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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEROME CHRIS SMITH

APPELLANT

APPELLATE CASE NO 2015-001616

RECORD ON APPEAL

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit
Post Office Box 8002
Anderson, SC 29622
(864)260-4046

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBITS #1-3 – PHOTOS
STATE’S EXHIBIT #4 – CD RECORDING OF BUY
DEFENSE EXHIBIT #4 – CD RECORDING OF PHONE CALL

Jury Qualification

1 THE COURT: All right. The jury has selected a
2 foreman, Mr. Screws.

3 Is there anything from the State before we bring
4 the jury in?

5 MS. SIMMONS: No, your Honor.

6 THE COURT: Anything from the defense?

7 MR. COLE: No, your Honor.

8 THE COURT: All right.

9 Mr. Bailiff, if you will get our jury, please,
10 sir.

11 (WHEREUPON, the jury entered open court at
12 10:05 a.m.)

13 THE COURT: All right. Ladies and gentlemen, we
14 are ready to proceed with opening statements.

15 Mr. Foreman, you will sit in that chair whenever
16 you come back from the jury room. You always sit in
17 that chair, and the alternate will always sit where
18 you're seated right now.

19 Ms. Simmons.

20 MS. SIMMONS: Thank you, your Honor. May it
21 please the Court, Mr. Cole.

22 Good morning, ladies and gentlemen. My name is
23 Lindsey Simmons, and I'm the assistant solicitor here
24 in Oconee County. I was actually born and raised here
25 in Oconee, and when Solicitor Adams was elected in

Jury Qualification

1 2005, I was able to come back home to practice law.

2 We have a relatively easy case for you today. It
3 is distribution of crack cocaine. There's one charge
4 for you to consider. What I have to prove to you is
5 that on September 4th of 2014 here in Oconee that this
6 defendant distributed a quantity of crack cocaine to an
7 undercover operative working for law enforcement.

8 You may not be familiar with what undercover
9 operatives working for law enforcement do. Law
10 enforcement goes out in the community, and they have to
11 eliminate -- try to eliminate the drug problem. In
12 order to buy drugs from people who are selling drugs,
13 they can't find preachers and teachers and things like
14 that to do that. They use other criminals. They use
15 other criminals to try to advance -- use one criminal
16 to bust the next criminal to try and get somebody worse
17 eventually. That's what they do.

18 And in this situation, you're going to hear from
19 law enforcement that they used a confidential
20 informant. His name is Brandon Hunter. He had pending
21 charges, and he's going to come up here in his jumpsuit
22 from the department of corrections. He's in prison.
23 He's in prison for drugs himself and for burglary.
24 He's not real happy to be here. But, ladies and
25 gentlemen, the transaction that he was involved with

Jury Qualification

1 was captured on audio and video. That's one of the
2 ways that law enforcement is able to ensure the
3 integrity of informant testimony because they capture
4 these things on audio and video.

5 You are going to see that there is a videotape of
6 the drug deal in question, and what you're going to be
7 looking for is there is a hand-to-hand delivery of
8 money and then a small baggie -- they use tips of
9 baggies like twisted up with drugs in them to exchange.
10 So you're looking for something small. You're going to
11 see that on the video.

12 Law enforcement officers are going to also explain
13 to you this whole system, what they did on
14 September 4th of 2014, and what kind of surveillance
15 they used. You're going to see the video in this case.
16 It's about 30 minutes long, and I'm going to apologize
17 in advance. Parts of it are boring. But in order to
18 prove to you that nothing else happened and that he
19 didn't buy drugs from somebody else during the course
20 of that, law enforcement puts a wire on the informant
21 once they get with them, and they don't take it off
22 until they're actually back with them. And that just
23 ensures to you that you have seen everything that went
24 on during that time period. The most relevant part of
25 the video is like two minutes in the middle. Again, I

Jury Qualification

1 apologize in advance for boring you.

2 You're also going to hear from Melinda Nicholson,
3 and she's from the Seneca Police Department. She
4 received the evidence. She ensured that the evidence
5 was handled properly, and that she submitted it to
6 Meredith Lanford of the Oconee County forensic lab for
7 testing.

8 That's all the people you're going to hear from,
9 ladies and gentlemen. At the end of the day, I want
10 you to stay focused on the video. Stay focused on the
11 fact there's videotape evidence and on September 4th of
12 2014 here in Oconee County that this defendant did
13 distribute crack cocaine to Brandon Hunter. Thank you.

14 THE COURT: All right, Mr. Cole.

15 MR. COLE: Thank you, your Honor. If it please
16 the Court.

17 Ladies and gentlemen of the jury, my name is Lee
18 Cole, and I'm from, as I said earlier, I'm from the big
19 city of Williamston in Anderson County, which is about
20 like Walhalla. And my client here is Gerome Smith
21 today. And you heard what he stands accused of, but I
22 want to tell you what your job is today.

23 Now, the judge is going to tell you, but your job,
24 you have the most important job here. Your job is the
25 finder of fact. Your job is to decide whether my

Jury Qualification

1 client's liberty to going to be taken away from him or
2 not. In the United States, we value liberty. We just
3 had the Fourth of July. A person's liberty cannot be
4 taken away unless a crime is proven against them beyond
5 a reasonable doubt.

6 That's something you're going to hear a lot today,
7 "beyond a reasonable doubt." And I'm sure you have
8 heard it before, and the judge is going to explain to
9 you, what that means, what the legal definition of that
10 is. But for me, I had to understand it -- took me a
11 while to really know to me what beyond a reasonable
12 doubt means. It means a reason to doubt.

13 Whenever I think about it and when I first started
14 really thinking about reasonable doubt, it reminded me
15 of a story from my childhood. As I said, I'm from down
16 the street in Williamston. I grew up with my mother
17 and father and my younger sister, Kendall, and we had
18 two cats in the house, Dusty and Bella.

19 And my sister Kendall, now she's not in the
20 courtroom today, so I can say this. When we were
21 growing up -- she's five years younger than me. When
22 we were growing up, she was the one that stayed in
23 trouble all the time, and I was the one who tried to do
24 right, most of all because I was scared of my mother.
25 None of y'all have met my mother, but she's a former

Jury Qualification

1 school teacher, and she was the sweetest, most loving
2 woman in the world, great mother, but you don't cross
3 her, and you don't do the wrong thing. And I learned
4 that the hard way too many times, so I did good. My
5 sister never could quite get that in her head.

6 So when we were younger, I was in -- I think I was
7 in about the ninth grade. My sister would have been in
8 primary school. I remember one day my mom, she had
9 come home from work. She was cooking us supper. My
10 daddy wasn't home yet. And one thing about my sister,
11 one thing that my mom always told us, "Don't practice
12 dance in the house." My sister took dance from the
13 time she was four years old until the time she
14 graduated high school and even into college some. She
15 loved to dance. She did it all the time, did all
16 different kinds, jazz, ballet, all the different kinds
17 of it. I had to go to a bunch of dance competitions
18 growing up and watch her.

19 But my mom said, "You can practice in the house,"
20 because she practiced all the time, but we had what was
21 called a formal living room. Now, that formal living
22 room was a room nobody ever went in, and she liked to
23 practice in there because nobody was ever in that room.
24 But mom did not like her practicing in that room
25 because that's where family heirlooms and things like

Jury Qualification

1 that was.

2 Well, that one day I'm telling you about, my mom
3 was cooking supper, and my sister is practicing in the
4 living room. Now, my mom didn't know about it. She
5 was in the kitchen. I'm in my room doing my homework.
6 Like I told you, I was the good one. I didn't learn
7 the hard way at this point. Next thing we hear, crash.
8 So me and my mom both go running to see what's going
9 on. My sister is in the living room, and my
10 grandmother -- great-grandmother. We called her Mama
11 Campbell -- Mama Campbell's vase that she had give us
12 was in the floor broke.

13 Now, of course my sister had been presenting in
14 the living room. My mom knew about it. My mom went
15 off, said, "You're going to clean this up. Come in
16 here," started, "Wait until your daddy gets home."
17 That was the thing. If any of y'all ever heard that,
18 "Wait until your daddy gets home." That's what we
19 didn't want to hear either.

20 And so my mom done took her into the room, telling
21 her she's going to clean this up, she's going to be on
22 restriction, and they don't know what daddy's going to
23 do when he gets home. Well, I stood there. I was
24 still laughing about the whole situation. But when I
25 was standing there, I told you we had two cats, Dusty

1 and Bella. I'm standing there, about to leave the
2 room, and Bella comes hiding, walking out from under
3 the table that that vase was sitting on.

4 Ladies and gentlemen, I had a reason to doubt at
5 that point. So I'm going to ask you today to look at
6 the evidence. Look at the evidence the State presents,
7 and if you have a reason to doubt, find my client not
8 guilty. Thank you.

9 THE COURT: All right. Ms. Simmons, call your
10 first witness.

11 MS. SIMMONS: State calls Brandon Hunter.

12 BRANDON HUNTER;

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. SIMMONS:

16 Q Mr. Hunter, how old are you?

17 A 23.

18 Q And are you here because you want to be here or
19 are you here because I subpoenaed you?

20 A Because you subpoenaed me.

21 Q And are you currently incarcerated?

22 A Yeah.

23 Q Tell me for what.

24 A Distribution.

25 Q Okay. How long are you going to be in jail?

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1 A Three years.

2 Q Have you had any problems since you have been in
3 jail?

4 A No.

5 Q So you have three drug convictions and a burglary
6 third conviction on your record; is that right?

7 A Yeah.

8 Q Okay. Back when you were on the street, did you
9 cooperate with the Seneca Police Department as an
10 informant?

11 A I plead the Fifth.

12 MS. SIMMONS: Your Honor, I would ask that you
13 instruct the witness to answer the question.

14 THE COURT: All right. Let's send the jury out
15 for a moment.

16 (WHEREUPON, the jury exited open court at
17 10:15 a.m.)

18 THE COURT: Okay. Ms. Simmons, state your
19 question again.

20 BY MS. SIMMONS:

21 Q Have you worked as a confidential informant for
22 the Seneca Police Department before?

23 A I plead the Fifth.

24 THE COURT: Okay. Mr. Hunter, you are pleading
25 the Fifth Amendment. Do you have pending charges?

1 THE DEFENDANT: Not that I know of.

2 THE COURT: Are there any pending charges for
3 Mr. Hunter?

4 MS. SIMMONS: No, your Honor. He pled in
5 December.

6 THE COURT: Mr. Hunter, the Fifth Amendment
7 applies to criminal charges. If you have any pending
8 or anticipated charges, I need to know that before I
9 rule on this issue.

10 THE DEFENDANT: I don't have any pending charges.

11 THE COURT: Okay. Ms. Simmons, are you asking
12 this question seeking information to prosecute
13 Mr. Hunter?

14 MS. SIMMONS: Absolutely not, your Honor.

15 THE COURT: Okay. All right. Well, Mr. Hunter, I
16 will direct you to answer the State's question.

17 Well, Mr. Cole, any --

18 MR. COLE: Your Honor, the only thing I'd add is
19 if he's anticipating answering the question would give
20 him some criminal liability. I don't know, your Honor.
21 But if he's anticipating that, then I think he should
22 be allowed to plead the Fifth.

23 THE COURT: Ms. Simmons, these are past incidents?

24 MS. SIMMONS: Yes, your Honor. There is -- the
25 past incidents occurred last September. He has pled to

1 every charge he had with my office, either pled or
2 dismissed.

3 THE COURT: Okay. All right. Mr. Hunter, I'm
4 going to direct you to answer the State's questions.

5 All right. Get our jury back in.

6 (WHEREUPON, the jury entered open court at
7 10:18 a.m.)

8 THE COURT: All right.

9 Ms. Simmons, proceed.

10 MS. SIMMONS: Thank you.

11 Q Mr. Hunter, I'm going to ask you again: Have you
12 worked as a confidential informant for the Seneca
13 Police Department before?

14 A I plead the Fifth.

15 THE COURT: Mr. Hunter, I'm directing you to
16 answer the question.

17 THE WITNESS: (No response.)

18 THE COURT: Mr. Hunter, I'm directing you to
19 answer the question.

20 THE WITNESS: (No response.)

21 THE COURT: Madam bailiff, will you take our jury
22 out again, please.

23 (WHEREUPON, the jury exited open court at
24 10:19 a.m.)

25 THE COURT: Mr. Hunter, I'm going to give you one

1 more opportunity to answer the State's questions. If
2 you refuse this Court's instructions, I will have no
3 choice but to hold you in contempt.

4 So are you going to answer the State's questions?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. All right. Would you please
7 remove Mr. Hunter. I'm going to hold a contempt
8 hearing at the conclusion of the trial.

9 MS. SIMMONS: Your Honor, may we approach?

10 THE COURT: Yes.

11 (WHEREUPON, a bench conference was held off the
12 record.)

13 THE COURT: We're going to be in recess.

14 (WHEREUPON, a recess was taken from 10:22 a.m. to
15 10:56 a.m., at which time Mr. Hunter is placed back on
16 the witness stand.)

17 THE COURT: All right. Ms. Simmons, I have
18 conferred with the attorneys, and, Ms. Simmons, it's my
19 understanding that you are seeking to impeach this
20 witness with a prior statement; is that correct?

21 MS. SIMMONS: Yes, your Honor. We will be seeking
22 to admit the defendant's statement -- I mean the
23 witness' statement under Rule 613.

24 THE COURT: Why don't we mark the statement that
25 you are seeking to admit and then, Mr. Cole, I'll hear

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1 from you in just a second.

2 (WHEREUPON, State's Exhibit Number 6 was marked
3 for identification.)

4 THE COURT: Have we marked the statement?

5 MS. SIMMONS: Yes, your Honor.

6 THE COURT: Mr. Cole, have you had an opportunity
7 to review the statement?

8 MR. COLE: Yes, your Honor.

9 THE COURT: Okay. Mr. Hunter, I'm assuming and or
10 the fact that I'm assuming means I have to ask you
11 again. The State is going to question you. Are you
12 still going to decline to answer the State's questions?

13 THE WITNESS: I'm not declining. I'm pleading the
14 Fifth.

15 THE COURT: Okay. So your answer is still the
16 same?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. All right.

19 Now, Ms. Simmons, this statement that you are
20 seeking to admit, is that a statement by Mr. Hunter?

21 MS. SIMMONS: Yes, your Honor. It's a written
22 statement signed by Mr. Hunter on -- describing the
23 incidents on September 4th of 2014.

24 THE COURT: And to whom was that statement given?

25 MS. SIMMONS: Sergeant B.J. McClure of the Seneca

1 Police Department.

2 THE COURT: So what are you seeking to do, when
3 Mr. Hunter declines to answer, is to put that statement
4 in. What authority, case law or rules do you have to
5 support that statement being admitted?

6 MS. SIMMONS: Your Honor, generally when a witness
7 has responded with anything less than an unequivocal
8 admission, the trial court has wide latitude to allow
9 extrinsic evidence of the statement. That is *State vs.*
10 *Carmack*, 694 S.E.2d 224. And then when the witness is
11 presented with the requisite circumstances surrounding
12 an alleged inconsistent but nevertheless continues to
13 deny before the Court making a statement, the person's
14 testimony may be admissible under 613(b).

15 Judge, I think anything less than an unequivocal
16 admission, if he pleads the Fifth, that qualifies under
17 that term.

18 THE COURT: Okay. All right.

19 Mr. Cole, be happy to hear from you.

20 MR. COLE: Please the Court, your Honor. My
21 position is that it's Mr. Hunter has pled the Fifth on
22 this, which I think is a wholly different thing than --
23 that's different than not answering and that's
24 different than saying -- than answering in the
25 negative. Usually impeachment is if the person answers

1 in the negative, then you can impeach them with a prior
2 inconsistent statement.

3 In this situation he has said he's pleading the
4 Fifth because -- and I don't know what his reasons are,
5 but I could assume a person pleads the Fifth, he's
6 worried that if he answers this question, that's going
7 to subject him to some type of criminal liability. So
8 I think in this situation, because he's exercising his
9 constitutional right to plead the Fifth, then he's not
10 given a -- I think it's a whole different -- it's
11 apples and oranges. It's not just an unequivocal
12 response. It is a different type of response, that is,
13 "I'm seeking the protection of the Constitution under
14 the Fifth Amendment in not answering this question."

15 THE COURT: Mr. Cole, how do you respond to
16 Ms. Simmons' statement that case law says that anything
17 other than an unequivocal admission triggers the rule?
18 What's your response to that? I'm also going to ask
19 you to look at the case of -- Ms. Simmons cited the
20 *Carmack* case, but I also want you to look at the case
21 of *State vs. Blalock*, 591 S.E.2d 632. And *Blalock* is
22 cited in the *Carmack* case.

23 MR. COLE: Yes, your Honor. I would say, in
24 answer to that Judge, that it's -- it is anything less
25 than an unequivocal admission. However, I think it

1 seems to me that that case was -- that case wasn't a
2 Fifth Amendment case. This was a contemplation of not
3 answering at all.

4 In this situation he's asked for protection of the
5 Fifth Amendment, which I think is different than not
6 answering at all. If he's just saying, "I'm not going
7 to answer at all," then I think she has -- there is a
8 better argument. But saying, "I'm taking the
9 protection of the Fifth Amendment," that is an answer,
10 and I think it's different than an unequivocal
11 admission analysis. It's a completely different thing,
12 your Honor.

13 THE COURT: Well, now, I've already ruled I don't
14 think the Fifth Amendment applies here. This is a
15 question regarding, as I understand it, an incident in
16 which the witness has already been charged and already
17 been convicted and he began his testimony.

18 So, Mr. Cole, again, I want to give you full
19 opportunity to argue your position here, but how is
20 giving a statement then pleading the Fifth a bar to
21 that evidence under this rule and under the case law?
22 Do you have any other authority for me to consider?

23 MR. COLE: No, your Honor. I have no other case
24 law for you to consider other than just the argument
25 that says in general it is a denial, and a denial would

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1 be what would trigger the impeachment. And in this
2 situation, there's been -- even if he's not pleading
3 the Fifth, he's refused to answer completely. I know,
4 I understand that may not be an unequivocal admission,
5 but it's not a denial either.

6 THE COURT: Thank you, Mr. Cole.

7 Anything further, Ms. Simmons?

8 MS. SIMMONS: No, your Honor.

9 THE COURT: All right. I'm going to --
10 Ms. Simmons, I'm going to allow you to impeach the
11 witness.

12 Mr. Cole, your objection is noted for the record.

13 And, again, the *Carmack* case and the *Blalock* case,
14 I believe, allows that testimony.

15 So, Ms. Simmons, from here you may ask Mr. Hunter
16 about the statement, and if Mr. Hunter continues to
17 decline to answer under the Fifth Amendment, then you
18 can proceed.

19 MS. SIMMONS: Thank you, your Honor.

20 THE COURT: Okay. If we can get our jury back in.

21 Well, anything further from the State before we
22 bring our jury back in?

23 MS. SIMMONS: No, your Honor.

24 THE COURT: Anything further from the defense?

25 MR. COLE: No, your Honor.

1 THE COURT: Okay.

2 (WHEREUPON, the jury entered open court at
3 11:05 a.m.)

4 THE COURT: Ms. Simmons.

5 MS. SIMMONS: Thank you, Judge.

6 Q Mr. Hunter, on September 4th of 2014 you met with
7 Sergeant B.J. McClure of the Seneca Police Department
8 and gave him the following statement: "I met with
9 agents with the Seneca Police Department at a
10 confidential location to buy crack cocaine under the
11 direction of agents. Upon meeting with agents I was
12 searched, wired and briefed and provided documented
13 funds to purchase crack. I left the confidential
14 location and went to East South 6th Street within
15 Seneca where I met Gerome Smith and purchased crack
16 with the documented funds. I then left the location
17 where I purchased the crack and went back to the
18 confidential location to meet with agents. Upon
19 returning, I turned over crack to Agent McClure and was
20 debriefed and searched again with negative results."
21 And you wrote, concluded, "I have read each page of
22 this statement consisting of one page which bears my
23 signature and corrections, if any, and bears my
24 initials, and I certify the facts contained herein are
25 true and correct." This was signed in Oconee County

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Brandon Hunter - Cross-Examination by Mr. Cole

1 regarding events of September 4th of 2014 witnessed by
2 Sergeant B.J. McClure.

3 Do you admit or deny this statement?

4 A I plead the Fifth.

5 MS. SIMMONS: Your Honor, at this time I would
6 move to admit the statement as State's Exhibit 6 under
7 South Carolina Rules of Evidence 613(b).

8 THE COURT: I think you're going to have to lay
9 some foundation for the statement from someone who can
10 identify --

11 MS. SIMMONS: I would seek to admit that from
12 another witness, your Honor.

13 THE COURT: I don't think you can admit it at this
14 point, but he's not answering the question.

15 Okay.

16 MS. SIMMONS: And, Mr. Hunter, I am asking that
17 you answer any questions the defense may have.

18 THE COURT: Any cross-examination?

19 MR. COLE: Yes, your Honor.

20 CROSS-EXAMINATION

21 BY MR. COLE:

22 Q Mr. Hunter, that statement you gave to the police
23 that's been marked for identification purposes as
24 State's Exhibit 6, you state there that you purchased
25 crack with documented funds; is that correct?

1 A I plead the Fifth.

2 Q Well, these documented funds, you didn't purchase
3 crack with documented funds. You kept the money; isn't
4 that correct?

5 A I plead the Fifth.

6 THE COURT: Okay. Mr. Hunter is going to continue
7 to decline to answer any questions, so if you could
8 remove Mr. Hunter.

9 MR. COLE: Your Honor, I have another prior
10 inconsistent statement.

11 THE COURT: Wait a minute, Mr. Hunter.
12 If you have another statement.

13 MR. COLE: Yes, your Honor.

14 THE COURT: Okay. You can ask him about that.

15 BY MR. COLE:

16 Q Mr. Hunter, isn't it true approximately two weeks
17 ago you called my client, Gerome Smith?

18 A I plead the Fifth.

19 MR. COLE: Your Honor, I would ask to be marked
20 for identification purposes a recorded statement of a
21 phone call between the witness and my client that's on
22 this CD.

23 THE COURT: Madam, could you remove the jury to
24 the jury room, please.

25 (WHEREUPON, the jury exited open court at

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1 11:08 a.m.)

2 THE COURT: Ms. Simmons, have you seen this?

3 MS. SIMMONS: It's the first I've heard of it,
4 Judge.

5 MR. COLE: Yes, your Honor. We didn't know if we
6 would have to use it or not unless we had to impeach
7 the witness, but this is a recorded statement where the
8 witness says, "I did not buy crack from Gerome Smith on
9 August 4th." It's a phone call between where he called
10 my client and made that statement. I only have -- I
11 only have it on CD form.

12 MS. SIMMONS: Your Honor, I think we would begin
13 meeting the Rule 613 issue where it would have to be
14 authenticated by another party.

15 THE COURT: I think case law is pretty clear on
16 that. My only concern -- you haven't had an
17 opportunity to listen to it or --

18 MS. SIMMONS: Under the reciprocal discovery
19 rules, I had no idea this existed.

20 THE COURT: When did you obtain this?

21 MR. COLE: Your Honor, I obtained this in the last
22 day or two, your Honor, but I don't think that because
23 it was -- because it's just being used for impeachment
24 purposes -- I'm not going to introduce this as an
25 Exhibit. I want to use it for impeachment purposes as

1 a prior inconsistent statement just as you would --

2 THE COURT: Well, he's pleading the Fifth, so
3 under what we've ruled it's going to have to be
4 admitted as an exhibit. All right. Take a minute.
5 Let Ms. Simmons hear the tape, and we'll be in recess.

6 THE DEPUTY: Do you want me to clear the
7 courtroom, Judge?

8 THE COURT: Clear the courtroom.

9 (WHEREUPON, the courtroom was cleared.)

10 (WHEREUPON, recording played from 11:10 a.m.
11 to 11:12 a.m.)

12 THE COURT: Ms. Simmons, have you had an
13 opportunity to listen to it?

14 MS. SIMMONS: Yes, your Honor. I believe that
15 Rule 613 would apply to this, but, your Honor, I would
16 also ask that this statement be excluded. It was not
17 provided in reciprocal discovery to me, and I did not
18 have any notice of it, and under Rule 6, it has to be
19 provided to me if they intended to use it.

20 THE COURT: Who is the party on the other end of
21 the phone, Mr. Cole?

22 MR. COLE: My client is the party. Your Honor,
23 like I say --

24 THE COURT: You're going to -- basically, if you
25 put that in, you're going to have to have your client

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Brandon Hunter - Cross-Examination by Mr. Cole

1 identify it.

2 MR. COLE: Well, and we don't want to -- we want
3 to use it just for impeachment purposes, not introduce
4 it into evidence.

5 THE COURT: Mr. Cole, you're going to either have
6 to put it into evidence or not use it because
7 Mr. Hunter is not answering questions. You're in the
8 same boat as the solicitor. She's seeking to put a
9 statement in, but she's going to have to use another
10 witness to authenticate that statement.

11 MR. COLE: I understand that, your Honor, but the
12 jury has heard her statement whether it comes in or
13 not, and they haven't heard our statement.

14 THE COURT: Well, Mr. Cole, that wasn't objected
15 to when she read it. But, again, I'm going to allow
16 you to put that into evidence, the same ruling that I
17 made for the solicitor, but you're going to have to
18 authenticate the phone conversation.

19 MR. COLE: I understand, your Honor.

20 THE COURT: He's not going to identify --
21 Mr. Hunter is saying he's not going to answer any
22 questions under the Fifth Amendment. So, I mean, you
23 can discuss that with your client. And I don't know if
24 your client seeks to testify or not. That's totally up
25 to him. But that's something that you can discuss with

1 him at the appropriate time. But I will allow you to
2 put that into evidence if you seek to do that in your
3 case.

4 MR. COLE: Your Honor, let me, if you don't mind,
5 if I could beg the Court's indulgence to speak with my
6 client.

7 THE COURT: Again, you don't have to make that
8 decision at this point because, of course, you and your
9 client is going to discuss whether he testifies.
10 That's totally up to him what he wants to do. But I'll
11 allow you to put it into evidence.

12 (WHEREUPON, an off-the-record discussion was
13 held between Mr. Cole and the defendant.)

14 MR. COLE: Your Honor, just because the State has
15 had an opportunity to ask Mr. Hunter to make sure that
16 he's not going to -- may I ask again just to be sure
17 that he's not going to --

18 THE COURT: Yes.

19 MR. COLE: -- not going to admit because if he
20 admits to the statement, the tape couldn't be played if
21 he admits that he made that statement.

22 THE COURT: I'll allow you to ask him again.
23 Mr. Hunter may change his mind, but he's been pretty
24 adamant that he's not going to answer questions up to
25 this point, but certainly I'll allow you to ask him

1 again if he wants to testify.

2 And, now, if Mr. Hunter changes his mind and
3 decides that he does wish to testify, I'm going to
4 allow the solicitor to go back to direct examination.
5 But up to this point Mr. Hunter has been very clear
6 that he's not going to testify. Okay?

7 Again, Mr. Cole, you don't have to decide at this
8 point whether or not you're going to put that CD in.
9 That's something you can decide when you and your
10 client discuss whether or not he testifies.

11 MR. COLE: Well, your Honor, I think what I'll do,
12 your Honor, is, like I say, Mr. Hunter has made it
13 clear that he's not going to testify, but there were
14 some other -- some other cross-examination we
15 originally planned. But, I mean, I'd like to ask the
16 questions and him have to say "I plead" -- well,
17 actually, your Honor, I change my mind. I'm not going
18 to ask him any more questions. Thank you, your Honor.

19 THE COURT: Anything further for Mr. Hunter from
20 either party?

21 MS. SIMMONS: No, your Honor.

22 THE COURT: Okay. You can take Mr. Hunter back.

23 Let's get our jury, then you can proceed with your
24 next witness.

25 MS. SIMMONS: Thank you, Judge.

1 THE DEPUTY: Open the courtroom back up, Judge?

2 THE COURT: You can open the courtroom back up.

3 (WHEREUPON; the jury entered open court at
4 11:18 a.m. and the courtroom reopened.)

5 THE COURT: All right. Ms. Simmons.

6 MS. SIMMONS: The State calls Agent Jason
7 Sutherland.

8 JASON SUTHERLAND,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. SIMMONS:

12 Q Agent Sutherland, where are you employed?

13 A Seneca Police Department.

14 Q And how long have you been in law enforcement?

15 A Close to ten years.

16 Q What division are you currently assigned to?

17 A Narcotics.

18 Q And what is your specialized training in narcotics
19 and what kind of things do you guys do?

20 A Any type of narcotics investigations, search
21 warrants, undercover buys, anything dealing with
22 illegal narcotics.

23 Q Is the matter at hand today an undercover buy?

24 A Yes, ma'am.

25 Q Were you working on September 4, 2014?

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Jason Sutherland - Direct Examination by Ms. Simmons

1 A Yes, I was.

2 Q And what area of Seneca?

3 A Inside the city limits around 6th Street area is
4 where we conducted the buy.

5 Q Did all the events that you witnessed or heard
6 occur in Oconee County?

7 A Yes, ma'am.

8 Q Did you supervise an undercover transaction
9 regarding this defendant on that day?

10 A Yes, I did.

11 Q After that undercover transaction, were you a
12 party to obtaining a written statement from the
13 confidential informant in this matter, Brandon Hunter?

14 A Yes, I was.

15 Q Did you type that statement?

16 A Yes, ma'am.

17 Q I'm going to show you what's been tentatively
18 marked as State's Exhibit 6. Do you recognize this?

19 A Yes, ma'am.

20 Q And what is that?

21 A A statement we typed in our vehicle based on the
22 facts of case. We print it out. My CI has a chance to
23 review it. If all the facts are what he told us, he
24 signs it, then we witness it.

25 Q What date did that occur on?

1 A September 4, 2014.

2 Q And the September 2nd on the bottom?

3 A That's just a typo.

4 MS. SIMMONS: Judge, at this time, I would move to
5 admit State's Exhibit 6 under Rule 613(b).

6 MR. COLE: Your Honor, I would object to this.

7 Under, first, your Honor, under being hearsay --

8 THE COURT: All right. Let's take our jury out.

9 (WHEREUPON, the jury exited open court at
10 11:22 a.m.)

11 THE COURT: Okay. State your objection.

12 MR. COLE: Your Honor, I'm trying to see what the
13 State's trying to do. She's trying to present this as
14 evidence, as impeachment evidence against the witness,
15 but also to me, your Honor, it is -- she's admitting it
16 as a statement for the truth of the matter, so I would
17 argue hearsay. But more importantly, your Honor, the
18 confrontation clause.

19 Your Honor, if this gets into evidence -- my
20 client has not had the opportunity to confront this
21 other witness because he's pled the Fifth on
22 everything. So this gets into evidence, this is a
23 statement that was made which we have no ability to
24 cross-examine because he's not answering any questions.

25 THE COURT: Okay. Mr. Cole, my ruling is the same

1 as the *Carmack* case, the *Blalock* case. I think we have
2 already dealt with that issue. The reason I sent the
3 jury out is I wanted to make sure you had no other
4 objections. Sounds like your objection is the same as
5 it was before. That's noted for the record.

6 MR. COLE: Thank you, your Honor. I wanted to
7 add -- I didn't know if I added the confrontation
8 clause issue, and I wanted to make sure that I --

9 THE COURT: I'll note that for the record,
10 Mr. Cole. I will allow you to admit the statement.

11 All right. If we can get our jury back.

12 (WHEREUPON, the jury entered open court at
13 11:24 a.m.)

14 MS. SIMMONS: Again, Judge, I would move to admit
15 State's Exhibit 6 under Rule 613(b).

16 MR. COLE: Your Honor, I repeat my previous
17 objections.

18 THE COURT: Your objections are noted, Mr. Cole.

19 MR. COLE: Thank you.

20 THE COURT: So admitted.

21 MS. SIMMONS: Thank you, your Honor.

22 (WHEREUPON, State's Exhibit Number 6 was admitted
23 into evidence.)

24 BY MS. SIMMONS:

25 Q Agent Sutherland, did you supervise an undercover

1 transaction involving this defendant on September 4th
2 of 2014?

3 A Yes, ma'am.

4 Q And have you viewed the audio and videotapes in
5 this case?

6 A Yes, ma'am.

7 Q And a person on that tape, do you see him in the
8 courtroom?

9 A It's the defendant.

10 Q Who was responsible for wiring the confidential
11 informant for sound and video in this case?

12 A I was.

13 Q How does that work?

14 A We just place a camera on his body. It's a
15 body-worn camera capable of night vision. Then we put
16 a wireless transmitter on him. That way we can monitor
17 the audio live.

18 Q So you were monitoring everything realtime?

19 A Yes, ma'am.

20 Q And how did you retrieve the recording after it
21 was made?

22 A After the recording was made and we met back with
23 the CI, I took everything back off of him, and we
24 downloaded it back at our office.

25 Q Did you personally download it?

1 A No, ma'am. Agent McClure did.

2 (WHEREUPON, State's Exhibit Number 4 was marked
3 for identification.)

4 BY MS. SIMMONS:

5 Q Have you had a chance to review what's been
6 premarked as State's Exhibit 4?

7 A The video? Yes, ma'am.

8 Q And is it a fair and accurate depiction of the
9 undercover drug transaction that you monitored realtime
10 on September 4th of 2014?

11 A Yes, ma'am.

12 Q Have you made any alterations, deletions or
13 additions to this since September 4th of 2014?

14 A No, ma'am.

15 MS. SIMMONS: Judge, at this time the State would
16 move to admit State's Exhibit 4.

17 THE COURT: Any objection?

18 MR. COLE: Objection, your Honor.

19 THE COURT: All right.

20 MR. COLE: I do believe it's a matter of law.

21 THE COURT: Okay. All right. Let's have our jury
22 retire to the jury room.

23 (WHEREUPON, the jury exited open court at
24 11:26 a.m.)

25 THE COURT: Mr. Cole.

1 MR. COLE: Your Honor, I would move that that
2 video not be admitted on lack of authentication of the
3 video. Your Honor, I think he testified that he had --
4 he listened to it on the audio, but there is a video
5 also. So if he didn't -- realtime on audio. If he
6 didn't realtime watch the video -- and I've watched the
7 video, your Honor. There's evidence in there that
8 indicates they didn't realtime watch the video. If
9 they didn't realtime watch it, then they can't
10 authenticate it. This video doesn't show Brandon
11 Hunter on the video, so I don't see how -- you would
12 have to have the person taking the video to
13 authenticate the video to get it into evidence. And I
14 don't see how they have done that in this case.

15 THE COURT: All right.

16 Ms. Simmons.

17 MS. SIMMONS: Mr. Hunter's written statement is in
18 evidence, Judge. It says he was searched, wired and
19 sent with documented funds to that location. That
20 statement is in evidence. Agent Sutherland is who
21 wired Mr. Hunter. He said that he downloaded that,
22 that he was responsible for wiring, he monitored the
23 transaction, and he downloaded -- he and Agent McClure
24 downloaded the video and it has not been altered or
25 tampered with in any way, and I believe that's

1 sufficient foundation for its admission.

2 THE COURT: I thought he testified that Agent
3 McClure was the one that actually downloaded the video.

4 MS. SIMMONS: He wired him and McClure downloaded
5 it in his presence, I believe.

6 MR. COLE: Yes, your Honor, and that's another --

7 THE COURT: I'm going to overrule your objection
8 for purposes of the admissibility of the video in
9 general.

10 However, Ms. Simmons, I believe you're going to
11 have to call Officer McClure since the testimony was
12 that he's the one that actually -- which you have him
13 listed as a witness. I'm not going to allow you to
14 admit that at this time.

15 MS. SIMMONS: Thank you, Judge.

16 THE COURT: If we can bring our jury back in.

17 (WHEREUPON, the jury entered open court at
18 11:29 a.m.)

19 THE COURT: Ms. Simmons.

20 BY MS. SIMMONS:

21 Q Agent Sutherland, have you reviewed what's been
22 premarked as State's Exhibit 4?

23 A Yes, ma'am.

24 Q And based on your information and belief and your
25 work that day, what do you believe occurred between the

1 defendant and Hunter?

2 A Yes, ma'am.

3 Q What do you believe occurred?

4 A Oh, the undercover buy. We met with the CI. We
5 wired him up. He met with the defendant with the
6 documented funds he gave him, purchased a quantity of
7 crack cocaine. We met back with him and he turned it
8 over to us.

9 Q And based on your observations of the video and
10 audio, was there any opportunity for him to obtain
11 crack cocaine from any other source during the time he
12 was wired?

13 A No, ma'am.

14 Q Was he searched prior to being sent to the
15 predetermined location?

16 A Yes, he was.

17 Q Were any drugs found on him at that time?

18 A No, ma'am.

19 Q Please answer any questions the defense may have.

20 MR. COLE: Thank you, your Honor. If it please
21 the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. COLE:

25 Q Officer, now, you have experience in wiring an

1 informant, and you have been trained on the proper way
2 to do that and search him; is that correct?

3 A Yes, sir.

4 Q And so when you wire an informant, you would
5 search them at the beginning; is that correct?

6 A I was responsible for the wiring and the audio in
7 this case.

8 Q Somebody would search them at the beginning; is
9 that the proper procedure?

10 A Yes, sir. Agent McClure did that.

11 Q Then the informant would be given documented
12 funds; is that the proper procedure after that?

13 A Yes.

14 Q Then after the supposed buy, the informant would
15 be searched again; is that correct?

16 A Yes. Yes.

17 Q And when you search again, you would take any
18 money that was left over, and if there were any drugs,
19 you would take that; is that correct?

20 A Yes, sir.

21 Q All right. In this situation, did you receive any
22 money when you searched the confidential informant for
23 the second time?

24 A Agent McClure was responsible for the searching,
25 and he'll have to testify to that. I took the audio

1 back when he returned, and I gave him the audio at the
2 beginning of the deal.

3 Q So you didn't receive any -- you didn't get any
4 drugs from the confidential informant?

5 A I didn't take any drugs from him, no.

6 Q And you didn't take any money from him?

7 A No, sir.

8 Q And you did not -- you did not witness live any
9 drugs change hands between any parties; is that
10 correct?

11 A I listened to audio. We have no capability of
12 watching live video while it's going on.

13 Q And on that audio, there was no conversation that
14 indicated that any drugs changed hands; is that
15 correct?

16 A On the audio, we could listen to it live time. We
17 knew when the deal had taken place.

18 Q There was evidence there was money changing hands,
19 but nobody ever said, "I'm going to give you drugs" or
20 anything like that; is that correct?

21 A I can't for sure say that, no, I can't.

22 Q In that audio and video that you listened to, did
23 you hear -- did you hear the informant ask for money
24 back from whoever he was purchasing the -- he was
25 supposedly purchasing drugs from?

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1 A I seen it on the video, yes.

2 Q All right. So he did -- saw on one of the videos
3 you saw, he did have money back; is that correct?

4 A Yes, sir.

5 Q But you received no money from him at the end of
6 it?

7 A I can't testify to that. If we received anything,
8 it wouldn't have come to me. It would have went to
9 Agent McClure.

10 Q On the audio that you listened to realtime, there
11 were three different voices; is that correct?

12 A Yes, sir.

13 Q And when you watch the video, there was three
14 people in that car; is that correct?

15 A Yes, sir. Yes, sir.

16 Q There was two people in the front seat and one
17 person in the backseat; is that correct?

18 A Yes, sir.

19 Q So the informant could have gotten the drugs from
20 either of the people in the front seat; is that
21 correct?

22 A No, sir.

23 Q If there was two people in the car and the
24 informant is in the backseat, couldn't he have gotten
25 the drugs from either one of them?

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1 A No. The video shows the defendant handing it to
2 him.

3 Q There is -- that video actually shows the
4 defendant -- the informant hold up drugs; is that
5 correct?

6 A Yes, and it shows the defendant hand it back.

7 MR. COLE: No further questions, your Honor.

8 THE COURT: Any redirect?

9 MS. SIMMONS: No, your Honor.

10 THE COURT: Thank you. You can step down.

11 Call your next witness.

12 MS. SIMMONS: State calls agent B.J. McClure.

13 B.J. McCLURE,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. SIMMONS:

17 Q Agent McClure, where are you employed?

18 A Seneca Police Department.

19 Q And how long have you been there?

20 A Approximately nine years.

21 Q What division are you assigned to?

22 A Currently I'm assigned to the narcotics
23 investigation division.

24 Q Tell us how drug transactions work.

25 A Most ways drug transactions works, somebody is

1 going to sell drugs, somebody is going to buy it. They
2 give them money. They give them the drugs. In our
3 particular case as we investigated it, they're not
4 going to sell to a police officer. They're not going
5 to sell to somebody they don't know. We have to get
6 somebody they do know and somebody that's familiar with
7 criminal activity that they would trust and that they
8 normally do business with. And that's what we usually
9 do is we get a confidential informant. As we talk to
10 them, they sign an agreement to conduct an
11 investigation with us. Once they sign that agreement,
12 once that happens, our general protocol is that we meet
13 with them. We search them after we brief them and make
14 sure they don't have any drugs, narcotics on their
15 person or in their vehicle. And in this particular
16 case there was no vehicle involved. Once that's done,
17 they're wired with a wireless transmitter, a recorder
18 so we can listen live time, and also it records audio
19 and video. Then they go out meet with the person
20 selling the drugs. We give them documented funds where
21 we briefed them. They usually use documented funds to
22 purchase the drugs. Once the drugs are purchased, we
23 meet back with them or pick them up. We go back and
24 debrief them. Then prior to that they turn the drugs
25 over to us and we debrief them, and then the wire is

1 removed from the person.

2 Q And was Mr. Hunter in this case, was he working
3 because he had pending charges or was he working for
4 money?

5 A He was working because he had pending charges. We
6 also paid him to help him out at the time as well.

7 Q Did you supervise an undercover drug transaction
8 between Brandon Hunter and this defendant on
9 September 4, 2014?

10 A Yes, ma'am.

11 Q And how many times did you use Brandon Hunter as
12 an informant?

13 A We just happened to use him, I think, one time
14 before.

15 Q Why do informants become hesitant?

16 A Informants become hesitant to testify?

17 Q Yes.

18 A To testify, usually intimidation. Maybe by phone
19 calls, they get in touch with them between the time
20 that the deal was made and once the prosecution begins
21 or the case is -- the prosecution. Sometimes they get
22 in touch with family members, intimidate family
23 members. They might have a showing at an event like
24 this to try to intimidate and cause a person to be
25 hesitant to testify.

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1 Q And are things like that common?

2 A Yes.

3 Q Based on your law enforcement training and
4 experience, was Brandon Hunter under the influence of
5 drugs or alcohol on September 4th of 2014?

6 A No, ma'am, he wasn't.

7 Q And who searched Mr. Hunter prior to the deal?

8 A I was the one that searched him.

9 Q Did you find any illegal drugs on him prior to the
10 deal?

11 A No illegal drugs were on him at any time when I
12 searched him. I think he was wearing shorts, shirt,
13 shoes. We check their shoes, their socks, waistband,
14 anywhere that we think drugs could be hidden and make
15 sure that there is nothing on them of that sort.

16 Q And did you monitor the transaction that day?

17 A We did by audio. We could hear it live by audio,
18 but it was recorded audio and video.

19 Q How much money was he provided?

20 A He was provided with \$200 in documented funds.

21 Q Did you get any money back after the deal?

22 A No, ma'am.

23 Q The \$200, was it for payment of drugs or a payment
24 of a loan or both?

25 A I believe in this particular case that he had owed

1 the defendant some money from a prior deal. He was
2 going to pay him back with his money what he owed him,
3 and then he was going to purchase the crack cocaine
4 with money that we provided for him, so he did have
5 some cash with him when he left and also our \$200 in
6 documented funds.

7 Q Did you get any change back from the informant?

8 A No, ma'am.

9 Q Did you ask?

10 A No, ma'am.

11 Q How did the transaction progress that day?

12 A We met with the confidential informant who was
13 Brandon Hunter. We got in contact with him by
14 telephone. He had told us that he had been in contact
15 with the defendant.

16 MR. COLE: Objection, your Honor.

17 THE COURT: Sustained.

18 THE WITNESS: Okay. We met with him at a
19 confidential location. At that time he informed us
20 that he could buy drugs from the defendant. At that
21 time he was searched, wired, briefed, provided with
22 \$200 in documented funds. We drove him and dropped him
23 off in an area around East South 6th Street. We were
24 kind of in the neighborhood close by where we was
25 listening and monitoring, and we could hear him get

1 picked up, ride around in the car. We could tell that
2 there was a transaction going on. Then after he was
3 set out, we went back and picked him up, drove him back
4 to a confidential meeting location at which time he was
5 debriefed. Well, the drugs were turned over to me, and
6 he was debriefed kind of at the same time. Then he --
7 a statement was typed up. He signs the statement. The
8 wire is removed at some point in time. And in this
9 particular case I think I gave him \$60 to help him out
10 with his kids. It's not uncommon for me -- for us to
11 do that as we have confidential informants, they are
12 coming from a criminal lifestyle. We try to keep them
13 from, if we can help them out a little bit, to keep
14 them from getting back into their criminal lifestyle
15 where they're -- especially while they're assisting us.

16 Q And did you monitor the transaction realtime?

17 A Yes, ma'am, by audio.

18 Q And who downloaded the videotape, the video
19 recording?

20 A The video and audio was removed by Agent Jason
21 Sutherland. He gave that to me, and I took it to my
22 computer. We plug a wire from the device. It doesn't
23 have a chip or anything like that in it. It has to be
24 downloaded to a computer hard drive. And that's what I
25 did. I downloaded it to a computer hard drive, put in,

1 I believe it's a DVD or R, and then it's downloaded
2 onto the DVD-R and it's also on our hard drive of our
3 computer.

4 Q Whose images and voices do you hear in that
5 transaction?

6 A I hear Brandon Hunter's on there at the beginning.
7 Any phone calls that are made, it's his voice we could
8 hear. And then we hear the car come up and hear two
9 other voices. One voice I recognize as being that of
10 the defendant.

11 Q And have you reviewed State's Exhibit 4 before
12 court?

13 A Yes, ma'am.

14 Q Is this a fair and accurate representation of the
15 videotape that you downloaded on September 4th of 2014?

16 A Yes, ma'am, it is.

17 Q And have you made any alterations, deletions or
18 additions to it?

19 A No, ma'am. At the beginning of the tape, we give
20 the date and time and what we're doing. When we come
21 back, we debrief. We also give the date and time to
22 say that drugs are now being turned over, and that
23 should be complete on there.

24 MS. SIMMONS: Judge, at this time we move into
25 evidence State's Exhibit 4 which was produced by Agent

1 McClure.

2 MR. COLE: Your Honor, I would object on the same
3 grounds, lack of proper foundation and authentication.

4 THE COURT: Mr. Cole, your objection is noted for
5 the record.

6 MR. COLE: Thank you, your Honor.

7 THE COURT: I will overrule it. It will be so
8 admitted as State's Exhibit 4.

9 (WHEREUPON, State's Exhibit Number 4 was admitted
10 into evidence.)

11 BY MS. SIMMONS:

12 Q Agent McClure, I'm going to show you what's been
13 marked as State's Exhibit 1, 2 and 3. Can you tell me
14 what these items are?

15 A Yes, ma'am. Those are pictures from our DVD-R
16 that we downloaded. That is a picture of -- I believe
17 it's Jerome Christopher Smith. We know him as Zimbe.
18 He goes by the name Zimbe on the street. He's always
19 referred to as Zimbe. That's who I recognize that as
20 being.

21 Q Are these taken from the video that you
22 downloaded?

23 A Yes, ma'am, they were.

24 MS. SIMMONS: Judge, at this time we would move
25 into evidence State's Exhibit 1, 2 and 3.

1 MR. COLE: Your Honor, I object to those coming in
2 also on the grounds of improper authentication. But
3 also, your Honor, I would object to those coming in on
4 the best evidence rule, that if the entire video is
5 coming in, then why do the stills need to come in, too.

6 THE COURT: I overrule your objection.

7 MR. COLE: Thank you, your Honor.

8 (WHEREUPON, State's Exhibit Number 1 was admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit Number 2 was admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit Number 3 was admitted
13 into evidence.)

14 BY MS. SIMMONS:

15 Q Agent McClure, the third party in the car, did
16 they take part in this transaction at all?

17 A From viewing the video; when we reviewed it, he
18 did not.

19 MS. SIMMONS: Judge, I would move to publish
20 State's Exhibit 4 at this time.

21 (WHEREUPON, State's Exhibit 4 is being played for
22 the jury.)

23 MS. SIMMONS:

24 Q Agent McClure, explain to us what is getting ready
25 to take place.

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1 A Looks like he's counting out the money. Like I
2 say, he owed him some money from a prior deal, and he
3 was going to pay him for this deal. Looks like he's
4 counting out the money to give him hand to hand so he
5 can get drugs back and exchange hand to hand.

6 Q Where should we be looking for the drugs?

7 A The drugs should be coming, best I recall, from
8 defendant's right hand, I believe. As he reaches back,
9 I believe right. He takes the money. He reaches back,
10 and I can't remember exactly which order, but I do
11 remember seeing that happen.

12 Q Agent McClure, explain what just took place.

13 A That was consistent with the packaging that we
14 received, the plastic tied-up bag with the crack
15 cocaine in it that we received back from Brandon
16 Hunter. We met back with him. It was exchanged
17 through the seat there.

18 Q Thank you.

19 Agent McClure, just a few more questions.

20 A Yes, ma'am.

21 Q Based on your review of your entire case, did this
22 transaction occur in Oconee County?

23 A Yes, ma'am, Oconee County, within the city limits
24 of Seneca.

25 Q Did you maintain -- after the transaction, did you

1 maintain audio surveillance up to -- of the
2 confidential informant up until the time he met with
3 you?

4 A Yes. We had a wire that we could listen. At the
5 time he got in the vehicle with us, we turned that
6 portion off so we don't get feedback.

7 Q Did you make any calls with him as he walked back
8 to you?

9 A I think he was texting me that the deal was done.
10 We was arranging a place to pick back up.

11 Q And as he talks, you can hear him?

12 A Yes. Yes. We let him walk a good bit because
13 sometimes we get what we call countersurveillance.
14 They come back around, try to see if they see anything.
15 So we get them to walk away from the area where he was
16 at.

17 Q Other than the time where you dropped him off for
18 the transaction to take place, was he out of your sight
19 any other time?

20 A No, ma'am.

21 Q And did he make any stops along the way on the way
22 back to you?

23 A No. What we see on the video -- we could hear
24 audio. It's kind of aggravating having to listen to a
25 lot of tape, but you hear the swishing noise of

1 somebody walking. Sounds like he was continuously
2 walking. Then upon reviewing the video and downloading
3 it, reviewing it again on DVD, it seemed that he was
4 always consistently walking the whole time. He met
5 with them, he got out, he was consistently walking, not
6 making any stops, not talking to anyone else.

7 Q It appears from the video that he stored the drugs
8 in his socks as he walked back. Did you the search his
9 socks further?

10 A Yes. Once we take the wire and everything off of
11 him, while Agent Sutherland is taking care of the
12 equipment, we re-search him again, go back, pat down,
13 look in socks, shoes, that type thing, any place where
14 drugs can reasonably be stored. We try to check back
15 for the drugs, yes.

16 Q And who did the informant turn the drugs in to?

17 A That was turned over to me at the back of the
18 vehicle.

19 Q I'm going to show you what has been marked as
20 State's Exhibit 5. Do you recognize this?

21 A Yes, ma'am. I do. It does look different than
22 what it was before, but the reason for that being, this
23 is a soft-type cookie. Seems like it was more one
24 cookie, but in transport and all, it gets squished, it
25 crumbles with time, but it's consistent with what I had

1 that I put in a Best bag, yes, ma'am, with the size and
2 the color and all that.

3 Q Has it been repackaged from the original time you
4 saw it?

5 A This is my packaging. I signed it, dated it. I
6 dated it September 8th for reason being is we have a
7 safe in my office. Once we come back, like this time
8 was probably 11:30, midnight, I'm not sure of the exact
9 time, but it was late, we'll store that in there.
10 Sometimes we have things going on like we have this
11 week with court, and then that's removed from our safe
12 and placed into our Best packs, put into an evidence
13 locker, at which time our evidence technician picks it
14 up, takes it to the lab to have it tested.

15 Q And you turned it in to the evidence locker?

16 A Yes, ma'am, I did. That would have been on the
17 8th of September.

18 Q And the testing process, does that make the
19 packaging look different than you saw it on
20 September 4th?

21 A Yes, ma'am. It gets handled. It's brittle and
22 sometimes soft, and the more it's handled, the more
23 it's transported, it's going to break apart.

24 Q And is the bag it's in now the original bag you
25 had?

1 A Yes, ma'am. It's consistent with the bags that I
2 use, yes, ma'am.

3 Q But is it consistent with the bag you received or
4 is it your evidence bag?

5 A That's my evidence bag. Apparently during testing
6 the plastic bag has been -- that it was in -- it was in
7 more like a soft plastic, maybe twist tie-type bag.

8 Q And based on your observations of the video and
9 the totality of the circumstances in this case, did the
10 defendant sell -- is there any evidence that the
11 defendant did not sell crack cocaine to the
12 confidential informant and another party was involved?

13 A This tested positive. I got a form back that this
14 tested positive for crack cocaine. With that being
15 what I sealed in here would show that what we observed
16 from briefing him, wiring him, searching him, giving
17 him documented funds, sending him out, him being moving
18 the whole time, getting in the car, what we see on the
19 video, my totality of the circumstances is that the
20 defendant sold crack cocaine to our informant that was
21 turned over to me and that being on September 4th,
22 2014.

23 Q Please answer Mr. Cole's questions.

24 A Yes, ma'am.

25 MR. COLE: Thank you, your Honor.

1 CROSS-EXAMINATION

2 BY MR. COLE:

3 Q Officer?

4 A Yes, sir.

5 Q You signed an agreement with Brandon Hunter; is
6 that correct?

7 A Yes, sir.

8 Q And this was a confidential informant agreement;
9 is that correct?

10 A Yes, sir.

11 MR. COLE: And I'd like to mark this for
12 identification purposes as Defense Exhibit 1.

13 (WHEREUPON, Defendant's Exhibit Number 1
14 was marked for identification.)

15 BY MR. COLE:

16 Q What's been marked for identification purposes as
17 Defense Exhibit 1, is this the confidential informant
18 agreement that you signed -- that Mr. Hunter signed
19 with you?

20 A Yes, sir, it appears to be, yes.

21 Q And part of that confidential informant agreement,
22 it does say that Mr. Hunter currently had charges of
23 distribution of crack cocaine and distribution of
24 marijuana; is that correct?

25 A Yes, sir. That's --

1 Q Also one of the things that Mr. Hunter initialed
2 on this agreement, it would be item number 15,
3 Mr. Hunter initialed a statement that says, "I further
4 agree to maintain a strict accounting of all funds
5 provided to me by the Seneca Police Department as part
6 of my activity as an informant. I understand that
7 misuse of state funds could be grounds for criminal
8 prosecution against me"; is that correct?

9 A Yes, sir.

10 MR. COLE: Your Honor, I'd like to have this
11 admitted as Defense Exhibit 1.

12 THE COURT: Any objection?

13 MS. SIMMONS: No, your Honor.

14 THE COURT: Defendant's Exhibit 1 will be admitted
15 without objection.

16 (WHEREUPON, Defendant's Exhibit Number 1 was
17 admitted into evidence.)

18 BY MR. COLE:

19 Q Officer, when you entered into this agreement with
20 Mr. Hunter, he was facing many criminal charges; is
21 that correct?

22 A He was facing drug charges that I know of.

23 Q Officer, isn't it correct that he was facing -- he
24 had six counts of manufacture or distribution of
25 cocaine base or crack cocaine, is what he was charged

1 with at the time he did this operation?

2 A I'm uncertain of that number, but he did have
3 several drug charges. I do know that. I was the one
4 that made several of them that I know of.

5 Q These are -- do you recognize these documents,
6 Officer?

7 MS. SIMMONS: Your Honor, I would object. The
8 confidential informant has already testified to his
9 convictions, and convictions are what is admissible.

10 MR. COLE: Your Honor, this would be going to
11 his -- this would be going to his motive, not the -- it
12 wouldn't be just the convictions, it would be the
13 charges.

14 THE COURT: I'm going to overrule the objection.

15 BY MR. COLE:

16 Q So do you recognize these documents?

17 A Uh-huh. These are not documents that I deal with.
18 This would be more or less court-type stuff, but it
19 does look like -- I'm making a layman opinion here
20 because I'm not familiar with clerk of court procedures
21 or anything, and I've never seen these before, but it
22 does appear to be some type of maybe record of some
23 kind of court cases against Brandon James Hunter.

24 Q So these are records that show charges against
25 Brandon Hunter; is that correct?

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1 A Yes, sir.

2 Q And these are from the Oconee County Tenth
3 Judicial Circuit public index?

4 A That's what it has on the title.

5 MR. COLE: Your Honor, I'd like to mark this all
6 together as Defense Exhibit 2 for identification.

7 THE COURT: Let Ms. Simmons look at them.

8 MS. SIMMONS: Your Honor, again, I would renew my
9 objection that only convictions are admissible.

10 THE COURT: Objection is so noted. Overruled.

11 (WHEREUPON, Defendant's Exhibit Number 2
12 was marked for identification.)

13 BY MR. COLE:

14 Q And according to these documents that's been
15 marked as Defense Exhibit 2, then Mr. Hunter had six
16 charges of manufacture or distribution of cocaine base
17 against him at the time that he was an undercover
18 operative for you?

19 A Like I said, I know I had several. I'm not sure
20 if all of these are mine or what it looks like. We
21 knew he had several -- he was a street level dealer.
22 We was trying to go up the chain. We did one deal and
23 we fired him as a CI.

24 Q So --

25 A Or we did a couple deals and we fired him as a CI.

1 Q So Mr. Hunter was a drug dealer?

2 A He was a street level drug dealer. We was moving
3 up the chain to get his supplier, yes. That's what we
4 was in the process of doing before we fired him.

5 MR. COLE: I'd like this to be admitted as Defense
6 Exhibit 2.

7 THE COURT: Objection is noted for the record.

8 MS. SIMMONS: Thank you.

9 (WHEREUPON, Defendant's Exhibit Number 2 was
10 admitted into evidence.)

11 BY MR. COLE:

12 Q Officer, do you recognize this document?

13 A Again, it's not a document I'm familiar with, but
14 like I say, it's titled like the others and appears to
15 be something, a court record.

16 Q All right. And this court record, does it show
17 that at the time Brandon Hunter was charged with
18 burglary first degree?

19 A Yes. I actually turned him in for that.

20 Q So you're familiar --

21 A I took him to the local law enforcement center,
22 turned him over to a warrants officer, and I consulted
23 with the investigator working on that case. We found
24 out that he was involved in a burglary. I fired him as
25 a CI, brought him up to the Oconee law enforcement

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1 center and turned him over to be prosecuted for that.

2 MR. COLE: Your Honor, I'd like to have this
3 marked as Defense Exhibit 3 for identification
4 purposes.

5 MS. SIMMONS: Your Honor, I haven't seen this
6 document.

7 THE COURT: Show Ms. Simmons the document.

8 MS. SIMMONS: Your Honor, I'd like an opportunity
9 to check the disposition of this because I believe this
10 could be misleading to the jury.

11 THE COURT: Ms. Bailiff, if you could take our
12 jury out.

13 (WHEREUPON, the jury exited open court at
14 12:22 p.m.)

15 MS. SIMMONS: Your Honor, my objection to this
16 document would be that this references a charge code of
17 a burglary first, and it also references burglary
18 second, but it doesn't differentiate as to which one he
19 pled to. There may have been an elements issue, your
20 Honor. We can't be sure. So I would object --

21 THE COURT: What's the time frame? Mr. Cole,
22 what's the time frame of these charges? I'm going
23 to -- if you have other documents to this effect, I'm
24 going to let you get into pending charges that the
25 confidential informant may have had. I think you're

1 entitled to ask that question for motive purposes, but
2 if there are charges that took place after this
3 incident, then I think Ms. Simmons is correct. That's
4 not going to be admissible. So what's the time frame
5 of these proposed charges?

6 MS. SIMMONS: Judge, the offense date is
7 September 2nd of 2014. But it was not -- it was not
8 received -- September 12th of 2014 and he was not
9 arrested on that charge until after this incident
10 occurred. He was arrested on the burglary after the
11 confidential informant deal here.

12 MR. COLE: But, your Honor, he's talking about the
13 burglary on the tape. That's what we're going to get
14 to.

15 THE COURT: This is the incident that's referred
16 to on the tape; is that correct?

17 MS. SIMMONS: Yes. He says "a burglary," so I
18 mean --

19 THE COURT: I'll let you get into that since it is
20 referred to in the tape, but if you have any other
21 criminal records that took place after that date, I
22 don't think that's relevant.

23 MR. COLE: These other three.

24 MS. SIMMONS: Judge, I specifically object to
25 characterizing this as a burglary first degree because

1 it was not pled as that.

2 MR. COLE: Your Honor, we wanted to make it that
3 he was charged with burglary first, he pled to burglary
4 second, and the whole thing is going to go to the type
5 of deal that he got for his work.

6 THE COURT: You can ask the officer the question
7 if a deal was offered on the burglary charge, and then
8 I will allow that question. But let's not refer to it
9 as burglary first, see if you can get a response to
10 your question.

11 MS. SIMMONS: Your Honor, I do not believe Agent
12 McClure would have any ability to make a deal on the
13 burglary because it's not a Seneca city charge, it's a
14 county charge.

15 THE COURT: If he doesn't have knowledge of it, he
16 doesn't have knowledge of it, but I think Mr. Cole is
17 entitled to ask him the question if that was part of
18 the deal. And if it's not something that involves the
19 Seneca Police Department, then I'm not going to allow
20 the document in. But I'll allow you to ask that
21 question, if he had any involvement in that case.
22 Okay?

23 MS. SIMMONS: Thank you, Judge.

24 THE COURT: Get our jury back.

25 (WHEREUPON, the jury entered open court at

1 12:27 p.m.)

2 THE COURT: Mr. Cole.

3 MR. COLE: Thank you, your Honor. Please the
4 Court.

5 BY MR. COLE:

6 Q So, Officer, you said that you did -- you took my
7 client -- or, I'm sorry, you took the witness to be --
8 Mr. Hunter to be arrested for that burglary -- for a
9 burglary charge; is that correct?

10 A Yes, I took him to -- I turned him in for that,
11 yes, when I found out about it.

12 Q Is that the same burglary charge -- we heard him
13 discussing a burglary charge on the tape. Is that the
14 same burglary charge he's discussing on the tape?

15 A That's what I heard. I asked him about it when we
16 got back. I said, "Hey, I heard you talking about
17 something." And he says, "Yeah, I've been accused of
18 it. I didn't do it." I called the sheriff's office
19 investigators. I said, "Hey, y'all got this case
20 working?" He says, "Yeah." He calls me back a few
21 days later, says, "I think I'm going to have -- I would
22 like to talk to him, interview him on this." He
23 said -- then he informed me later on he had warrants.
24 I took Hunter up there, turned him over because he had
25 warrants, turned him over to the warrant officer at the

1 jail. They took him in, and the sheriff's office dealt
2 with him after that. I had no further involvement from
3 that point forward. I have no knowledge, no -- I don't
4 even know what his sentence is.

5 Q But he ended up pleading guilty to burglary second
6 violent; is that correct?

7 A I don't know that. That was an Oconee County
8 Sheriff's Office investigation.

9 Q I'm going to show you, there's three other
10 documents. See if you recognize them.

11 A Okay. Again, I don't recognize them. This is not
12 paperwork that we use in our day-to-day operations that
13 we do. I really, just looking at this stuff, trying
14 to, because it's got a lot of stuff on it, I don't like
15 to be indifferent or anything, I like to be as open as
16 possible. But me looking at this trying to make sense
17 out of it without studying it and seeing what all these
18 case numbers are and dispositions and dates and stuff,
19 I'm really not qualified to comment on this. It's not
20 something I deal with. I think it's something the
21 solicitor's office and the clerical staff at the court
22 would be dealing with more than I do.

23 Q These show that Brandon Hunter was -- is charged
24 with distribution of --

25 MS. SIMMONS: Judge, I object. The witness has

1 said he can't lay a foundation.

2 THE COURT: I'll sustain the objection. He says
3 he can't identify it.

4 THE WITNESS: That's not paperwork I deal with.
5 BY MR. COLE:

6 Q Regardless, Officer, you admit that Brandon Hunter
7 had some significant criminal charges against him at
8 the time you used him as an informant?

9 A I think I had several drug charges. That's what I
10 know of. I found out from talking to a sheriff's
11 office investigator that he may be connected to another
12 drug dealer that was burglarized, I believe, was what I
13 was talking to him about. And I said, "Well, he signed
14 an agreement, that I found out he's violated the
15 agreement, I no longer can use him as a CI." And he
16 said, "Well, I got these warrants." I said, "Well,
17 I'll bring him to you and turn him in to you," and
18 that's my last dealings with it.

19 Q And Brandon -- but before, before you ever dealt
20 with him in the first place, he did have some charges
21 against him?

22 A He had some drug charges or he was selling street
23 level, like we call them 20 rocks, 40 rocks. I can't
24 remember the quantities. Like I say, again, we was
25 trying to go up the chain. We have been hearing things

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1 that the person we was investigating was a major
2 supplier. We was trying to establish some deals with
3 him and go up. Unfortunately, things happened that I
4 couldn't stand for. I had to terminate my agreement or
5 the agreement that I had with the CI, and we never was
6 able to, other than three deals that we -- I think that
7 we done here, that was all we could do before we could
8 move up and get into bigger quantities and go up the
9 chain.

10 Q And you offered -- as part of this agreement, you
11 offered to make -- you offered to recommend the
12 solicitor go more lenient on those charges --

13 A I do. I don't necessarily say lenient, but what
14 I'll do is I say I'll talk to the solicitor and say
15 that he cooperated with us, cooperated with us during
16 an investigation that we were conducting, and that she
17 can take that into consideration when she presents the
18 case before a judge. That's --

19 Q You don't -- and on the six drug charges that are
20 in evidence, he could have gotten 15 years on each of
21 those charges?

22 MS. SIMMONS: Objection, your Honor. Speculation.

23 THE COURT: Sustained.

24 BY MR. COLE:

25 Q Mr. Hunter, he ended up receiving a sentence of

1 three years; is that correct?

2 A I do not know that. I know he's in prison, but
3 what his sentence is, I don't know. Like I say, that
4 was -- I was running this portion of the football, and
5 it changed to a different team, and what happened with
6 that team, different coach, different players, I don't
7 know what transpired there.

8 Q I want to go back to the video, Officer. On this
9 video, Mr. Hunter makes the comment to -- he makes the
10 comment and says, "If I wasn't trying to pay you, you
11 would be crying. I'm trying to pay you on time"; is
12 that correct?

13 A Yeah. Apparently he owed him money from a
14 previous deal is what he had told us earlier. And he
15 had some money with him. I said, "Well, take your
16 money and pay him that, what you owe him," and then we
17 got documentation I think has been turned over in
18 discovery the pictures of the money that we had that we
19 gave to him to make the buy with.

20 Q So you gave him \$200?

21 A \$200, yes, sir.

22 Q And he says -- you say you asked him on the tape
23 that if he gave \$200 in documented funds to the person
24 he bought the drugs from, and he said yes; is that
25 correct?

1 A I tried to listen to it in the video. I couldn't
2 hear. Sounded like a phone rang where the answer is.
3 I took it that he gave him 200. Like I say, we're
4 dealing with an element that -- well, he didn't
5 understand or what, I don't know, but I gave him \$200.
6 I didn't get any money back from him. He did have
7 money on him when he left because I didn't know exactly
8 how much he owed him, so he was carrying cash with him.
9 We searched him for drugs. I didn't do an accounting
10 of money, but when I searched him again he had some
11 money, I'm sure. But as far as like going through it
12 counting it back, our \$200, I think that -- I assume
13 that he said that, yes, that he took \$200.

14 Q But from the video you see that he only counts out
15 a few hundred dollars -- he only counts out a little
16 more than \$100, gives it to the person in the front
17 seat then asks for change back. That's what it shows
18 in the video, correct?

19 A As far as I can tell. I don't know the exact
20 money amount. I couldn't really tell it myself. And
21 only upon reviewing this, by this time he was a fired
22 CI. If that was something that, you know, I wanted to
23 talk to him about, find out what -- I hadn't talked to
24 him since that day as far as -- about any cases or
25 anything. I think he tried to call me from jail a few

1 times, but when I spoke to him, it was never about any
2 cases or anything like that. I assume, if there was
3 any money, that he had it in his pocket and I didn't
4 get it back from him.

5 Q So he basically stole money from the county; is
6 that correct?

7 A It would be the city, if he did.

8 Q The city, yes, I'm sorry.

9 A But, again, that's the element that we're dealing
10 with.

11 Q All right. I want to go back to the tape. This
12 would be the plaintiffs -- I'm sorry, the State's
13 Exhibit 4. I'd like to play back a portion of that.

14 MR. COLE: Your Honor, I apologize, but the CD is
15 not showing up on here.

16 THE COURT: Ms. Simmons, could you assist him?

17 MS. SIMMONS: I would be glad to, your Honor.

18 THE COURT: Mr. Cole, you know the point on the
19 tape that you want?

20 MR. COLE: Yes, your Honor.

21 (WHEREUPON, State's Exhibit 4 is being played for
22 the jury.)

23 BY MR. COLE:

24 Q Officer, in that portion of the video, it does not
25 show the person in the front seat giving any crack or

1 anything to the person in the backseat other than
2 change back; isn't that correct?

3 A I saw crack earlier. I don't know on this portion
4 here, I did see the bag there between another portion.
5 This portion, I don't know if that's where that
6 occurred at. This is just the money transaction here.

7 Q Isn't it true that this part of the transaction,
8 all we see is the informant hold up, hold up something
9 in the backseat?

10 A I believe I saw it come between the seat, best I
11 could tell.

12 Q Now, there is another person sitting in the front
13 seat of this car, too; is that correct?

14 A Yes. I believe that was Andrew Cleveland, I
15 believe.

16 Q And Mr. Cleveland, did you search or talk to
17 Mr. Cleveland after this?

18 A No. We've arrested him, but for other stuff, but,
19 no, not in this case, no.

20 Q And after this -- after this deal or this supposed
21 deal, did you get a search warrant against my client to
22 search him?

23 A No. By that time I didn't have an informant that
24 I could use to follow up on. But my agreement was
25 violated, and I had no recourse but to not use him as a

1 CI anymore. But, nonetheless, whether he used my \$200
2 to buy that crack cocaine or he gave it to him, it's
3 distributing. He was distributing crack cocaine. And
4 that's what we were trying to get off the street. We
5 were trying to start small with him and get up to the
6 big quantities that we were understanding he was
7 trafficking and selling. And we never got that far
8 because of the stuff that we talked about that
9 occurred, happened, that ceased our investigation any
10 further than it happened here.

11 Q But all we just saw on the video was money
12 changing hands; is that correct?

13 A If we go back to the video, we can see the -- I
14 believe I saw the bag come back. But in this portion
15 here, if you're going to take it and dissect it and go
16 piece by piece, to me it would be altering it to not
17 look at it in its context like we did originally.
18 Originally I saw what looked like he turned the light
19 on, he was trying to deal and like the crack cocaine
20 come --

21 Q The light is on right here in this part.

22 A We're looking at a still photo. Right now I can
23 tell you -- I can't tell you if this car was moving
24 down the road, if they was playing poker, just from
25 this still picture right here, if that's all I'm

1 looking at. But if it's moving and we're looking at it
2 in context and see what all's going on, but just
3 looking at this picture, no, I can't even tell that's
4 money from the freeze frame you have here.

5 Q Well, this video is kind of grainy. It's hard to
6 tell what's going on --

7 A I can definitely see it's cash when it's moving.

8 Q And also this Andrew Cleveland that was in the
9 car?

10 A Uh-huh.

11 Q Isn't it possible that the informant got the drugs
12 from Andrew Cleveland if he's sitting in the front seat
13 of the car?

14 A It's always possible the sun won't come up
15 tomorrow but it's not very likely. He doesn't have any
16 conversation with him. He don't show any movements
17 that I seen. Basically our conversation, our phone
18 records -- recordings -- or not recordings, but what we
19 heard and stuff going on, the one doing the driving,
20 the one making the transaction, it seemed to me in the
21 totality of the circumstances that Jerome Christopher
22 Smith sold him, for whatever price, crack cocaine on
23 the night of September 4, 2014.

24 Q That audio you're listening to and that we all
25 just listened to together, there's no mention of drugs

1 on that audio, is there?

2 A If I was a drug dealer and I know that we had
3 narcotics investigators trying to investigate us, I
4 would do the same thing that every drug dealer does,
5 say, Hey, we're trying to do drug deals. Don't talk
6 about it. Don't mention my name. But his name gets
7 mentioned anyway by Zimbe, which he's commonly referred
8 to. Sometimes it gets in, but a lot of times they
9 don't like to talk about it. A lot of times -- I hate
10 to try to get into too many tactics here because they
11 are the people that could be listening that could use
12 these things against us, but --

13 Q But it's true there is no talk of drugs on the
14 video; you admit to that?

15 A Referred to as that, no. Not where it's just
16 referred outright -- I mean, they don't go around
17 saying, "Hey, meet me out in a public place. Here's
18 your drugs." They don't do that.

19 Q And Brandon Hunter's face is never on this video;
20 you would agree with that?

21 A I seen his tattoos. He had a tattoo of Candace,
22 which is his -- I believe is what is on his arm there.
23 I hear him talking to Candace. I hear his voice. I
24 hear things that's telling me that even if I didn't
25 know that I wired him up, know what was going on or

1 that he was wired up, I would know from that voice and
2 from identifying marks that that was Brandon Hunter.

3 Q And when he was walking away, he put something in
4 his shoe, didn't he?

5 A He was carrying the drugs. There are other
6 officers that don't know what we're doing out there
7 this time or night that are going by and walking. He's
8 got crack cocaine in his hand. That's not good. So
9 that's apparently where he carried at until he met back
10 with us. He had it in his hand, he gets out of the
11 car, you see it. He's walking. He never stops
12 walking. He puts it in his sock. He meets back with
13 us, gets in our vehicle, and apparently that's when he
14 removed it from his sock to turn it over to us.

15 Q Now, before -- would you agree on the video, he's
16 not searched before or after on the video, is he?

17 A No. We search him before, then we wire him up
18 because we put other articles on him, other things on
19 him, we put things in their pockets, multiple places we
20 could put stuff. Then we start taking the wire and
21 stuff off of them, the stuff that we put on them, and
22 as we're taking that off, we conduct the search.

23 Q So you searched him afterwards, but you didn't
24 recover the money from him?

25 A I didn't even count money. I was looking for

1 drugs. I may have seen the money. I knew he had money
2 with him when he went because he was going to pay a
3 debt. I didn't know exactly what the debt was. It's
4 possible that he kept some of our money, very possible.

5 Q And he told you he was going to pay the debt; is
6 that correct?

7 A He told us beforehand that he owed Zimbe a debt
8 for a past bill.

9 Q And in this video he says, "I gave him the money I
10 owed him"; is that correct?

11 A I believe that's what I heard, yes, sir.

12 MR. COLE: No further questions for this witness.

13 THE COURT: Any redirect?

14 MS. SIMMONS: Just briefly.

15 REDIRECT EXAMINATION

16 BY MS. SIMMONS:

17 Q You mention that Brandon Hunter was a street level
18 dealer. Was this transaction designed to go up the
19 chain?

20 A We were beginning an investigation to move up the
21 chain. As a matter of fact, the last buy we used,
22 State Law Enforcement Division conducted the last buy
23 that we did to move up the chain, and that's when I was
24 notified by a sheriff's office investigator that their
25 case was incorporating our CI, and at that time we

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1 terminated his use.

2 Q Did you make any specific sentencing
3 recommendations regarding Mr. Hunter to the solicitor's
4 office?

5 A No.

6 Q And I want to show you since you're familiar with
7 these. I want to briefly watch this again and just
8 tell me when to stop it when you see the deal
9 happening.

10 (WHEREUPON, State's Exhibit 4 is being played for
11 the jury.)

12 A Right there. That would have been the crack
13 cocaine in the plastic bag.

14 Q Okay. Thank you very much, Agent McClure.

15 THE COURT: Anything further, Mr. Cole?

16 MR. COLE: Your Honor, I'd like to recross on that
17 that portion of the video.

18 THE COURT: I'll allow you on that portion of the
19 video, yes, sir.

20 (WHEREUPON, State's Exhibit 4 is being played for
21 the jury.)

22 RECCROSS-EXAMINATION

23 BY MR. COLE:

24 Q And isn't it true in that portion of the video
25 that you just saw, there is no drugs that changed

1 hands?

2 A It looked to me like a classic hand-to-hand drug
3 transaction. Classic.

4 Q In that portion of the video you never saw --

5 A I saw a bag approximately the size of that right
6 there in the palm of his hand as the money changes.

7 Q You saw it in the palm of whose hand?

8 A Zimbe. Gerome Christopher Smith. If you want to
9 play it many times, I'll show it to you every time.

10 Q Can you tell me the exact point that you see drugs
11 in his hand.

12 (WHEREUPON, State's Exhibit 4 is being played for
13 the jury.)

14 A Right there. In the palm of his hand right there.
15 He takes it, he takes the money at the same time he
16 hands him the drugs. We can see it again if you would
17 like to. It's classic. That's the way it's done.
18 That's the way it's done on the street. You will see
19 that all the time.

20 Q Officer, he comes back with money. His hand goes
21 down by his side and then he holds drugs up in front of
22 the camera; isn't that what you just saw?

23 A I saw the money come back and it disappears, then
24 it comes back up because of the camera, it's going out
25 of view of the camera. All kind of things are, but.

1 Q Why, if they're in the car together, and there's
2 no nobody else around, why would he be trying hide it?

3 MS. SIMMONS: Objection; outside the scope of
4 redirect.

5 THE COURT: I'll let you ask this question but
6 stay on course, Mr. Cole.

7 THE WITNESS: It's just the way drug transactions
8 are done. There is -- we hear it all the time,
9 people's worried about getting busted. And they're
10 worried about somebody that they know they sell to is
11 going to get them. And, I mean, we hear chatter. We
12 hear stuff -- that's classic hand to hand. I mean,
13 that's the way we see it done. You don't talk about
14 it. You try to be covert. That's why we do covert
15 investigations because this is done in a covert manner,
16 it's done clandestinely, and we have to operate in the
17 system that they have set up, the way they do drug
18 deals. That's what we have to operate within, and
19 that's classic what we see, hand to hand, how it goes
20 down.

21 MR. COLE: No further questions, your Honor.

22 THE COURT: All right. Thank you.

23 MS. SIMMONS: Judge, may we approach?

24 THE COURT: Yes.

25 (WHEREUPON, a bench conference was held off the

1 record in the presence of the jury, but out of the
2 hearing of the jury.)

3 THE COURT: All right. Ladies and gentlemen of
4 the jury, we're going break for lunch right now. I'm
5 going to have the bailiff take you to the jury room.
6 Your lunch is going to be provided for you by the
7 clerk.

8 So, Madam Bailiff, if you will take our jurors to
9 the jury room.

10 (WHEREUPON, the jury exited open court at
11 12:53 p.m.)

12 THE COURT: It is about ten minutes to 1:00. We
13 will reconvene at 2 o'clock.

14 (WHEREUPON, lunch recess was taken from
15 12:54 a.m. to 2:04 p.m.)

16 THE COURT: Let's go on the record. I was
17 approached by the bailiff. One of the jurors told the
18 bailiff that one of the audience members has been
19 staring at them. Now, there's no evidence that the
20 audience member has made any gestures, said anything,
21 done -- of course I hadn't seen anything from the bench
22 that would warrant a person being held in contempt or
23 being removed from the courtroom.

24 But one of these jurors has stated that this
25 person works at the same place that they do, and it's

1 making them uncomfortable. So how I'm going to deal
2 with that, rather than call attention to that issue, is
3 I'm going to move all of the spectators over to the
4 side behind the defense table. And just -- I'll give
5 an instruction to the audience when the case is
6 submitted to the jury about outbursts and courtroom
7 behavior because we're not going to tolerate someone
8 behaving in an irresponsible manner in the courtroom,
9 but I wanted to call that to your attention.

10 Now, again, there's no allegation that this person
11 made a gesture or communicated in any way. This juror
12 just said the person was staring at them and it was
13 making them uncomfortable. So that's how I'm going to
14 respond to that.

15 MR. COLE: Judge, if I may, it concerns me if a
16 juror is saying they feel uncomfortable by a person in
17 the audience who they would assume would be with my
18 client that I would ask -- I would move, since we're on
19 the record, to have that juror replaced with the
20 alternate.

21 THE COURT: Ms. Simmons, what's your position?

22 MS. SIMMONS: Judge, I object to that because none
23 of the people in the audience are here with the State.
24 They're all here with the defense, judge, and I would
25 object to her being replaced because she hasn't said

1 she can't be fair. She just said she's uncomfortable.

2 THE COURT: Would you like me to question that
3 witness?

4 MR. COLE: If she could still be --

5 THE COURT: If she could still be fair.

6 MR. COLE: Yes. I think that would -- and then an
7 instruction as you said, Judge.

8 THE COURT: Let's just do that on the record right
9 here.

10 (WHEREUPON, Juror No. 147, Susan Simpson, entered
11 the courtroom.)

12 THE COURT: Yes, ma'am. And you are juror number?

13 JUROR: 147, Susan Simpson.

14 THE COURT: Ms. Simpson, the bailiff has informed
15 me that you recognize one of the people sitting in the
16 audience and that they have made eye contact with you.

17 JUROR: Yeah.

18 THE COURT: And that has made you uncomfortable?

19 JUROR: Well, kind of.

20 THE COURT: I mean, I haven't seen anything from
21 the bench that would make me hold someone in contempt
22 or remove the parties from the courtroom.

23 JUROR: No, no, but I know she recognized me
24 because she comes to us for therapy.

25 THE COURT: Okay. Do you think that the fact that

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1 you recognized one of the people in the audience would
2 in any way affect your ability to be fair and impartial
3 in the case?

4 JUROR: No, sir.

5 THE COURT: Okay.

6 JUROR: I just wanted y'all to know.

7 THE COURT: And what I'm going to do to try to
8 avoid this situation, and I have informed the attorneys
9 of this, I'm going to move everyone from that side, the
10 State's side, over to the other side and have all the
11 gallery on the other side of the courtroom.

12 JUROR: That would be good, yeah.

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

14 JUROR: Thank you.

15 THE COURT: You can return to the jury room.

16 JUROR: Okay. The pizza was great.

17 (WHEREUPON, Juror No. 147, Susan Simpson, left the
18 courtroom.)

19 THE COURT: Okay. Does that answer your concern,
20 Mr. Cole?

21 MR. COLE: Yes, that does.

22 MS. SIMMONS: Thank you, Judge.

23 THE COURT: Very good. All right.

24 THE COURT: Anything before we bring the jury in?

25 MS. SIMMONS: No, your Honor.

1 MR. COLE: No, your Honor.

2 THE COURT: We need the jury.

3 (WHEREUPON, the jury entered open court at
4 2:08 p.m.)

5 THE COURT: Ms. Simmons, call your next witness.

6 MS. SIMMONS: Thank you, your Honor. The State
7 calls sergeant Melinda Nicholson.

8 MELINDA NICHOLSON,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. SIMMONS:

12 Q Sergeant Nicholson, where are you employed?

13 A I'm employed with the Seneca Police Department.

14 Q And what is your current position?

15 A I am the evidence custodian for Seneca Police
16 Department.

17 Q And what does that entail?

18 A It entails collecting evidence from a secured,
19 locked evidence locker that the officers put in for
20 their court cases. I take the evidence, I log it into
21 the evidence computer, and then once it is logged in, I
22 put it in secured evidence storage.

23 Q And I'm going to --

24 MS. SIMMONS: If I may approach the witness your,
25 Honor.

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1 drugs to my client; is that correct?

2 A No, sir. I mean that is correct.

3 MR. COLE: No further questions, your Honor.

4 MS. SIMMONS: I would ask that Sergeant Nicholson
5 be excused.

6 THE COURT: Any objection to this witness being
7 excused?

8 MR. COLE: No objection, your Honor.

9 THE COURT: Thank you, ma'am. You are excused.
10 Call your next witness.

11 MS. SIMMONS: The state calls Agent Meredith
12 Lanford.

13 MEREDITH LANFORD,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. SIMMONS:

17 Q Agent Lanford, where are you employed?

18 A I'm employed with the Anderson/Oconee Regional
19 Forensics Laboratory.

20 Q What are your duties there?

21 A My main job duty is to analyze evidence that's
22 brought to our laboratory and to determine if
23 controlled substances are present.

24 Q And what's your educational background?

25 A I graduated from Clemson University with a

1 bachelor's of science in chemistry. I then went on to
2 complete the forensic science certificate program at
3 Greenville Technical College. I was trained and
4 certified as a forensic chemist with the Charleston
5 police laboratory as well as my current laboratory. I
6 was trained in the area of forensic drug chemistry with
7 the Drug Enforcement Administration. I'm a member of
8 the American Chemical Society as well as the
9 Clandestine Laboratory Investigating Chemists, and each
10 year I'm required to pass a proficiency test as well as
11 try to maintain about 40 hours of continuing education
12 in the area of forensics through seminars and classes.

13 Q How often do you analyze substances for the
14 presence of controlled substances?

15 A Just about every day.

16 Q How many times do you estimate you have testified
17 in court before?

18 A 18 times.

19 MS. SIMMONS: Judge, at this time I would move
20 that Agent Meredith Lanford be qualified as an expert
21 in forensic drug chemistry.

22 MR. COLE: No objection, your Honor.

23 THE COURT: Okay. Ms. Lanford would be admitted
24 as an expert in forensic drug chemistry without
25 objection.

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1 Now, before Ms. Simmons proceeds with the
2 questions, ladies and gentlemen of the jury, ordinarily
3 a witness is limited to what they have personal
4 knowledge of -- what they saw, what they heard, what
5 they felt or detected with their senses. A witness
6 ordinarily cannot give opinion testimony.

7 However, there are in certain areas where a
8 person's education or experience gives them specific
9 knowledge in a technical field, that the person is
10 admitted as an expert and they are able to give expert
11 opinions.

12 The fact that a person is admitted as an expert
13 does not mean that you have to accept the opinion of
14 the expert. They are like any other witness. You may
15 believe or disbelieve any or part or all of their
16 testimony. You are to place whatever weight on the
17 expert witness' testimony that you, as the trier of
18 fact, deem appropriate just like any other witness.

19 Ms. Simmons.

20 MS. SIMMONS: Thank you, Judge.

21 Q Agent Lanford, I'm going to show you what's been
22 premarked as State's Exhibit 5. Can you tell me about
23 the composition of crack cocaine.

24 A Crack cocaine, which we call cocaine base, is the
25 base form of cocaine hydrochloride. And it usually

1 looks like little rock substance, and it usually has
2 the texture of kind of like wax. It's usual off-white
3 in color.

4 Q On State's Exhibit 6 (sic), can you identify this
5 item?

6 A Yes, I can.

7 Q How can you do that?

8 A This has our laboratory stickers on it as well as
9 my signature on it, and this is our Best kit pack that
10 we ask officers to submit their evidence in.

11 Q When was that -- this received by your lab?

12 A I received it on September 12, 2014.

13 Q From whom did you receive it from?

14 A Sergeant Melinda Nicholson.

15 Q Did that item remain in your care, custody and
16 control during the time it was at the lab?

17 A Yes.

18 Q And is it today in substantially the same
19 condition as when it left your lab?

20 A Yes.

21 Q For what purpose did the exhibit come into your
22 possession?

23 A It came into my possession to see if any
24 controlled substances were present in the substance.

25 Q And what weight did you determine State's

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1 Exhibit 6 (sic) is?

2 A I determined it was 1.04 grams.

3 Q I misspoke. That's State's Exhibit 5, I
4 apologize, that we're referring to.

5 Did you conduct chemical analysis on this item?

6 A Yes, I did.

7 Q And how does that process work?

8 A The first thing I do is remove a substance from
9 any kind of packaging. I take the weight of just the
10 substance, and then I perform two screening tests to
11 determine what kind of substance may be present, and
12 then I perform two confirmatory tests using the
13 instruments in the lab, and this tells me whether or
14 not a controlled substance is actually present or not.

15 Q And from your testing, were you able to form an
16 expert opinion as to what State's Exhibit 5 is?

17 A Yes. I found that this item contained cocaine
18 base of 1.04 grams.

19 Q Is that also known as crack cocaine?

20 A Yes, it is.

21 MS. SIMMONS: Judge, at this time the State would
22 move into evidence State's Exhibit 5 and the
23 accompanying report.

24 MR. COLE: Your Honor, I would object to that, and
25 I do have an objection as to a matter of law.

1 THE COURT: All right. Madam Bailiff, if you will
2 take our jury to the jury room, please.

3 (WHEREUPON, the jury exited open court at
4 2:19 p.m.).

5 THE COURT: Yes, sir, Mr. Cole.

6 MR. COLE: Your Honor, if it please the Court, I
7 would like to have some case law -- I have given a copy
8 to opposing counsel -- that I would like to pass up at
9 this time.

10 THE COURT: Yes, sir.

11 MR. COLE: Your Honor, I'm objecting under this
12 for improper chain -- the chain of custody has not been
13 established. This case, *State vs. Sweet*, basically
14 what happened in that case is that the informant was
15 unavailable to testify, and there was no -- in that
16 case, so the informant could not make a determination
17 he had originally had custody of this property, and
18 then it just went on similar to this case.

19 In this case, the informant is basically
20 unavailable to testify because he refused to testify.
21 And the only -- the rules of criminal procedure require
22 that it be -- that each person, and we did specifically
23 ask in our discovery motions we sent to the State, that
24 each person be present in the courtroom to testify
25 about the drugs, your Honor. Now -- and also Rule 6

1 does allow for a sworn statement to be used in the
2 place of that; however, this statement that was
3 presented by Mr. Hunter, there's nothing indicating
4 that it's a sworn statement. It's not notarized. And
5 I don't see -- I read through it again. I don't see
6 anything that says that this is a sworn statement. So
7 I don't believe the statement from Mr. Hunter is
8 sufficient to establish that initial link in the chain
9 of custody linking those drugs back to my client.

10 MS. SIMMONS: Judge, I would like to hand the case
11 forward to you *State vs. Valentine*, which came out in
12 2009, after the *Sweet* case. Judge, I believe it is
13 precisely on point in this matter.

14 Your Honor, in that case -- in *Sweet*, the CI was
15 unknown to the defense. In *State vs. Valentine*, the CI
16 was known to the defense. And unlike *Sweet*, in
17 *Valentine*, the identity of the CI was known, the
18 defense was able to fully explore the CI's criminal
19 history, which has happened here, and the terms of the
20 deal which the CI arranged to buy drugs. And,
21 moreover, where the CI in *Sweet* was permitted to travel
22 to and from the transaction site in a personal
23 automobile, the CI in *Valentine* was under direct police
24 observation except the ten minutes when he was only on
25 audio surveillance.

1 Judge, this is precisely the same scenario we have
2 here. He was continuously under audio surveillance.
3 The only time he was out of sight of law enforcement
4 was when he was dropped off to do the deal in this
5 case. He was not in a personal automobile, and the
6 court in *Valentine* held there where other evidence
7 establishes the identity of those who handled the
8 evidence and reasonably demonstrates the manner of
9 handling the evidence, our courts are willing to fill
10 in the gaps of the chain of custody due to an absent
11 witness.

12 Your Honor, I believe this is precisely on point,
13 and it is 386 S.C. 499.

14 THE COURT: Mr. Cole, have you looked at *State vs.*
15 *Valentine*?

16 MR. COLE: Yes, your Honor. I looked at that.
17 And I just want to make clear, too, the second part of
18 my objection is that Rule 6 of the rules of criminal
19 procedure, it's clear that a sworn statement, even if
20 we said that this was a sworn statement, a statement
21 can be used, but that the defense can still request
22 that each person be made to appear in the courtroom.
23 We did that with our discovery motion. So in my mind,
24 your Honor, that the person that we ask for them all to
25 appear, he at least came in, but he didn't testify. So

1 I think that makes it where it's almost the same way
2 that he did not appear.

3 And when you take that together with the ruling in
4 *Sweet*, that in some situations, that the informant, if
5 he does not testify, is not -- you can't establish that
6 chain of custody. I think those, *Sweet* and Rule 6
7 taken together, would not allow this to come in in this
8 case.

9 THE COURT: Ms. Simmons, any response to that?

10 MS.. SIMMONS: Judge, I don't believe Rule 6 is
11 applicable. In *Sweet* or *Valentine*, they did not
12 discuss Rule 6, and the chain as far as practicable has
13 been established, and, your Honor, I stand by my belief
14 that *Valentine* controls this and the evidence is
15 admissible.

16 MR. COLE: Your Honor, if I could briefly respond
17 to that. The end of *Valentine* -- I'm sorry, the end of
18 *Sweet*, it does say the court specifically tells the
19 State, says, you could have taken a sworn statement
20 from the informant before he left the station under
21 Rule 6. I think that same situation would apply here.
22 They could have taken a sworn statement from the
23 informant.

24 THE COURT: Let me take a minute and read both of
25 these cases.

1 (Pause in proceedings while judge reads cases.)

2 THE COURT: I've read the applicable case law. I
3 would find in this case that the defense's reliance on
4 the *Sweet* case is misplaced. *Sweet* focuses on a
5 situation where the identity of the confidential
6 informant is in question. The rationale of the Court
7 was that the identity was in question; therefore, the
8 defense could not attack the credibility of the
9 confidential informant. I find in this case the State
10 has presented evidence of the identity of the
11 confidential informant. In fact, the defense has been
12 able to cross-examine the witnesses about the possible
13 motives and impeachment evidence of the confidential
14 informant. Therefore, Mr. Cole, I'm going to overrule
15 your objection and allow the evidence in.

16 MS. SIMMONS: Thank you, Judge.

17 (WHEREUPON, the jury entered open court at
18 2:29 p.m.)

19 MS. SIMMONS: Your Honor, again the would move
20 into evidence State's Exhibit 5, which is the crack
21 cocaine in this case and the accompanying drug report.

22 THE COURT: It is so admitted.

23 Mr. Cole, your objection is noted.

24 (WHEREUPON, State's Exhibit Number 5 was admitted
25 into evidence.)

1 MS. SIMMONS: Please answer any questions Mr. Cole
2 may have.

3 CROSS-EXAMINATION

4 BY MR. COLE:

5 Q Agent Lanford, you ran all the tests on this
6 material that you found to be crack cocaine; is that
7 correct?

8 A Yes, I did.

9 Q And you ran several different tests on that; is
10 that correct?

11 A I did.

12 Q And in those tests that you ran, did it show that
13 this crack cocaine had any relationship to my client?

14 A No.

15 MR. COLE: No further questions, your Honor.

16 THE COURT: Any redirect?

17 MS. SIMMONS: No, your Honor. We'd ask that
18 Ms. Lanford be excused.

19 THE COURT: Any objection to this witness being
20 excused?

21 MR. COLE: No, your Honor.

22 THE COURT: Thank you, ma'am. You are excused.

23 MS. SIMMONS: Your Honor, the State rests.

24 THE COURT: Madam Bailiff, you can take your jury
25 to the jury room, please.

1 (WHEREUPON, the jury exited open court at
2 2:30 p.m.)

3 THE COURT: Any motions?

4 MR. COLE: Yes, your Honor. At this time I move
5 for a directed verdict. Your Honor, the evidence
6 that's been presented by the State, we do not have any
7 testimony from the confidential informant which is the
8 main thrust of their case. They're saying that this
9 person, this confidential informant, sold some drugs to
10 my client (sic). We have no testimony from that
11 person. We have a grainy video. I think from the
12 video you could not clearly see any drugs passing --
13 couldn't see drugs passing from one person to another.

14 You don't ever see on that video the identity of
15 the informant. All we have to go on is secondhand
16 statements about that. I think all -- and then there's
17 lots of questions about the video that we raised and
18 the fact that the client -- that the informant
19 apparently stole money and then just the credibility
20 issues with the informant. I think all that total, a
21 reasonable jury could not find my client guilty based
22 on the evidence that's been presented at this time.
23 Most importantly because the confidential -- there was
24 no testimony from the informant.

25 THE COURT: Ms. Simmons.

1 MS. SIMMONS: Your Honor, the informant's
2 statement has been admitted pursuant to Rule 613. The
3 officers had authenticated that statement that
4 testified their complete chain of custody as far as
5 practicum has been provided. There's videotape
6 evidence where the officer has repeatedly indicated
7 that a drug deal occurs. It's the State's position you
8 can see the actual hand-to-hand of that drug deal, and
9 there was -- the transaction was monitored by law
10 enforcement. I believe, Judge, in the light most
11 favorable to the nonmoving party, there is sufficient
12 evidence to send this matter to the jury.

13 THE COURT: Mr. Cole, I think your arguments go
14 more towards the weight of the evidence rather than the
15 existence of the evidence. I find there is sufficient
16 evidence for this to be a jury question, so I,
17 therefore, deny your motion.

18 MR. COLE: Thank you, your Honor.

19 THE COURT: The State has rested.

20 Mr. Cole, would you and your client please stand.

21 Mr. Smith, at this time I'm going to explain to
22 you some of your rights. If you don't understand
23 anything that I say, please let me know and I will
24 explain it in more detail. If you answer the question,
25 I will assume that you understood the question. Do you

1 understand?

2 THE DEFENDANT: (Nodding.)

3 THE COURT: We have reached the stage in the trial
4 where you may present your defense. You have the right
5 to claim the protections given to you by the Fifth
6 Amendment to the Constitution of the United States.
7 This amendment states in part, "No person shall be
8 compelled in any criminal case to be a witness against
9 himself." This means that you cannot be required to
10 testify in this case.

11 On the other hand, you have the right to testify
12 on your own behalf should you choose to do so.
13 However, no one can make you testify. This is a
14 personal right, and no one can waive this right except
15 you. If you decide to testify, you will be subject to
16 the same rules that govern other witnesses, and you may
17 be examined and cross-examined on any relevant issue in
18 the case.

19 In addition, if you have any convictions involving
20 dishonesty or false statement or for crimes punishable
21 by imprisonment for more than one year and this Court
22 determines that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you, the
24 solicitor will be able to introduce your record to
25 attack your credibility.

1 If you decide to testify, this decision on your
2 part must be freely, voluntarily and intelligently made
3 with knowledge of the protections given to you by the
4 Fifth Amendment and the consequences of your decision
5 to testify. If you decide not to testify, I will
6 instruct the jurors that they cannot give the fact that
7 you did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you
9 because you did not testify. It is left entirely up to
10 you whether or not to testify. You may talk to your
11 attorney, your family, friends, anyone else, but the
12 final decision will be left entirely up to you. Do you
13 understand what I've explained to you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Do you have any questions about
16 what I've just explained to you?

17 THE DEFENDANT: Like, um --

18 THE COURT: You need to talk to your attorney.

19 (WHEREUPON, an off-the-record discussion was
20 held between Mr. Cole and the defendant.)

21 THE COURT: We're going to take a few minutes'
22 break and let Mr. Smith have time to talk to his
23 attorney and then we'll reconvene.

24 MS. SIMMONS: Judge, did you want me to put his
25 impeachable record on the record for you now?

1 THE COURT: Let's -- do you have a copy?

2 MS. SIMMONS: Yes, your Honor.

3 THE COURT: Does Mr. Cole have a copy of it?

4 MR. COLE: Yes, your Honor.

5 MS. SIMMONS: Judge, for impeachment purposes, if
6 the defendant should testify, he was convicted in 2008
7 for distribution within proximity of a school,
8 distribution of marijuana, and trafficking in cocaine
9 ten to 28 grams.

10 THE COURT: Okay. Those are the three offenses
11 that you would seek to impeach the defendant if he
12 testified?

13 MS. SIMMONS: Yes, your Honor. They have been
14 provided to Mr. Cole.

15 THE COURT: Okay. We'll take a break, let
16 Mr. Cole talk to his client.

17 (WHEREUPON, a recess was taken from 2:36 p.m. to
18 2:45.)

19 THE COURT: Mr. Cole, have you had an opportunity
20 to talk with your client?

21 MR. COLE: I have, your Honor.

22 THE COURT: Mr. Smith, have you decided?

23 THE DEFENDANT: Yes, sir. I would like to get on
24 the stand.

25 THE COURT: Okay.

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Let's get our jury.

3 (WHEREUPON, the jury entered open court at
4 2:45 p.m.)

5 THE COURT: Okay. Mr. Cole.

6 MR. COLE: May it please the Court. Your Honor, I
7 would like to call Gerome Smith.

8 GEROME SMITH,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 MR. COLE: Your Honor, may opposing counsel and I
11 approach briefly?

12 THE COURT: Yes, sir.

13 Mr. Smith, have a seat back at the table, please,
14 sir.

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

18 THE COURT: Okay. Mr. Smith, you can come back
19 around.

20 DIRECT EXAMINATION

21 BY MR. COLE:

22 Q Mr. Smith, can you state your full name, please.

23 A Gerome Chris Smith.

24 Q All right. Mr. Smith, and where are you from?

25 A Pendleton, South Carolina.

1 Q And what do you do, Mr. Smith?

2 A I'm currently an employee. I'm head captain at
3 Taco Bell restaurant. I was doing such a good job,
4 they gave me eight Taco Bells and a contract, so I go
5 around pressure washing from Piedmont Taco Bell all the
6 way down to Toccoa, Georgia when I get a chance. And I
7 go pressure washing, cleaning cement, cutting grass.
8 Then when I get done with that job, I go put my Taco
9 Bell uniform on and I go work rolling tacos.

10 Q Do you have any other jobs as well?

11 A I also work for the ex-solicitor of Pickens
12 County. I'm his landscaper. Also, I'm over 18 houses
13 of his. Anything goes on in any 18 houses, water
14 leaks, drywalling or anything like, that I'm called to
15 come fix the problem. I get back with him after I fix
16 it and --

17 Q That's Steve Cureton that you work for?

18 A Steve Cureton.

19 Q All right. Mr. Smith, tell us what happened on
20 the night of August 4th, 2014.

21 A On August 4th, 2014, I received a call from
22 Mr. Hunt -- Brandon Hunter, also known as Hunda. He
23 called me and asked me to come pick him up because we
24 play cards, you know what I'm saying. So he had owed
25 me some money for some cards because we play, which I

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1 know it ain't right, but we gamble, you know what I'm
2 saying. So I loaned him some money at the card table,
3 and I wanted my money back because, you know what I'm
4 saying, it was a couple days later.

5 So when he called me, I went to go pick him up.
6 When he got in the car, I was like, "You always think
7 somebody playing about his money," you know what I'm
8 saying. And I'm always giving this man money, you know
9 what I'm saying. And he replied back to me, "Oh, man,
10 if you think I wasn't going to pay you, you always
11 crying or something about your little money, but I'm
12 getting ready to give your money to you now." So he
13 gave me my money. He rode around for five minutes. I
14 think -- I'm pretty sure it was about five minutes, and
15 he asked me to drop him off. I dropped him off. He
16 got out the car, and we were discussing in the car, we
17 were discussing about going to Downtown Clemson because
18 the Clemson game with Georgia, Georgia State, one of
19 the Georgia games from when Clemson first started
20 playing was they had a party Downtown Clemson. So I
21 think that we all went to, including Mr. Hunter, later
22 on that night.

23 Q And, Mr. Smith, did you regularly loan Mr. Hunter
24 money?

25 A Yes. I have loaned Mr. Hunter money on several

1 occasions. I also loaned Mr. Hunter money to get out
2 of jail. I loaned him a thousand to get out of jail.

3 Q And why did you loan Mr. Hunter money?

4 A Because the way I feel is I'm not a perfect
5 person, you know what I'm saying. I done made mistakes
6 in my past, which I'm pretty sure y'all will hear. I
7 just don't want everybody out there doing the wrong
8 thing, and I was fortunate enough to come into a
9 lawsuit, you know what I'm saying, so I help a lot of
10 people out, you know what I'm saying. So if you ask me
11 for something and I got it, I'm going to give it to
12 you, you know what I'm saying. It ain't nothing but
13 money because you can't take it with you. But at
14 points in time people do give me that money back. And
15 Mr. Hunter, his son play with my son, you know what I'm
16 saying, so I felt that he needed the money for his
17 kids.

18 Q Did -- and that was -- where did you -- where do
19 you have this extra money to be able to loan to people
20 from?

21 A A bank account with T --

22 Q Mr. Hunter (sic), do you have a speech impediment?

23 A Yes, sir.

24 Q And so if you need us to, then we can slow down or
25 anything like that. But let's start back. Where do

1 you have money, where do you have money from to be able
2 to loan to people?

3 A TD Bank is my bank account. Well, I ain't got as
4 much money in there that I had because it was a lump
5 sum in a lawsuit that I received, plus over the years
6 of working. My parents had passed away and left me
7 property and money, too, because I was adopted and my
8 adoptive parents left me money and stuff. And my
9 guardians and my brother, if I need something from
10 them, or I will finance. So that's where I get my
11 money from. And plus I work.

12 Q And do you have any children, Mr. Hunter (sic)?

13 A Mr. Smith, you mean.

14 Q I'm sorry. Mr. Smith, do you have any children?

15 A Yeah. I got one son. He's seven years old. I
16 got four other kids I take care of that is his
17 siblings. I've been taking care of them for the last
18 ten years, ten, eleven years, ever since I met their
19 mother. I feel like that my parents weren't there for
20 me, so I don't look at kids as no different. They are
21 all my kids. So I got five kids, if you want to get
22 exact with it.

23 Q You take care of those kids?

24 A All five of them.

25 Q All right. Mr. Smith, I want to go back through

1 what's previously been marked as State's Exhibit Number
2 4, which was the videotape earlier that we saw.

3 Mr. Smith, I'm going to watch this portion of the
4 tape. And then I want you to watch it and tell us
5 what's going on here after we watch that.

6 (WHEREUPON, State's Exhibit 4 is being played for
7 the jury.)

8 Q Mr. Smith, what's going on there in that tape?

9 A What's going on in that tape right there or what I
10 see in that tape?

11 Q Yes. What do you see in that tape?

12 A I see Mr. Hunter giving me some money that he owed
13 me. Then I see his hand go beside his leg. Then I see
14 him come back with a baggie cuffed, like it's cuffed
15 between his forehand and his thumb and his forehand. I
16 really -- I remember that night. Like I said, I'm not
17 perfect, and I do have a past history of what I used to
18 do, you know what I'm saying. I don't think nobody
19 walk a Christian, you know what I'm saying, so it give
20 me time to change over the years, you know what I'm
21 saying. But as far as I know of seeing right there, if
22 you could play the video, keep playing the video,
23 please.

24 (WHEREUPON, State's Exhibit 4 is being played for
25 the jury.)

1 A That's -- I was giving him \$10 back. And at the
2 time I didn't know I had \$10 on me.

3 Q I'm sorry, Mr. Smith. Repeat that?

4 A He said I tried to play him out of \$10. And I
5 guess I didn't know I had \$10 on us -- on me, so that's
6 what I stated to him, I didn't know I had \$10 on me.

7 Q And that was part of you -- him paying you money
8 that he owed you?

9 A Actually, yes, but as I watched the tape, I don't
10 know what was going on that night because out of the
11 money he supposedly owed me was \$150. You see me keep
12 giving him ten, and I guess he just have me -- I don't
13 know, but at the end of the day, I didn't receive all
14 my money.

15 Q So he didn't pay you all that he owed you?

16 A No. He had owed me \$150.

17 Q And did you sell any crack to Mr. Hunter on that
18 night?

19 A No, I did not sell no drugs to Mr. Hunter on that
20 night. Like I said before, my past history, what I
21 used to do, yes. But people change. That's over
22 seven, eight years ago, and I work. So, no, I don't
23 even have -- like I don't even hear the conversation,
24 you know what I'm saying. Like if you gonna ride
25 around with me, knowing what type of person I used to

1 be, if you're going to ride around with me for that
2 long, I'm going to ask you, you know what I'm saying,
3 because really and truly you called me to pay me, so I
4 get my money. And if it was anything else, I could be
5 in a car with somebody for five minutes, some kind of
6 slang word will come up or something slang will come
7 up, a slang term or something will come up, and I don't
8 remember having heard nothing like that come up, so I
9 don't remember selling him nothing.

10 Q So you didn't sell -- you didn't sell him any
11 drugs?

12 A No, I did not.

13 Q All right. Did you -- when he called you on the
14 phone that night, did he say anything about drugs?

15 A No, he did not.

16 Q When he got in the car with you, did he say
17 anything about drugs?

18 A No, he did not.

19 Q Did anybody in that car say anything about drugs?

20 A No, nobody did. If you -- if you play the whole
21 video, when he got in the car, he only said two or
22 three words. I only said two or three words to him. I
23 remember saying, "You always think somebody playing
24 about their money." And I also remember saying that I
25 didn't have nothing but a ten-dollar bill on me. Other

1 that that, I didn't talk to him. He was talking to the
2 passenger.

3 Q Who was the passenger in that car?

4 A A friend of mine, but they was having a
5 conversation that I was not part of -- they were having
6 a conversation which was not a criminal conversation,
7 but I did not take part of the conversation.

8 Q It was Andrew Cleveland was in the car with you?

9 A If that's what you want to say.

10 Q And they are -- when y'all got in the car, Brandon
11 Hunter, he was talking about some criminal charge that
12 he had; is that correct?

13 A Yes. He had mentioned about what he's, I guess,
14 currently incarcerated for is a burglary. He mentioned
15 something about A.J. That's another friend of ours,
16 saying that he broke into his house, that they're
17 trying to say he broke into his house. Come to find
18 out later on that he did break into the people's house.

19 MS. SIMMONS: Objection, your Honor. That's
20 hearsay.

21 THE COURT: All right. Sustained.

22 Move on.

23 BY MR. COLE:

24 Q All right. Mr. Smith, did you receive -- have you
25 had any communication with Brandon Hunter recently?

1 A Yes; I did. About two weeks ago -- well, I've
2 been going through here for a while now with this
3 charge, and I had known that his name had came up in my
4 case file or something like that into that matter. And
5 I was saying that I don't really believe that he did
6 that to me or even try to put that -- put that --
7 what's the word? Actually try to put that on me like
8 that.

9 I got a phone call from Mr. Hunter when he was
10 locked up in Lower Savannah penitentiary, and I was
11 explaining to him that why he do this, and he was like,
12 "Don't worry." I believe that the conversation is on
13 the SCDC phone in Lower Savannah, so the tape could be
14 pulled. He stated to me, "Don't worry. You ain't got
15 nothing to worry about. I'm sorry." Then I was like,
16 "Well, can you give me a" --

17 MS. SIMMONS: Objection; hearsay as to anything
18 Mr. Hunter said.

19 MR. COLE: Your Honor, I'd say that it's a prior
20 inconsistent statement. Since his statement has been
21 admitted, this was -- it's a prior inconsistent
22 statement.

23 THE COURT: Counsel, approach. Counsel, approach.

24 (WHEREUPON, a bench conference was held off the
25 record in the presence of the jury, but out of the

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1 hearing of the jury.)

2 (WHEREUPON, Defendant's Exhibit Number 4
3 was marked for identification.)

4 BY MR. COLE:

5 Q Mr. Smith, I'd like to mark this as Defense
6 Exhibit 4 for identification purposes. This CD,
7 Mr. Smith, does this CD contain -- did you record that
8 phone call that you received from Brandon Hunter?

9 A Yes. I asked -- while I was on the phone with
10 him, I asked him if he would give a recorded statement
11 so I could give it to my lawyer telling him -- telling
12 what occurred that night, asking him what occurred that
13 night, and he gave me a statement. At the end of the
14 statement, you will hear me tell him, "Let me make sure
15 it recorded." And he was like, "You ain't got nothing
16 to worry about."

17 Q About how long ago did he make that call to you?

18 A Exactly two weeks ago when I believe it refers to
19 start getting ready for trial.

20 Q And on this CD, is that a fair and accurate
21 representation of the recording that you made that day,
22 is it transferred to this CD?

23 A Yes. Like I said, again, I got a speech
24 impediment problem where I stutter, you know what I'm
25 saying. So at first you will hear me stuttering, then

1 I stop and pause because my doctor tells me to take a
2 deep breath. I stop, pause, I take a deep breath, and
3 then I ask him a question, he answered the question. I
4 ask him the date, the year, then I pause, and I ask him
5 to give his name. He give me his name, and then I say,
6 "Can you hold on and make sure -- so I can make sure it
7 recorded," because I wanted him to know that it was
8 being recorded. And I also let him know that the
9 recording is on the SCDC phone log.

10 Q So this is a fair and accurate statement of the
11 recording you made that day, fair and accurate copy?

12 A Yes, sir.

13 MR. COLE: All right. Your Honor, at this time I
14 would like to move this CD, recorded phone
15 conversation, into evidence as Defense Exhibit 4.

16 MS. SIMMONS: Subject to my previous objection.

17 THE COURT: Noted for the record.

18 It will be admitted as Defense Exhibit 4.

19 (WHEREUPON, Defendant's Exhibit Number 4 was
20 admitted into evidence.)

21 (WHEREUPON, Defendant's Exhibit 4 is being played
22 for the jury.)

23 THE WITNESS: If you let it play until the end,
24 the end will let it be known the he knew he was being
25 recorded. And like I say again, it's on the SCDC wall

1 phone down there where they keep records, so it could
2 be pulled to let you know it wasn't no intimidation or
3 nothing like that. I got a volunteer phone call from
4 him.

5 Q Mr. Smith, so did -- in that conversation, you
6 told him it was going to be recorded; is that correct?

7 A Yes, sir.

8 Q And it was a voluntary statement that he gave to
9 you; is that correct?

10 A Yes, sir.

11 Q And, Mr. Smith, we watched the video together.
12 Did -- on the video, it appears that Mr. Hunter at some
13 point pulls up -- looks like something, a baggie of
14 something. He pulls up that and put it in the camera.
15 Do you know where he got that from?

16 A I seen the video, too, several times, and, like I
17 say, I don't remember having no conversation with this
18 guy about no drugs. I do remember him giving me the
19 money, then I remember him handing me -- he handed me a
20 hundred, come back, because when I handed a hundred --
21 when he handed the hundred, his hand was up there for a
22 minute, you know what I'm saying. Then he moved his
23 hand back, then he came back. Because I'm driving.
24 And he came back with another 40 and asked for a ten,
25 so I gave him another ten. But from the camera view, I

1 don't want to give no assumption or none of that, but I
2 see his hand go down on the camera. When his hand come
3 back up, it's on the side of the passenger, you know,
4 and it's cuffed. Like I don't know why if you was a CI
5 and you buying something, why would you cuff something,
6 you know what I'm saying? Like you're trying to hide
7 something or trying to plant something, you know what
8 I'm saying. So, no, I did not sell him no drugs that
9 night.

10 Q So if he had any drugs, he didn't get them from
11 you?

12 A No, he did not.

13 Q Is there anything else that you would like to tell
14 the jury, Mr. Smith?

15 A Like I said, ain't nobody walk a Christian. You
16 got to change at some point during life, you know what
17 I'm saying. And what I'm on trial for is
18 September 4th, not nothing from eight years ago, you
19 know what I'm saying. So, yeah, I admit I got a past
20 history, you know what I'm saying, from eight years
21 ago, you know what I'm saying, when I was young, and
22 people make mistakes when they're young. But on
23 September 4th, 2014, no, he did not buy nothing from
24 me.

25 MR. COLE: No further questions. Please answer

1 any questions that the solicitor may have.

2 THE COURT: Ms. Simmons.

3 MS. SIMMONS: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MS. SIMMONS:

6 Q Mr. Smith, you said you worked for the
7 ex-solicitor of Pickens County. That's Bob Ariail.

8 A What now?

9 Q Bob Ariail --

10 A Well, my lawyer talked to him on the phone. His
11 name is Steve Cureton. He says he's the ex-solicitor,
12 so I did not do a background check on my boss. I'm
13 pretty sure he did a background check on me.

14 Q He is, in fact, an ex-defense attorney who no
15 longer practices. I just want to make that clear.

16 A Yes. Yes. Yes. That's why I said ex.

17 Q Not an ex-solicitor.

18 A Well, as he told me, which is hearsay because he
19 ain't here right now, but what he told me is that he
20 was ex-solicitor of Pickens County when he hired me.
21 As a matter of fact, I live in one of his houses, you
22 know what I'm saying. So me and my family, my kids
23 live in one of his houses. Like I say, again, I'm over
24 18 of his houses.

25 Q I understand that, but back to the question. He

1 is not the ex-solicitor of Pickens County. I'm just
2 telling you that.

3 A Okay. Okay. But, okay. I'm sorry for saying
4 that, but that's what he told me. And you can call
5 him. I think my lawyer got his number. You can call
6 him, and he might tell you he's the ex-solicitor, but
7 that's what he told me.

8 Q Mr. Smith, let's talk about you said that there
9 was no slang language in this drug transaction that
10 would indicate --

11 A What drug transaction?

12 Q There was no slang language in this video that
13 indicated a drug transaction took place; you testified
14 to that, right?

15 A Yes.

16 Q But isn't it true that you wised up about that
17 slang language since you were convicted in 2008 of
18 possession with intent --

19 A Actually, in 2000 -- when I was convicted, I
20 pleaded guilty because I was wrong. Right now I'm not
21 wrong.

22 Q In 2008 you were convicted of possession with
23 intent to distribute marijuana. In 2008 you were
24 convicted of trafficking in cocaine, which is more than
25 distribution --

1 A That wasn't 2008. I was locked up in 2008. The
2 charge happened in 2004. I was convicted in 2006.

3 Q 2006?

4 A I went to prison then. Not 2008.

5 Q But you have been convicted of trafficking in
6 cocaine ten to 28 grams --

7 A Yes, I was, ten to 28 grams.

8 Q And trafficking in cocaine in proximity of a
9 school.

10 A I only have one trafficking, and that was on that
11 charge you're talking about, I was 22. I'm 32 years
12 old now. I was 21, 22 at the time. I think you
13 convicted me on one of them charges. And I pleaded.
14 That way we didn't have to go this far.

15 Q I'm looking that you were sentenced for possession
16 with intent to distribute marijuana, third offense, on
17 February 28th of 2008. I'm looking at your sentencing
18 sheet.

19 A I don't know how that's possible because I did
20 most of my time up here in the county jail, then I went
21 from here to Pickens. I got sentenced in Pickens
22 County. I didn't get sentenced in Oconee County. I
23 got sentenced, like I said. And to my recollection, I
24 stayed in Oconee County the whole two thousand -- at
25 the end of 2006 -- no, I was convicted in 2007. That's

1 what it was, when my son was born prior to that in
2 October. And I was in Pickens County jail. So I want
3 to say I went down the road -- okay. The convictions
4 take place the same year because this is a long time
5 ago, so please don't hold me but, no, say I'm lying.
6 2007 my son was born...

7 Q If I show you it, do you think it would help you,
8 Mr. Smith?

9 A Yes, ma'am.

10 Q You pled guilty on February 28th of 2008 to
11 possession with intent to distribute marijuana. That's
12 the date you went to court, gave you the sentence.

13 A Yes. I'm sorry. Like I said, again, it was a
14 long time ago.

15 Q Then trafficking in ten to 28 grams of cocaine --

16 A Yes, I did.

17 Q -- February of 2008 --

18 A Yes, I pled guilty to that, too.

19 Q And then trafficking in close proximity to a
20 school --

21 A I pled guilty to that, too, because I was wrong.

22 Q Now that we got that out of the way.

23 A Yes, ma'am.

24 Q You said that this whole thing is about a loan
25 being paid and that this is not a drug --

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1 A No. I think the whole thing is about somebody
2 trying to get their behind off a case and trying to put
3 somebody else on a case because that's what this whole
4 thing is about --

5 Q Earlier it was said --

6 THE COURT: Hold on. Let her ask the question.
7 You answer. The court reporter can't take down what's
8 being said if y'all are talking at the same time. So
9 let her finish the question, then you will have a full
10 opportunity to answer.

11 Yes, sir.

12 THE WITNESS: But she's throwing allegations.

13 THE COURT: I'm going to give you every
14 opportunity to answer the question. Ms. Simmons will
15 stop when she's finished, but we can't talk at the same
16 time. The court reporter has to take down what's being
17 said.

18 BY MS. SIMMONS:

19 Q When you were testifying on direct, you told
20 Mr. Cole that the money that changed hands on this day
21 was a repayment of a loan; true or false?

22 A True.

23 Q Okay. But you had almost a year to think up this
24 excuse that this was a loan; isn't that true?

25 A I guess so because -- no, I ain't have a year.

1 Y'all had a year because it took a year for y'all to
2 get me in here.

3 Q But over the course of this year, within the last
4 couple of weeks, you have contacted Brandon Hunter at
5 the Department of Corrections, correct?

6 A I can't contact somebody who's locked up in
7 prison. They have to contact me voluntarily.

8 Q You've talked to him?

9 A Yes, ma'am.

10 Q And you've talked to his girlfriend?

11 A Yes. Like we all friends. Like my kids and his
12 kids play together. We all friends. Like we all
13 friends. Yeah, of course I talk to his girlfriend. I
14 talk to his baby mama. Like his baby mama is up here
15 who the officer, McClure, pointed out earlier, Candace.
16 She's up here, too.

17 Q And did you bring all these people here to
18 intimidate him today?

19 A No. They're here to support -- like it will look
20 kind of bad if I came in here by myself without no
21 support. That's family. But most people there are
22 family to me, blood relatives to me, you know what I'm
23 saying. Those people have been there for me when I was
24 in the hospital and stuff, so, of course, they are
25 going to come show because my freedom is on the line

1 over here. So, of course, they're going to come, you
2 know what I'm saying. I ain't packed the courtroom
3 out, just a few people on this side right here. So,
4 yes, I brought them up here with me to show support.

5 Q And your freedom is on the line. That's why you
6 recorded that phone call with Brandon Hunter because
7 you're afraid you're going to get convicted?

8 A No. I recorded that phone call with Brandon
9 Hunter because he knew it was recording. He told me --
10 like I said, you could have the SCDC phone thing pulled
11 that I had said my name -- my street name is Zimbe, and
12 he said when he called, "You have nothing to worry
13 about, Bro," you know what I'm saying. "I'm sorry for
14 putting you in this predicament." So I said to him,
15 "May I have a written -- I mean an audio statement?"
16 He was like, "Yeah." When he said that, I let him know
17 that he was being recorded. So I guess that some
18 people do stuff and think it's going to be swept under
19 the rug. Then your conscience kick in. When your
20 conscience kick in, you get what you just got, "I plead
21 the Fifth."

22 Q But what we don't have is the beginning of that
23 phone call --

24 A No --

25 Q -- we don't know --

1 A -- what you don't have is Brandon Hunter --

2 Q -- if you threatened him, we don't know if you
3 intimidated him, and we don't know if you coerced him?

4 A No. What you don't have is Brandon Hunter on the
5 stand. You got me on the stand, but you ain't got
6 Brandon Hunter on the stand.

7 Q Brandon Hunter is on video, isn't he?

8 A I don't know --

9 Q And you're on video selling him crack cocaine?

10 A I admit even though the video is blurry, that I'm
11 on video. You ain't never got Brandon Hunter on video,
12 period.

13 Q Brandon --

14 A Can you play the video back, please.

15 THE COURT: Hold on. Hold on. Hold on. This is
16 the last time. Let her ask the question. Answer the
17 question.

18 Ms. Simmons, you stop. Let him finish. We are
19 not going to talk over one another. Okay? This is the
20 last time I'm going to warn you.

21 THE WITNESS: Yes, sir. I'm sorry again.

22 BY MS. SIMMONS:

23 Q The fact of the matter is that you have done
24 everything you can to make everyone in this courtroom
25 forget that on 13.38 of this video, you can see you

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1 sell crack cocaine to Brandon Hunter. That's a fact,
2 isn't it?

3 A Can I ask you a question?

4 Q No.

5 A But you ask me a list of questions. Could I ask
6 you a question?

7 THE COURT: Answer her question, and then you can
8 explain your answer.

9 THE WITNESS: No, I'm not trying to make nobody
10 forget nothing because that never took place. I never
11 seen a hand-to-hand transaction. I never heard nothing
12 about no money. I never -- I don't even -- like I
13 remember him getting in my car. But, no, I'm not
14 trying to make nobody forget nothing. If I was wrong,
15 I would plead guilty. Nah, I'm trying to get everybody
16 to see what's right and what's wrong from the evidence
17 that you are presenting. I'm not trying to make nobody
18 listen to me. I'm trying to make them see the evidence
19 that you presented, not me.

20 BY MS. SIMMONS:

21 Q So you're denying that there is a hand-to-hand on
22 this video?

23 A I'm denying there is a hand-to-hand drug
24 transaction on that video.

25 MS. SIMMONS: Nothing further.

1 THE COURT: Any redirect?

2 MR. COLE: Just briefly, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. COLE:

5 Q You went through the convictions that you
6 previously had, Mr. Smith; is that correct?

7 A Yes, sir. Like, again, I was -- I'm 32 now. It
8 was over -- they say 2008. So we'll do the math.
9 That's seven years ago. That's when I was young. I
10 was out here basically running around here doing the
11 wrong thing. So when I got caught doing the wrong
12 thing, I admitted to the wrong thing. And I admit
13 today in front of the courthouse, yes, I had drugs in
14 2008. Yes, I sold a CI drugs in 2008. Yes, I did.
15 But on September the 4th, 2014, a hand-to-hand
16 transaction of drugs did not occur in my car.

17 Q And since then, since you got convicted before,
18 have you changed -- have you quit selling drugs, quit
19 doing that?

20 A Drugs, um, I come from a drug background, you know
21 what I'm saying. Really probably, you know what I'm
22 saying, I wasn't born rich. So at the time I was
23 young, I seen a way to get money, and that was selling
24 drugs in my community. But as older and doing time and
25 time that you would never get back, and I got home from

1 the penitentiary, I seen that that's not the right
2 thing to do, so --

3 MS. SIMMONS: Objection, Judge. This is outside
4 the scope of cross-examination.

5 THE COURT: You asked him about the prior record.
6 I'm going to overrule the objection.

7 THE WITNESS: So you -- when you come home from
8 prison, it's like you really don't know nothing, but
9 you don't never want to go back, you know what I'm
10 saying. And so what you need to do is straighten your
11 life up. And, yeah, I loaned that boy some money, you
12 know what I'm saying, because he out here, you know
13 what I'm saying. If it's a choice, you know what I'm
14 saying, I feel like he was out here doing the wrong
15 thing. So if he come and ask me for something I got,
16 just like the police testified and said that we use him
17 to bust Saco (phonetic), the CI to bust people, we give
18 them money for their families. If my friend, if my
19 cousin, if my mama or my daddy come ask me for some
20 money and I got it, I'm going to give it to them and
21 believe they're going to give it back to me because it
22 ain't nothing but money.

23 Q And those convictions in 2007 or 2008, they don't
24 have anything to do with why we're here today; is that
25 correct?

1 A Oh, no. That's past history. Right now I'm
2 working. Like I say, I got a contract for eight Taco
3 Bells. And that's what I do when I get done there. I
4 work third shift on that because I work until all the
5 stores close.

6 MS. SIMMONS: Objection; outside the scope of
7 cross.

8 THE COURT: Sustained.

9 Move on.

10 MR. COLE: No further questions, your Honor.

11 THE COURT: Any questions in response?

12 MS. SIMMONS: No, your Honor.

13 THE COURT: Thank you. Mr. Smith, you can step
14 down.

15 Call your next witness.

16 MR. COLE: Your Honor, I'd like to call Angelus
17 Goodine.

18 ANGELUS GOODINE,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. COLE:

22 Q Ms. Goodine, can you state your full name and
23 spell your last name for the Court, please.

24 A Angelus, A-n-g-e-l-u-s, Goodine, G-o-o-d-i-n-e.

25 Q Ms. Goodine, do you know my client, Gerome Smith?

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Angelus Goodine - Cross-Examination by Ms. Simmons

- 1 A Yes, sir.
- 2 Q How do you know him?
- 3 A He was a friend of my son for about seven years.
- 4 Q All right. And do you know Brandon Hunter?
- 5 A Yes, sir.
- 6 Q And how do you know him?
- 7 A I just found out he's my cousin a couple of years
- 8 ago.
- 9 Q And are you friends with him also?
- 10 A Yes, sir.
- 11 Q And knowing these two parties, have you ever had
- 12 the occasion to witness my client loan money to Brandon
- 13 Hunter?
- 14 A Yes, sir.
- 15 Q And were those loans drug related?
- 16 A No, sir.
- 17 Q And did Brandon -- did you ever witness Brandon
- 18 Hunter make payments to my client?
- 19 A Yes, sir.
- 20 Q And what was he making payments for?
- 21 A For the money he got from him.
- 22 Q And that was a loan?
- 23 A Yes, sir.
- 24 Q And did you ever -- have you ever witnessed my
- 25 client sell drugs to anybody?

1 A No, sir.

2 MR. COLE: No further questions, your Honor.

3 THE COURT: Ms. Simmons.

4 CROSS-EXAMINATION

5 BY MS. SIMMONS:

6 Q Ms. Goodine, you weren't present on September 4th
7 of 2014 when these two gentlemen were in the car
8 together, were you?

9 A No, ma'am.

10 MS. SIMMONS: Nothing further.

11 THE COURT: Anything further for this witness?

12 MR. COLE: No redirect, your Honor.

13 THE COURT: Any objection to this witness being
14 excused?

15 MS. SIMMONS: No, your Honor.

16 THE COURT: All right. Thank you, ma'am. You can
17 step down. You are excused.

18 MR. COLE: Your Honor, I'd like to call Candace
19 Lewis at this time.

20 MS. SIMMONS: Your Honor, I will object. She
21 wasn't provided on the defense witness list.

22 THE COURT: Did you have Ms. Lewis on your witness
23 list that we read earlier?

24 MR. COLE: No, your Honor. She approached me
25 during the -- after the witness list was already made

1 and said that she may have some testimony, so I did not
2 put her on the witness list.

3 THE COURT: If she wasn't on the witness list that
4 was disclosed, I'm not going to allow you to do that.

5 MR. COLE: Thank you, your Honor.

6 The defense rests.

7 THE COURT: Any reply?

8 MS. SIMMONS: No, your Honor.

9 THE COURT: All right.

10 Madam Bailiff, if you will take our jury to the
11 jury room. We have a couple legal matters to take up.

12 (WHEREUPON, the jury exited open court at
13 3:26 p.m.)

14 THE COURT: Yes, sir.

15 MR. COLE: Your Honor, if the Court is ready to
16 proceed, I would like to make a motion for a directed
17 verdict at this time.

18 THE COURT: Renewing your previous motion?

19 MR. COLE: Yes, your Honor, renewing my previous
20 motion, your Honor, on the same grounds as my previous
21 motion that a reasonable jury, based on the State's
22 evidence, could not find my client guilty, and then
23 with the evidence that has been presented, especially
24 the impeachment evidence of Mr. Hunter who was -- who's
25 just been admitted by statement anyway, and then we

1 have impeachment evidence saying that he did not sell
2 and then the testimony of my client and the testimony
3 of the other witness that talks about the previous --
4 the previous transactions between these two that are
5 completely not drug related, then I would say, your
6 Honor, and also for all the same reasons that I stated
7 before -- the quality of the video, the evidence that
8 they're -- taken in the light most favorable to the
9 State, a reasonable jury could not convict my client of
10 this charge.

11 THE COURT: Mr. Cole, again, I think your argument
12 goes toward the weight of the evidence rather than the
13 existence, and I will continue to deny your motion, but
14 your motion is noted for the record.

15 MR. COLE: Thank you, your Honor.

16 THE COURT: I'm going to give each attorney a
17 moment and you can prepare your closing arguments. Are
18 there any specific jury charges that are requested by
19 the State or the defense? If so, please hand those up
20 and let me take a look at them.

21 THE COURT: Mr. Cole, you have submitted four
22 proposed charges. I'm going to deal with, first of
23 all, credibility of witnesses. That's included in the
24 Court's standard charge to the jury.

25 MR. COLE: Your Honor, I thought it probably would

1 be. Just out of an abundance of caution, I want to --

2 THE COURT: And also your mere association and
3 mere presence charge, I have a standard charge that's
4 included in the bench book to that.

5 MR. COLE: Yes, your Honor.

6 THE COURT: Ms. Simmons, he's asked for a charge
7 on identification, and I don't believe we have a
8 standard charge on identification. Okay. All right.
9 I was looking -- let me look at it real quick. I take
10 that back. We do have a standard charge on
11 identification.

12 MS. SIMMONS: Judge, just for the record, I object
13 to an identification charge because the defendant just
14 testified he's in the car and he's the person who was
15 exchanging money, so identity is not an issue.

16 THE COURT: Well, I think the question of fact in
17 the case is where the drugs came from, and the
18 defendant is denying that he did that or the
19 identity -- there is another party in the car, so I
20 think that's an appropriate charge based on the
21 evidence that's been submitted. Again, that's a
22 question of fact.

23 MS. SIMMONS: Thank you, your Honor.

24 MR. COLE: Thank you, your Honor.

25 THE COURT: Any further charges from the State?

1 MS. SIMMONS: No, your Honor.

2 THE COURT: Okay. All right. We'll take just a
3 minute and the State will open on the law, defense will
4 close, and then the State will get the last closing
5 argument. Take about five minutes.

6 MS. SIMMONS: Thank you, Judge.

7 (WHEREUPON, a recess was taken from 3:31 p.m. to
8 3:39 p.m.)

9 THE COURT: Anything from the State before we
10 bring the jury back?

11 MS. SIMMONS: No, your Honor.

12 THE COURT: Anything from the defense?

13 MR. COLE: No, your Honor.

14 THE COURT: Any objection to the verdict form?

15 MS. SIMMONS: No, your Honor.

16 MR. COLE: No objection, your Honor.

17 (WHEREUPON, the jury entered open court at
18 3:40 p.m.)

19 THE COURT: All right. Ladies and gentlemen, we
20 have reached the end of the evidence in the case. Each
21 side has rested, so the final things for us to do
22 before I send you out for your deliberations are the
23 closing arguments by counsel, and then I will instruct
24 you on the law at the conclusion of counsel's
25 arguments.

1 So, Ms. Simmons.

2 MS. SIMMONS: Thank you, your Honor. May it
3 please the Court, Mr. Cole.

4 Ladies and gentlemen, we've reached the point in
5 the trial today where I get to talk to you just one
6 more time after this. Right now I'm going to open to
7 you on the law that you will be applying when you go
8 into the jury room.

9 I told you this at the beginning of the case.
10 It's pretty simple elements under the law. In order to
11 prove distribution of crack cocaine, we have to prove
12 that in Oconee County on September 4th of 2014 the
13 defendant sold crack cocaine to Brandon Hunter. It
14 actually doesn't even have to be a sale. The statute,
15 as well as the judge will charge it to you, is just the
16 simple delivery. You can give someone crack cocaine,
17 and it's still distribution. So whether money changed
18 hands is irrelevant. The simple act of distributing a
19 controlled substance to another person suffices under
20 the statute.

21 It's been my obligation to prove this to you
22 beyond a reasonable doubt. And the most important
23 thing you brought with you to jury service is your
24 common sense. And I ask that you use your common sense
25 when you apply the reasonable doubt standard.

1 Reasonable doubt is not beyond all doubt, but it's
2 beyond a reasonable doubt. You, being a reasonable
3 person, when you go into that jury room, you have to
4 ask yourself, "Do I reasonably believe that a drug deal
5 took place?" It's just as simple as that.

6 Distribution. The transfer of drugs to Brandon
7 Hunter on September 4, 2014, in Oconee County, and the
8 standard is reasonable doubt. It's very simple, ladies
9 and gentlemen, very simple elements of the crime, and a
10 very simple standard of understanding reasonable doubt.

11 I will be back to talk to you in a few minutes
12 about why I believe we have met the burden of proof in
13 this case, and I'm going to ask you to find the
14 defendant guilty. Thank you.

15 THE COURT: Mr. Cole.

16 MR. COLE: May it please the Court, your Honor.

17 Ladies and gentlemen of the jury, you've heard the
18 evidence today, and now it is all in your hands. You
19 are the deciders of fact in this case. As I told you
20 earlier today, there's nobody in this -- not me, not
21 the solicitor, not even the honorable judge can decide
22 the facts in this case. It is up to you. I think
23 that's one of the greatest things about America is that
24 it is up to -- it is we, the people. It is up to
25 individuals to decide the facts of a criminal case

1 because the stakes are so high.

2 In this situation, as I told you before, my
3 client's liberty is in your hands, and it's up to each
4 one of you to make that choice to look at the evidence,
5 look at what was presented today and see if the State
6 did prove those elements that the solicitor just went
7 over beyond a reasonable doubt, if the State proved
8 that my client had possession of crack cocaine and my
9 client distributed that crack cocaine to somebody else.

10 Now, an analogy I like to use, I thought about it
11 over lunch. I went down to the Steakhouse Restaurant
12 down here Main Street, Walhalla. I know all of y'all
13 know where that's at. And I got some banana pudding as
14 a desert. And banana pudding, everybody knows what's
15 in a banana pudding. You got cookie, you got pudding,
16 bananas, then you usually have whip cream or meringue
17 on top, depending on what you like. They have whip
18 cream down there.

19 Well, if the steak house was going to sell you a
20 banana pudding, and they sold you one and it didn't
21 have any cookies in it, would that be a banana pudding?
22 If it didn't have any whip cream or meringue on top,
23 would it be a banana pudding? If it didn't have any
24 pudding in it, would it be a banana pudding? If it
25 didn't have bananas in it, would it be a banana

1 pudding.

2 In this case, in this situation, if the State is
3 not selling you a complete banana pudding with all the
4 ingredients in it, then you must find my client not
5 guilty. In other words, if the State did not prove
6 beyond a reasonable doubt all the elements of this
7 crime, you must find my client not guilty. And I would
8 submit to you today that the State has not met their
9 burden.

10 We go back through the evidence briefly. I know
11 y'all have been sitting here a while, and I don't want
12 to keep you too long. But if we look, one of the
13 biggest things at the beginning, they say they have an
14 informant, Brandon Hunter, who's supposedly bought
15 drugs from my client. He did not testify. He would
16 not testify. You sat up here and looked at him. He
17 would not say anything. He wouldn't say anything when
18 I asked him questions. He wouldn't say anything when
19 the solicitor asked him questions.

20 Also, I want to make it clear, too, that the
21 defense doesn't have to put anything forward. We could
22 have just sat there the entire time. We don't have to
23 present any evidence. In our system of justice, only
24 the State has to present evidence. Only they have the
25 burden of proof.

1 If we look at the video, the officers have
2 admitted that the informant, Brandon Hunter, stole
3 money from the city of Seneca on that video. It's come
4 into evidence, we have it as part of our exhibits, the
5 criminal history, the extensive, recent criminal
6 history of Brandon Hunter. We have in evidence that
7 Brandon Hunter had this criminal history when he was
8 going to -- when he was doing this work for the police.

9 Well, what was he doing the work for? So he could
10 get a better deal and not to go to prison any longer
11 than he's having to go for. If you look at the video,
12 Brandon Hunter is never on the video. We never see
13 Brandon Hunter's face. We saw Brandon Hunter's face in
14 here, but we never see him on the video. There is no
15 conversation about drugs. You hear conversations -- I
16 mean Brandon or the person that they say is Brandon
17 Hunter is on the phone several times. We have other
18 people talking. There's no conversation about drugs on
19 the video. There's only conversations about money.
20 And we've had other witnesses, even the State's
21 witnesses have said Brandon Hunter owed my client a
22 debt. And that was all -- when you look at the video,
23 you see money exchanged.

24 The police said that they did a search of Brandon
25 Hunter before and after. There is no search on the

1 video. So we're to take their word for it that they
2 did a search. But the question I have: They did a
3 search. They also admit that Brandon Hunter stole
4 money. They didn't get the money off of him when they
5 did that search?

6 Another question from this video is Brandon
7 Hunter, his entire demeanor or the person that's taking
8 the video that claims to be Brandon Hunter, his entire
9 demeanor in the video. He's acting -- the whole time
10 he's acting very strange. He puts drugs down in his
11 shoe when he's supposedly going back to meet the police
12 to give them drugs back. The whole thing just
13 doesn't -- and switching money back and forth, not
14 giving all the money back to the police.

15 There's another person in this car. We have that.
16 We have -- the evidence has shown that Andrew
17 Cleveland, another person sitting in the front seat of
18 this car, that could -- if Brandon Hunter got drugs
19 from anybody, it could have just as easily been him as
20 it would have my client, if he got drugs from anybody.

21 The police did not find -- there's been no
22 evidence that the police found any drugs on my client.
23 The police testified that they gave Brandon Hunter
24 marked bills. There's no evidence that the police
25 found any marked bills on my client. Most of all,

1 there is no evidence -- y'all watched that video just
2 like the rest of us watched that video. There is
3 nothing on that video that shows any drugs go from my
4 client to Brandon Hunter. There is something on the
5 video that shows Brandon Hunter get drugs from
6 somewhere, but as you watch the video, they pass out
7 money. Brandon Hunter goes down to the side and then
8 later on holds up drugs in front of the camera. He's
9 on this side; my client is on this side. It all
10 doesn't add up.

11 You look at the other evidence. Now, as I said
12 before, we could have just sat here. My client didn't
13 have to testify. My client knew by testifying he was
14 going to subject himself to cross-examination. He was
15 going to subject -- y'all were going to know about his
16 past history. If he wouldn't have testified, y'all
17 wouldn't have known about that. My client chose to
18 testify, though, because he wanted to tell you the
19 truth today. He didn't want to sit on his hands. He
20 wanted to tell you the truth, and he told you the truth
21 that he had some past history. He had some past
22 convictions. He pled guilty to them, but he was in
23 here to tell you the truth today, that he did not do
24 this crime that's being alleged.

25 You heard the audio recording. Brandon Hunter

1 wouldn't say anything up here, but we have the
2 recording where he says on that recording, "I did not
3 sell drugs to Gerome Smith," and he identifies himself
4 as Brandon Hunter. We also -- not only my client
5 didn't have to testify, we didn't have to put forth any
6 witnesses, but we chose to. We were able to do Angelus
7 Goodine. She wanted to get up on the stand and tell
8 you, she wanted to tell the truth about these parties'
9 past -- past transactions that they had had where my
10 client would loan money, and then Brandon Hunter would
11 pay him back. And that's what it shows in this video,
12 Brandon Hunter paying money to my client.

13 So, again, I ask you to look at the whole thing.
14 Look at has the State, are they selling you a real
15 banana pudding? Are they selling you a real banana
16 pudding, or are they selling you one of those fake
17 Jello banana puddings that you get at some places? Is
18 it a real banana pudding? In other words, are all the
19 elements there? Is there anything that is not there in
20 this case? Is there anything that the State has failed
21 to prove to you beyond a reasonable doubt? I would
22 submit to you if you look at the evidence, you will see
23 that the State has not proven its case beyond a
24 reasonable doubt.

25 And just some final words. I know y'all have some

1 of the most important jobs that Americans can have now.
2 I still believe that we live in the greatest country in
3 the world. I'm sure most of you do as well. We live
4 in the greatest country because we have a system of
5 justice. And as I said before, we have an extremely
6 high, high standard to take somebody's liberty away,
7 and that is in your hands at this point. So I ask each
8 one of you to consider the evidence, to just consider
9 what you saw today. Don't let anybody try to talk you
10 out of doing the just thing, of doing what you, as a
11 jury member, have the right to do is make a decision
12 if my client was found guilty beyond a reasonable
13 doubt. And when you look at that, I would ask you to
14 see that he was not found guilty, they did not give you
15 a real banana pudding, find my client not guilty.
16 Thank you.

17 THE COURT: Ms. Simmons.

18 MS. SIMMONS: Thank you, your Honor.

19 Ladies and gentlemen, this is the final time I'm
20 going to talk to you today. And, quite frankly, my job
21 is sometimes like being a cruise director, and this
22 cruise has not been a very smooth one today. Sometimes
23 witnesses cooperate. Sometimes they don't. Sometimes
24 you have to change the course midstream. I want you to
25 know I appreciate your patience and I appreciate your

1 attention on this bumpy cruise and let you know that it
2 is almost over.

3 The defense in this case has presented to you a
4 whole bunch of smoke and mirrors. All those smoke and
5 mirrors are designed to get you off the one thing that
6 matters in this case: That tiny little snippet of
7 video where we see a drug distribution. You have seen
8 it like a million times now, but I'm going to let you
9 see it one more time before you go to the jury room.

10 They have attacked this confidential informant's
11 rap sheet and credibility. Well, law enforcement told
12 you, you have to use people that run in the same
13 circles. There are not preachers available to do drug
14 deals. You have to know people that know each other
15 and they can deal with each other.

16 A lot has been made -- to-do has been made about
17 the fact that the informant is cooperative. He sat up
18 there. You can tell he's scared. Agent McClure told
19 you it's not uncommon for informants to recant. It's
20 not uncommon for them to become uncooperative due to
21 pressure that's put on them by -- either on them or
22 pressure on their family, or it's not uncommon for them
23 to fold when they they see mass showings against them.
24 He told you all of that. And he also told you that
25 sometimes you have to use people like Brandon Hunter to

1 catch that bigger fish. And that's what he was trying
2 to do in this case. And the defendant's prior record,
3 for not just distribution but trafficking, which is a
4 significant weight of drugs, trafficking shows you he's
5 that bigger fish they were trying to get.

6 The defendant testified today and you heard a
7 phone call that allegedly took place between him and
8 Brandon Hunter at the Department of Corrections. Most
9 importantly, there's no beginning to that phone call.
10 We have no idea what that man said to Brandon Hunter to
11 get him to say that. The entire thing -- you're smart
12 people. The entire thing sounds coached and rehearsed
13 and planned. We don't know why he got Brandon Hunter
14 to say that. That is important, that we don't know
15 why. I submit to you there was some sort of threats or
16 intimidation made to get Brandon Hunter to make that
17 statement.

18 Let's look at the defendant's testimony. He sure
19 didn't want to admit his prior convictions and wanted
20 to argue about them. He hadn't changed one bit. All
21 of his denials, all of the, "On September 4th, 2014, I
22 did not sell drugs to Brandon Hunter," you be the judge
23 of his credibility. He never looked at you once. He
24 stared straight ahead and gave his rehearsed remarks
25 denying this crime. He didn't even want to testify as

1 to who else was in that car. He didn't want to rat out
2 his homey.

3 He would have you believe that Brandon Hunter was
4 conducting some magic show with drugs and money and all
5 this in the backseat of his car. That quite simply did
6 not happen. You can see the deal. You have to watch
7 carefully, but you can see it and what Brandon Hunter
8 brought back to Agent McClure is what was on that
9 video.

10 Let's talk about what you heard from law
11 enforcement. Agent McClure and Agent Sutherland told
12 you how drug deals work. They told you how they get
13 CI's. That's just an underworld that you probably
14 don't understand but have learned a little bit more
15 about today. He told you that they do thoroughly
16 search the CI's prior to. He told you that they
17 encourage the CI to put the drugs somewhere on them
18 when they're coming back so they don't get stopped by
19 some unassuming officer holding crack walking down the
20 street. They control the environment as much as
21 possible. In this case they had audio surveillance the
22 entire time, and they were able to have a video of his
23 entire time away from them once they downloaded it.

24 Again, the confidential informant. He's not the
25 ideal guy. You don't want him to come over for dinner.

1 He may have kept some money, but I told you earlier
2 that money didn't even have to exchange hands in this,
3 just drugs. It's not uncommon for him to become
4 uncooperative. Just because Brandon Hunter went to
5 prison doesn't mean cases that he made don't get
6 prosecuted. We can't let drug dealers go just because
7 their informant goes to jail. That's why we rely on
8 video evidence.

9 The videotape does not lie. It's hard evidence of
10 the defendant's guilt, and the case doesn't rest solely
11 on Brandon Hunter because of this tape. The defense
12 are the only people that can't see this, that a drug
13 deal is taking place on this recording. I think Agent
14 McClure told you, "We can watch this all day every day,
15 and it is a classic hand-to-hand drug deal."

16 You also heard from Melinda Nicholson about the
17 complete chain of custody on the drugs in this case,
18 and you heard from Meredith Lanford who told you
19 exactly what the weight of the drugs were, and that it
20 was indeed crack cocaine or what's also known as
21 cocaine base.

22 Ladies and gentlemen, this is not some vast
23 conspiracy against the defendant. He was selling
24 drugs. He got caught. And it's on tape. Video and
25 photographs don't lie. I'm going to show you this deal

1 with your very own eyes one more time. It doesn't
2 matter that he got busted by another drug dealer.
3 That's just the way this element works.

4 (WHEREUPON, State's Exhibit 4 is being played for
5 the jury.)

6 MS. SIMMONS: That's it. You see it right there.
7 You saw their hands go together, and you saw the drugs
8 transfer. That tiny bit of crack cocaine that goes
9 straight into Brandon Hunter's hands. Ladies and
10 gentlemen, you can see it with your own eyes. It's
11 there. And it's obvious.

12 This all comes down to confidential informants
13 sometimes lie. Snitches lie. But this videotape
14 doesn't lie, ladies and gentlemen. Like Sergeant
15 McClure said, this is a classic hand-to-hand drug
16 transaction all day every day.

17 The evidence in this case has shown you that this
18 man, on September 4th of 2014, sold crack cocaine here
19 in Oconee County. I appreciate your time. I
20 appreciate your careful deliberations, and I ask that
21 you find the defendant in this case guilty.

22 THE COURT: Ladies and gentlemen, we have come to
23 the point in the trial where I instruct you on the law.
24 My instructions will be somewhat lengthy, but they will
25 be in three parts. The first will be some instructions.

1 ALTERNATE JUROR: I still have my stuff in there.

2 THE COURT: You can't go in the jury room now that
3 they have begun their deliberations.

4 Let the bailiff know.

5 (WHEREUPON, the alternate juror left the
6 courtroom.)

7 THE COURT: Before we go in recess, again, we have
8 had some issues in the case that have made this case a
9 little more difficult to handle, but I appreciate the
10 professional manner in which both attorneys conducted
11 themselves. You have gotten through a difficult
12 situation today. So the Court appreciates the
13 professionalism that I've seen on both sides.

14 MS. SIMMONS: Thank you, your Honor.

15 MR. COLE: Thank you, your Honor.

16 THE COURT: We would now be in recess.

17 (Court in recess, pending verdict, from 4:18 p.m.
18 until 4:37 p.m.)

19 THE COURT: Ms. Simmons, Mr. Cole, I have been
20 informed by the bailiffs that the jury has reached a
21 verdict. And is there anything before we bring the
22 jury in from the State?

23 MS. SIMMONS: No, your Honor.

24 THE COURT: Anything?

25 MR. COLE: No, your Honor.

1 THE COURT: Okay. I'm going to instruct the
2 gallery. I know that we have a lot of interest in this
3 trial. We have a lot of people who have come in to
4 watch the trial on both sides. There will be no
5 outbursts regardless of what this verdict is. I have
6 no idea what the jury has decided, but regardless of
7 what they have decided, there will be no outbursts. We
8 will keep order in this courtroom.

9 Mr. Bailiff, if you will get our jury.

10 (WHEREUPON, the jury entered open court at
11 4:38 p.m.)

12 THE COURT: All right. Mr. Foreman, has the jury
13 reached a verdict?

14 JURY FOREMAN: Yes, sir.

15 THE COURT: Okay. Hand that verdict to the
16 bailiff.

17 Madam Clerk, would you publish the verdict.

18 THE CLERK: In the matter of the State of South
19 Carolina versus Gerome Chris Smith, on Indictment
20 Number 2015-GS-37-399, distribution of crack cocaine,
21 we, the jury, unanimously find on Indictment Number
22 2015-GS-37-399, that the defendant, Gerome Chris Smith,
23 is guilty of distribution of crack cocaine.

24 Ladies and gentlemen of the jury, if this was your
25 verdict and remains your verdict, please indicate so by

1 and the law has to be upheld.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, again, this is a very serious
4 offense. So this will be the sentence of the Court:
5 Defendant will be confined to the State Department of
6 Corrections for a term of 18 years. That would be
7 suspended on the service of eight years followed by
8 probation for five years. Condition of probation,
9 substance abuse counseling and random drug and alcohol
10 testing.

11 Good luck to you, sir.

12 He will get credit for 60 days time served. Thank
13 you.

14 THE DEFENDANT: Thank you for your leniency, your
15 Honor. Thank you.

16 THE COURT: The reason I did that Mr. Smith is
17 because I want you to take care of these children. You
18 have got small children. This gives you a chance to
19 get your life -- I could have thrown away the key. I
20 could have put you in jail for 30 years under the law,
21 and I don't think that is appropriate in this
22 situation.

23 ///

24 ///

25 ///



Anderson-Oconee Regional Forensics Laboratory

#5

DRUG ANALYSIS DEPARTMENT

B. J. McClure
Seneca Police Department
205 North Depot Street
Seneca, SC 29678

Date: 11/07/2014
Lab Number: L14-000588
Incident Date: 09/04/2014
Agency Case #: 14001217
Control #: C16224
(S): Smith, Gerome Chris

This is an official report issued by a certified analyst. The items in this report were examined with the assurance that the submitted specimens have not, nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L14-000588

The following evidence was submitted to the Anderson/Oconee Regional Forensics Laboratory by Melinda Nicholson of the Seneca Police Department on 9/12/2014:

Item A: Sealed drug evidence kit Control #: C16224

Item A.01: Clear plastic ziploc bag containing rock substance.

Results:

Cocaine (Base) found 1.04 grams Schedule: II

I am a Forensic Chemist employed by the Anderson/Oconee Regional Forensics Laboratory at the Anderson County Sheriff's Office, and certified by the Anderson/Oconee Regional Forensics Laboratory as a chemical analyst qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in the State of South Carolina by Title 44, Chapter 53 of the SC Code of Laws and Rule 61-4 of the SC Department of Health and Environmental Control. I have 9 years and 6 months experience and have been qualified as an expert witness in recognized courts of law no less than 18 times.

The following legally reliable forensic laboratory procedures were used to conduct this analysis:

UV-Vis Spectroscopy

Mass Spectroscopy

Gas Chromatography

FT-IR Spectroscopy

Color Tests

Meredith Lanford

Meredith Lanford

Forensic Chemist

11/07/2014

Date



SENECA POLICE DEPARTMENT INFORMANT AGREEMENT

Name: BRANDON JAMES HUNTER
DOB: [REDACTED]
SS#: [REDACTED]
DL/ID#: [REDACTED]
[REDACTED] SC 29678
Aliases: BB

Race B Sex M Hgt. 6'1 Wgt. 230 Hair Color BLK

NCIC History (attached / date) [REDACTED]

D/L History (attached / date) [REDACTED]

Warrant Check (attached / date) [REDACTED]

Photo (attached / date) [REDACTED] (current)

Phone(s) Home: [REDACTED] Cell: [REDACTED]

Electronic Mail (e-mail, Facebook, etc.) [REDACTED]

Are you presently represented by an Attorney? Yes or No
If yes, Who? DANNY DAY

Do you have current, pending criminal charges? Yes or No

Are you currently on probation? Yes or No
If yes, who is your agent? MIKE JONES

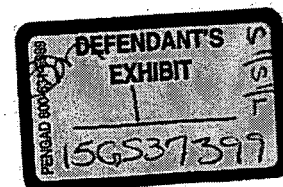
If so, please list

Current Charges:

DIST. OF CRACK COCAINE

DIST. OF MARIJUANA

Warrant # (s):



Please check one of the following:

BH The above stated individual is currently charged with Criminal Offenses and the individual has indicated his/her willingness to cooperate with Law Enforcement as a confidential informant.

BH The above stated individual is not currently charged with a Criminal Offense. However, the individual has indicated his/her willingness to cooperate with Law Enforcement as a confidential informant in exchange for Financial Compensation.

During my association with the Seneca Police Department as an Informant, I, the undersigned, do hereby agree to be bound by the following conditions and procedures while so associated;

(By initialing each statement the informant is indicating that they have read and understood and will abide by these statements.)

1. BH I agree that I have no police power under the Seneca Police Department or any local governmental subdivision and have no authority to carry a weapon while performing my activity as an Informant.
2. BH I acknowledge that I am associated with the Seneca Police Department as an Informant on a case or time basis as an independent contractor and that any payment I receive from the Seneca Police Department will not be subject to Federal or State Income Tax Withholding or Social Security. All reporting of income is the responsibility of the Informant.
3. BH I further acknowledge that as an Informant and independent contractor, I am not entitled to Workman's Compensation or Unemployment Compensation from the State of South Carolina and I shall not hold the State of South Carolina liable for any injuries or damage incurred by reason of my association with the Seneca Police Department.
4. BH I shall not hold the State of South Carolina or City of Seneca liable for any injuries or damage (personal injury or real property) incurred by reason of my association with the Seneca Police Department. Further, I am responsible for any injuries or damage I should cause to others during the course of this association.
5. BH I further agree that in the course of my association, if my personal vehicle is used, I shall hold the State of South Carolina and City of Seneca harmless should my vehicle incur damage. Further, I agree to maintain automobile insurance on said vehicle in such sum not less than minimum limits established by the South Carolina legislature and/or the South Carolina Department of Insurance.
6. BH I further agree not to divulge to any person, except the agent(s) with whom I am associated, my status as an Informant for the Seneca Police Department unless required to do so in court and shall not represent myself to others as an employee or representative of the Seneca Police Department.
7. BH I agree to testify truthfully in court regarding any evidence or information obtained during my association with the Seneca Police Department if required to do so.
8. BH I further acknowledge that in the event that I fully, honestly, and completely cooperate in the above described activities, the Seneca Police Department will advise the Solicitor's Office of such cooperation and request the Solicitor's Office take such cooperation into consideration when making decisions as to disposition and sentence on any current charges.

9. BH I further confirm that no Law Enforcement Officer has made any promises or representations as a part of this agreement that I will receive any specific sentence, probationary or other type. Further, no Law Enforcement Officer has made promises that any of the charges will be dismissed as a result of my cooperation.
10. BH I acknowledge that I am aware that all final decisions regarding disposition of pending charges are in the sole discretion of the Solicitor's Office. Recommendations from Law Enforcement will be considered by the Solicitor's Office in making those determinations.
11. BH I further acknowledge that I have not been offered or promised anything in exchange for cooperation, and that cooperation is completely voluntary and not the result of force or coercion.
12. BH I further agree not to use the Seneca Police Department or any of its agents as credit references or employment references unless prior approval is obtained from the agent with whom I am associated.
13. BH I further agree that my association with the Seneca Police Department does not afford me any special privileges.
14. BH I further agree that I will not attempt to make any purchase, sale, or delivery of drugs or other contraband except as instructed by the agent with whom I am associated and will contact the agent as soon as possible for delivery of such evidence to him/her.
15. BH I further agree to maintain a strict accounting of all funds provided to me by the Seneca Police Department as part of my activity as an Informant. I understand that misuse of state funds could be grounds for criminal prosecution against me.
16. BH I further agree to violate no City, State, or Federal laws during the time of my association with the Seneca Police Department.
17. BH I agree that violation of any of the above enumerated provisions will be grounds for immediate termination and probably criminal charges.
18. BH Finally, I agree to law enforcement monitoring and surveillance during the period of my cooperation outlined within this agreement; by audio, visual, global positioning systems or any other means available to law enforcement. I consent to electronic monitoring during the entire time period of my cooperation as a confidential informant, including times when I may be outside the presence of law enforcement.

Dated this 7th day of August, 20 14

Informant Signature: Brandon Hunt

Agent Signature: BJ McClure

Supervisor Signature: [Signature]

Witness Signature: [Signature]



Oconee County Tenth Judicial Circuit Public Index



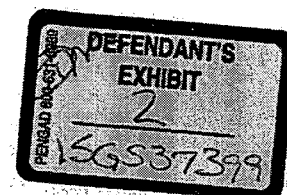
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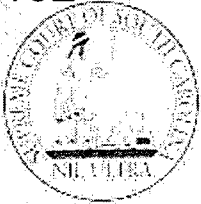
The State of South Carolina VS Brandon James Hunter					
Case Number:	2014A3720300318	Court Agency:	General Sessions	Filed Date:	05/23/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Macaulay, Alexander Stephens
Disposition:	Pled Guilty				
Disposition Date:	12/16/2014	Date Received:	05/23/2014	Arrest Date:	05/14/2014
Law Enf. Case:		True Bill Date:	10/06/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS3701083	Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date			
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	12/16/2014			

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The State of South Carolina VS Brandon James Hunter

Case Number:	2014A3710400874	Court Agency:	General Sessions	Filed Date:	09/30/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Solicitor
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	12/16/2014	Date Received:	09/30/2014	Arrest Date:	09/24/2014
Law Enf. Case:	1410379	True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000GS37	Waiver Date:	
Probation Case:					

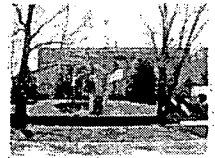
Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	12/16/2014

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The State of South Carolina VS Brandon James Hunter					
Case Number:	2014A3720300319	Court Agency:	General Sessions	Filed Date:	05/23/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Solicitor
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	12/16/2014	Date Received:	05/23/2014	Arrest Date:	05/14/2014
Law Enf. Case:		True Bill Date:	10/06/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS3701084	Waiver Date:	
Probation Case:					

Case Parties	Charges	Sentencing	Associated Cases	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge		Disposition Date		
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st		12/16/2014		

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The State of South Carolina VS Brandon James Hunter					
Case Number:	2014A3720300320	Court Agency:	General Sessions	Filed Date:	05/23/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Solicitor
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	12/16/2014	Date Received:	05/23/2014	Arrest Date:	05/14/2014
Law Enf. Case:		True Bill Date:	10/06/2014	No Bill Date:	
Prosecutor Case:		Indictment Number:	2014GS3701085	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds			
Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	12/16/2014

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The State of South Carolina VS Brandon James Hunter

Case Number:	2014A3720300551	Court Agency:	General Sessions	Filed Date:	11/21/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Simmons, Michael Todd	Disposition Judge:	Solicitor
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	12/16/2014	Date Received:	11/21/2014	Arrest Date:	11/13/2014
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000GS37	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	12/16/2014

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The State of South Carolina VS Brandon James Hunter

Case Number:	2014A3720300552	Court Agency:	General Sessions	Filed Date:	11/21/2014
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Simmons, Michael Todd	Disposition Judge:	Solicitor
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	12/16/2014	Date Received:	11/21/2014	Arrest Date:	11/13/2014
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	0000GS37	Walver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Hunter, Brandon James	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	3014-Drugs / Manufacture, distribution, etc. of cocaine base, 1st	12/16/2014

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WITNESSES
[Signature]
Seneca Police Dept.

Bobby McClure

ARREST WARRANT NUMBER

2014A3720300576

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: APR 13 2015

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2015-GS-37-00399

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 13 2015

TERM

THE STATE

VS.

GEROME CHRIS SMITH

INDICTMENT FOR

DISTRIBUTION OF CRACK COCAINE, 2nd
OFFENSE

SC Code: § 44-53-375(B)
CDR Code: 3015

LSS

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 APR 15 PM 4 21

ENTERED 157
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

INDICTMENT

APR 13 2015

At a Court of General Sessions, convened on _____, the Grand Jurors of Oconee County present upon their oath:

DISTRIBUTION OF CRACK COCAINE, 2ND OFFENSE

The defendant, Gerome Chris Smith, did on or about September 4, 2014, in Oconee County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a schedule II cocaine base controlled substance, in violation of the provisions of Section 44-53-370. All in violation of 44-53-375(B) of the South Carolina Code of Laws (1976) as amended.

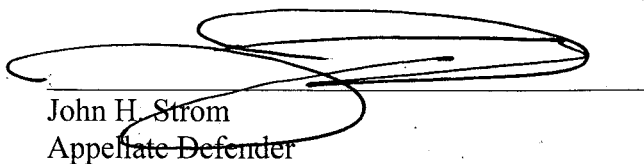
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


LINDSEY SATTERFIELD SIMMONS
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



John H. Strom
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 11th day of October, 2016.

RECEIVED
OCT 11 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Oconee County
Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED

OCT 11 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GEROME C. SMITH,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon William F. Schumacher, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of October, 2016.



George Vlas
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of October, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires 5/12/2025.