He did call me and ask
7 me if I wanted him to go somewhere else and I told him no.
8 For the purpose of the integrity of the buy, I have to be
9 in control.

10 Q. So he remained at ■■■■■ Street?

11 A. He did.

12 Q. Officer, based on your observations, surveillance
13 before, during and some after the buy, were you able to
14 identify who sold crack cocaine to this confidential
15 informant?

16 A. Yeah, I recognize -- when I watched the video I
17 paused it and was able to get a better view of Mr. Ivery
18 and I was able to identify Mr. Ivery myself from that
19 video.

20 Q. Could you please point out the individual you're
21 pointing out as Mr. Ivery, the person that sold crack
22 cocaine?

23 A. He's sitting right there.

24 Q. And can you describe what he's wearing for the
25 record?

Cothran - Cross

1 A. It looks like a dark blue shirt with light blue
2 circles. It's a button up shirt.

3 Q. I'm showing you what's been marked State's
4 Exhibit 3. Are you familiar with what this is?

5 A. This is -- like I said when I paused it, I
6 printed out that picture where you can see the subject
7 that walked in the house to retrieve the crack cocaine,
8 which was Mr. Ivery. You can see him just out of the
9 corner of the picture. This is the photograph that I
10 printed out.

11 Q. Detective Cothran, thank you very much. Please
12 answer any questions Mr. Hamilton may have for you at this
13 time.

14 THE COURT: Before we begin cross-
15 examination, I need to take up a matter with the previous
16 trial first.

17 MS. PRICE: Yes, sir.

18 THE COURT: Members of the jury if you will
19 be excused for just a few moments, we'll be back with you.
20 Thank you for your patience. Do not discuss the case.

21 (Jury exits the courtroom. There was a brief
22 break.)

23 Go ahead and bring out the jury.

24 (Jury re-enters the courtroom.)

25 Mr. Hamilton, you are recognized for your

Cothran - Cross

1 cross-examination.

2 MR. HAMILTON: May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. HAMILTON:

5 Q. Officer, you've been promoted into violent crime
6 and you mentioned you used to be "B" patrol and now it's a
7 promotion?

8 A. The police department considers it a transfer.

9 Q. I was getting ready to congratulate you on being
10 promoted but at the same time you are doing something
11 different. You were working vice at the time of Gregory
12 Ivery, vice and narcotics?

13 A. Right.

14 Q. Part of what you saying you do requires a lot of
15 integrity?

16 A. Yes.

17 Q. When you're dealing with confidential informants,
18 these guys have pending criminal cases like the one in
19 this case. He had a pending criminal case but you say
20 he's trusted but you really can't trust him and that's why
21 you search the car, isn't that true? You can't trust
22 these people.

23 A. You search the vehicle for the integrity of the
24 case because you don't want to falsely accuse or allow
25 someone to falsely accuse.

Cothran - Cross

1 Q. Absolutely. It's because you can't trust these
2 people. You got to do things that make sure what they are
3 telling you is true?

4 A. You take precautions to insure the integrity of
5 the case, yes.

6 Q. But here's what I'm asking you to do in that --
7 you were in the in-camera hearing. You knew Gregory
8 Ivery. He was target in this investigation and you knew
9 him long before James Grant ever come to you?

10 A. I knew him from when I was on patrol and it was
11 strictly -- I didn't know anything about him. I knew
12 about █ Street because that's the area I lived in.
13 I didn't know if any criminal activity that Mr. Ivery may
14 have been involved in up until this point and I didn't
15 know his name. I had seen his face.

16 Q. You didn't know any crime that he may have been
17 involved in up until James Grant tell you and he had a
18 shoplifting charge, right? He said, hey, I got this
19 shoplifting charge and I want to set somebody up. That's
20 the first time you heard of Greg Ivery?

21 A. Yes.

22 Q. Really?

23 A. I knew of him. I did not know ---

24 Q. You investigated -- you seen this woman here at
25 her house. You talked with her. That's his mother and

Cothran - Cross

1 you been there and knocked on her door long before this
2 case?

3 A. No, I didn't.

4 Q. You never seen this woman?

5 A. The incident you're talking about was another
6 investigator. I am familiar with that but it was not me.
7 I am not the investigator that knocked on his mother's
8 door.

9 Q. But you know that police been out there more than
10 one time.

11 A. I know that the Vice and Narcotics Unit had done
12 something there in the past. I can't speak to it.

13 Q. So we agree that the Vice and Narcotics Unit that
14 you were apart of at that time had been going to ■ ■■■■■
15 Street and nothing every happened.

16 A. I don't know what happened.

17 MS. PRICE: Your Honor, I believe
18 Mr. Hamilton may be opening a door here. I don't know if
19 we need to curtail the questioning but I think he's about
20 to open a door that I'm going to walk through.

21 THE COURT: I agree.

22 BY MR. HAMILTON:

23 Q. You've never been there before, before you saw
24 James Grant.

25 A. That's correct.

Cothran - Cross

1 Q. But there's no question that James Grant had
2 something to gain by trying to ---

3 A. Mr. Grant he had been arrested and he approached
4 us and asked for our assistance and the way we make our
5 agreements and our assistance is anything we do for the
6 police department will be made known to the prosecutors.
7 Once it's made known, they handle the matter of law and
8 whatever goes from there. I can't tell our informants
9 that if you give us this, your charges are going to go
10 away. I can't do that and it's clearly stated on the
11 agreement that myself and Mr. Grant signed. There will no
12 threats, coercion, force. Mr. Grant completely and
13 voluntarily provided the information and following through
14 with that information?

15 Q. But he's thinking he's trying to cooperate so he
16 could get help?

17 A. I would assume that would be his position.

18 Q. At the same time -- in the video he had stolen
19 eyeglasses trying to sell them for \$10. Did you know that
20 was in there?

21 A. I didn't know they were stolen.

22 Q. Did you know they were in the car?

23 A. I didn't search the car. Detective Irvin
24 searched it and if he did see any sunglasses in there,
25 we're not going to check to see if the sunglasses were

Cothran - Cross

1 stolen. Our intent in searching the car is for contraband
2 and sunglasses aren't contraband.

3 Q. If they're stolen, they're contraband, but I'm
4 just saying you didn't search the car anyway.

5 A. Right.

6 Q. But you did wire him with a hidden video?

7 A. Yes.

8 Q. You did know where he was going.

9 A. Yes.

10 Q. You made your case that the only time you knew
11 this ■■■■■ Street was when he came to you, but you
12 always -- your intent was to investigate Greg Ivery, is
13 that the truth? You told us that.

14 A. Our intent to investigate Greg Ivery came on the
15 28th of June, 2011 when Mr. Grant, the confidential
16 informant, contacted me and advised me that he knew a
17 subject that we could purchase crack cocaine from. At
18 that point your client became a subject of my
19 investigation?

20 Q. Your personal investigation.

21 A. I would have followed up on that information with
22 or not Mr. Grant at that point?

23 Q. And once he did that he became the total focus
24 and he said, well, you want me to talk to somebody else
25 and you said, no, don't go talk to somebody else, I want

Cothran - Cross

1 Greg Ivery?

2 A. Like I explained moments ago for the integrity of
3 the case, it would be hard for me to say Greg Ivery sold
4 those drugs if the confidential informant had went to four
5 or five different locations and talked to numerous people.
6 But because I protected the integrity, I am absolutely
7 positively certainty that Mr. Ivery is the person that
8 sold the crack cocaine.

9 Q. Right.

10 A. That the purpose of the integrity. It is not
11 because people may or may not be honest, it's because when
12 I put someone in jail and in this case potentially goes to
13 prison, I want to make sure I'm making the correct
14 decisions and the integrity of that case is solid and then
15 there's nothing more.

16 Q. He got the person that you sent him out to get.
17 You showed him a photo line-up and all knowing that you
18 knew he was the one you targeted to get based on him
19 coming to you saying I can get this person.

20 A. Yes. It's part of my investigation to determine,
21 hopefully prior to a buy but at some point, to determine
22 who we purchase the crack cocaine from. With or without
23 the photo line-up with the video itself with that still
24 picture, I can look over there and look at the still and
25 tell you that picture is that guy.

Cothran - Cross

1 Q. And we just got to trust you that that picture
2 was taken at the time that video was made?

3 A. Yes, I would hope you would trust me.

4 Q. With all the photo shops, that picture could have
5 been taken two years ago.

6 A. Yeah, but if you look at the video and you
7 compare that video, you'll see that video and that picture
8 have not been altered.

9 Q. But you didn't take that picture.

10 A. I took that picture off of the video.

11 Q. But you didn't take the picture. You can say for
12 absolute certainty that the picture came from the video
13 while you were there. You were not there.

14 A. That picture right there on that desk, I played
15 that video, I paused it and printed it. That picture came
16 from the video that I watched and everybody in here
17 watched. It didn't come from anywhere else.

18 Q. From that video.

19 A. That video.

20 Q. That video could have been doctored?

21 A. I can tell you what I did. It was taken from the
22 device that record it, burned on my computer, that disk,
23 and taken to property and evidence.

24 Q. And it had exactly who you wanted to find on it?

25 A. It had the subject of the investigation, yes, I

Cothran - Cross

1 did.

2 Q. So in the audio -- there's no question that Greg
3 Ivery was that target. Supposed he wasn't there, you
4 don't want nobody but him.

5 A. No.

6 Q. Now, he had a camera in his hand?

7 A. The thing you saw in his hand was his cell phone.

8 Q. It could have a camera on it?

9 A. I would assume and you could snap pictures, but
10 if you start snapping pictures of someone you're buying
11 drugs from, you're probably going to have some issues.

12 MR. HAMILTON: Can I have one second, Judge.

13 BY MR. HAMILTON:

14 Q. Let's go back to when he got back. You say you
15 marked some drugs in this case.

16 A. Explain got back.

17 Q. When the person got back.

18 A. The confidential informant?

19 Q. The confidential informant got back to
20 headquarters.

21 A. To our office?

22 Q. Yeah.

23 A. Okay.

24 Q. Did you have a video of the drugs that were
25 there?

Cothran - Cross

1 A. Well, you can see us go upstairs. When he gets
2 out of the car, he tries to hand it to us and I say just
3 hold to them until I get upstairs. Let's get upstairs
4 because I don't want to remain any more visible any longer
5 than I have to be. You can see we're outside and the
6 longer I'm outside the greater the risk is to the CI being
7 discovered. So my thoughts is let's get upstairs and
8 handle out business once we're behind closed doors and
9 we're safe and nobody can see you.

10 Once get upstairs as you can see we walk up
11 the backside of the stairs in the door and into another
12 room where I say hold on, let me turn everything off and I
13 turn everything off.

14 Q. Did you take a picture of the drugs?

15 A. No. I had no reason to, I've got them.

16 Q. So there is nothing to say -- you got video of
17 everything but the drugs?

18 A. No, there's no video of the actual drugs.

19 Q. No video of the drugs.

20 MR. HAMILTON: Just one more second, Judge.

21 BY MR. HAMILTON:

22 Q. If you don't have any pictures of the drugs that
23 were taken, how do you know those are the same drugs?

24 A. Like I explained, when he enter that room I
25 turned everything off. The confidential informant handed

Cothran - Cross

1 me a plastic bag that contained a number of white rock
2 like substances. That substance remained in my control,
3 nobody else. I kept it under my control which means no
4 one else touched it, no one tampered with it, no one
5 altered it until I took it and put it in property and
6 evidence. When I put it in property and evidence, we take
7 it and we put it in a bag. We initial inside the bag, put
8 the case number and the date and that bag is heat sealed
9 and can not be opened. If it's opened, we will know.

10 I believe it was probably signed out by other
11 technicians for testing.

12 Q. Other than -- since this is such a high tech
13 society today, show me a picture when he handed you the
14 drugs?

15 A. I don't have a picture where he handed me the
16 drugs. I never for any of my investigations taken
17 pictures of someone handing me the drugs, confidential
18 informant or otherwise.

19 Q. If he says he never handed you the drugs then ---

20 A. Then he would be lying.

21 Q. --- how do you know he did?

22 A. He would be lying.

23 Q. He would be lying if he said he didn't hand you
24 the drugs?

25 A. I think the video clearly shows that he purchased

Cothran - Redirect

1 the drugs, that he received the drugs. They even
2 discussed it about the quality of the drugs. You hear him
3 refer to it that it looks like mid(ph), that is high
4 quality. From my experience and understanding of what
5 crack cocaine -- the quality of crack cocaine is affected
6 by the purity and the way its cooked.

7 Q. Okay.

8 A. When you hear them talking about and you hear
9 Mr. Ivery bragging in essence about the quality of the
10 drugs and then you hear the confidential informant say,
11 yeah, this looks good, yeah, this looks good, the quality
12 is there. So obviously unless your client and the
13 confidential informant had some kind of conversation about
14 that substance that they're looking at, I have no reason
15 to believe at all that they substance didn't come from
16 your client.

17 Q. I understand but I still have -- you're saying
18 that he gave you some drugs but I didn't see that in the
19 picture.

20 A. If you're asking me to produce a photograph or
21 video of the confidential informant handing me the drugs
22 that he purchased from your client, I can not do that. My
23 personal feeling is that's the best I can answer your
24 question. I can't produce that video.

25 Q. Right, you can't produce the video. And he was a

Cothran - Redirect

1 target prior to this and you knew him.

2 MS. PRICE: Your Honor, I'm going to object.

3 This is asked and answered.

4 THE COURT: Sustained.

5 MR. HAMILTON: That's all we have.

6 THE COURT: Redirect?

7 MS. PRICE: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. PRICE:

10 Q. Detective, to be clear, you don't have authority,
11 no one in law enforcement other than folks that work with
12 me and my office, the Solicitor's Office, have any powers
13 of negotiation on outstanding charges; is that correct?

14 A. That is correct. We can only make what a person
15 is doing known to those who have that authority.

16 Q. And you may not know of other outstanding charges
17 that are pending or other background information that
18 comes to you that leads into the decisions that
19 prosecutors make?

20 A. That's correct.

21 Q. And you mentioned the commentary on the video
22 about the quality of the drugs.

23 A. Correct.

24 Q. To be clear, this was a high quality product was
25 what he was explaining?

Cothran - Recross

1 A. The conversation that they had when you hear them
2 talking it being mid(ph), that is a street term used to
3 attribute a certain level of quality and vice and
4 narcotics when you buy lower quality product versus a
5 higher quality product it costs you more. The bragging
6 about it looking good -- when you hear mid(ph), the best
7 way I can describe it is that product is of a higher
8 quality than some of the other products you may buy. In
9 this case, the product would be crack cocaine?

10 Q. So the distributor, the seller, is bragging about
11 the quality of their sale?

12 A. They're bragging about the quality of the product
13 they're selling which is the crack cocaine.

14 Q. Saying you're getting a good bargain?

15 A. Right, that you're getting a good deal because
16 you're getting -- basically, you're getting a lower grade
17 price for a higher quality product.

18 Q. Detective, I'm going to ask you a question and I
19 already know the answer to this question, would you or
20 have you ever lied or compromised your integrity as an
21 officer by planting evidence, altering photographs,
22 altering videos, doing anything to compromise the
23 integrity of any of your investigations?

24 A. Absolutely not.

25 MS. PRICE: Thank you. I have no further

Cothran - Recross

1 questions.

2 THE COURT: Mr. Hamilton, do you have any
3 further questions.

4 RECROSS-EXAMINATION

5 BY MR. HAMILTON:

6 Q. But that happens though.

7 MS. PRICE: Your Honor, I'm going to object.
8 That's a statement.

9 THE COURT: I didn't even hear what you said.

10 MR. HAMILTON: He said he never did it but
11 it's been proven that not just on tv but ---

12 MS. PRICE: Objection, again, Your Honor.
13 He's testifying.

14 THE COURT: Go ahead and ask him a question.

15 BY MR. HAMILTON:

16 Q. Officers make it right and make the case by
17 planting manipulating their testimony and evidence, it
18 happens.

19 A. Are you asking me if it happens?

20 Q. Yes. You don't do it.

21 A. I am sure that there is a small percentage of
22 police officers, however, I have never done that. I take
23 pride in what I do and the integrity and ethics in the
24 line of work ask everyone here knows is paramount.

25 THE COURT: You may step down.

Grant - Direct

1 Call you next witness.

2 MS. PRICE: The State calls James Grant.

3 THE CLERK: Mr. Grant, please come up to be
4 sworn. Would you place your left hand on the Bible and
5 raise your right.

6 JAMES GRANT, having been duly sworn,
7 testified as follows:

8 Thank you. You can be seated. Please state
9 your name for the record.

10 THE WITNESS: James Grant.

11 DIRECT EXAMINATION

12 BY MS. PRICE:

13 Q. Mr. Grant, how old are you?

14 A. Fifty years old.

15 Q. And where are you from originally?

16 A. New York.

17 Q. And did you at one time live in Greenville?

18 A. Yeah.

19 Q. I see you're in a jump suit. Where are you
20 incarcerated?

21 A. Crenshaw.

22 Q. Why are you incarcerated?

23 A. I told you I ain't want to be in no trial. All
24 of these questions I really don't want to answer. I told
25 you I'm not putting on no trial for you. I'm not putting

Grant - Direct

1 on no trial for him. I ain't got nothing to do with
2 neither one of y'all problem. I asked you earlier before
3 we even came here I plead the Fifth. I ain't got nothing
4 to do with it. You keep bringing me here in this
5 courtroom. They told me I can't come here or I'm going to
6 get charged so I'm here. I'm telling you straight up and
7 I'm telling the judge -- I'm not disrespecting the jury,
8 I'm not disrespecting you, Your Honor -- I don't have
9 nothing to say so I wish you would just let me roll on up
10 out of here.

11 Q. You sure you don't want to testify today because
12 you didn't receive the deal that you wanted to on your
13 shoplifting charges, sir?

14 A. See you keep trying to twist things. I told you
15 that ---

16 Q. Isn't it true that you're not testifying and
17 you're angry with the State because you did not ---

18 A. I told you ---

19 Q. --- get the deal that you ---

20 A. I'm not angry with you or no ---

21 THE COURT: We have to have one person at a
22 time talking.

23 THE WITNESS: Yeah, I'm angry at you for
24 trying to put me in your criss-cross so, no, I'm not
25 testifying. I just plead the Fifth. I'm not going to

Grant - Direct

1 disrespect these people here. I'm not going to disrespect
2 the judge. So right now I ain't got nothing to say to you
3 and excuse me, Judge, I plead the Fifth on all of it. So
4 I don't have nothing else.

5 MS. PRICE: Your Honor, I would ask you to
6 instruct the witness that he is not entitled to the
7 protections of the Fifth Amendment.

8 THE COURT: That's right. You are not on
9 trial and you need to answer.

10 MR. HAMILTON: Your Honor, I object. He has
11 a right to counsel and if he wants a lawyer ---

12 THE COURT: He's not on trial. He's not
13 being accused of a crime. He can answer how he sees fit.
14 We have to take the answer as he gives it but you need to
15 give an answer.

16 MS. PRICE: Thank you, Judge.

17 BY MS. PRICE:

18 Q. So you're incarcerated.

19 THE COURT: You need to go ahead and answer.

20 THE WITNESS: I told you I ain't on no trial
21 so y'all can do whatever and just go on and do it. I'm
22 not going to answer no question.

23 MS. PRICE: Your Honor, I would like
24 permission to treat this witness as hostile, continue to
25 ask him questions whether he agrees to answer them.

Grant - Direct

1 THE COURT: Permission is granted.

2 MS. PRICE: Thank you, Judge.

3 BY MS. PRICE:

4 Q. Do you know the defendant, Gregory Ivery?

5 A. (No response.)

6 Q. How do you know him?

7 A. (No response.)

8 Q. Prior to June 30, 2011 how long did you know him?

9 A. (No response.)

10 Q. Do you know Detective Cothran?

11 A. (No response.)

12 Q. How do you know him?

13 A. (No response.)

14 Q. Prior to the incident in this case how long have
15 you known him?

16 A. (No response.)

17 Q. Do you remember giving a statement to Detective
18 Cothran?

19 A. (No response.)

20 Q. Let me rephrase, isn't it true that you gave a
21 statement to Detective Cothran on June 30, 2011?

22 A. (No response.)

23 Q. Is this your signature?

24 A. (No response.)

25 Q. Isn't it true that you entered into an informant

Grant - Direct

1 agreement?

2 A. (No response.)

3 Q. Are these your signatures?

4 A. (No response.)

5 MS. PRICE: Let the record reflect that I am
6 showing the witness Exhibit 6, 7, 7a and 7b and he is
7 refusing to answer.

8 BY MS. PRICE:

9 Q. Isn't it true that you identified this defendant,
10 Mr. Gregory Ivery, on June 30, 2011 by circling his image
11 and putting your initials here?

12 A. I ain't circle nothing.

13 Q. These aren't your signatures, sir.

14 A. Those are my signatures but I ain't circle
15 nothing.

16 Q. That's your signature, then. You admit that
17 these are you signatures?

18 A. That's my signature but I didn't circle nothing.

19 Q. You didn't circle but you put your signature on
20 it; is that correct?

21 A. I ain't put my signature on nothing.

22 Q. Isn't it true that you signed and put your
23 signature on this on this affidavit that says, "I, James
24 Grant, view a group of six photographs, 30th of June, for
25 which I positively identified photograph 4 as being the

Grant - Direct

1 person who sold me cocaine base."

2 A. No, I didn't.

3 Q. Is that your signature?

4 A. I didn't sign that.

5 Q. Is that you signature?

6 A. I didn't sign that.

7 Q. Mr. Grant -- I'm showing you State's Exhibit 5.

8 Isn't it true that you purchased what's in this envelope

9 from Gregory Grant on June 30, 2011?

10 A. I didn't purchase nothing from him or nobody

11 else. I don't smoke a pipe and I don't buy crack.

12 Q. Can you explain why you're on a video, then, sir?

13 A. I'm not on no video.

14 Q. That's not you on the video. Isn't it true that

15 you were given \$140 to purchase crack and that you did

16 purchase it from the defendant showing you State's Exhibit

17 8, sir?

18 A. You ain't give me nothing and he ain't gave me

19 nothing.

20 Q. Which is why you're angry today, isn't it?

21 A. I don't have no money. Where the money at?

22 Q. You're mad because nobody gave me nothing; isn't

23 that right?

24 A. I'm mad because you called me up here and asked

25 me to do something and I told you I don't want no part of

Grant - Direct

1 it and then you got mad and told me don't disrespect you.
2 I told you I wasn't disrespecting you. Now, you call me
3 back up here again sitting here all day and in front of
4 these people trying to make you criticize this man for my
5 behavior. It ain't going to happen.

6 Q. I'm not sure I follow you, but ---

7 A. You follow me.

8 Q. I'm going to ask you one more question and then
9 I'm done. Isn't it true that on June 30, 2011, you
10 operated as a confidential informant for this detective,
11 Detective Cothran, that you went to [REDACTED] Street, you
12 purchased crack cocaine from Gregory Ivery? You gave it
13 to Detective Cothran so that you could beat your
14 shoplifting charge. Isn't it true that you are
15 incarcerated right now on a shoplifting charge?

16 A. The charge was from '09 and it ain't got nothing
17 to do with him and the charge ain't only for 32 months, so
18 if I was an informant why the hell am I in jail for 32
19 months on a shoplifting charge? You can't play me like
20 that.

21 MS. PRICE: Beg the Court's indulgence.

22 BY MS. PRICE:

23 Q. You pled guilty on August 25, 2011 off of the
24 trial docket in this county to shoplifting; is that
25 correct?

Grant - Direct

1 A. It ain't got nothing to do with you or him so I
2 don't know why you're bringing it up.

3 THE COURT: Hold on.

4 THE WITNESS: That ain't got nothing to do
5 with this case. All you trying to do is trying to find
6 something to pinpoint me because that man stopped me and
7 asked me a bunch of questions and you trying to get me to
8 throw him. It ain't going to work because he ain't never
9 did nothing to me. I don't work for you. I'm doing my
10 time. I'm not going to be your do boy. Excuse you Court,
11 excuse you, Your Honor, excuse you jury. I ain't got
12 nothing to do with it. Let me go do my time and whatever
13 problem y'all got, y'all handle that yourself.

14 BY MS. PRICE:

15 Q. Okay.

16 A. Keep me out of it. Stop trying to twist the jury
17 by making it look like I'm helping you because I'm not
18 helping you ---

19 Q. I don't think you're helping me. Were you
20 arrested on June 16, 2011?

21 A. The question has nothing to do with you or this
22 case.

23 Q. True or false, you were arrested in June 16,
24 2011?

25 A. That's none of your business.

Grant - Cross

1 Q. Isn't it true you were arrested on June 16, 2011
2 and that's why you went to this detective on June 22,
3 2011, sir?

4 A. If you go call my lawyer I had this case. I was
5 incarcerated. This case was supposed to be ran
6 concurrent. They didn't run it concurrent so therefore
7 you or this case has nothing to do with my old shoplifting
8 charge because I'm doing my time for it. I got serve and
9 I'm doing my time. I'm paying my debt to society and I'm
10 not going to help you try to lock somebody else up. I
11 don't know nothing about what you're talking about.
12 Please let me go.

13 MS. PRICE: That's all.

14 THE COURT: Mr. Hamilton, would you like to
15 ask him any questions.

16 CROSS-EXAMINATION

17 BY MR. HAMILTON:

18 Q. I just have one question. I understand that you
19 don't know anything. I would like to ask whether or not
20 -- you said you did not circle that.

21 A. No, I didn't.

22 MR. HAMILTON: That's all I got.

23 THE COURT: Step down. Call you next
24 witness.

25 MS. PRICE: The State calls Ms. Kara Bennick

Bennick - Direct

1 with the Greenville County Sheriff's Office and property
2 and evidence.

3 THE CLERK: Please come around to be sworn,
4 please. Place your left hand on the Bible and raise your
5 right hand.

6 KARA BENNICK, having been duly sworn,
7 testified as follows:

8 Thank you. You can be seated. State your
9 name for the record.

10 THE WITNESS: Kara Bennick.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MS. PRICE:

14 Q. Ms. Bennick, where do you work?

15 A. I work for Greenville County Department of Public
16 Safety, property and evidence section.

17 Q. And how long have you worked there?

18 A. I've been in that unit for 10 years.

19 Q. What is your office title?

20 A. I'm the supervisor of the unit.

21 Q. Supervisor of the entire unit?

22 A. Yes, ma'am.

23 Q. And can you explain what property and evidence is
24 for these jurors?

25 A. They are the secure holding location for evidence

Bennick - Direct

1 and property that's brought in by Greenville County and
2 Greenville City Police Department.

3 Q. And explain what you mean by secure location?

4 A. We are the division that holds all that evidence
5 while the cases are going on and stuff like that. It's
6 brought to us and held in a secure location that nobody
7 has access to until it is checked out again for whatever
8 processing.

9 Q. Who has access to this property and evidence?

10 A. There are four full time employees and they are
11 the only ones with unlimited access.

12 Q. Can you explain briefly how you maintain property
13 and evidence?

14 A. There are holding locations for all different
15 types of stuff and the risk of the items depends on what
16 department it's held in. Everything is under camera
17 surveillance, lock and key, and swipe card.

18 Q. Are drugs kept in the property and evidence
19 section?

20 A. Yes, ma'am, they are in a separate section.

21 Q. It's own section?

22 A. Yes.

23 Q. Can you explain what the drop box is?

24 A. The drop box is an after hours system that is set
25 up for officers to drop property after we are gone from

Bennick - Direct

1 business hours.

2 Q. How are items removed in and put in the drop box
3 where they are kept secure?

4 A. Officers on whatever shift it is after we're gone
5 and it's a box that located behind a steel door basically
6 and it's located down a shoot and lands in a box down
7 below. We pick up that stuff and check it in and move it
8 to it's locations.

9 Q. If it's something fragile, you have a different
10 system for that ---

11 A. Yes. We have locker systems and everything set
12 up.

13 Q. How is the evidence maintained and recognized for
14 each case?

15 A. Everything is marked when it comes in and a
16 property report accompanies everything coming in.

17 Q. Who initiates that report?

18 A. The officer putting it in.

19 Q. I'm showing you what's been marked State's
20 Exhibits 9 and 10, do you recognize those?

21 A. Yes.

22 Q. And are these records that are kept in the course
23 of regular business at property and evidence?

24 A. Yes, ma'am. Nothing moves without this.

25 MS. PRICE: Your Honor, the State would move

Bennick - Direct

1 to have Exhibits 9 and 10 admitted into evidence.

2 THE COURT: Any objection?

3 MR. HAMILTON: No objection.

4 THE COURT: Entered into evidence without
5 objection.

6 (Property and evidence documents previously
7 marked as State's Exhibit Nos. 9 and 10 for identification
8 were admitted into evidence.)

9 BY MS. PRICE:

10 Q. You have these property and evidence sheets, do
11 you have an additional report that is generated after
12 these property and evidence sheets are turned in with the
13 evidence?

14 A. We do. There's a bar code system. These reports
15 are entered into the system at the time that the evidence
16 clerk is to lay hands on it. It is then forwarded to our
17 records division to holding and from that point forwarded
18 to the electronic file that is kept on that item.

19 Q. I'm showing you what's been marked State's
20 Exhibit 11, are you familiar with this?

21 A. Yes, ma'am.

22 Q. And what is that, ma'am?

23 A. This is the electronic movement sheet.

24 Q. Does that sheet in correlation with the property
25 and evidence sheets which were initiated by an officer

Bennick - Direct

1 tell you who checked the items into property and evidence?

2 A. Yes.

3 Q. Could you please tell me who initially turned the
4 items into property and evidence and then who checked them
5 in from your office?

6 A. They were turned in by Detective Cothran
7 originally who generated the report itself, and then
8 Tabitha Fritz one of the property clerks picked this stuff
9 up and accepted it. She actually accepted it at the
10 counter.

11 Q. Directly from the office?

12 A. Yes.

13 Q. Does the sheet show whether or not the times were
14 checked out by anyone after initially being checked into
15 property and evidence?

16 A. They do.

17 Q. And when was that?

18 A. They were checked out on June 1, 2011 to James
19 Armstrong.

20 Q. And were they again checked back in to property
21 and evidence by Mr. Armstrong?

22 A. They were.

23 Q. Who checked them back in?

24 A. On July 1st Melanie Watson checked them back in.

25 Q. And she works for you as well?

Bennick - Direct

1 A. She does.

2 Q. Has the evidence been checked out again according
3 to your records from property and evidence prior to being
4 brought to court today?

5 A. Not prior to being brought to court, however, I'm
6 the one that signed it out for court this morning.

7 MS. PRICE: Your Honor, at this time we move
8 State's Exhibit 11 into evidence.

9 THE COURT: Any objections?

10 MR. HAMILTON: Judge, she's testified to it,
11 I believe it's cumulative. I don't believe it's
12 necessary.

13 THE COURT: State's 11 into evidence without
14 objection.

15 MS. PRICE: Thank you, Your Honor.

16 (Document previously marked as State's
17 Exhibit 11 for identification was admitted into evidence.)

18 BY MS. PRICE:

19 Q. So you are the one who checked it out this
20 morning. It has been in a secured monitored location
21 since it was checked in by initially Detective Cothran?

22 A. Yes, ma'am, it's been held in the storage room
23 for the drugs.

24 Q. Thank you, very much, Ms. Bennick.

25 A. You're welcomed.

Armstrong - Direct

1 Q. Answer any questions Mr. Hamilton has for you.

2 MR. HAMILTON: I have no questions.

3 THE COURT: Call your next witness.

4 MS. PRICE: Yes, sir. The State calls James
5 Armstrong.

6 THE CLERK: Place your left hand on the Bible
7 and raise your right hand.

8 JAMES ARMSTRONG, having been duly sworn,
9 testified as follows:

10 Thank you. You may be seated. State your
11 name for the record.

12 MR. HAMILTON: Your Honor, we'll stipulate to
13 his qualifications.

14 THE WITNESS: James William Armstrong.

15 DIRECT EXAMINATION

16 MS. PRICE: Since they stipulated to your
17 qualifications which are quite lengthy, Your Honor, I'd
18 move to have to Mr. Armstrong qualified in the field of
19 chemical drugs.

20 THE COURT: Any objections?

21 MR. HAMILTON: No objection.

22 BY MS. PRICE:

23 Q. Mr. Armstrong, were you asked to analyze any
24 chemical substances in this case?

25 A. Yes, ma'am, I was.

Armstrong - Direct

1 Q. How did you obtain the chemical substances?

2 A. Received them from the property and evidence room
3 that's in the basement of law enforcement center.

4 Q. When did you check the substances out of property
5 and evidence?

6 A. I received the item on July 1, 2011.

7 Q. I'm showing you what's been marked as State's
8 Exhibit 5. Could you please open it and tell me if this
9 is what you checked out of property and evidence?

10 A. Yes, ma'am, it is.

11 Q. How do you know?

12 A. The outer bag has my initials and the date which
13 is heat sealed. The inner bag also has my initials and
14 the date where I cut the bag open. And it also has my
15 initials along with an item number and weight that
16 contains a rock substance.

17 MS. PRICE: Your Honor, the State would move
18 to have State's Exhibit No. 5 entered into evidence at
19 this time.

20 THE COURT: Any objection?

21 MR. HAMILTON: No objection.

22 MS. PRICE: Thank you, Your Honor.

23 (Drugs previously marked as State's Exhibit
24 No. 5 for identification was admitted into evidence.)
25

Armstrong - Direct

1 BY MS. PRICE:

2 Q. Mr. Armstrong, if the substance that you'd been
3 asked to analyze wasn't sealed, what would you do?

4 A. We'd make a notation on the bag if they didn't
5 catch it at the property and evidence room. If we caught
6 early enough, we would actually tell the property clerks
7 it was not sealed and have the officer come back and seal
8 the evidence.

9 Q. How did you analyze the substance in this case?

10 A. I did a chemical spot test and an instrumental
11 analysis.

12 Q. How much material do you need to perform these
13 tests?

14 A. Approximately 100th or so of a gram.

15 Q. How many bags came to you when you did your
16 analysis?

17 A. I had one.

18 Q. Just one. And what did your test and analysis
19 reveal the substance in that bag to be, sir?

20 A. I found this bag containing rock substance to
21 contain cocaine base at the weight of 1.79 grams.

22 Q. Does cocaine base have a common street name?

23 A. Also known as crack cocaine.

24 Q. And how many grams?

25 A. 1.79.

Armstrong - Direct

1 Q. After you analyze the material, did you document
2 the tests you conducted and your results?

3 A. Yes, ma'am, I did.

4 Q. How did you do that?

5 A. I generated a lab report and then the evidence
6 was taken back to property and evidence.

7 Q. Does that lab report kept in the course of
8 regularly conducted business at the Greenville County
9 Crime Lab?

10 A. Yes, ma'am, it is.

11 Q. And is it your regular practice to document your
12 findings in these drug reports after you analyze
13 substances from property and evidence?

14 A. Yes.

15 Q. I'm showing you what's been marked as State's
16 Exhibit 12, sir. Are you familiar with that?

17 A. Yes, I am.

18 Q. And what is it, sir?

19 A. This is a copy of my drug analysis report for
20 case no. City-201155552.

21 Q. How do you recognize it?

22 A. My name is printed and signed with a date at the
23 bottom.

24 Q. And after you analyzed this material, what did
25 you do with it?

Armstrong - Cross

1 A. After the analysis was complete, the items were
2 sealed up and taken back to evidence for storage.

3 Q. Is the evidence that was marked as State's
4 Exhibit 5 the same evidence you returned to Greenville
5 County Property and Evidence?

6 A. Yes, ma'am, it is.

7 Q. And is it in substantially the same condition
8 today as when you returned it to property and evidence,
9 sir?

10 A. Yes, it is.

11 Q. Thank you very much. Please answer any questions
12 Mr. Hamilton may have.

13 THE COURT: Mr. Hamilton.

14 CROSS-EXAMINATION

15 BY MR. HAMILTON:

16 Q. You analyzed this to be crack cocaine and based
17 on the chain of custody, you don't know where it came
18 from?

19 A. That's correct.

20 Q. Do you have any information that it came from a
21 subject named James Grant?

22 A. I was given a lab request form just to analyze
23 items under this case number and this item number.

24 Q. So you don't know where it came from?

25 A. I have no idea.

Cothran - Recall

1 MR. HAMILTON: That's all I have, Judge.

2 THE COURT: Thank you. You may step down.

3 MS. PRICE: May this witness be excused, Your
4 Honor?

5 MR. HAMILTON: No objection.

6 (Witness excused.)

7 MS. PRICE: Your Honor, we would briefly
8 recall Detective Cothran only for the purpose of moving in
9 some statements.

10 THE COURT: All right.

11 (Detective Cothran retakes the stand.)

12 CHARLES COTHRAN, having been duly sworn,
13 testified as follows:

14 BY MS. PRICE:

15 Q. Detective, I'm showing you what's now opened and
16 marked as State's Exhibit 5. It's been moved into
17 evidence. Is this what you retrieved from Mr. Grant when
18 he returned to your office, sir?

19 A. Yes, it is.

20 Q. I'm showing you what has been marked as State's
21 Exhibit 1 and 2. What are those exhibits, sir?

22 A. Exhibit 1 is the photo line-up affidavit that I
23 presented to Mr. Grant the day of the incident. State's
24 Exhibit 2 is the photo line-up where Mr. Grant circled and
25 initialed and dated indicating Mr. Ivery was the person

Cothran - Recall

1 who sold him the crack cocaine.

2 MS. PRICE: Your Honor, at this time, the
3 State would move to have State's Exhibits 1 and 2 moved
4 into evidence under the prior inconsistent statement.

5 THE COURT: Any objections?

6 MR. HAMILTON: I object, Your Honor. He
7 clearly stated he did not circle that.

8 THE COURT: I'm going to overrule the
9 objection. They are not hearsay.

10 MS. PRICE: Thank you, Your Honor.

11 (Affidavit previously marked as State's
12 Exhibit 1 for identification was admitted into evidence.)

13 (Photo line-up previously marked as State's
14 Exhibit 2 for identification was admitted into evidence.)

15 BY MS. PRICE:

16 Q. I'd like to show you State's Exhibit 6. Once
17 again tell me what that item is, sir?

18 A. This is the confidential informant or operative
19 statement that Mr. James Grant completed the day of the
20 incident.

21 MS. PRICE: At this time, the State would
22 move to have State's Exhibit 6 moved into evidence as well
23 as we would request permission to have Detective Cothran
24 publish that to the jury.

25 THE COURT: Any objections?

Cothran - Recall

1 MR. HAMILTON: Your Honor, he testified that
2 he didn't sign anything.

3 THE COURT: State's No. 6 is in evidence.
4 (Statement previously marked as State's
5 Exhibit No. 6 for identification was admitted into
6 evidence.)

7 MS. PRICE: Thank you, Your Honor.

8 THE WITNESS: At the very top of the form it
9 says, "Confidential Informant/Operative Statement." The
10 charge is distribution of cocaine base. The case number
11 is 11-55552. The date is 6/30/11. The defendant Gregory
12 Ivery, race, black, sex, male. The transaction location
13 is ■■■■■ Street, time 12:53, substance bought, cocaine
14 base, amount spent \$140. Surveillance detectives,
15 Cothran, Irvin, Hyatt, Wilks, Brown. Type if surveillance
16 audio video. Summary in Mr. Grant's writing: "I have Greg
17 Ivery \$140 for some crack so that I can flip for a bill.
18 I have crack to Detective Cothran." The bottom left is
19 CI/Operative with an X mark that I placed indicating where
20 he needed to sign. James Grant's signature and it's got
21 Detective and then Cothran CK and then my signature.

22 BY MS. PRICE:

23 Q. Thank you, Detective Cothran.

24 MS. PRICE: No further questions from the
25 State.

Cothran - Recall

1 THE COURT: Mr. Hamilton.

2 BY MR. HAMILTON:

3 Q. You took those statements -- when did you take
4 those statements?

5 A. Immediately after. When you watch the video, we
6 come up the stairs going to the room, I turn everything
7 off, I get the drugs, secure the drugs in my desk lock and
8 key, go back with the paperwork that I need to have
9 completed. You can actually hear me telling him it
10 shouldn't take us long to get the paperwork done because
11 he had an appointment or had to meet his wife or someone
12 at that time.

13 Q. And there's no evidence that he handed you any
14 drugs?

15 A. Other than my testimony, no.

16 MR. HAMILTON: Thank you.

17 THE COURT: You can step down.

18 MS. PRICE: No further witnesses from the
19 State.

20 THE COURT: Members of the jury panel, we
21 have to take up some matters out here. If you would step
22 into the jury room, do not discuss the case, and we'll be
23 back with you shortly.

24 (Jury exits the courtroom.)

25 Any motions?

State versus Ivery

1 MR. HAMILTON: I do have motions. I probably
2 should have objected at the introduction of the evidence
3 and that is there is no evidence of drugs being
4 transferred or handed to the detective. Clearly he took
5 some drugs down there but there is not evidence to show
6 that it came from the defendant or the confidential
7 informant. The confidential informant did verify that he
8 gave that detective anything. He said he didn't buy
9 anything from this defendant and there is no evidence of
10 this drugs coming from the defendant and we ask for a
11 directed verdict on that.

12 THE COURT: That is a question for the jury
13 and I deny the motion.

14 MR. HAMILTON: The other matter is the
15 showing of the video that was not sufficiently validated
16 by the officer. He wasn't in the video and therefore he
17 couldn't verify that it was accurate on everything that
18 was shown in it. He said he saw it and it looked like it
19 happened or something so we object to the evidence of the
20 video in this case.

21 THE COURT: I will deny that motion as well.

22 MR. HAMILTON: That's all we have, Judge.

23 THE COURT: We'll take a brief break.

24 (Whereupon, there was a break.)

25 MR. HAMILTON: Judge, we're ready to proceed.

State versus Ivery

1 THE COURT: Are you planning on presenting
2 any witnesses?

3 MR. HAMILTON: The defendant will rest his
4 case.

5 THE COURT: Let me talk to your client. If
6 you would come on up here and let the clerk swear you in.

7 THE CLERK: Would you please raise your right
8 hand.

9 GREGORY IVERY, having been duly sworn,
10 testified as follows:

11 THE COURT: Let me go over certain rights
12 that you have and I want to make sure you understand these
13 rights. The first thing I want to tell you is that if you
14 would like to testify, you may. You have that right. You
15 can come over here and you can place your left hand on the
16 Bible. You can raise your right to be sworn in to tell
17 the truth, nothing but the truth, and you can testify.
18 However, I want you to understand that if you do testify,
19 you may be cross-examined on any and all relevant issues
20 in connection with your case.

21 Furthermore, if you have a criminal record
22 that involves crimes of dishonesty or false statements, or
23 you have a criminal record that crimes that serves time
24 more than one year and the Court determines that the
25 probative value outweighs its prejudicial effect, then

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1 your record will be introduced to attack your credibility.

2 Do you understand this?

3 DEFENDANT IVERY: Yes, I understand it.

4 THE COURT: And I want you to understand,
5 however, you have the constitutional right to remain
6 silent. You do not have to testify. Nobody can make you
7 testify. And, in fact, if you choose to exercise that
8 right not to take the witness stand, I want you to
9 understand that I will tell the jury they can not use that
10 against you in any way whatsoever.

11 I will tell the jury the fact that you did
12 not testify has absolutely no prejudice against you. I
13 will even tell the jury they can not discuss that fact in
14 the jury room.

15 Do you understand your right to remain
16 silent?

17 DEFENDANT IVERY: Yes, sir.

18 THE COURT: Have you talked with your lawyer
19 about whether or not you wish to testify?

20 DEFENDANT IVERY: Yes, sir.

21 THE COURT: Has he answered all of your
22 questions?

23 DEFENDANT IVERY: Pretty much.

24 THE COURT: Do you have any questions for
25 your lawyer at this time?

State versus Ivery

1 DEFENDANT IVERY: No, sir.

2 THE COURT: Have you understood everything I
3 have told you?

4 DEFENDANT IVERY: Yes, sir.

5 THE COURT: Do you have any questions for me
6 about your right to testify?

7 DEFENDANT IVERY: I just want to say thank
8 you.

9 THE COURT: Have you understood everything I
10 told you?

11 DEFENDANT IVERY: Yes, sir.

12 THE COURT: Do you wish to testify?

13 DEFENDANT IVERY: No, sir.

14 THE COURT: The defendant has chose not to
15 testify and he did so freely and voluntarily with the
16 advise of a very competent lawyer. Thank you.

17 Why don't you bring the jury out and let you
18 rest on the record, send them out, let him renew his
19 motion and then I'll charge.

20 Y'all want to take a look at the verdict form
21 real quick while we have a break.

22 (There was a brief break.)

23 Any objections to the verdict form from the
24 State or the Defendant?

25 MS. PRICE: Nothing from the State.

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1 MR. HAMILTON: Nothing from the defendant.

2 THE COURT: As far as I my charge goes, I'm
3 going to give them a little introduction. I'm going to
4 read reasonable doubt pursuant to Nebraska, direct and
5 circumstantial evidence, duties of the judge and jury,
6 rights of the defendant to testify, expert testimony,
7 police officer charge, distribution of cocaine base,
8 distribution of cocaine base within proximity of a school
9 or park. Is that correct for the State?

10 MS. PRICE: Your Honor, I'm not familiar with
11 the police officer charge.

12 THE COURT: It just says they judge their
13 credibility and believability like any other witness.
14 Just because their police officer doesn't mean --

15 MS. PRICE: Distribution, would Your Honor be
16 inclined to --

17 THE COURT: Why don't y'all come up here and
18 take a look at it.

19 Any objection to the charge from the State?

20 MS. PRICE: Nothing from the State, Your
21 Honor.

22 THE COURT: How about the defense?

23 MR. HAMILTON: Nothing from the defense, Your
24 Honor.

25 THE COURT: Let's bring out the jury.

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1 (Jury re-enters the courtroom.)

2 All right, solicitor, you may proceed with
3 your closing statements.

4 MS. PRICE: Thank you, Your Honor.

5 Ladies and gentlemen of the jury, it's almost
6 decision time and I promise you I will keep it brief and
7 try to hold to that promise, but there are a few things I
8 need to go over with you before the Judge sends you back
9 to render a verdict.

10 The first thing I want to say is that you now
11 have all the evidence that you're going to hear in this
12 case, all of the testimony that you're going to hear.
13 Sometimes during deliberations jurors will ask for
14 additional information, perhaps additional witness
15 statements or reports, but everything you have is here on
16 this table will all that you have to consider in
17 conjunction with what you heard from the stand today. In
18 rare situations and only rare situations sometimes comes
19 back but the rules of evidence don't permit us to send
20 anything else back at that point.

21 You have all the evidence and I submit that
22 you have all the evidence that you need to find this
23 defendant guilty today.

24 Ladies and gentlemen, this entire case
25 ultimately hinges on the law. The Judge is going to

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1 charge you the law momentarily but I'm going to tell you
2 what I believe the version to be and Mr. Hamilton is going
3 to come up here and tell you what he thinks. If anything
4 that I saw or Mr. Hamilton says differs in any way what so
5 ever from what the Judge tells you in a moment, you need
6 to go with what the Judge tells you because he is arbiter
7 of the law.

8 You heard a number of times and you're going
9 to hear it some more that the defendant has come into this
10 courtroom innocent. That is absolutely true and the State
11 embraces that. That's a fundamental concept of American
12 law. Our country was built on concepts like that, but if
13 beyond a reasonable doubt was an impossible burden for the
14 State to overcome, we would never have a criminal
15 conviction from the simplest charge of speeding to
16 whatever you may consider to be the most serious charge,
17 the burden is the same. So every criminal defendant who
18 has ever been convicted by a jury like you deemed to have
19 met that burden.

20 Now, there are very few things in this world
21 that we know, if anything at all, with complete certainty.
22 There are very few things that can be known beyond all
23 doubt, if anything. The law doesn't require that in
24 criminal cases. I want you to keep in mind that the
25 burden of proof is not beyond all doubt or beyond every

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1 doubt. The standard is beyond a reasonable doubt. It
2 simply means you're firmly convinced. It means the doubt
3 would be reasonable that's left in your mind.

4 I want to take a few moments to summarize
5 with you how the evidence that we put before you today and
6 it, in deed, does show beyond a reasonable doubt how this
7 defendant is guilty. In order to convict this defendant
8 there has to be evidence of each of the elements of the
9 offense for which the defendant has been charged.

10 As you heard the defendant is charged with
11 defendant is charged with distribution of cocaine base and
12 cocaine base within one half mile of a school. I think I
13 tripped on that in my opening and I hope I had enough
14 coffee this afternoon to get out of my mouth the rest of
15 my closing, but that is the accurate charges in the case.

16 As the State as I said I have to prove every
17 element of those crimes and show you that I've proven each
18 element beyond a reasonable doubt. The elements of those
19 crimes are for distributing cocaine base, the defendant
20 distributed, which means he delivered over than by
21 administering or dispensing which would be like what a
22 pharmacist does. He delivered meaning he actually handed
23 it to someone, in this case, or transferred cocaine base.

24 So let's look at distribute. You saw the
25 video, you have affidavit's from the confidential

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1 informant, you saw him speak with him. You have testimony
2 from Detective Cothran and all of it indicates that this
3 defendant delivered crack to Mr. Grant in exchange for
4 \$140 which was provided to him by Detective Cothran.

5 Now, you heard that this buy was monitored
6 the entire time it was occurring and you heard that the CI
7 and his vehicle was searched both before and after the
8 buy. The only place, ladies and gentlemen, that these
9 drugs could have come from was this defendant. You saw
10 the entire video and, in fact, it was probably fairly
11 tedious in parts of it but there is a reason you got to
12 watch the entire video and that reason is the integrity of
13 the case. It is something that Detective Cothran has hit
14 on, it's something I'm going to hit on now.

15 Integrity is important here. We want you to
16 see everything from beginning to end. There's nothing
17 hidden from you. Everything that you saw is exactly what
18 happened that day. The only place that these drugs could
19 have come from was from the individual that handed them to
20 this confidential informant on the video.

21 I submit to you if you listen closely to the
22 video as was suggested by Detective Cothran, you can hear
23 this defendant and you could hear the CI talking about the
24 quality of the drugs that were just handed over. You have
25 the video in evidence and if you feel it's necessary to

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1 listen to it again, we have that available if you need to.

2 As to the second element whether he
3 delivered, he delivered cocaine base which is crack. You
4 heard James Armstrong. He testified that all together
5 this substance is 1.79 grams of crack. You'll have this
6 in your jury deliberation room. You can look at it and
7 you can see it's broken up and you also have the lab
8 report that shows it tested positive as cocaine base. I
9 don't think there's any doubt that the substance before
10 you is cocaine base.

11 The State also has to prove for the
12 additional charge that the defendant distributed cocaine
13 base within the distance of half mile of a school knowing
14 that he was within that distance. You heard testimony
15 from the detective that the school, in this case, the
16 community center was within one half mile of this
17 defendant's residence. You ask yourself do you know if
18 there is a school within a one block radius of your
19 residence? Is that something you would know?

20 Now, you may not like the informant in this
21 case or his past. I can tell I don't like him very much
22 myself. People don't like drug dealers and don't hang out
23 with drug dealers. It's criminals that hang out with drug
24 dealers and dealers are the people that they hang out
25 with. We can't as prosecutors or detectives try to hide

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1 and go out on the street and walk up to someone on the
2 street and ask them to sell us drugs. It just doesn't
3 work so the people that we use are the people that they
4 trust and that's why they use confidential informants.

5 You can see Mr. Grant was not to happy to be
6 here today and there's a few reasons for that, one of
7 which he was not given the deal that he was offered or
8 expected in his shoplifting charge. You heard me ask him
9 about the shoplifting charge from earlier in June right
10 before he agreed to cooperative from the detective. He
11 didn't feel he got he benefits that he wanted. That is a
12 case for another day, but ladies and gentlemen I think
13 there's another reason why he wasn't happy to be hear,
14 because there's a stigma associated with people that are
15 snitches or stool pigeons or squealers or rats; people who
16 turn on people they may know or use other people they know
17 to get a benefit or not liked by most members of our
18 community, but that's the way we catch criminals.

19 Fortunately, no matter how Mr. Grant feels
20 today, he's already given you everything you need in this
21 case to find this defendant guilty.

22 I submit to you also at the time he gave
23 these statements, if there's any doubt in your mind, he
24 was telling the truth and you can confirm it. He even
25 admitted on the stand this was his signature. Now, he

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1 said, no, I didn't circle anything but he admitted these
2 were his signatures. To believe that they aren't his
3 signatures or to believe that's not him on the video would
4 mean that this detective who is now in the homicide unit,
5 the violent unit, has stakes his entire career on a lie on
6 1.79 grams of crack cocaine. And I want you to ask
7 yourselves if it makes any sense. He has nothing to gain
8 and everything to lose by doing that.

9 Now, every time a citizen sits on a jury and
10 they render decisions, they bring justice to those who are
11 directly involved in the case before them. But more
12 importantly in rendering decisions as a jury to enforce
13 the laws of our community. That's why giving your time on
14 this jury today is so important. Not only do you honor
15 those of us who are directly involved in this case, but
16 you're also honoring everyone in Greenville County who
17 believes in a drug free and crime free community.

18 Drugs are insidious and they're a scourge on
19 our state quite frankly. We as a state have passed law
20 because of the effects they have not only on the people
21 who use them but on the family members of the people that
22 use them and the communities where they're a problem

23 Everyone knows including this defendant that
24 crack is illegal and it's harmful to people, but there are
25 some people like this defendant who choose to ignore how

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1 these substances not only hurt other people, but hurt our
2 communities and they do it for their own financial gain.
3 They do it with the full knowledge, though, that they may
4 face judgment for their actions in a court of law
5 eventually and for this defendant today is that day.

6 Now, the defense is going to get up here in a
7 minute and try to distract you from what happened and you
8 have the evidence in front of you. I'd like to ask you to
9 keep any eye on what's in front of you. We've gone
10 through the elements and I think that you have the tools
11 and the facts that you need to decide this case. The only
12 tool you really need is your common sense and your life
13 experiences and I encourage you to use those today.

14 On behalf of the State of South Carolina, I'd
15 ask you to go back to your jury room and review the
16 evidence before you and come back with a verdict of
17 guilty. I thank you for your time and for your attention
18 today.

19 THE COURT: Mr. Hamilton.

20 MR. HAMILTON: May it please the Court.
21 Mr. Foreman, ladies and gentlemen of the jury, we are now
22 at the phase of the trial where after I am done giving my
23 closing remarks and what I think the evidence will show,
24 the judge is going to give you the instructions as to
25 exactly what the law is in this case. And then all 12 of

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1 this case based on the evidence presented.

2 I find it interesting they always say that I
3 say ain't evidence and what I saw ain't evidence, but at
4 the same time she asked you to listen to us and put some
5 value to it because I am just here to assist my client in
6 getting you to do what you've sworn to do as a juror and
7 that is decide his fate based on the evidence in the case.

8 The Judge is here to give you the law and
9 he's going to tell you that you may find the truth in
10 facts by evidence over circumstantial evidence. You
11 already know about certain things like direct evidence. I
12 seen it and that happened, but then I didn't see it but
13 the glass turned over and it had water in it. I don't
14 know who turned over but it got knocked over and the water
15 spilled and if I'm the only one in the room, maybe I'm the
16 one who did it, but that's all you have, and the
17 circumstances could be something happened.

18 It this a circumstantial case? The Judge is
19 also going to give you instructions as to the credibility
20 and the believability of the witnesses. You can believe
21 one witness against another or half of what the witness
22 states and give some rationale. That's the power you
23 have. You determined what happened and we all know none
24 of what you did and half of what you see. They showed the
25 movie but we all know in this day in time movies can be

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1 manipulated and then you find that it had, but what did
2 you see? Did you see anybody buying drugs? Do you
3 understand what they are talking about? Are you satisfied
4 that the government proved to you beyond a reasonable
5 doubt what happened because there are some kind dealings
6 going on here.

7 I tried to bring it out but the detective
8 said I don't know Mr. Ivery and I never met the other
9 people that went out there and he said that the first time
10 he met Mr. Grant is when he came to me. And he said he
11 had to do some research as to who Greg Ivery was and then
12 he had to put the case together to protect the integrity
13 of the case. But where Gregory Ivery lived he was a
14 patrolman there and said I, yeah, I know them. So when
15 this informant supposedly came to him, allegedly came to
16 him, and said Gregory Ivery, that wasn't the first time he
17 knew of him. It wasn't the first time he knew of him. He
18 told you that. He knew him when he ran the beat. He knew
19 him when he was a vice officer and he knew him now that
20 he's in violent crime.

21 We need good law enforcement officers. They
22 protect us, protect me, protect my wife and children so we
23 need police and we need police to do what they supposed to
24 do. And integrity is important because it happens and
25 some people make cases and it didn't happen and he said he

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1 wanted to make a case and he said he didn't want to put
2 the wrong person in jail. In the video I didn't see any
3 drugs. Did you see any drugs in the video? From the
4 video I said I didn't see any drugs.

5 When he got to the station with the
6 technology they have, couldn't they show him putting drugs
7 on the table or couldn't they show that. The video was --
8 we didn't even see anything. It could have been a box or
9 anything and you don't have anything you can take back to
10 the jury room and look at. Did you see that in the video?

11 Mr. Grant said I didn't get nothing from this
12 guy and I don't smoke crack and I don't do that. He did
13 do the shoplifting. He had some shoplifting charges
14 pending. Think about this, now, he some kind of deal
15 going on. He had sunglasses, a box full of sunglasses he
16 tried to sell ---

17 MS. PRICE: I'm going to object, Your Honor.
18 I don't believe that was in evidence at all and I don't
19 know what he was talking about.

20 THE COURT: Move on, Mr. Hamilton.

21 MR. HAMILTON: I didn't see Mr. Grant in the
22 video. Did you see Mr. Grant in the video? I didn't see
23 him. In fact he said he wasn't there. Did you hear him
24 say that? I heard him. He said what video. The evidence
25 is based on your judgment.

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1 When you try these cases you convict
2 somebody. You have to make a decision on what you've seen
3 and based on the evidence that's present it and you apply
4 as to the law, the credibility and believability of the
5 witnesses.

6 I submit to you that Mr. Grant says that I
7 had a shoplifting charge and some kind of deal went wrong
8 in some kind of way and he did not get any drugs because I
9 didn't see any drugs on the video. Something went wrong
10 in the transaction when the deal was made and this officer
11 sent him to -- this officer claims he never been to
12 Mr. Ivery's place and he says I know about all that but I
13 personally have never been, but he did know about that and
14 he was targeted.

15 What's this targeted business? Mr. Grant, if
16 he was purposely going to get something as he testified
17 to, I got some information I'm going to get Greg Ivery,
18 but then he says how about this other guy or how about
19 this other guy I can get him, no, no, no, I don't want
20 nobody else. If he had bought drugs from somebody else
21 other than Greg Ivery, how would that video have been any
22 different as far as the case. It would have shown a
23 different person, but, no, for some reason -- no, no, stay
24 there, we want Greg Ivery. Stay there, don't move, well,
25 I can go over here and get the same thing, no, no, you

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1 stay there. They call him up, you still there, yeah, I'm
2 still there.

3 Now, I'm talking like that was James Grant
4 and you may be firmly convinced but I didn't see his
5 picture on the camera. But that's your decision as to who
6 that really was beyond a reasonable doubt. Did you see
7 him in that video? Did you see any drugs? Did you see
8 where he wasn't interested in Greg Ivery at all and he
9 wanted to go somewhere else and this officer said, no, no,
10 I wanted to keep the integrity.

11 If you buy drugs somebody and we live in a
12 technology world -- I was a prosecutor for 20 years and
13 you got all this stuff at your disposal from A-Z in
14 investigating these crimes and you go all the way to the
15 end and you don't have the drugs handed to somebody, you
16 don't have somebody and you took pains to say such and
17 such a place and such and such a time and this concludes
18 our investigation and the informant is handing me this.
19 Did you see that? Did something go wrong? This guy
20 convicted of shoplifting walked around in front of police
21 with stolen items. They don't arrest him. They check,
22 they already told you.

23 He comes back and they check again. You
24 can't trust those people, we're all criminals. I said we
25 because she said something like they all work together,

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1 informants, and they all trust each other but they know
2 they can't trust each other now, but crooks around crooks
3 and stuff, but as a lawyer and a prosecutor and as police
4 we all associated with crooks too. I make my livelihood
5 dealing with people accused of crimes and some people who
6 are actually involved in stuff.

7 As police officers, that's all they deal with
8 untrustworthy people. That's why they searched the car,
9 patted him down, and wired him up. That's why this sign
10 this and sign that so you don't change your story. Here's
11 something interesting about this, he said he signed or
12 didn't sign, but he was quick to tell you that I didn't
13 circle anything. You can kind of trust him on that
14 because the main thing is how do you tell somebody is
15 telling you the truth about something? The truth is just
16 like the wind blowing, it blows, but you can't see the
17 wind and I can tell you that the wind is blowing by
18 looking out and there are the trees with the leaves on
19 them and you see the leaves blowing and you say, oh, look
20 the wind is blowing. That's how you can tell the wind is
21 blowing. It's not the big tree that's telling you the
22 wind is blowing, it's the leaves. It's the little things.
23 There are little things in this case where you can find
24 the truth.

25 There was a great deal of time to get

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1 something on my client. Yeah, we're going to get him.
2 Don't change up, don't do that. And then in the end
3 something as important as this, they don't give you the
4 evidence to show, that No. 1 the CI didn't point to the
5 pictures. He said he didn't take no pictures. He wasn't
6 in no video. He said he wasn't part of no drugs. The
7 best case would be he come in and say, yeah, I did it and
8 they gonna give me a deal and I contacted the officer.
9 You don't have that. You don't have that one little bit
10 of thing that says that that's drugs in that video beyond
11 a reasonable doubt.

12 If you somebody try to convince you of that
13 in your mind you're not convinced, but if you are
14 convinced than that's drugs, then you're satisfied with
15 that evidence that that was drugs and he sold them to
16 Mr. Grant and Mr. Grant paid that kind of money.

17 How easy -- they took pictures of the money
18 and you're going to have that back in the jury room but he
19 comes into the station in Greenville, downtown Main Street
20 and buys with the drug money they got pictures of and goes
21 right back out there. He's standing right there. He
22 could say here, I got the money, this is how cases are
23 made, that's how better cases are made. That's how law
24 enforcement works. That's why they take pictures of the
25 money.. So what good is this.

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1 Mr. Grant said I didn't circle that so that
2 shows you that he did an investigation and showed they
3 already knew who Gregory Ivery was so why do all this
4 circling. Those little things are they're trying to build
5 a case, but they didn't. They didn't satisfy you as
6 jurors.

7 The only reason why I'm standing here and
8 pleading with you is because my experience and I'm one of
9 these older lawyers that used to say it's best nine people
10 go free than one innocent person be wrongly convicted.
11 What that says is that you just weren't satisfied and you
12 turn him free, but if he is wrongly convicted and wrongly
13 identified and wrongly targeted and that the evidence
14 falls way short.

15 So you have all these documents from the
16 government but you don't have the one document that
17 Gregory Ivery gave him the money. Did you see the drug
18 transaction? Are you satisfied that he gave him the
19 money? It's against the law for anyone to -- I can't give
20 you cocaine. That's against the law, too, but in this
21 case they claim that they spent money. Did you see a
22 money transaction at any time? What time in the video did
23 they had the money? Where was the money transaction and
24 where is the drugs.

25 I have to repeat one or two things and I am

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1 going to conclude, common sense. Common sense is my final
2 statement that I worked out here because I started out
3 with there was some kind of deal. You just have to apply
4 your common sense and if you honestly believe that the
5 government has failed -- this is a lesson to take that
6 extra step but do something -- this is a learning
7 experience but not at the expense of my client.

8 Thank you.

9 THE COURT: Thank you, Mr. Hamilton.

10 Members of the jury, it is now my duty as the
11 trial judge to instruct you on the law applicable to this
12 case and in that regard it is your duty to accept and
13 apply the law as I state it to you. Furthermore, it is
14 your exclusive duty to decide all the issues of the fact
15 in this case and to determine the effect, value, weight
16 and truth of the evidence. Both the State and this
17 defendant have the right to expect that you will carefully
18 and consider and evaluate the evidence and apply the law
19 of this case to it so that in the end both the State of
20 South Carolina and this defendant will have received a
21 fair and impartial trial.

22 Furthermore, I want you to understand that
23 when I use the word defendant I refer to Mr. Gregory Allan
24 Ivery. Also, it is important to understand that the State
25 of South Carolina charges the defendant with the offense

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1 known as distribution of cocaine base, crack cocaine, and
2 distribution of cocaine base within one half mile of a
3 school or park. These offenses are in violation of
4 Section 44-53-0375 and 44-53-0445 of the South Carolina
5 Code of Laws that amended. To these charges the defendant
6 has entered a plea of not guilty.

7 His plea of not guilty placed the burden on
8 the State to prove the guilt of the defendant beyond a
9 reasonable doubt. It is vital to understand that the
10 defendant is presumed under the law to be innocent of the
11 charges. It is a fundamental rule of our law that a
12 defendant regardless of the seriousness of the charges
13 against him is always presumed innocent of the crimes for
14 which he is charged unless and until his guilt has been
15 proved by evidence that satisfies you beyond a reasonable
16 doubt.

17 The presumption of innocence is not a mere
18 legal theory or legal phrase. The presumption of
19 innocence is very important and you need to understand
20 this presumption accompanies the defendant from the time
21 of his arrest and appearance in this court and continues
22 with the defendant even after you retire to the jury room
23 to deliberate.

24 In other words, the defendant receives the
25 benefit of the presumption of innocence until the very end

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1 of this trial when you would deliberate upon the evidence
2 and decide whether the State has proven his guilt beyond a
3 reasonable doubt.

4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's guilt.
6 There are few things that we know with absolute certainty
7 so even in criminal cases the law does not require proof
8 that overcomes every possible doubt. However, based on
9 your consideration of the evidence you are firmly
10 convinced the defendant is guilty of the crimes charged,
11 you must find him guilty.

12 If on the other hand, you think there's a
13 real possibility that he is not guilty, you must give him
14 the benefit of the doubt and find him not guilty. Please
15 understand that reasonable doubt may arise from evidence
16 that has been presented in the case or from the lack of
17 evidence in the case.

18 It is your responsibility to determine
19 whether or not reasonable doubt exists as to the guilt of
20 this defendant. I charge you that the defendant is
21 entitled to every reasonable doubt arising in the whole
22 case. If upon any issue of fact essential to conviction
23 and a verdict of guilty you have a reasonable doubt as to
24 how that issue should be resolved, it would be your duty
25 to resolve that reasonable doubt in favor of the

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1 defendant. Thus in summary it is important to understand
2 that a defendant is not required to prove his innocence.
3 Instead the state is required by law to prove every
4 essential element of offenses charges against the
5 defendant by evidence which satisfies you of his guilt
6 beyond a reasonable doubt. Only then can you convict the
7 defendant and find him guilty.

8 Furthermore, evidence can be direct or
9 circumstantial. Direct evidence is testimony by a witness
10 about what the witness personally saw or heard or did.
11 Circumstantial evidence is indirect evidence. In other
12 words, it is proof of one or more facts from which one can
13 find another fact. You may consider both direct and
14 circumstantial evidence equally.

15 During this trial, you and I have separate
16 duties to perform. As the Judge, it is my responsibility
17 to preside over this trial. Furthermore I have the duty
18 to rule upon the admissibility of the evidence offered
19 during the trial. In that regard, you are to consider
20 only the evidence before you, thus you are to consider
21 only the testimony which as been presented from this
22 witness stand together with any exhibits submitted into
23 the record of this case.

24 Also I have the additional duty to charge you
25 on the law applicable to this case, and in that regard it

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1 is your duty to accept and apply the law as I now state it
2 to you. If you have preconceived ideas as to what the law
3 is or what the ought to be and it does not agree with what
4 I tell you the law is, then you are obligated under your
5 oath to abandon these preconceptions and accept the law as
6 I now state it to you.

7 In this trial you are the sole and exclusive
8 judge of the facts and I am the judge of the law. Do not
9 infer that I have any opinion about the facts in this case
10 from anything I have said during the course of this trial.
11 In this regard the law simply does not permit me to have
12 an opinion about the facts. As to yours it is your duty
13 alone to determine the effect, value, weight and truth of
14 the evidence presented during the course of this trial.

15 Furthermore, it is your job as jurors to
16 determine the credibility and believability of the
17 witnesses who have testified in this case. In determining
18 the believability of witnesses who have testified in this
19 trial, you may believe one witness over many or many over
20 one. You may believe a part of the testimony of a witness
21 and reject the remaining part. You may believe the
22 testimony of a witness in its entirety or reject it in
23 full. You may consider whether the witness has an
24 interest in the result of the trial, whether the witness
25 is prejudice towards either part, the opportunity for the

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1 witness to have seen the matters and things about which
2 the witness may testify and the way the witness acts on
3 the witness stand.

4 I further instruct you that the defendant did
5 not testify on his own behalf is not a factor to be
6 considered by you in any way in your deliberations and in
7 your consideration on the question of guilt or innocence.
8 In this regard, the defendant has the constitutional right
9 to remain silent. Any exercise of this right must not be
10 considered by you in your deliberations. The fact that
11 the defendant did not testify should not even be discussed
12 in the jury room. The burden of proof as I stated to you
13 is on the State. The defendant has no obligation to prove
14 his innocence. The burden of proof remains with the State
15 to prove the defendant's guilt beyond a reasonable doubt
16 and the fact that a defendant did not testify is not a
17 factor to be considered by you in deciding the guilt or
18 the innocence of the defendant.

19 When you consider the whole case if you have
20 a reasonable doubt as to the guilt or the innocence of the
21 defendant then he is entitled to that reasonable doubt and
22 would be entitled to a verdict of not guilty. However, if
23 upon considering the whole case, you find that the State
24 has proved by evidence which satisfies you of the guilt of
25 the defendant beyond a reasonable doubt, then in such

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1 circumstance it would equally be your duty to convict the
2 defendant and find him guilty.

3 Furthermore, the rules of evidence ordinarily
4 do not permit witnesses to testify regarding opinions or
5 conclusions. An exception to this rule exists for
6 witnesses we call expert witnesses. A witness, who by
7 education or experience has become an expert in some art,
8 science, or profession may give an opinion as to the
9 subject the witness claims to be an expert in and they
10 also give the reasons for the opinion. You should
11 consider any expert opinion given by a witness like any
12 other evidence give it the weight you think it deserves.

13 If you decide that an expert witness's
14 opinion is not based on sufficient education and
15 experience or if you decide that the reasons that are
16 given in support of the opinion are not sound or that the
17 opinion is outweighed by other evidence, you may disregard
18 the opinion entirely. An expert witnesses testimony is to
19 be given no greater weight than that of any other witness
20 simply because the witness is an expert and you do not
21 have to accept an expert's opinion even though it is
22 uncontradicted.

23 In exercising your mental processes and
24 attempting to decide the truth, the law simply requires
25 that you exercise your good judgment, your common sense,

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1 your sense of logic and reason and your experiences in
2 life. Then you apply these attributes to the evidence and
3 apply the law as I now state it to you and thus arrive at
4 a verdict.

5 Please understand that the testimony of a
6 police officer is not entitled to more weight than that of
7 any other witness. You are the sole judges of the
8 credibility of a witness and you are not to give more
9 weight to a police officer's testimony solely because he
10 is a police officer. Rather you should judge an officer's
11 testimony by the same standards that you apply to all
12 other witnesses.

13 The defendant is charged with distribution of
14 cocaine base commonly referred to as crack cocaine. Under
15 South Carolina Code Section 44-54-0375. In this state the
16 State must prove beyond a reasonable doubt that the
17 defendant distributed cocaine base. Distribute means to
18 deliver or to actually, constructively, or attempt to
19 transfer a drug other than by administering or dispensing.
20 Deliver means to actually, constructively or attempt to
21 transfer a drug. A transfer can involve an exchange for
22 money, a barter or a gift. It does not have to be
23 anything given in exchange for the drugs for a transfer to
24 constitute distribution. Simply a giving of drugs from
25 one person to another with or without any exchange of any

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1 compensation would constitute distribution.

2 The defendant is also charged with
3 distribution of cocaine base within proximity of a school
4 or a park. In this regard, the State must prove beyond a
5 reasonable doubt that the defendant distributed, sold,
6 purchased, manufactured or unlawfully possessed with
7 intent to distribute cocaine base within one half miles of
8 the grounds of a public, private, elementary, middle or
9 secondary school, playground or a park, a public
10 vocational or trade school or technical education center
11 or a public or private college or university.

12 Ladies and gentlemen, I am now drawing to the
13 end of the charge. I want you to clearly understand that
14 you are not partisans or advocates for the State or for
15 the defendants. You do not serve as jurors to award your
16 friends or punish your enemies. In this regard, you have
17 been selected by both the State and this defendant to be
18 fair and impartial jurors. It is your duty by your joint
19 deliberations to determine the truth in this case giving
20 to this defendant the benefit of any reasonable doubt on
21 each and even issue. Then to the facts which you have
22 determined to be true, you should take and apply the law
23 as it has been given to you by this Court and thus arrive
24 at a verdict which speaks the truth in this case.

25 In fact, the word verdict which as a latin

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1 derivative means to speak to truth, thus when you have
2 accomplished these responsibilities you will have
3 satisfied your oath as jurors and you have discharged your
4 duty to this court.

5 Ms. Clerk, would you please hand them the
6 jury form.

7 Now, Mr. Foreman, I have handed you the jury
8 form. When you arrive at a verdict for each offense you
9 will write your verdict on the form. For each separate
10 charge if the State has failed to prove the guilt of this
11 defendant beyond a reasonable doubt, your verdict for the
12 charge will be two words, not guilty. However, should the
13 State have proved their case against this defendant below
14 beyond a reasonable doubt, then your verdict on that
15 charge will be one word, guilty.

16 Mr. Foreman, once a decision has been made
17 for each charges, just check whichever choice is your
18 word. The verdict that you rendered in this case must the
19 verdict of each and every juror. It must be your
20 unanimous verdict. All 12 jurors must agree on the
21 verdict for which you authorized for the foreman to write
22 for the jury.

23 Mr. Foreman and members of the jury, I want
24 you to further understand that the order in which the
25 choices of verdict appear on the verdict form are not

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1 suggestive of any verdict on the part of this court. The
2 verdict in this case is to be determined by you and not
3 the Court.

4 Furthermore, ladies and gentlemen, please
5 understand that even though I have given the verdict form
6 to the foreman, it is not his verdict alone. It is the
7 verdict of all 12 of you and I emphasize again it must be
8 unanimous.

9 In a moment, you will retire to the jury
10 room. However, I would ask that you do not begin your
11 deliberations until you are told to do so. The law
12 requires that I now consult with the attorneys about this
13 charge. After doing so, the bailiff will bring in the
14 items of evidence and instruct you to begin your
15 deliberations.

16 Also, should you have any questions during
17 your deliberations, you must put them in writing and send
18 them to me by way of the bailiff. The bailiff will be
19 placed immediately outside the jury doors to provide
20 security and assistance for you during your deliberations.

21 Once you have reached your verdict, please
22 knock on the jury room door and ask the bailiff to advise
23 the Court that you have reached a verdict and we will
24 return you to the courtroom as promptly as possible
25 thereafter.

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1 Thank you. You may retire to the jury room,
2 but again, do not begin your deliberations.

3 (Jury exits courtroom.)

4 Any objections to the charge from the State?

5 MS. PRICE: Nothing from the State, Your
6 Honor.

7 THE COURT: Anything from the defense?

8 MR. HAMILTON: Nothing from the defense.

9 THE COURT: Please take a look at the items
10 of evidence, make sure they're in order and send them
11 back.

12 Are all items of evidence in order?

13 MS. PRICE: Yes, Your Honor.

14 THE COURT: From the defense?

15 MR. HAMILTON: Yes, Your Honor.

16 THE COURT: Send them back and tell them to
17 begin and bring out the alternate.

18 (Alternate juror dismissed.)

19 (Jury begins deliberations.)

20 (Whereupon, this trial was in recess during
21 deliberations.)

22 We have a note from the jury. They want to
23 see the transaction. Go ahead and set up and bring them
24 in.

25 (Jury re-enters the courtroom.)

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1 (Video played in open court.)

2 If you go on back in to the jury room and
3 continue your deliberations. Thank you.

4 THE BAILIFF: Come to order, court is in
5 session.

6 THE COURT: We have a note from the jury. It
7 says, "We can not reach a decision. Eleven guilty, one
8 not guilty, the juror voting not guilty will not,"
9 underling, "change their vote under any circumstances."
10 I'll just give them an Allan charge and see if ---

11 MS. PRICE: That's fine, sir.

12 THE COURT: Mr. Hamilton.

13 MR. HAMILTON: Your Honor, with the hour
14 being as it is, I will accept that juror's opinion.

15 THE COURT: I'm going to give them an Allan
16 charge one time and a little bit of time and if they can't
17 reach a verdict, we'll go from there. Go ahead and bring
18 them in.

19 (Jury re-enters the courtroom.)

20 Ladies and gentlemen of the jury, I'm going
21 to give you one more charge and then we'll go from there.
22 Members of the jury, when a matter is in dispute, it isn't
23 always easy for even two people to agree so when 12 people
24 must agree it becomes even more difficult. In most case,
25 absolute certainty can not be reached or expected.

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1 However, you have a duty to make every reasonable effort
2 to reach a verdict. In doing this, you should consult
3 with one another, express your own views, and listen to
4 the opinions of your fellow jurors, tell each other how
5 you feel and why you feel that way, discuss your
6 differences.

7 Although the verdict of your jury must be
8 unanimous, every one of you has a right to your own
9 opinion. The verdict that you agree to must be your own
10 verdict, the result of your own convictions, and you
11 should not give up your firmly held beliefs merely to be
12 in agreement with your fellow jurors. The majority should
13 consider the minority's position and visa versa. You
14 should carefully consider and respect the opinions of each
15 other and re-evaluate your position for reasonableness,
16 correctness and impartiality.

17 You must lay aside all outside matters and
18 re-examine the questions before you based on the law and
19 evidence in this case.

20 I want you to understand if you can not agree
21 on a verdict in this case, we're just going to have to
22 come back on week with another jury pool, select another
23 jury of 12 people and one alternate. Judge is going to
24 have to be here to try the case. Lawyers are going to
25 have to be up here and try the case again, the bailiffs

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1 will have to be here, law clerk will have to be here; all
2 of that time, all of that effort, all of those expenses
3 associated with trying this case again, and I don't see
4 how another group of 12 people will do a better job than
5 the 12 of you.

6 So I would ask that you go back in your jury
7 room, just re-examine your beliefs, think about what
8 you're doing, respect each other's opinion and try to make
9 a decision within a reasonable amount of time.

10 Thank you very much. You may proceed.

11 (Jury question marked as Court's Exhibit No.
12 2 for identification.)

13 Any objections to the charge from the State?

14 MS. PRICE: No, Your Honor.

15 THE COURT: From the defense?

16 MR. HAMILTON: No, Your Honor.

17 THE COURT: We'll take it easy until
18 something happens.

19 (Whereupon, court was in recess during
20 deliberations.)

21 (Verdict reached by jury at 7:15 p.m.)

22 THE COURT: I understand we have a verdict.
23 I want to go over a few things in this courtroom and I
24 want everybody to be clear on what I'm about to say. This
25 jury is coming back with a verdict. I don't know what it

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1 is, guilty or not guilty, but they've had a hard job.
2 They've worked hard. They've been here all day working on
3 this thing and I don't want any reaction at all from the
4 public to this verdict or anybody in this courtroom. If I
5 hear somebody clapping or saying yeah, talking or doing
6 anything and I hear it, I'm going to put you in jail for
7 10 days. I want to be clear about that. If anybody in
8 this courtroom does not think they can abide by my ruling,
9 you need to leave the courtroom now because when that jury
10 comes back in, we're going to lock that door down until
11 that verdict is received and they are dismissed. So if
12 anybody needs to leave right now, please do.

13 Does anybody have any questions about what I
14 said?

15 (No response.)

16 Go ahead and bring out the jury.

17 (Jury re-enters the courtroom.)

18 Mr. Foreman, do you have a verdict?

19 MR. FOREMAN: Yes, we do.

20 THE COURT: Would you hand it to the bailiff,
21 please.

22 Madam Clerk, would you publish the verdict.

23 THE CLERK: Yes, sir. Your Honor, the State
24 versus Gregory Allan Ivery, Case 2011-GS-23-9810 and 9811
25 as to the charge of distribution of cocaine base, we the

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1 jury unanimously find the defendant, Gregory Allan Ivery,
2 guilty. As to the charge of distribution of cocaine base
3 in proximity of a school or park, we the jury find the
4 defendant, Gregory Allan Ivery, guilty.

5 Ladies and gentlemen, the verdict that I just
6 published is the verdict that you reached in the jury
7 room, I ask you was that your verdict then and is it your
8 verdict now? If so, please raise your right hand.

9 (Jury complies.)

10 THE COURT: Thank you, very much. Is there
11 any need for further from the defense?

12 MR. HAMILTON: Your Honor, I would like the
13 jury poled.

14 THE COURT: Go ahead and pole the jury.

15 THE CLERK: Yes, sir.

16 As I call your name please answer yes or no.

17 Khang Van, is your verdict guilty, if yes,
18 say yes, if it is.

19 JUROR VAN: Yes.

20 THE CLERK: Pamela Moore.

21 JUROR MOORE: Yes.

22 THE CLERK: Thank you. James Smith.

23 JUROR SMITH: Yes.

24 THE CLERK: Jayne Cleveland.

25 JUROR CLEVELAND: Yes.

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1 THE CLERK: Alice Piepho.

2 JUROR PIEPHO: Yes.

3 THE CLERK: Michael Whitaker.

4 JUROR WHITAKER: Yes.

5 THE CLERK: Bruce Berryhill.

6 JUROR BERRYHILL: Yes.

7 THE CLERK: Kim Summers.

8 JUROR SOMMERS: Yes.

9 THE CLERK: Angela Cheslak.

10 JUROR CHESLAK: Yes.

11 THE CLERK: Lataya Peronet

12 JUROR PERONET: Yes.

13 THE CLERK: Brittany Stalter.

14 JUROR STALTER: Yes.

15 THE CLERK: Richard Myers.

16 JUROR MYERS: Yes.

17 THE COURT: Thank you very much. Members of
18 the jury, I want to thank you for your service. Thank you
19 for your efforts and all that you have done. You are free
20 to go and you have earned a three-year exemption by being
21 here and you will be paid. If you have any complaints
22 about the amount of the check, you can complain to this
23 man right there. I didn't have anything to do with it.

24 You are free to go and everybody else remain
25 seated.

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1 (Jury dismissed from the trial.)

2 Any motions from the defense?

3 MR. HAMILTON: Your Honor, we just would
4 renew our previous motions and directed verdict. Also, we
5 make a new motion that the jury had got into a hard
6 situation and possibly coerced into reaching a verdict.

7 THE COURT: Thank you, very much. I deny
8 those motions. We poled the jury and they raised their
9 right hand and verbally responded that it was their
10 verdict. So those motions are denied.

11 Solicitor, whenever you're ready.

12 MS. PRICE: Thank you, Your Honor. You heard
13 the facts that were presented at trial today. I'd like to
14 just tell you that this is a distribution of crack third
15 offense for the purposes of sentences that's reflected on
16 the sentencing sheet. As to his prior record, he has a
17 1981 possession with intent to distribute heroine, 1985,
18 he violated parole and had another PWID heroine, 1986
19 distributing heroine, two counts, and 2009 possession of
20 drug paraphernalia.

21 Your Honor, as you know the distribution
22 third carries 10 to 30 years, can not be suspended and no
23 home incarceration is permissible. And the one half mile
24 charge carries up to 10 years.

25 Your Honor, there is at least one other

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1 pending charge in our office right now based on another
2 buy conducted by this same confidential informant and it's
3 my understanding based on speaking with law enforcement
4 that this individual has been active and pervasive in his
5 community as a distributor.

6 The State is asking for the maximum amount of
7 time this Court is willing to give this individual and/or
8 to run the half mile consecutive to the distribution
9 charge. But, of course, Your Honor has heard the facts
10 today so we leave it to the Court's discretion.

11 THE COURT: Mr. Hamilton, I'd be glad to hear
12 from you if you'd like to say anything.

13 MR. HAMILTON: Your Honor, I can't argue with
14 the verdict of the jury other than that the circumstances
15 involved in this in that there was a lot of information
16 that was presented that the jury could have found that the
17 State did not meet its burden, but they did find that they
18 did meet the burden.

19 He's here and, Your Honor, you can see that
20 his family is here. He has a supportive family. He has
21 some stuff in the past and all of it is 20 years old, over
22 20 years old in most of his involvement. This information
23 about him being a menace to society or being -- I don't
24 know how much the Court can rely on that. Other than
25 that, his record shows that he has not been involved in in

State versus Ivery

1 criminal activity for over 20 years. If I'm mistaken on
2 that addition or subtraction, I apologize.

3 He has some disability -- don't you draw some
4 kind of disability?

5 DEFENDANT IVERY: I don't draw it no more but
6 I've been disabled for about 13 years, stroke and
7 aneurism.

8 MR. HAMILTON: So his health was not all that
9 -- he exercised his right to go to trial. He didn't take
10 the stand to try to mislead the Court other than asking
11 everybody to do their job, even to me to do my job, the
12 prosecutor, the Court and the jury. Everybody did their
13 job, Judge, and you've got a job to do. It's just that I
14 don't think that he presented nothing to this Court that
15 he should be punished to the degree that he should get the
16 maximum penalty and run it concurrent.

17 This case started out with a 10-year plea and
18 that's what they thought about it at that time, but he
19 exercised his right because it is a right. I don't think
20 he abused it because he didn't come up and take the stand
21 -- in federal court you get punished for testifying and
22 losing -- so I think the State court should recognize he
23 did not do that.

24 THE COURT: Anything further?

25 DEFENDANT IVERY: I want to apologize to the

State versus Ivery

1 Court for even being here. Ain't much I can say about
2 that. If I had to do it all over again, I'd do it
3 entirely different. Now, I got a chance to look at my
4 life and try to make the best of it. I'm not trying to
5 run away from anything, I'm going to face my
6 responsibility for anything I go to do. I want to
7 apologize for putting you through what I put you through
8 an it ain't much I can say. I'm sorry and ask for
9 forgiveness.

10 THE COURT: In reference to the distribution
11 of cocaine base, third offense, the sentence of the Court
12 is 23 years. In reference to the proximity of the school,
13 the sentence of the Court is 10 years and it will run
14 concurrent.

15 Thank you.

16 MS. PRICE: Thank you, Your Honor.

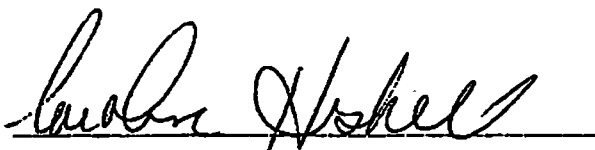
17 ---END OF TRANSCRIPT RECORD---

18 I, the undersigned Caroline Hiskell, Official
19 Court Reporter for the Thirteenth Judicial Circuit of the
20 State of South Carolina, do hereby certify that the
21 foregoing is a true, accurate, and complete transcript of
22 record of all the proceedings had and evidence introduced
23 in the trial of the captioned case, relative to appeal, in
24 the Court of General Sessions, Greenville, South Carolina
25 on the 11th day of October, 2012.

State versus Ivery

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of General Sessions, Greenville, South Carolina
8 on the 11th day of October, 2012.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell
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22
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24
25

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)Gregory Allan Every #131131)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-23-00244

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL B. WILKINSON
2015 JUN 13 PM 4 24INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept. of Corrections; Lieber Corr Inst.
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions; Hon. William Seals and a jury
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-23-9810; distribution of crack cocaine (344-53-375)
 - (b) 2011-GS-23-9811; distribution of crack cocaine within 1/2 mile of a school of park (344-53-445)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 11, 2012; twenty-three (23) years
 - (b) October 11, 2012; ten (10) years; sentences to run concurrent

- (c) _____
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
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed convictions and sentences
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 30, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Ivery, Opinion No. 2014-UP-265
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Assistance
 (b) Prosecutorial Misconduct
 (c) Judge's Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Attorney did not investigate witness statement
 (b) Prosecutorial/Lack of evidence in witness testimony
 (c) Allowed witness statement
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? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- Petition for Rehearing
 - Petition for Writ of Certiorari to the Court of Appeals
 - in the S.C. Supreme Court
 -
- (b) the name and location of the Court in which each was filed:
- South Carolina court of Appeals
 - South Carolina Supreme Court
 -
 -
- (c) the disposition thereof:
- Denied
 -
 -

- iv. _____
- (d) the date of each such disposition:
- i. August 20, 2014
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- 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) First opportunity to raise IAC - can not raise on direct appeal
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (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? _____
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. Ernie Hamilton
- ii. Carmen V. Ganjehsani, Appellate Defender, S.C. Comm. on Indigent Defense
- iii. Div. of Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentencing
- ii. Petition for Rehearing
- iii. Petition for Writ of Certiorari to the Court of Appeals
19. State clearly the relief you seek in filing this application: Conviction and sentence reversed and remanded for a new trial and any other relief the Court may deem just and proper
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)Gregory Allan Ivory #131131

I, Gregory Allan Ivory #131131, 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.

x Gregory Allan Ivory

SWORN to and subscribed before me this 7th
day of Jan, 2015.

Ludheim Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Gregory Allan Ivery #131131

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.

x Gregory Allan Ivery
Applicant

SWORN or affirmed to and subscribed before me this
7th day of Jan, 2015.

Ludeman Bryant
Notary Public

My Commission Expires: May 26, 2020

FOR LEGAL USE ONLY

EVERY AREA ALLAD 131131
LC I.
P.O. BOX 205 STANA B-1.
RIDGEVILLE S.C. 29472.

RECEIVED
JAN 07 2015
MAIL ROOM
WEBER C.I

2015-CP-23-00244

Paul B. Wickesimer
Clerk of Court
305 East North Street
Greenville, South Carolina 29601



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2015-CP-23-0244
COUNTY OF GREENVILLE	)	
	)	
Gregory Allan Ivery,	)	
S.C.D.C. No. 131131,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed January 13, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the June 2012 term of General Sessions for distribution of cocaine base within 1/2 mile of a school or park (2012-GS-23-9810) and distribution of cocaine base (2012-GS-23-9811). Ernest Hamilton, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 11, 2012, the Honorable William H. Seals, Jr. sentenced the Applicant to concurrent terms of 10 years for distribution of cocaine base within 1/2 mile of a school or park and 23 years for distribution of cocaine base, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Carmen V.

Ganjehsani, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Ivery, Op. No. 2014-UP-265 (S.C. Ct. App. filed June 30, 2014). By order filed December 4, 2014, the South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari. The Remittitur was sent on December 10, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the trial transcript, and the appellate records. The Applicant's records from the South Carolina Department of Corrections will be forwarded upon receipt.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of assistance."
 - a. "Attorney did not investigate witness statement."
2. "Prosecutorial misconduct."
 - a. "Prosecutorial/lack of evidence no witness testimony."
3. "Judgement misconduct."
 - a. "Allowed witness statement."

III.

The Respondent construes the Applicant's first issue to be one of ineffective assistance of trial counsel. The Respondent asserts this allegation is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant

must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent submits the Applicant's allegation of prosecutorial misconduct is without merit. "[T]he test for reversible prosecutorial misconduct generally has two components: that (1) the prosecutor's remarks or conduct must in fact have been improper, and (2) such remarks or conduct must have prejudicially affected the defendant's substantial rights so as to deprive the defendant of a fair trial." United States v. Chorman, 910 F.2d 102, 103 (4th Cir. 1990). The Respondent submits the Applicant has failed to articulate any basis to support a claim of reversible prosecutorial misconduct.

V.

The Respondent submits the Applicant's allegation of judicial misconduct is without merit. The Applicant's claim appears to be predicated upon the argument that the trial judge erred in admitting a statement into evidence at trial. Such an issue is proper for direct appeal, not post-conviction relief. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993).

VI.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

June 2, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2015-CP-23-0244

GREGORY ALLAN IVERY, 131131)

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:

**Gregory Allan Ivery, 131131
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 2nd day of June, 2015.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2015CP2300244
	)	
Gregory Allan Ivery,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

April 22, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE R. KNOX McMAHON, Judge.

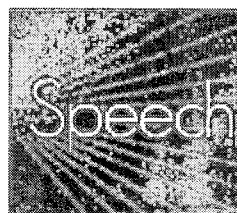
A P P E A R A N C E S:

MILLS ARIALL, Esquire
Attorney for the Applicant

PATRICK SCHMECKPEPER, Esquire
Attorney for the Respondent

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

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produced via



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Remarks	4		
Ernest Hamilton			
by Mr. Ariail	8		
by Mr. Schmeckpeper		17	
Certificate of Reporter	22		

EXHIBITS PAGENO.DESCRIPTIONID EV

APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

Remarks

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 22nd day of April, 2016 at approximately 10:00 a.m.)

MR. SCHMECKPEPER: I apologize, Your Honor. This is the matter of Gregory Allan Ivery versus the State of South Carolina, 2015-CP-23-0244. The applicant was indicted in Greenville County in June of 2012 for Distribution of Cocaine Base within One-half Mile of a School or Park and Distribution of Cocaine Base. He was represented by Ernie Hamilton.

After proceeding to trial, the applicant was found guilty on October 11th, 2012 in front of Judge Seals. He was sentenced to concurrent terms of 10 years for Distribution of Cocaine Base within a Half Mile of a School and 23 years for Distribution of Cocaine Base third offense.

Following a timely notice of appeal, the Court of Appeals affirmed the lower court's conviction. And by order filed December 4th, 2014, the Supreme Court denied certiorari. The remittitur was sent on December 10th.

Your Honor, this application was filed on

1 January 13th, 2015. At this time, I'll turn
2 matters over to opposing counsel.

3 **THE COURT:** Thank you.

4 Mr. Ariail?

5 **MR. ARIAIL:** Yes, Your Honor. I'm ready to
6 proceed. I just want to put the Court on notice
7 -- I talked with my client, Mr. Ivery, in
8 regards to this. I think he's had a little bit
9 of a medical issue where he has a problem
10 remembering. I've talked with him in regards to
11 his testimony and asked him a couple of times
12 if he wanted to testify. He's told me that,
13 based upon that, he does not want to testify.
14 So I'm going to go strictly on to Mr.
15 Hamilton's testimony. But I want to let the
16 Court know that. If I can put on the record
17 that I have discussed this with him and he
18 understands that and does not wish to testify.

19 **THE COURT:** All right. Yes, sir. You may.

20 **MR. ARIAIL:** Mr. Ivery, how are you doing
21 today?

22 **MR. IVERY:** All right.

23 **MR. ARIAIL:** Now, we talked about your
24 case --

25 **THE COURT:** Stand up for me please, Mr.

Remarks

1 Ivery.

2 Madam Clerk, place him under oath for me.

3 **THE CLERK:** Please raise your right hand.

4 (WHEREUPON, Mr. Ivery is first duly sworn.)

5 **THE CLERK:** Thank you.

6 **THE COURT:** All right. Mr. Ariail.

7 **MR. ARIAIL:** Mr. Ivery, we talked about

8 your case, correct?

9 **MR. IVERY:** Uh-huh.

10 **MR. ARIAIL:** Okay. And you understand that

11 today is the time to put up your PCR, put up

12 the allegations that you were saying Mr.

13 Hamilton was ineffective? You understand that?

14 **MR. IVERY:** Uh-huh.

15 **MR. ARIAIL:** Okay. And we've talked --

16 **THE COURT:** Say yes or no for me please,

17 Mr. Ivery.

18 **MR. IVERY:** Yes, sir.

19 **MR. ARIAIL:** Say that again. We've talked

20 about all that; is that correct?

21 **MR. IVERY:** Yes.

22 **MR. ARIAIL:** And you understand you have

23 the right to testify?

24 **MR. IVERY:** Yes.

25 **MR. ARIAIL:** And you told me that you're

1 having a hard time remembering what happened at
2 trial?

3 **MR. IVERY:** I have memory loss.

4 **MR. ARIAIL:** Okay. So you can't remember
5 what happened at trial, correct?

6 **MR. IVERY:** I can remember some of the
7 things some of the time, but not all of --
8 everything.

9 **MR. ARIAIL:** Okay. But based on that,
10 you're asking -- you don't want to have to
11 testify today; is that correct?

12 **MR. IVERY:** I can't testify.

13 **MR. ARIAIL:** I just want to make sure that
14 we put that on the record today, okay. Thank
15 you. That's fine.

16 Thank you, Your Honor.

17 **THE COURT:** Mr. Ivery, there's a
18 difference between I don't want to and I can't.
19 Do you want --

20 **MR. IVERY:** I can't remember. I can
21 remember some of the time, but not all the
22 time. You can ask me -- tell me something and
23 ask me five minutes later, I'll be done forgot.

24 **THE COURT:** Do you want to testify or not?

25 **MR. IVERY:** I can't.

1 **THE COURT:** Do you want to --

2 **MR. IVERY:** No, sir.

3 **THE COURT:** All right. Thank you. Thank
4 you very much.

5 **MR. ARIAIL:** Thank you, Your Honor.

6 **THE COURT:** All right. Mr. --

7 You may be seated, Mr. Ivery.

8 Mr. Ariail, you may call your first
9 witness.

10 **MR. ARIAIL:** Yes, Your Honor. I call Mr.
11 Hamilton to the stand.

12 **THE COURT:** All right. Come around for us
13 please, Mr. Hamilton, and be sworn.

14 **THE CLERK:** Mr. Hamilton, place your left
15 hand on the Bible and raise your right hand.

16 **ERNEST HAMILTON**

17 having first been duly sworn, testifies as follows:

18 **THE CLERK:** Thank you. You may be seated,
19 and please state your full name for the record.

20 **THE WITNESS:** My name is Ernest Hamilton.

21 **DIRECT EXAMINATION**

22 **BY MR. ARIAIL:**

23 **Q** Mr. Hamilton, how are you doing today?

24 **A** Hey. How are you doing, Mr. Ariail?

25 **Q** Good. Good to see you. I want to go through

1 a little bit. You represented Mr. Ivery; is that
2 correct?

3 A I did.

4 Q Were you retained or appointed on his
5 behalf?

6 A I was retained.

7 Q Okay. How long after, I guess, he was
8 charged were you retained on this case? You remember?

9 A Pretty early on in the case.

10 Q Okay. Uh, was he incarcerated during this
11 period of time?

12 A I don't think he was.

13 Q So he was out and would come to your
14 office?

15 A That's right.

16 Q Okay. Did you get discovery from the
17 Solicitor's office?

18 A Absolutely.

19 Q Okay. And did you review that discovery?

20 A Absolutely.

21 Q Did you discuss that with him?

22 A I did.

23 Q Okay. Did he and you go over defenses,
24 elements and all the different things about the
25 alleged crimes that he had committed?

1 **A** Yeah, we went over that. But what I
2 remember that stands out mostly in the case, which we
3 was concerned about was the tape that they had of
4 him. And I saw the tape. He never saw the tape. We
5 talked about the tape. I gave him my opinion of the
6 videotape. But what I conveyed to him was, uh, turned
7 out to be not so prevalent at trial. When I viewed
8 the videotape, it was rainy and you couldn't see too
9 well. I explained to him, I said, you know, on that
10 tape, you can't really see who that is, so it would
11 be difficult for anybody to determine who that is on
12 the tape.

13 **Q** Okay.

14 **A** Plus they had several tapes. But anyway,
15 that's what our discussion focused on was the
16 evidence of the tape.

17 **Q** Okay. Let me see if I can give a short
18 synopsis. There was a tape of an alleged ---

19 **A** Buy.

20 **Q** --- drug transaction buy from Mr. Ivery to
21 a confidential informant. Is that pretty much it?

22 **A** Yes.

23 **Q** And there was a tape and some audio that
24 was associated with it, correct?

25 **A** Absolutely.

1 Q Okay. And as part of that, when you got to
2 trial, at some point in time, the confidential
3 informant was not going to cooperate or testify; is
4 that correct?

5 A He recanted.

6 Q Okay. My questions kind of revolve around
7 this. Prior to going to trial, did you know that the
8 CI was going to recant?

9 A I had, uh, -- I didn't have no concrete.
10 But Mr. Ivery was confident that, you know, nobody
11 was going to testify against him.

12 Q And if I remember correctly, you went
13 through -- did y'all have a pretrial hearing in
14 regards to the tape and all that?

15 A Absolutely. We had that hearing and I
16 submitted to the judge that it was -- it can't be
17 properly -- it couldn't be introduced because there
18 wasn't no foundation. The person in the tape didn't
19 identify themselves as being part of the tape. It
20 could have been taped anywhere.

21 Q Okay. And I know there are some decisions
22 out there that will basically allow the tape in if it
23 is authenticated by the officer in this case.

24 A Yeah. That's what the court determined.

25 Q My question was, and I know you went

1 through it. I want to make sure. Did you -- I guess,
2 the officer in the case, Officer Coth -- Deputy
3 Cothran.

4 **A** Yeah.

5 **Q** Did he say -- I'm going back and looking
6 at the transcript -- that he heard the testimony or
7 heard the transaction at the same time while it was
8 going on?

9 **A** And that's, uh, -- I don't know. That's a
10 point of, uh, -- that's an issue in the matter. I'm
11 not sure was that brought out clearly that he
12 actually heard the transaction ---

13 **Q** Right.

14 **A** --- as it was going on.

15 **Q** Did you feel that was -- I mean, I guess
16 there's one thing where you've got a live -- he's
17 hearing it as it's going on and he can, here is the
18 drug transaction and here is the witnesses. It's
19 another thing to then get the tape afterwards and
20 listen to it and see it.

21 **A** And that's the truth.

22 **Q** Did you find that to be an issue in this
23 case?

24 **A** I didn't find the audio to be an issue, but
25 the actual physical seeing -- seeing the two together

1 beyond the tape. In other words, the officer would
2 park four blocks away and listen, but did they
3 actually see two people come together.

4 Q I guess it's two different things. The
5 officer was hearing at the same time what was going
6 on; is that correct?

7 A I believe so.

8 Q Okay. But clearly, you don't think that he
9 was able to see it at that time?

10 A That's right.

11 Q Okay. So before, did you make any -- I'm
12 going back and trying to remember exactly what motion
13 you made to try to keep that tape out. Did you raise
14 those issues?

15 A I raised those issues about, you know,
16 actually witnessing the encounter, the transaction.

17 Q Okay.

18 A To verify that that's the person in the
19 tape.

20 Q Okay. At that point in time, I guess you
21 were turned down and the tape came in; is that
22 correct?

23 A Yes.

24 Q Did you raise -- I know you raised
25 authentication. Did you -- why did you not raise

1 hearsay or some other issues in regards to it. Do you
2 remember that?

3 **A** I don't remember that, uh, coming to mind.
4 Thinking back, that would be an objection, hearsay.

5 **Q** Okay. Uh, and to your knowledge then, the
6 CI came in. I guess they put him on the stand. He
7 wouldn't cooperate, correct?

8 **A** He didn't cooperate.

9 **Q** Okay. Now, at some point in time, you go
10 along. The jury goes out. They come back and they say
11 they are, I guess, hung up at 11 to 1. Is that
12 correct?

13 **A** That's correct.

14 **Q** Okay. Now, I've gone through and I've
15 looked at the transcript. I want to look back. I
16 think it starts on page 141, Your Honor. Do you
17 remember -- the note, I think, that came out -- and I
18 can show you the transcript -- basically says, uh, we
19 have a note from the jury. It's line 6. It says we
20 can not reach a decision. 11 guilty, 1 not guilty.
21 The juror voting not guilty will not -- and it says
22 underlined -- underlining -- change their vote under
23 any circumstances. I'll just give them an Allen
24 charge and see if -- and then, uh, Ms. Price says
25 that's fine. Then you -- the Court asks you, Mr.

1 Hamilton. And you say, Your Honor, with the hour
2 being as it is, I will accept that juror's opinion.
3 I've gone through and I want to make sure. Do you
4 remember objecting to any type of Allen charge?

5 A I don't remember. And if it's not on the
6 record, I can't say that I did. I know that that was
7 my, you know, -- Allen charge that the juror -- give
8 the juror any encouragement to change would be
9 improper.

10 Q Right.

11 A Objectionable, I mean.

12 Q It's unusual in this circumstance. I know
13 sometimes they come out and they say we're hung.

14 A Yeah.

15 Q And they just tell you that. This one said
16 there is a juror that won't change their vote under
17 any circumstance. Did that raise any concern to you
18 that if we do an Allen charge, that could be too
19 coercive or he's already made his mind up. Did you
20 think of anything like that?

21 A I did. I did.

22 Q Okay.

23 A I did. I did. I voiced that to the Court
24 that --

25 Q You're saying -- and do you remember where

1 you put it in the transcript? Where it was?

2 **A** I don't have that.

3 **Q** Okay. And I know at one point in time, I
4 think it was, uh, -- I think later on in the
5 transcript on page 147, I think this was after the
6 jury was dismissed, line 4 through 6, you say also we
7 make a motion that the jury had got into a hard
8 situation and possibly coerced into reaching a
9 verdict. That was after the jury. Do remember making
10 that motion beforehand?

11 **A** I have to rely on the transcript.

12 **Q** Okay. But you believe that that was a --
13 now looking at it with the way the juror stated it
14 and changed their -- going to change their vote under
15 any circumstances, you think an objection should have
16 been made in that situation?

17 **A** Thinking back on it, yes.

18 **Q** Okay.

19 **A** Yes.

20 **MR. ARIAIL:** If you will bear with me, Your
21 Honor, real quick. Let me talk to Mr. Ivery.

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

23 **(WHEREUPON, there is a pause.)**

24 **MR. ARIAIL:** No further questions, Your
25 Honor.

1 **THE COURT:** Thank you, Mr. Ariail.

2 Mr. Schmeckpeper?

3 **MR. SCHMECKPEPER:** Thank you, Your Honor.

4 May it please the Court.

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

6 **CROSS-EXAMINATION**

7 **BY MR. SCHMECKPEPER:**

8 **Q** Good morning, Mr. Hamilton.

9 **A** Good morning.

10 **Q** Just checking to make sure it wasn't
11 afternoon. Got a couple of questions for you. Let's
12 talk about that video. Now, you were asked whether or
13 not maybe you should have objected to the video on
14 certain grounds. You did indeed object to the video
15 coming in; is that correct?

16 **A** Absolutely.

17 **Q** In fact, do you have a transcript with you?

18 **A** I do not have it.

19 **MR. SCHMECKPEPER:** Your Honor, may I
20 approach?

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

22 **BY MR. SCHMECKPEPER:**

23 **Q** I'm showing you page 67 of the transcript.
24 That's where the video, I believe it's the video,
25 Exhibit 4, came -- was introduced into evidence by

1 the State. If you could look at just number 9, you
2 actually objected to the video coming in.

3 A (Reviewing.)

4 Yeah, I objected to it.

5 Q Was that video allowed in over your
6 objection?

7 A It was, uh, -- the Court allowed the video
8 to be shown to the jury.

9 Q Now, I know you didn't handle this case on
10 appeal. Did you follow the appeal at all?

11 A I didn't. I didn't follow the appeal. I was
12 sure that he was in a position to get an appeal.

13 MR. SCHMECKPEPER: Your Honor, I'm going to
14 approach one more time.

15 BY MR. SCHMECKPEPER:

16 Q I'm going to show you the final brief of
17 appellate, Issue Number 1. Tell me what that issue
18 is.

19 A (Reviewing.)

20 Number 1?

21 Q You don't have to read it. Is it fair to
22 say that that objection was the basis of that appeal
23 to that Court of Appeals?

24 A That is the basis of the objection of the
25 appeal. The objection to the entry of the video is

1 the basis of the appeal.

2 Q I'm going to have you hold on to that for
3 one more second. If you would look at -- I'm going to
4 move on to the Allen charge. You can look at the
5 second issue.

6 A Okay.

7 Q Is it fair to say the Allen charge is the
8 basis of the second ground for an appeal?

9 A The second is the Allen charge, encouraging
10 the jurors to reach (Indiscernible) was objected to
11 and the basis of the appeal.

12 MR. SCHMECKPEPER: May it please the Court.
13 I'd like to admit the final brief of appellate
14 into evidence.

15 MR. ARIAIL: I think it's already part of
16 the evidence, isn't it? Isn't it part of the
17 packet? If it's not, Your Honor, I don't have
18 any objection.

19 THE COURT: I'll allow it into evidence as
20 State's 1. I didn't see it up here, Mr. Ariail.
21 Final brief of the appellate?

22 MR. SCHMECKPEPER: Yes, sir. I'll grab that
23 brief back. I'll withdraw the exhibit.

24 THE COURT: It is.

25 MR. SCHMECKPEPER: I'll withdraw that then,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 MR. SCHMECKPEPER: Beg the Court's
4 indulgence.

5 THE COURT: Yes, sir.

6 MR. SCHMECKPEPER: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. SCHMECKPEPER:

9 Q I'm handing you the Court of Appeals
10 opinion in this case confirming the conviction. If
11 you would, just look at the first issue up there and
12 scan over it. Is it fair to say the Court of Appeals
13 ruled on the video issue in favor of the State?

14 A Yeah, this shows that the Court of Appeals
15 reviewed that issue and ruled that it was admissible.

16 Q Now, if you could turn your attention to
17 the second paragraph, correct me if I'm wrong, is it
18 fair to say that the Court of Appeals found that
19 while the issue may not be preserved, they also found
20 that the Allen charge given was not coercive?

21 A It is here saying that it is not -- held it
22 is not coercive, the Allen charge, in this case.

23 Q Thank you.

24 MR. SCHMECKPEPER: Judge, do you have a
25 copy of the appellate order -- Court of Appeals

1 order?

2 **THE COURT:** Yes, sir. I do. Thank you.

3 **MR. SCHMECKPEPER:** Your Honor, I have no
4 further questions.

5 **THE COURT:** Redirect, Mr. Ariail?

6 **MR. ARIAIL:** No, Your Honor.

7 **THE COURT:** Thank you.

8 Thank you very much, Mr. Hamilton.

9 **MR. ARIAIL:** Your Honor, that is our case.

10 **MR. SCHMECKPEPER:** Your Honor, the State
11 has no witnesses.

12 **THE COURT:** All right.

13 **MR. SCHMECKPEPER:** Your Honor, may the
14 witness be excused?

15 **THE COURT:** Yes, of course. Again, thank
16 you for being with us.

17 **THE WITNESS:** Thank you, Judge.

18 **THE COURT:** Again, I'll take it under
19 advisement. 30 days?

20 **MR. ARIAIL:** Yes, Your Honor.

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

22 **THE COURT:** Thank you.

23 **(WHEREUPON, the proceedings conclude at**
24 approximately 10:20 a.m.)

25

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 21st day of November, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Gregory Allan Ivery,	)	
S.C.D.C. No. 131131	)	C.A. No. 2015-CP-23-0244
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	(with prejudice)
State of South Carolina,	)	
	)	
Respondent.	)	ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKHAM
2016 MAR 9 PM 2 22

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 13, 2015. Respondent filed its Return on June 11, 2015. An evidentiary hearing into the matter was convened on April 22, 2016, at the Greenville County Courthouse. Applicant was present, but did not testify. Applicant's trial counsel, Ernest Hamilton, Esquire, was present and testified. Applicant was represented by Mills Ariail, Jr., Esquire. Respondent was represented by Patrick Schmeckpeper, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted Applicant at the June 2012 term of General Sessions for distribution of cocaine base within 1/2 mile of a school or park (2012-GS-23-9810) and distribution of cocaine base (2012-GS-23-9811). He was represented by Ernest Hamilton, Esquire.

After the State called the case to trial, Applicant was found guilty. On October 11, 2012, the Honorable William H. Seals, Jr. sentenced him to concurrent terms of 10 years for distribution of cocaine base within 1/2 mile of a school or park and 23 years for distribution of

cocaine base, third offense.

A timely Notice of Appeal was filed at the South Carolina Court of Appeals. Carmen V. Ganjehsani, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Ivery, Op. No. 2014-UP-265 (S.C. Ct. App. filed June 30, 2014). By order filed December 4, 2014, the South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari. The Remittitur was sent on December 10, 2014.

Allegations

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Attorney did not investigate witness statement.
2. Prosecutorial misconduct.
 - a. Prosecutorial/lack of evidence no witness testimony.
3. Judgement misconduct.
 - a. Allowed witness statement.

At the evidentiary hearing, Applicant proceeded only on the allegations that counsel was ineffective for failing to object to the introduction of the "controlled buy" video, and failure to object to the trial judge's Allen¹ charge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witness presented at the hearing, passed upon his credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, appellate records, Applicant's records from the South Carolina Department of

¹ Allen v. United State, 164 U.S. 492 (1896).

Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Failure to Object to Hearsay

i.

Applicant first alleged counsel was ineffective in failing to object to hearsay when the State introduced a video depicting a "controlled buy," in which a confidential informant – James Grant – met with Applicant and purchased crack cocaine from him.² Tr. p. 67, l. 9-13. Applicant has failed to furnish a copy of the video for purposes of the evidentiary hearing, or otherwise allege any particular statements that violate the rule against hearsay. Accordingly, even assuming counsel was deficient in failing to object, this Court finds Applicant has failed to show any resulting prejudice. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (mere speculation insufficient to support a finding of prejudice). As Applicant has failed to meet his burden, this allegation is denied and dismissed.

ii.

Alternatively, and after reviewing the transcript, this Court finds it is highly unlikely that the video contained any actual hearsay. By definition, statements made by Applicant in the video are not hearsay. Rule 801(d)(2)(A), SCRE (2016) ("A statement is not hearsay if [t]he statement is offered against a party and is the party's own statement. . . ."). Similarly, Mr. Grant's prior inconsistent statements are not hearsay. Rule 801(d)(1)(A) ("A statement is not hearsay if [t]he declarant testifies at trial . . . and is subject to cross-examination concerning the statement, and the statement is inconsistent with the declarant's testimony. . . ."). Mr. Grant denied purchasing drugs from Applicant and denied being on the video of the controlled buy. Tr.

² This Court notes that counsel actually did object to the introduction of this video, on the ground that it had not been properly authenticated.

p. 89, l. 7-19. The fact that the video was introduced before Mr. Grant testified is not relevant in the context of post-conviction relief. Had counsel objected to the video³ based on hearsay and been sustained, the State could have simply introduced it following Mr. Grant's inconsistent testimony. Because it would have come in during the trial anyway, Applicant has failed to show counsel's failure to object affected the outcome of the proceeding. This allegation is therefore denied and dismissed.

Failure to Object to the Trial Judge's Allen Charge

i.

Applicant further alleges counsel was ineffective for failing to object to the trial judge's Allen charge. Even assuming counsel was deficient, this Court finds Applicant has failed to show any resulting prejudice, as the issue was fully resolved on the merits by the South Carolina Court of Appeals. The Court of Appeals affirmed Applicant's convictions, finding that the issue was not preserved, **but also** that the charge was not unduly coercive. State v. Ivery, Op. No. 2014-UP-265 (Ct. App. filed June 30, 2014). Specifically, it found the charge in Applicant's case was similar to that in Green v. State, 351 S.C. 184, 195, 569 S.E.2d 318, 323-23 (2002), which was not directed to minority jurors or otherwise coercive. Id. It further held that charging that the failure to reach a verdict will require a new trial at additional expense is not coercive. Id. (citing State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996)).

In light of the Court of Appeals decision on the matter, this Court finds Applicant has failed to show prejudice – even assuming his objection did not adequately preserve the issue, the Court of Appeals' resolution is controlling.

³ While Applicant's allegation focuses on the video, the same logic applies to the statement he made to law enforcement.

ii.

Alternatively, this Court independently finds that Applicant has failed to meet his burden to prove the trial judge's Allen charge was unduly coercive. An Allen charge cannot be directed to the minority voters on the jury panel. State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983). Instead, an Allen charge should be even-handed, directing both the majority and the minority to consider the other's views. Green at 194, 569 S.E.2d at 323. A trial judge has the duty to urge, but not coerce, a jury to reach a verdict. State v. Pauling, 322 S.C. 95, 470 S.E.2d 106 (1996). Whether an Allen charge is unconstitutionally coercive must be judged in its "context and under all the circumstances." Workman v. State, 412 S.C. 128, 130, 771 S.E.2d 636, 638 (2015). The four factors used to determine whether an Allen charge is unconstitutionally coercive are:

- (1) Does the charge speak specifically to the minority juror(s)?
- (2) Does the charge include any language such as "You have got to reach a decision in this case"?
- (3) Is there an inquiry into the jury's numerical division, which is generally coercive?
- (4) Does the time between when the charge was given, and when the jury returned a verdict, demonstrate coercion?

Workman at 131, 771 S.E.2d at 638.

This Court agrees with the Court of Appeals in finding that the trial judge's Allen charge was not directed to the minority jurors. Instead, the trial judge emphasized to the jury that "[t]he majority should consider the minority's position and visa [sic] versa," and that each "should carefully consider and respect the opinions of each other and re-evaluate your position for reasonableness, correctness, and impartiality." Tr. p. 142, l. 12-16. The trial judge also told the jury that "[a]lthough the verdict . . . must be unanimous, every one of you has a right to your own opinion," and "[t]he verdict that you agree to must be your own verdict, the result of your own convictions, and you should not give up your firmly held beliefs merely to be in agreement with

your fellow jurors.” Id. at 7-9. This language was not coercive, and was not directed to the minority jurors.

Concerning the second factor, the trial judge did not, at any point, include language such as “[y]ou have got to reach a decision in this case.” As the Court of Appeals correctly held, charging that the failure to reach a verdict will require a new trial at additional expense is not coercive. Ivery (citing Pauling, supra). With respect to the third factor, the trial judge made no inquiry into the jury’s numerical division. See State v. Williams, 386 S.C. 503, 515, 690 S.E.2d 62, 68 (2010) (innocent knowledge of jury’s numerical division not sufficient to make a charge coercive). Finally, regarding the fourth factor, this Court would only note that the record does not indicate how long the jury deliberated following the Allen charge, and that it is Applicant’s burden to prove each of his allegations. As Applicant has failed to show coercion with respect to any of the required factors, this Court is unable to find he was prejudiced by counsel’s purported deficiency. This allegation is therefore denied and dismissed.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION

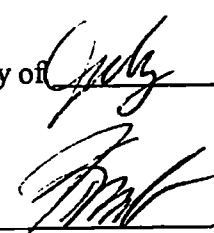
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

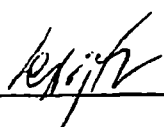
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 29 day of July, 2016.


 R. KNOX MCMAHON
 Presiding Judge
 Thirteenth Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NO: 2015CP2300244

Gregory Allan Ivery vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
 Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE - R Knox McMahon

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

R. Mills Ariail Jr. 11 North Irvine Street, Suite 11
 Greenville, SC 29601

Patrick Lowell Schmeckpeper PO Box 11549
 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

WITNESSES

Charles Cothran

Greenville Police Department

9/19/2011

ARREST WARRANT NUMBER

M802284

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. Jones
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: *10/11/12*

DOCKET NO. 2011-GS-23-

KBS

009810

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2012
TERM 2011

THE STATE

vs.

GREGORY ALLAN IVERY

Indictment for

0107

**DISTRIBUTION OF COCAINE BASE WITHIN 1/2
MILE OF A SCHOOL OR PARK**

VIOLATION § 44-53-0445

RECEIVED

DEC 27 2011

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE WITHIN 1/2 MILE OF A
SCHOOL OR PARK

JUN 12 2012

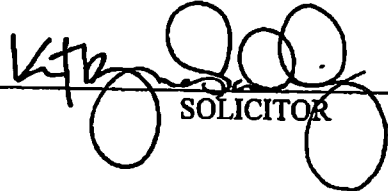
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That GREGORY ALLAN IVERY did in Greenville County, on or about the 30th day of June 2011, distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, while being within one-half (1/2) mile proximity of NICHOLTOWN COMMUNITY CENTER. This is in violation of §44-53-445 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

Charles Cothran

Greenville Police Department

9/19/2011

ARREST WARRANT NUMBER
M802283

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. [Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 10/11/12

DOCKET NO. 2011-GS-23-^{KBS} 009011

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2011 *2012*

THE STATE

vs.

GREGORY ALLAN IVERY

Indictment for

3014

DISTRIBUTION OF COCAINE BASE
(CRACK COCAINE)

VIOLATION § 44-53-0375

RECEIVED

DEC 27 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on **JUN 12 2012** the Grand Jurors of Greenville County present upon their oath:

That GREGORY ALLAN IVERY did in Greenville County, on or about the 30th day of June 2011, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR