

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Cherokee County

Honorable J. Derham Cole, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

JEFFREY WILLIAM COLE,

APPELLANT

APPELLATE CASE NO 2016-001451  
\_\_\_\_\_

RECORD ON APPEAL  
\_\_\_\_\_

**RECEIVED**

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**SC Court of Appeals**

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

THE STATE )  
 )  
-vs- ) TRANSCRIPT OF RECORD  
 ) 2015-GS-11-00044  
JEFFERY WILLIAM COLE, )  
 ) JUNE 28, 2016  
DEFENDANT.. ) GAFFNEY, SOUTH CAROLINA

(VOLUME I)

B E F O R E :

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

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

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N. DOUGLAS BRANNON, ESQUIRE  
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MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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

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

6 (Photograph marked as State's Exhibit No. 3 for  
7 identification).

8 (Photograph marked as State's Exhibit No. 4 for  
9 identification).

10 (Photograph marked as State's Exhibit No. 5 for  
11 identification)

12 (Photograph marked as State's Exhibit No. 6 for  
13 identification).

14 (Photograph marked as State's Exhibit No. 7 for  
15 identification).

16 (Voucher marked as State's Exhibit No. 8 for  
17 identification).

18 (Voucher marked as State's Exhibit No. 9 for  
19 identification).

20 THE COURT: All right, are we ready for the panel?

21 MR. BRANNON: We are, Your Honor.

22 THE COURT: All right, bring them up.

23 (Off the record).

24 (Back on the record)

25 (The following takes place in the presence of the

1 jury panel)

2 THE COURT: Ladies and gentlemen, thank you for  
3 your patience.

4 We are now ready to begin with jury selection in  
5 the first case that's going to require some of your  
6 participation. The title of that case is the State versus  
7 Jeffery William Cole. Mr. Cole has been accused by the  
8 prosecutor by way of this indictment. This is a charging  
9 paper. It sets forth the allegations that the State  
10 contends constitute a criminal offense having been committed  
11 by the defendant.

12 In this case the State claims that Mr. Cole  
13 committed the crime of distribution of Oxycodone. They  
14 alleged that that event occurred on or about November the  
15 26th of 2014, and they alleged on that date that he did  
16 unlawfully dispense, distribute, or deliver a quantity of  
17 Oxycodone, a Schedule II controlled substance.

18 As to those allegations and that charge Mr. Cole  
19 has entered a plea of not guilty. A plea of not guilty  
20 places upon the State the burden of proving the allegations  
21 that they have made, the burden of proving each of the  
22 essential elements that constitute the crime alleged. And,  
23 therefore, the burden is on the State to establish the  
24 defendant's guilt to the satisfaction of twelve jurors  
25 beyond a reasonable doubt before a verdict of guilty could

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be returned.

We are going to be selecting thirteen of you to participate in the trial. I'm going to be asking you some questions in order to determine whether or not there is some reason why any one of you should not be selected to participate in the trial of this particular case; in other words, you have some reason why you think you could not be fair and impartial. So during the course of this process should you have a reason why you think you could not be fair in this particular case, I will ask that you please stand to provide me with that explanation.

The first thing I'm going to do is to introduce those persons who are participants in this trial and that includes any potential witnesses that might be called during the trial of the case. The reason I'm introducing these folks to you is because I want to find out if any one of you, or some member of your family, has any connection with these people; in other words, are you related to them by way of blood or marriage; do you go to school with them; do you attend church with them, or are you employed at the same place that they are employed; do you have a relative who knows them; do you socialize with them; have you met them somewhere or do you know them or have any contact with them in any capacity. And if you do, when that person's name is recited, if you will please stand and we will address what

1 courtroom)

2 THE COURT: Do we have any matters to address  
3 before the jury is sworn?

4 MS. LESKANIC: I have just one motion regarding  
5 the indictment, Your Honor, to amend the indictment. I  
6 brought that to Mr. Brannon's attention. I believe he  
7 consents to my amendment.

8 MR. BRANNON: That is correct, Your Honor. The  
9 number in the warrant is correct, but the number in the  
10 indictment went from 370 to 375, or something like that.  
11 There is just a -- so I have no objection to amending the  
12 indictment to reflect the correct number.

13 MS. LESKANIC: The correct statute number should  
14 be 44-53-370 and we have 375 in the indictment, Your Honor,  
15 but the body of the indictment contains the correct charge  
16 of Oxycodone, Schedule II.

17 THE COURT: Okay.

18 MR. BRANNON: Your Honor, I do have a motion.  
19 It's either a motion to dismiss or a motion to suppress and  
20 it deals with the video in this case, Your Honor.

21 THE COURT: Okay.

22 MR. BRANNON: The basis of the motion is simple,  
23 Your Honor. They paid a snitch to videotape what they  
24 allege is a drug transaction. The problem is there is no  
25 transaction on the video. Nothing ever changes hands on the

1 video. And if that's the basis for their case, well, then  
2 they ain't got a case, so I would ask the court to view the  
3 video and see if the court might agree with me.

4 THE COURT: All right. Ms. Leskanic?

5 MS. LESKANIC: May it please the court, Your  
6 Honor, there is no requirement statutorily or in case law  
7 that a drug transaction be videotaped. We used to have  
8 cases where there was no video in these cases.

9 We have the individual who was the undercover  
10 operative who is going to come in and testify as to what  
11 occurred, and we also have the videotape, but that would go  
12 to the weight of the evidence presented to the jury, but  
13 it's not appropriate for dismissal or suppression. That's  
14 just a piece of evidence that the State wishes to present,  
15 but there is no statutory requirement that these  
16 transactions even be videotaped, so we would ask that the  
17 motion be denied.

18 THE COURT: All right. So the motion to exclude  
19 is based on the relevance of it?

20 MR. BRANNON: Yes, Your Honor.

21 THE COURT: It doesn't show anything?

22 MR. BRANNON: It doesn't show anything.

23 THE COURT: How long does it take to show me?

24 MS. LESKANIC: Seven minutes, Your Honor. It's a  
25 little over seven minutes. I just need to warm up the

1 equipment.

2 THE COURT: All right, warm it up and I'm going to  
3 let the jury go to lunch and I'll look at it and we will  
4 talk about it.

5 MR. BRANNON: Thank you.

6 THE COURT: Are you just going to turn it on?

7 MS. LESKANIC: I was just going to turn it on,  
8 Your Honor, and let it start warming up.

9 THE COURT: Bring the jury in.

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

12 THE COURT: Ladies and gentlemen, because of the  
13 hour we are going to recess now for lunch. We will begin  
14 with the trial of this case this afternoon at 2:30.

15 Keep in mind as you are excused that you are not  
16 to discuss this case with any person whatsoever in any  
17 fashion whatsoever. You are only permitted to talk about  
18 the case when you are involved in jury deliberations and  
19 that won't occur until the end of the trial after the  
20 evidence has been received and I have instructed you on the  
21 law and have asked you to begin deliberations. So no  
22 discussions about the case until that time comes.

23 Also you are never permitted to conduct any  
24 research or do your own investigation into any issue and you  
25 are not allowed to try to find out anything about the case

1 outside of the courtroom. In other words, everything about  
2 this case that you are to consider in arriving at your  
3 decision will come in during the course of the trial. You  
4 can't read a newspaper article or go on the internet to try  
5 to find out anything about anything that relates to the  
6 case, or people involved in the case, or anything else. You  
7 have to base your decision upon what you see and hear during  
8 the trial. So no discussions, no research, no  
9 investigation.

10 Do have a good lunch and please report to your  
11 jury room this afternoon at 2:30.

12 When you come back you will be reporting to the  
13 side entrance to the courthouse. That's the one that is  
14 right across the street from the back of the First Baptist  
15 Church and the bailiff will meet you there and from there  
16 you will be taken up the back stairwell to the jury room.  
17 So have a good lunch and we will see you at 2:30 this  
18 afternoon.

19 (The following takes place outside the presence of  
20 the jury panel)

21 THE COURT: Okay. Do you want to set it up?

22 MS. LESKANIC: Yes, sir.

23 (Off the record).

24 (Back on the record).

25 (Whereupon, the videotape was started).

1 (Whereupon, the videotape was stopped)

2 MR. BRANNON: You can watch the rest of it if you  
3 want, but that's it. The rest of it is him walking back.

4 THE COURT: What are we showing here? How is all  
5 that purple and microphone and running going to help us  
6 here?

7 MS. LESKANIC: Your Honor, right there the  
8 undercover operative is asking if he has any Suboxone and he  
9 says that he does not. He apparently has Oxycodone and they  
10 will talk about the price. He says "how many do you need?  
11 One," and the CI says "four or five."

12 "How much are they," and the answer was five. So  
13 he says "three," so he gets three pills, which would be \$15,  
14 but I would continue and so it's for the conversation that  
15 occurred between the defendant --

16 THE COURT: That's start at 13:49, doesn't it?

17 MS. LESKANIC: Yes, sir.

18 THE COURT: Well, what about all that before where  
19 all we see is the purple screen and a lot of --

20 MR. BRANNON: Well, Your Honor, I would argue that  
21 I believe the entire video is irrelevant, but if you are  
22 going to -- if you are inclined to let the video in, then I  
23 want the entire video in.

24 THE COURT: Okay. Well, that answers the  
25 question.

1 MR. BRANNON: All right.

2 THE COURT: The video comes in.

3 Court is in recess until 2:30.

4 MS. LESKANIC: Thank you, Your Honor.

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 MS. LESKANIC: May it please the court, I just  
8 have one motion that we discussed back in chambers I just  
9 wanted to briefly put on the record.

10 THE COURT: Okay.

11 MS. LESKANIC: I had filed today a motion and  
12 memorandum to exclude third-party guilt.

13 It's my understanding from speaking with Mr.  
14 Brannon that he does not intend to, I guess, lay blame on  
15 other individuals. There were two individuals besides this  
16 defendant in the front cab of the truck during this  
17 transaction, but it's my understanding that those witnesses  
18 are not here. They are not going to testify.

19 I don't know whether or not the defendant will  
20 testify, but I just wanted to make sure we had an  
21 understanding of whether Mr. Brannon was going to attempt to  
22 point the finger at another individual and my motion was to  
23 exclude that, unless there was some evidential testimony to  
24 support it.

25 MR. BRANNON: And, again, Your Honor, I don't

1 intend to go into the occupants of a truck, or anything like  
2 that, in my opening statement. I'm not -- I don't want to  
3 paint myself into a box.

4 I don't intend to call the occupants, the other  
5 occupants of the truck as witnesses in this case, but I  
6 don't know what testimony I'll be able to elicit from the  
7 State's witnesses, but I'm not going to make any third-party  
8 claims during my opening statement and won't do it, unless I  
9 can derive the testimony through cross-examination.

10 THE COURT: Okay. Anything else?

11 MS. LESKANIC: The only other thing, Your Honor,  
12 our first witness after opening is the undercover operative,  
13 Anthony Elliott. He does have a criminal history. I have  
14 provided that to Mr. Brannon and I just wanted to have on  
15 the record what prior convictions he was planning on going  
16 into.

17 MR. BRANNON: Your Honor, I have discussed this  
18 with Ms. Leskanic. He's got a 2008 drug conviction -- I'm  
19 sorry, forgive me, Your Honor, a 2000 drug conviction. I  
20 understand that that's too old and probably doesn't cross  
21 the moral turpitude line.

22 He's got a 2008 petit larceny. That was the case  
23 that I think Ms. Leskanic questions whether I could go into.

24 He's got a burglary and grand larceny arrest that  
25 was then pled down to accessory after the fact to a felony

1 from 2009. That's the conviction date.

2 And then he's got a 2009 hit and run accident with  
3 death.

4 I believe I should be able to go into the  
5 felony -- accessory after the fact to a felony, the petit  
6 larceny and the hit and run with death.

7 THE COURT: Okay.

8 MS. LESKANIC: I don't --

9 THE COURT: Do they all carry more than a year?

10 MR. BRANNON: I'm sorry, Your Honor?

11 THE COURT: Do they all carry more than a year?

12 MS. LESKANIC: The petit larceny does not carry --

13 THE COURT: No, but that's -- by definition that's  
14 a crime of dishonesty.

15 MR. BRANNON: That was my position, yes.

16 MS. LESKANIC: And I know there was a recent case  
17 about armed robberies. I wasn't sure of the court's --

18 THE COURT: Well, that's interesting. Yes -- yes,  
19 there is that case that says armed robbery does not fall  
20 into the list of crimes that can be used for impeachment,  
21 but larceny does.

22 MS. LESKANIC: I just wanted the court to be --

23 THE COURT: I can't explain -- I can't explain  
24 that rationale, but, nevertheless, larceny is definitely a  
25 crime of dishonesty.

1           The appellate courts have said that robbery and  
2 armed robbery is not. I cannot speak for them, nor explain  
3 that, but I'm confident that larceny is a crime of  
4 dishonesty.

5           MS. LESKANIC: Yes, sir. I just wanted the  
6 court's opinion, because that case was confusing to me as  
7 well.

8           THE COURT: But that could change, you know, in  
9 the future.

10          All right. Are we ready for the jury now?

11          MS. LESKANIC: The State is ready, Your Honor.

12          MR. BRANNON: Defense is ready, Your Honor.

13          THE COURT: All right. Bring them in.

14          Ask Ms. Propst, juror 100, Ms. Propst to take the  
15 foreperson's seat.

16          (The following takes place in the presence of the  
17 jury panel)

18          THE COURT: Good afternoon, ladies and gentlemen.  
19 We are ready to begin with the trial of the case  
20 for which you have been selected.

21          And Ms. Propst, I'm going to ask you to serve as  
22 the foreperson of the jury.

23          As the foreperson you will have three duties that  
24 none of the other jurors will have.

25          First of all you will be asked to serve as the

1           Please give the lawyers your attention now as they  
2 give you their opening statements.

3           Ms. Leskanic.

4           MS. LESKANIC: May it please the court?

5           THE COURT: Yes.

6           MS. LESKANIC: Good afternoon, ladies and  
7 gentlemen.

8           As I introduced myself earlier, I'm Kim Leskanic  
9 and I'm a prosecutor here for Cherokee County. I have been  
10 working with Cherokee County since 2006.

11           The thirteen of you are here today because the  
12 defendant has been charged with distribution of Oxycodone.  
13 That is a Schedule II narcotic, and distribution just means  
14 that you are giving it to someone or selling it to someone  
15 and you are not a doctor, you don't have a prescription,  
16 they don't have a prescription. You are giving them drugs  
17 they are not entitled to. That's what distribution means,  
18 and that's what happened back on November 26th of 2014.

19           How do we know that that's what happened? An  
20 undercover operative was working with our Cherokee County  
21 Sheriff's Department. An undercover operative is just a  
22 person who is working in a law enforcement capacity, but  
23 doesn't tell the outside world I'm law enforcement.  
24 Sometimes it's a civilian that agrees to work with the  
25 sheriff's department. Sometimes it's actually a law

1 enforcement officer, but they are dressed in the street  
2 clothes and they don't tell that they are a law enforcement  
3 officer. They are working undercover, and that's what we  
4 have in this case.

5 We have a civilian who agreed to work with the  
6 Cherokee County Sheriff's Department to help catch people  
7 selling drugs. And on this particular day this undercover  
8 informant went to the sheriff's department, met with  
9 Sergeant Gardner, who you will hear from, and Lieutenant  
10 Painter. They hooked him up with audio and video capability  
11 through a little key fob that had a camera it and also can  
12 pick up audio. And they searched him, make sure he doesn't  
13 have anything on him. They gave him \$20. They took a copy  
14 of the \$20 bill so they know the serial number, and they  
15 drove him over to East Gaffney Baptist Church and he was  
16 going over to River Drive here in Cherokee County to see if  
17 he could make a purchase of some kind of drug.

18 So they drop off the informant. He walks over to  
19 River Drive. And as he gets there, he sees Jeff Cole, the  
20 defendant. Jeff Cole is sitting in a pickup truck. There  
21 were two other people. It appears to be a female and a male  
22 beside him, and you will hear on the video that we will play  
23 for you, the informant say "what's going on, Jeff?" They  
24 have a little bit of talk about what he's going to buy and  
25 then on the video you will see in the defendant's hand a

1 plastic baggy containing pills. There is a discussion about  
2 the price, \$5 for each pill.

3 The informant will testify also that he gave the  
4 defendant the \$20 bill. He got \$5 back. And after that  
5 transaction took place he walked back to the vehicle where  
6 Sergeant Gardner was waiting for him and he turned over the  
7 key fob. He turned over the \$5 that he got back from this  
8 transaction and he turned over three Oxycodone pills.  
9 That's what it is, ladies and gentlemen.

10 You are going to hear from the informant, as I  
11 stated. The key fob, you are going to see bits and pieces  
12 of the video. When the video starts you are not going to  
13 see anything because it's in his pocket. He can't walk up  
14 with the video camera and say "I'm going to video our drug  
15 transaction," so he has it on the key fob and when he can  
16 take it out of his pocket he can take it out and you will  
17 see the defendant's face. And then he will put his arm up  
18 above the truck for a moment where he can look down into the  
19 vehicle and you can see the pills in his hand. Then he has  
20 to put it back in his pocket, because he can't let anybody  
21 know that he has that, but you will hear his testimony. You  
22 will see the video. You will hear their conversation, and  
23 based on that I believe the evidence it's our duty to  
24 present to you will prove that he's guilty of distributing  
25 Oxycodone back in November of 2014. Thank you.

1 MR. BRANNON: May it please the court?

2 THE COURT: Mr. Brannon.

3 MR. BRANNON: Good afternoon, ladies and  
4 gentlemen.

5 Again, my name is Doug Brannon. I'm an attorney.  
6 My office is actually in Spartanburg, and today I have the  
7 privilege to represent Mr. Jeffery Cole.

8 And apparently on November the 26th of 2014, there  
9 was nothing else going on for the police in Gaffney or  
10 Cherokee County to do, so they enter into an agreement with  
11 a guy who's a snitch and they pay him \$60. They give him  
12 money, but they also pay him for his services to go out and  
13 create a crime and then they make an arrest. The problem is  
14 they can't prove that a crime was ever committed.

15 As Ms. Leskanic said, you are going to see a  
16 video. And I ask you to watch the video closely and you  
17 will see that no transaction ever takes place.

18 As Ms. Leskanic said, there were two other people  
19 in the vehicle. This video lasts about seven minutes and  
20 about twenty seconds of it is actually pertinent.

21 Ladies and gentlemen, the State, and let me be  
22 clear, the people sitting at this table, this is the State  
23 of South Carolina and they are prosecuting Jeff Cole, and  
24 the State has the burden to prove beyond a reasonable doubt  
25 that he is guilty of committing a crime.

1           So what I'm asking you to do is watch this video.  
2 Listen to the testimony and listen to what the police and  
3 the State did, but more importantly listen to what they  
4 didn't do, and I believe not only at the end of this case  
5 you will find they haven't proved beyond a reasonable doubt  
6 that Mr. Cole did anything, but they haven't proven that a  
7 crime was ever committed. I believe at the end of this  
8 trial that's where you will be.

9           I thank you for your service. I thank you for  
10 your attention and I look forward to the opportunity to  
11 speak to you at the end of the trial. Thank you.

12           THE COURT: Ms. Leskanic?

13           MS. LESKANIC: The State calls Anthony Elliott.

14           ANTHONY ELLIOTT, having been first duly sworn,  
15 testified as follows:

16           MS. LESKANIC: May it please the court.

17           DIRECT EXAMINATION BY MS. LESKANIC:

18           Q. Will you please state your name for the ladies and  
19 gentlemen of the jury?

20           A. Anthony Derrick Elliott.

21           Q. Mr. Elliott, were you working with the Cherokee County  
22 Sheriff's Department back in November of 2014?

23           A. Yes.

24           Q. All right. Now, were you a law enforcement officer?

25           A. No.

1 Q. Okay. Do you live here in Cherokee County?

2 A. Yes.

3 Q. How long have you lived in Cherokee County?

4 A. 35 years.

5 Q. Okay. How did you begin working with the sheriff's  
6 department?

7 A. I contacted Mr. Painter.

8 Q. Okay. Why did you contact Mr. Painter?

9 A. To see about cleaning Cherokee County up.

10 Q. Okay. Why? What was your motivation?

11 A. Get rid of some of the drugs.

12 Q. Okay. So you went to law enforcement and asked if you  
13 could help them in any way?

14 A. Yes.

15 Q. All right. And did they agree to let you work with  
16 them?

17 A. Yes.

18 Q. Okay. And did you work with them back on November 26th  
19 of 2014, for this case that we are here about today?

20 A. Yes.

21 Q. All right. If you can take the jury back to that day.  
22 Can you explain how you got -- who were you working with  
23 that day?

24 A. Mr. Painter and Brandon.

25 Q. Okay. Is it Sergeant Gardner, Brandon Gardner at the

- 1 table?
- 2 A. Yes.
- 3 Q. So you were working with Lieutenant Painter?
- 4 A. Yes, ma'am.
- 5 Q. And Sergeant Gardner?
- 6 A. Uh-huh.
- 7 Q. Okay. And how did the three of you get together back  
8 on November 26th?
- 9 A. I met them at the end of my road. They picked me up.
- 10 Q. Okay.
- 11 A. I come to Gaffney. I don't know the name of the  
12 church. We pulled behind the church. I walked to --
- 13 Q. Well, hold up.  
14 When they picked you up at your house, did you go to  
15 the sheriff's department first?
- 16 A. Oh, yes. Yes, ma'am.
- 17 Q. That's all right. I know it's nervous for you  
18 testifying sometimes.  
19 Okay. They pick you up. Where do you go first?
- 20 A. To the sheriff's department.
- 21 Q. Okay. What happens at the sheriff's department?
- 22 A. I have to sign some papers.
- 23 Q. Okay.
- 24 A. They gave me a key chain with a camera in it.
- 25 Q. Okay. Did they show you how that worked?

1 A. Yes, ma'am.

2 Q. Okay. Did you understand what you were asking them  
3 that you could do?

4 A. Yes, ma'am.

5 Q. Okay. And what was that? What was your agreement with  
6 law enforcement?

7 A. I don't understand the question.

8 Q. Okay. That's all right.

9 What were you going to do for law enforcement and then  
10 what were they going to do for you?

11 A. Purchase drugs for money.

12 Q. Okay. So you were going to attempt to make drug  
13 purchases, is that correct?

14 A. Yes, ma'am.

15 Q. And in exchange they were going to pay you money --

16 A. Yes, ma'am.

17 Q. -- for doing that. Okay.

18 So on this day you go to the sheriff's department and  
19 what did they do when you get there before you go out?

20 A. They tell me how it works, where I want to go, and I  
21 just told them that I knew where to get some Suboxone.

22 Q. So you knew of a location?

23 A. Yeah.

24 Q. Did they search you or anything when you got to the  
25 sheriff's department?

- 1 A. Yeah.
- 2 Q. Tell the jury about that. What's the process?
- 3 A. Take off my shoes, my socks. You know, lift up my  
4 pants legs. Take my shirt off.
- 5 Q. Okay. Did you have anything on you?
- 6 A. No, ma'am.
- 7 Q. Okay. At some point did they give you some money?
- 8 A. Yes, ma'am.
- 9 Q. All right. Tell me the procedure about you getting the  
10 money.
- 11 A. They made a copy of the money and give me a \$20 bill.
- 12 Q. Okay. And then what?
- 13 A. Then I went -- turned on River Drive where I bought  
14 three Percocets from the defendant and he give me \$5 back.
- 15 Q. Percocet is an Oxycodone?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Let's go back.  
18 So do you drive yourself to that location, or how --
- 19 A. No, ma'am.
- 20 Q. How did you get to the location?
- 21 A. Mr. Gardner and Mr. Painter --
- 22 Q. They did --
- 23 A. -- drove me there.
- 24 Q. Okay. They drove you where?
- 25 A. To a church -- to the church. I walked through the

1 church -- there's like a walkway through the church, how I  
2 got on 29 and then I walked to River Drive from there.

3 Q. Okay. And then what do you see when you got to River  
4 Drive?

5 A. The defendant in his truck.

6 Q. All right. Now, did you know the defendant before  
7 you --

8 A. Yes.

9 Q. Before that day?

10 A. Yeah.

11 Q. Did you know his name?

12 A. Yeah.

13 Q. Had you seen him before that day?

14 A. Yeah.

15 Q. Approximately how many times?

16 A. A lot. Fifty times.

17 Q. Fifty times.

18 Okay. So you knew who he was as soon as you saw him?

19 A. Yeah.

20 Q. Okay. And what happened after you approached him?

21 A. I asked where some Suboxones were at? Was Lucas there?

22 No. They said no, so --

23 Q. So you were looking for someone else?

24 A. Yes, ma'am.

25 Q. All right. Who were you looking for? Lucas?

1 A. Yeah.

2 Q. Okay. Is that who you thought you would be able to buy  
3 something from?

4 A. Yes, ma'am.

5 Q. Okay. And what was the answer as far as where Lucas  
6 was?

7 A. He wasn't there.

8 Q. Okay.

9 A. And they had some Percocets. They asked me do I have  
10 anything. He had Percocets, so I bought three of them. He  
11 give me \$5 back.

12 Q. Okay. Did he give you a price for the Percocets?

13 A. \$5 each.

14 Q. Okay. Did you see where the Percocet came from?

15 A. Out of his left pocket, shirt pocket.

16 Q. Out of whose shirt pocket?

17 A. The defendant.

18 Q. Mr. Cole's?

19 A. Yes.

20 Q. Can you identify Mr. Cole for me, what he's wearing?

21 A. Right there.

22 Q. What's he wearing?

23 A. Red shirt.

24 Q. Okay. Is that the person that you saw pull the  
25 Percocet out of his shirt pocket?

1 A. Yes.

2 Q. All right. And then what happened?

3 A. I gave him the money.

4 Q. Okay.

5 A. He gave me three pills and \$5 back.

6 Q. Okay. Do you know how many pills he had in all?

7 A. Four.

8 Q. And so what did you put your pills in?

9 A. He kept one and he gave the cellophane with three pills

10 in it.

11 Q. So the pills were already contained in something?

12 A. Yes, ma'am.

13 Q. And he gave that to you and he removed one pill?

14 A. Yes, ma'am.

15 Q. Now, we have said that there were two other individuals

16 in the truck. Did you know who they are?

17 A. No, ma'am.

18 Q. Okay. Did you talk to them?

19 A. No, ma'am.

20 Q. Did you have any deals with them that day?

21 A. No, ma'am.

22 Q. Who did you hand the \$20 to?

23 A. Mr. Cole.

24 Q. All right. And who handed you the three Oxycodone and

25 Percocet pills?

1 A. Mr. Cole.

2 Q. Okay. Who gave you the \$5 in change back?

3 A. Mr. Cole.

4 Q. All right. And who did you negotiate the price with  
5 for the pills?

6 A. Mr. Cole.

7 Q. Okay. Now, you state that you were equipped with the  
8 video, is that correct?

9 A. Yes, ma'am.

10 Q. Have you had an opportunity to watch that video?

11 A. Yes, ma'am.

12 Q. All right. And does this fairly and accurately show  
13 what occurred and what you were able to record with the key  
14 fob?

15 A. Yes, sir.

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

18 MR. BRANNON: No objection.

19 THE COURT: It's admitted.

20 (Whereupon, State's Exhibit No. 1 was entered into  
21 the record as evidence)

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

24 THE COURT: Yes, ma'am.

25 MS. LESKANIC: Thank you.

1 BY MS. LESKANIC:

2 Q. Before I put this in, Mr. Elliott, when you first left  
3 from the location, where do you have the camera?

4 A. In my pocket.

5 Q. Okay. And then at what point did you take it out of  
6 your pocket?

7 A. As I had taken the -- as I take the money out, I took  
8 the money out with the key chain camera.

9 Q. Okay. So you took the money and key chain out  
10 together?

11 A. Yeah.

12 Q. Okay. And then -- well, we will watch the video and  
13 then I'll have some more questions about that.

14 (Whereupon, the videotape was started)

15 MR. BRANNON: Your Honor, could we take a break?  
16 I think there is a technical --

17 MS. LESKANIC: It's failed, Your Honor. I'm not  
18 sure why.

19 THE COURT: All right. Let me ask the jury to  
20 please go to your jury room. Do not talk about the case.  
21 I'll bring you back as soon as we get it repaired.

22 (The following takes place outside the presence of  
23 the jury panel)

24 MR. BRANNON: Your Honor, while we figure the  
25 technical difficulties out, my client would like to use the

1 restroom. Is that okay?

2 THE COURT: Uh-huh.

3 (Off the record)

4 (Back on the record).

5 THE COURT: We okay?

6 MS. LESKANIC: Your Honor, is it okay if I stay  
7 over here while they come back?

8 THE COURT: Yes.

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

11 THE COURT: Okay.

12 (Whereupon, the videotape was concluded).

13 BY MS. LESKANIC:

14 Q. Is that a complete video of what you were able to  
15 record that day?

16 A. Yes.

17 Q. Now, after you returned to the sheriff's department --  
18 did y'all go back to the sheriff's department after this  
19 happened?

20 A. Yes.

21 Q. Okay. And were you searched again at that time?

22 A. Yes.

23 Q. All right. And what did you turn back over to law  
24 enforcement?

25 A. The money and the pills.

1 Q. Okay. I'm sorry?

2 A. The money.

3 Q. How much money?

4 A. \$5, and the camera.

5 Q. Is that what you received in change?

6 A. Yes, ma'am.

7 Q. Okay.

8 A. And the camera.

9 Q. Okay.

10 A. I had already given them the pills when I got back in  
11 the car.

12 Q. All right. And who did you give the pills to?

13 A. Brandon.

14 Q. Okay. Sergeant Gardner?

15 A. Yes, Sergeant Gardner.

16 Q. Okay, that's fine. I just want to make sure we are  
17 clear.

18 So you gave the pills to him. You returned the money?

19 A. Yeah.

20 Q. And you turned back over the key fob, is that correct?

21 A. Yes, ma'am.

22 THE COURT: You got to speak up.

23 THE WITNESS: I'm sorry.

24 BY MS. LESKANIC:

25 Q. Now, at the beginning of this video even law

1 enforcement talks about going to make a controlled buy from  
2 a subject named Luke?

3 A. Yes.

4 Q. Who was Luke?

5 A. The guy that lived in the trailer.

6 Q. Okay. Did you see Luke that day?

7 A. No.

8 Q. All right. Did you make any purchases from Luke that  
9 day?

10 A. No.

11 Q. Is that who you thought you may be able to make a  
12 purchase from if you went to that area?

13 A. Yes.

14 Q. Okay. Did you have any kind of meeting set up with  
15 Luke, or anyone else, to make a purchase that day?

16 A. No.

17 Q. I want to first show you what's been marked State's  
18 Exhibit 2 and let you take a look at this. Do you recognize  
19 what's contained inside the bag?

20 A. Yes.

21 Q. Okay. What is that?

22 A. Percocet 10.

23 Q. Does that appear to be what you collected from the  
24 defendant on this day in November?

25 A. Yes.

1 Q. Okay. Why do you hesitate?

2 A. There is a half missing.

3 Q. Okay. So you collected three pills?

4 A. Yes.

5 Q. And there is two and a half in the bag, is that  
6 correct?

7 A. Yes, ma'am.

8 Q. Okay. That's fine. Thank you for saying that.

9 And then these are the pills that you then turned over  
10 to Sergeant Gardner, is that correct?

11 A. Yes, ma'am.

12 Q. Okay. Now, also I want to show you what's been marked  
13 State's Exhibit 3, 4, 5, and 6. If you would take a look at  
14 those and tell me if you recognize those?

15 A. Yes.

16 Q. And what are those?

17 A. Two of Jeff Cole and two of the -- two of the pills.

18 Q. And where do these pictures come from?

19 A. The camera.

20 Q. From the video?

21 A. Yeah, I mean the video.

22 Q. Are these still shots from the video that you were able  
23 to take?

24 A. Yes..

25 Q. And do these accurately show what was captured on the

1 video camera that day?

2 A. Yes.

3 MS. LESKANIC: Your Honor, at this time we would  
4 offer State's Exhibit 3, 4, 5, and 6 for admission.

5 MR. BRANNON: No objection.

6 THE COURT: They are admitted.

7 (Whereupon, State's Exhibit No. 3 was entered into  
8 the record as evidence).

9 (Whereupon, State's Exhibit No. 4 was entered into  
10 the record as evidence).

11 (Whereupon, State's Exhibit No. 5 was entered into  
12 the record as evidence).

13 (Whereupon, State's Exhibit No. 6 was entered into  
14 the record as evidence)

15 BY MS. LESKANIC:

16 Q. Okay. Mr. Elliott, I'm first showing you what's been  
17 marked State's Exhibit 3. Can you identify the person in  
18 this photograph?

19 A. Mr. Cole.

20 Q. The defendant?

21 A. Yes, ma'am.

22 Q. Okay. And what is this right here?

23 A. The \$20.

24 Q. All right. And whose hand is that?

25 A. Mine.

1 Q. What are you doing with that \$20?

2 A. Handing it to Jeff.

3 Q. And did he take that \$20?

4 A. Yes.

5 Q. State's Exhibit 4, what do we see in this picture?

6 A. Jeff Cole. Mr. Cole.

7 Q. Okay.

8 A. And one other person.

9 Q. Okay. Is there a person here and here? Is there two  
10 people in the vehicle?

11 A. There is three in the people.

12 Q. Two other people other than Mr. Cole?

13 A. Yes.

14 Q. Male or female, do you remember?

15 A. One -- two males and one female.

16 Q. So Mr. Cole being a male, and who was next to Mr. Cole  
17 right here?

18 A. Female.

19 Q. Okay. And then the last person closest to the  
20 passenger door?

21 A. A male.

22 Q. A male. Okay.

23 Did you deal with either the female or the male that  
24 day?

25 A. No.

1 Q. Okay. Now I want to show you State's Exhibit 5. All  
2 right, can you explain to the jury what we see in this  
3 picture?

4 A. Mr. Cole with the Percocets in his hand.

5 Q. Okay. Is that here?

6 A. Yes, ma'am.

7 Q. All right. And who was that that's sitting right here?

8 A. Mr. Cole.

9 Q. Okay. And is this your arm?

10 A. Yes, ma'am.

11 Q. Okay. And what -- how do you have the key fob  
12 positioned at that time?

13 A. I got my arm on top of the door facing down.

14 Q. All right. I'm going to show you State's Exhibit 6,  
15 and what do we see -- what do we see here, Mr. Elliott?

16 A. The pills.

17 Q. Okay. And is this the plastic baggy that you testified  
18 that he gave you with three pills in it?

19 A. Yes, ma'am.

20 Q. So he took one pill out of the baggy and gave three to  
21 you?

22 A. Yes, ma'am.

23 Q. At any time were these pills in anyone else's hands  
24 inside that vehicle?

25 A. No, ma'am.

1 Q. The area of River Drive, is that in Cherokee County, do  
2 you know?

3 A. Yes, ma'am.

4 Q. I want to show you State's Exhibit 7 and see if you  
5 recognize that.

6 A. Yes, ma'am.

7 Q. And what is that?

8 A. That's the church that we parked behind, and that's  
9 River Drive. That's Mr. Cole's scrap yard right there.

10 Q. Okay. Would this map show where you parked and where  
11 you walked that day to make this transaction?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. LESKANIC: At this time I would offer State's  
15 Exhibit 7 for admission.

16 MR. BRANNON: No objection.

17 THE COURT: It's admitted.

18 (Whereupon, State's Exhibit No. 7 was entered into  
19 the record as evidence)

20 BY MS. LESKANIC:

21 Q. Can you step down for just a moment?

22 (Witness off the witness stand).

23 BY MS. LESKANIC:

24 Q. You testified that -- where did you all begin?

25 A. Behind the church.

1 Q. Okay. Where it says East Gaffney Baptist Church?

2 A. Yeah, more or less, where them trees are. About right  
3 there.

4 Q. Some where in here --

5 A. Parking lot.

6 Q. -- where you parked.

7 Okay. And then I'm going to let you hold this pointer  
8 and if you would tell the ladies and gentlemen of the jury  
9 where you walked and where you purchased these Oxycodones?

10 A. I walked straight up this way and straight down right  
11 there where Mr. Cole's scrap yard --

12 Q. Okay.

13 A. -- where I purchased.

14 Q. And then what did you do after making the purchase?

15 A. I walked back down this way. I come back. They picked  
16 me up, Mr. Gardner.

17 Q. Okay. And that's what we hear at the end of the video  
18 before you get back into the vehicle?

19 A. Right.

20 (Witness back on the witness stand).

21 BY MS. LESKANIC:

22 Q. All right. And you were paid for this transaction, is  
23 that correct?

24 A. Yes, ma'am.

25 Q. Do you remember how much you were paid?

1 A. \$60'.

2 Q. Now, did law enforcement contact you about becoming an  
3 undercover operative and working with them, or did you  
4 contact law enforcement?

5 A. I contacted them.

6 Q. Were you working off any kind of charges, or was it  
7 just for money?

8 A. Just for money.

9 Q. All right. You had had charges before, is that  
10 correct?

11 A. Yes, ma'am.

12 Q. You have been in the criminal system before. You had a  
13 2008 conviction for petit larceny?

14 A. Yes, ma'am.

15 Q. And a 2009 conviction for accessory after the fact to a  
16 felony?

17 A. Yes, ma'am.

18 Q. And a hit and run accident with death in 2009, is that  
19 correct?

20 A. Yes, ma'am.

21 Q. Why did you want to work with the sheriff's department?

22 A. Tired of finding needles laying on the side of the  
23 road.

24 Q. And is that -- where do you live?

25 A. I live in -- I live in Blacksburg, but if you walk down

1 Gaffney you find needles laying all over the side of the  
2 road; people shooting dope, and people catching AIDS.

3 I know a friend of mine, he had been in prison, he got  
4 AIDS and he probably gave it to ain't no telling how many  
5 people in Gaffney.

6 Q. All right. But this is something that you wanted to  
7 do. Did you pick the location this day that you were going  
8 to make the drug transaction?

9 A. Yes.

10 Q. I think that's everything that I have for you. If you  
11 would please answer any questions that Mr. Brannon has.

12 MR. BRANNON: If it please the court?

13 THE COURT: Yes.

14 CROSS EXAMINATION BY MR. BRANNON:

15 Q. Mr. Elliott, if you were ordered by this court to take  
16 a drug test today, would you be --

17 MS. LESKANIC: Objection.

18 THE COURT: Sustained.

19 BY MR. BRANNON:

20 Q. Do you use drugs?

21 A. No, sir.

22 MS. LESKANIC: Objection.

23 THE COURT: Sustained.

24 BY MR. BRANNON:

25 Q. Was it your goal to rid Cherokee County of drugs, or

1 was it to be a snitch for money?

2 A. It's -- I have --

3 MS. LESKANIC: Objection, Your Honor, to the use  
4 of the word snitch.

5 THE COURT: Rephrase your question.

6 BY MR. BRANNON:

7 Q. Was it your goal to rid Cherokee County of drugs, or  
8 was it your goal to be an informant and get paid for the  
9 work?

10 A. I was raised not to be a snitch, but this county is  
11 going down hill quick. There is a problem. I was trying to  
12 help.

13 Q. All right. And if you just wanted to help the problem,  
14 then why did you charge \$60 of state or county tax money to  
15 rid the problem?

16 A. I didn't charge.

17 Q. Well, you took the money, didn't you?

18 A. Yes, I did.

19 Q. Okay. And let's be sure. You didn't get the money  
20 before you got in the police car. You got the money after  
21 you got back to the sheriff's department, right?

22 A. Yes, I did.

23 Q. All right. So if you hadn't made a buy that day, or  
24 allegedly made a buy that day, you wouldn't have gotten any  
25 money, would you?

1 A. Nope.

2 Q. Nope. Okay.

3 A. No, sir, I mean.

4 Q. Now, you claim that law enforcement gave you a \$20 bill  
5 and that they made a copy of it, right?

6 A. Yes, sir.

7 Q. Have you ever seen a copy of that \$20 bill?

8 A. Yes, sir.

9 Q. You have. Okay.

10 All right. If you got \$20 to buy dope, why don't you  
11 spend the \$20?

12 A. I bought three -- I bought three pills.

13 Q. Well, did they tell you how many to buy?

14 A. No, they didn't.

15 Q. Okay. Why did you think it was important to get  
16 change?

17 A. Just -- it seemed right.

18 Q. Well, and the reason I ask the question, and I know  
19 that you have seen this, but this is all of the evidence  
20 that the State provided to me in this case and there is no  
21 mention of you giving back the \$5 bill to law enforcement.  
22 Did they take a copy of that \$5 bill --

23 MS. LESKANIC: Objection.

24 A. No, they did not.

25 THE COURT: Overruled. Go ahead.

1 BY MR. BRANNON:

2 Q. They didn't make a copy of that, did they?

3 A. As far as I know, no, sir.

4 Q. Okay. All right.

5 Now, you are walking from -- it's quite a distance from  
6 that church parking lot area to my client's scrap yard,  
7 correct?

8 A. A couple hundred yards.

9 Q. I mean it took you six minutes to walk there, right?

10 A. Yes, sir.

11 Q. Okay. Could this police officer see you the whole  
12 time?

13 A. No, sir.

14 Q. Okay. Could he see you while you were at the scrap  
15 yard?

16 A. No, sir.

17 Q. Could he see you when you walked back?

18 A. No, sir.

19 Q. Okay. Now, when you are at the sheriff's department  
20 before he takes you to the church, they allegedly searched  
21 you, right?

22 A. Yes, sir.

23 Q. But they got a camera, right? There is a camera there,  
24 right?

25 A. Yes, sir.

1 Q. But there is no pictures of them searching you, is  
2 there?

3 A. Not that I know of.

4 Q. Okay. All right.

5 And then after you allegedly make this buy you go back  
6 to the sheriff's department, right?

7 A. Yes.

8 Q. And they say they searched you again. In fact, that  
9 was your testimony, right?

10 A. Yes, sir.

11 Q. But they don't take pictures of them searching you  
12 again, do they?

13 A. No, sir, not to my knowledge.

14 Q. Okay. All right.

15 And where are the copies -- did they give you three  
16 twenties, or six tens, or what did they give you? How did  
17 they pay you the \$60?

18 A. It's been two years. I think three twenties, I think.

19 Q. Okay. Did they make copies of those too?

20 A. No, sir.

21 Q. Nope. Okay.

22 A. Not that I know of.

23 Q. All right.

24 Any idea why they waited so long to go out and arrest  
25 my client?

1 A. No.

2 Q. Okay. But they didn't go and get him that day to see  
3 if he had your \$20 bill, did they?

4 A. No, sir.

5 Q. Okay. How many times have you sold scrap to my client  
6 at his scrap yard?

7 A. Never, not personally.

8 Q. Okay. How many times had you been to his scrap yard?

9 A. Twice.

10 Q. Okay. All right.

11 But you had seen him 50 times?

12 A. I have known him for a long time.

13 Q. Oh, okay. Okay. All right.

14 MR. BRANNON: Approach the witness, Your Honor?

15 BY MR. BRANNON:

16 Q. Sir, do you wear glasses or anything? Are your eyes  
17 good?

18 A. Yup.

19 Q. Okay. That's my client you say, correct?

20 A. Uh-huh, yes.

21 Q. And then there is somebody sitting it looks like on the  
22 passenger's side with the door open, right?

23 A. Yes.

24 Q. Okay. Look at the person in the middle. Do you see a  
25 baseball cap?

- 1 A. Yes, sir.
- 2 Q. What about a mustache?
- 3 A. It looks likes a baseball cap.
- 4 Q. Okay. What about a mustache right there? Do you see
- 5 the nose?
- 6 A. No, I don't -- I do not.
- 7 Q. Okay. All right.
- 8 A. I just see a face.
- 9 Q. Do you see a baseball cap?
- 10 A. It could be a baseball cap.
- 11 Q. Okay. Couldn't that be a guy?
- 12 A. It could be. It could be.
- 13 Q. It could be a guy, okay. All right.
- 14 A. But it wasn't.
- 15 Q. It could be a guy?
- 16 A. It wasn't.
- 17 Q. It wasn't. I just asked you could it be a guy and you
- 18 said it could be?
- 19 A. Yeah, but it also -- it wasn't. It was a woman,
- 20 female.
- 21 Q. Okay.
- 22 A. Her hair pulled back.
- 23 Q. Okay. All right.
- 24 Who is Luke?
- 25 A. The guy living in the trailer.

1 Q. Okay. How do you know Luke?

2 A. He sells pills.

3 Q. Okay. All right.

4 Have you ever bought from him?

5 A. Yes.

6 Q. For the sheriff's department?

7 A. No.

8 Q. For yourself, right?

9 A. Yes.

10 Q. Because you use, right?

11 A. I did use.

12 Q. Okay. All right.

13 So wait a minute. When did you become not a part of  
14 the problem and the cure to the problem? When did you stop  
15 using?

16 A. When I got out of prison in 2009.

17 Q. Okay. All right.

18 So were you using the night that you wrecked the car  
19 killing somebody and then drove away?

20 A. No, I was not.

21 Q. Okay. Were you using the day that you stole something  
22 and were charged and convicted with petit larceny?

23 MS. LESKANIC: Objection.

24 A. I probably was.

25 THE COURT: Go ahead.

1 A. I don't recall.

2 BY MR. BRANNON:

3 Q. Okay. And what about when you are convicted of being  
4 an accessory after the fact to a felony, were you using  
5 then?

6 A. Nope, I let somebody use the car is when I got charged.

7 Q. Okay. All right.

8 When you steal something from somebody, are you being  
9 honest? Are you being truthful?

10 A. No, sir.

11 Q. When you hit and wreck a car and you kill somebody and  
12 you drive away, are you being honest?

13 A. The judge told me it was not my fault, it was his  
14 fault. He was in my lane of travel.

15 Q. Okay.

16 A. I was found -- I was found guilty of leaving the scene.

17 Q. Right.

18 And when you left the scene, you were trying to hide  
19 the fact that you were there, weren't you?

20 A. No, sir.

21 Q. Okay.

22 A. I did not see what I hit.

23 Q. Okay. I got you. All right.

24 But at least one time you admit criminally that you  
25 were not being honest, right?

1 A. Sir?

2 Q. When you stole from that person, you were not being  
3 honest, weren't you?

4 A. No, sir.

5 Q. Okay. All right.

6 So you're an admitted, at least, former drug user?

7 A. Yes.

8 Q. You decide you want to stop the crime wave in Cherokee  
9 County, but you want to be paid to do it. You reach out to  
10 law enforcement. They allegedly search you to guarantee  
11 that there is nothing else on your person, but they don't  
12 take any pictures of that search, right?

13 A. Not to my knowledge, no.

14 Q. You walk six minutes across property and along  
15 Interstate 29 from the church to my client's scrap yard,  
16 right?

17 A. Yes.

18 Q. There is no evidence that you didn't stop along the way  
19 and pick something up, is there?

20 A. The camera showed I kept walking, the noise.

21 Q. You tell me that the camera showed you didn't bend  
22 over?

23 A. (No response).

24 Q. You can't show that, can you?

25 A. No, sir.

1 Q. Okay. You had the camera. You alleged that you handed  
2 my client a \$20 bill, but you didn't take a picture of that,  
3 did you?

4 A. I -- the picture is on the thing.

5 Q. The picture of you holding a \$20 bill?

6 A. Yeah.

7 Q. Yeah.

8 Did you take a picture of my client accepting it?

9 A. No, sir.

10 Q. Okay. You alleged that my client handed you something?

11 A. Yes, sir.

12 Q. Did you take a picture of him handing you anything?

13 A. No, sir.

14 Q. Okay. So you're the one in control of the camera. You  
15 say you did these two things, that you gave him something  
16 and accepted something from him, but you couldn't take a  
17 picture of either of those two things, right?

18 A. No, sir.

19 MR. BRANNON: I don't have anything further.

20 Thank you.

21 REDIRECT EXAMINATION BY MS. LESKANIC:

22 Q. Mr. Elliott --

23 A. Yes, ma'am.

24 Q. -- when did you get out of prison?

25 A. 2009. December the 1st, 2009.

1 Q. December 1st, 2009?

2 A. Uh-huh.

3 Q. And what had you gone to prison for?

4 A. I hit a friend of mine when he was drunk walking down  
5 the road.

6 Q. All right. And did you stay at the scene?

7 A. I had a headlight out and I didn't know what I hit at  
8 first. A girl was with me and, you know, I just -- I just  
9 panicked. I was young. I was coming back to turn myself in  
10 when Jamie Ham pulled me over. I didn't -- I didn't resist  
11 arrest. I didn't run.

12 Q. And what you were convicted of is not staying at the  
13 scene to render aid or --

14 A. Yes.

15 Q. -- give your information, is that correct?

16 A. Yes.

17 Q. And you went to prison for that and served time?

18 A. Yeah, I have to live with it every day.

19 Q. And back in 2008 was the petit larceny. Were you using  
20 drugs during that time?

21 A. Repeat the question.

22 Q. Back in 2008, during the petit larceny charge, the  
23 misdemeanor magistrate court offense, were you using drugs  
24 back in 2008?

25 A. Yes.

1 Q. Okay. And what changed in your life to make you stop  
2 using drugs?

3 A. I got -- I used drugs to kill the pain that I had. I  
4 didn't know I had mental disorders.

5 Q. Okay.

6 A. I'm mentally disabled.

7 Q. And what type of -- what type of help did you get?

8 A. I just -- I saw a psychiatrist and I go to a doctor  
9 every month.

10 Q. And you still do that?

11 A. Every month.

12 Q. All right. Do you still use illegal drugs or drugs --

13 A. The only ones the doctor gives me.

14 Q. Okay. And since when? How long have you been clean?

15 A. Since 2000 -- right after -- about 2009.

16 Q. When you got out of prison?

17 A. Yes.

18 Q. I assume you didn't use in prison, and then when you  
19 got out you haven't used?

20 A. No. The judge has probation and prison. I was clean  
21 when I got out.

22 Q. Okay.

23 A. I have been clean since.

24 Q. All right. You have remained clean since 2009?

25 A. Yes.

1 MR. BRANNON: Your Honor, may we approach briefly?

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

4 MR. BRANNON: Thank you, Your Honor.

5 BY MS. LESKANIC:

6 Q. All right. Mr. Brannon was asking you about picking  
7 something up on the way to Mr. Cole's scrap yard where he  
8 was there. Did you stop along the way? I believe it was  
9 three minutes.

10 A. No, sir.

11 Q. It's on the video.

12 A. I mean no, ma'am.

13 Q. It takes about three minutes, I think, according to the  
14 video, for you to get to Mr. Cole in his vehicle. Did you  
15 pick anything up along the way?

16 A. No, ma'am.

17 Q. Did you stop and get pills from anyone else?

18 A. No, ma'am.

19 Q. You only had \$20?

20 A. Yes, ma'am.

21 Q. Is that correct?

22 A. Yes.

23 Q. And you still had this \$20 when you got to Mr. Cole's  
24 truck?

25 A. Yes, ma'am.

1 Q. What are your concerns with the key fob? When you are  
2 trying to use the key fob, how does that work and what are  
3 your concerns when you work with the sheriff's department  
4 doing the buy?

5 A. You can't -- you can't shine it in their face or, you  
6 know, you are not -- I mean, it's not going to work.

7 Q. Okay.

8 A. I mean, if that's the case, you ain't going to -- I  
9 mean, you ain't going to shine it on him handing you the  
10 money. You know, he will know you right then.

11 Q. Okay. But you were there --

12 A. Yeah.

13 Q. -- correct?

14 The video shows that you could capture on camera.

15 And then one more time, where did the pills come from?

16 A. Jeff Cole.

17 Q. Where?

18 A. Out of his left shirt pocket.

19 Q. Okay.

20 A. Flannel shirt pocket.

21 Q. And you didn't pick up pills from anybody else?

22 A. No, ma'am.

23 Q. Or pick up pills on the way back?

24 A. No, ma'am.

25 Q. Everything that happened is on that video for the jury?

1 A. Yes, ma'am, except for me. I had -- I laid the money,  
2 the \$5 bill and the pills on the console when I got back in  
3 the car.

4 Q. So you returned everything along --

5 A. And then I handed the key -- I mean the key thing to  
6 Mr. Gardner. That's why it wasn't on the video.

7 Q. All right. And then there was some questioning. I  
8 think you made it clear. Was that a male or a female in the  
9 middle of the truck?

10 A. It was a female.

11 Q. All right. Thank you very much.

12 MR. BRANNON: Response to those questions, Your  
13 Honor?

14 THE COURT: Come up here.

15 (Whereupon, the lawyers approached the bench for  
16 an off-the-record discussion).

17 THE COURT: Let me ask the jury to please go to  
18 the jury room. Don't discuss the case. I'll bring you back  
19 in just a few minutes.

20 (The following takes place outside the presence of  
21 the jury panel)

22 THE COURT: Mr. Brannon, you can make the proffer.

23 MR. BRANNON: Thank you.

24 (Whereupon, the following is proffered testimony).  
25

1 RECROSS EXAMINATION BY MR. BRANNON: (PROFFERED TESTIMONY)

2 Q. Mr. Elliott, did you just testify a few minutes ago  
3 that you were mentally disabled?

4 A. Yes, sir.

5 Q. Okay. Have you been legally determined to be disabled?  
6 In other words, do you receive a disability benefit each  
7 month?

8 A. No, I'm appealing.

9 Q. I'm sorry?

10 A. I'm appealing.

11 Q. You are appealing it?

12 A. Yes, sir.

13 Q. What is your medical diagnosis?

14 A. I have PTSD. I have bipolar type one, type two.  
15 Agoraphobia, General Anxiety Disorder, OCD.

16 Q. Okay. PTSD?

17 A. Yes, I have flashbacks.

18 Q. I understand that.

19 And bipolar type one and type two?

20 A. Yes, it's called unipolar.

21 Q. And what are the symptoms of the bipolar disorders?

22 A. Racing thoughts. Something with anger. You know,  
23 something -- some depression. Some people with anxiety.  
24 Mine is anxiety.

25 Q. Any forms of schizophrenia or anything?

1 A. No.

2 Q. Okay. All right. What medications are you prescribed?

3 A. Mobic, Resperdal, Effexor. Levothyroxine for my  
4 thyroid. Remeron for my sleep, and Xanax.

5 Q. And Xanax?

6 A. Yes.

7 Q. How many Xanax do you take a day?

8 A. I take one. I was supposed to take three.

9 Q. Okay. All right.

10 When were you diagnosed with these mental health  
11 issues?

12 A. I have been bipolar since I was eight years old.

13 Q. All right. Did you ever tell law enforcement that you  
14 had mental health issues before you signed a contract or  
15 agreement to work for them?

16 A. I don't see why that would be relevant.

17 Q. That's not the question I asked you.

18 A. No, sir, I did not tell them.

19 Q. You never told them that you have mental health issues?

20 A. No, sir. My medicine keeps my symptoms at bay.

21 Q. Okay. So you are asymptomatic? In other words, as  
22 long as you are on your medicines, you got no problems?

23 A. No, I'm -- I have flashbacks right now, since you  
24 brought up me hitting my buddy. I mean -- yeah.

25 Q. Okay.

1 A. I saw everything about what you are saying.

2 Q. Okay. So, in other words, your medications don't  
3 completely control your symptoms?

4 A. I didn't bring my medicine with me. I'm supposed to  
5 take Xanax. I don't have it, so I can't take it.

6 Q. Okay. Your Xanax is to help you block out --

7 A. My anxiety.

8 Q. Okay. All right.

9 MR. BRANNON: Your Honor, I don't have any more  
10 questions, but I would ask for the opportunity to go into  
11 this in front of the jury. I believe it's -- it goes to his  
12 credibility. If he's got these mental health issues and he  
13 didn't disclose them to law enforcement, Your Honor, I  
14 believe it goes to his credibility.

15 THE COURT: Well, as I understood it, you asked  
16 him if he applied for disability for these issues and he  
17 said he did and it was denied, but --

18 MR. BRANNON: That he's appealing. But then my  
19 followup --

20 THE COURT: Appealing what?

21 MR. BRANNON: Denied. The denied.

22 THE COURT: Right.

23 MR. BRANNON: But the followup question was have  
24 you been diagnosed and he said yes, so it's not the  
25 determination of financial eligibility because of a

1 disability. It's the fact that the diagnosis is there and I  
2 believe that it is relevant for law enforcement to know  
3 these things.

4 THE COURT: All right. Tell me what the relevance  
5 is.

6 MR. BRANNON: It goes to his credibility, Your  
7 Honor. If he's got these mental health issues and he's not  
8 disclosing them to law enforcement, Your Honor, I believe  
9 that that calls his credibility into question.

10 THE COURT: All right. Well, did he lie about it,  
11 or did they ask him about it, or he just hadn't -- he's not  
12 volunteering that is a lack of credibility?

13 MR. BRANNON: I think it certainly could be. It  
14 could lead to that, Your Honor. He's doing this for money.

15 THE COURT: I understand.

16 MR. BRANNON: Okay. And I would -- I would kind  
17 of venture to bet that if he told law enforcement about  
18 these mental health issues, they probably would have said  
19 no, thank you.

20 THE COURT: Well, I don't know what they would  
21 have done. They didn't ask him and he didn't volunteer it,  
22 but that's not -- that's not -- that's not being -- that's  
23 not lying about anything or that's not committing any type  
24 of fraud. They didn't ask him if he had any issues, and he  
25 didn't volunteer any issues because apparently neither one

1 of them recognized that that's an issue to do the work he  
2 was doing.

3 MR. BRANNON: But, Your Honor, there is --

4 THE COURT: If he was taking medication, if he is  
5 taking drugs on the day this event occurred, I'll let you  
6 ask him about that, because that may affect his ability  
7 to -- his judgment and identification, or whatever, I don't  
8 know. I think that's relevant.

9 MR. BRANNON: All right. Well, so at that point  
10 can I go into what his diagnoses are and what his  
11 medications are?

12 THE COURT: Well, if it's -- if it was in  
13 existence in November of 2014 -- 2000 --

14 MR. BRANNON: 2014, that's correct, yes. All  
15 right.

16 THE COURT: You need to ask him.

17 BY MR. BRANNON:

18 Q. Sir, you have identified a list of mental health  
19 diagnoses. Were those diagnoses made before November of  
20 2014?

21 A. Yes.

22 Q. Okay. And were you prescribed medications before  
23 November of 2014?

24 A. No, not all these medicines, no.

25 Q. I understand maybe not all of them, but were you

1 prescribed some of these medications or some medications?

2 A. Yes, sir.

3 Q. And were you taking them at that time?

4 A. Yes, sir.

5 Q. Thank you.

6 THE COURT: And what were they?

7 THE WITNESS: Uh --

8 THE COURT: Thyroid medicine is not --

9 THE WITNESS: I take thyroid medicine. I wasn't  
10 taking Xanax then. I was taking Remeron and the Effexor.

11 BY MR. BRANNON:

12 Q. And what is Remeron for?

13 A. Sleep.

14 Q. Okay. And what is --

15 A. Help you fall asleep.

16 Q. What is Effexor for?

17 A. Depression.

18 Q. So it's -- so then --

19 A. Mood stabilizer.

20 Q. It's a mood stabilizer. Thank you.

21 MR. BRANNON: So it's a mind-altering substance.

22 THE COURT: What is the State's position?

23 MS. LESKANIC: I just don't see the relevance in  
24 this, Your Honor. I mean, he is certainly competent. The  
25 answers that he is giving are responsive to the questions

1 that are being asked. I don't see how whether or not he was  
2 bipolar has any relevance as to whether or not he's being  
3 honest with the jury about who he bought drugs from.

4 I just don't see a connection between those  
5 things. There is no allegation that he has lied to anyone  
6 about his mental health condition or that it affected him in  
7 any way in doing what he was asked to do. The jury -- I  
8 mean, the video is there for the jury. They heard his  
9 testimony today. I just don't see the connection between  
10 these things as being credible or pertinent to this case at  
11 all.

12 THE COURT: All right. I don't find it to be  
13 relevant. If it is, it's more prejudicial than probative.

14 However, if his testimony is that he was taking  
15 any type of drug during the time period that this offense  
16 occurred or these events occurred, then I think that's  
17 relevant, if it's something that has any sort of  
18 mind-altering or mood-changing capability. It's no  
19 different than taking alcohol or smoking dope if it's  
20 something that affects your mental capacity. That's what we  
21 have to determine.

22 So tell me what you were taking in November.  
23 November the 26th of 2014, within a week before or a week  
24 after, what kind of drugs were you taking?

25 THE WITNESS: Can you repeat that?

1 THE COURT: Let's say three days before this event  
2 and three days after this event what kind of --

3 THE WITNESS: I take my medicine at nighttime. I  
4 don't take it during the day.

5 THE COURT: And what did you take at this period  
6 of time?

7 THE WITNESS: My thyroid medicine that day.

8 THE COURT: You took your thyroid medicine?

9 THE WITNESS: Yes.

10 THE COURT: Were you taking any other prescribed  
11 medication during this period of time?

12 THE WITNESS: Yes, but only at night.

13 THE COURT: What were you taking?

14 THE WITNESS: My Effexor and Remeron.

15 THE COURT: Tell me again what that -- Remeron?

16 THE WITNESS: Remeron, yes. It helps me fall  
17 asleep.

18 THE COURT: Remeron is a sleep aid?

19 THE WITNESS: Yeah.

20 THE COURT: You take it at night to go to sleep?

21 THE WITNESS: Yes.

22 THE COURT: All right. What others?

23 THE WITNESS: I have nightmares.

24 THE COURT: What else were you taking?

25 THE WITNESS: Effexor.

1 THE COURT: And what's that do?

2 THE WITNESS: It stabilizes, you know, helps with  
3 the Remeron. I don't know how to explain it. They --

4 THE COURT: What's it prescribed for? Effexor, is  
5 that what you --

6 THE WITNESS: Effexor. It's mental effects name  
7 for it.

8 THE COURT: And what's it prescribed for?

9 THE WITNESS: Bipolar.

10 THE COURT: And what does it do for you?

11 THE WITNESS: It helps me -- it helps my thoughts.

12 THE COURT: It stabilizes your mood? Is that --

13 THE WITNESS: Well, it just stops -- it calms my  
14 brain down. That's all it does.

15 THE COURT: Do what?

16 THE WITNESS: It calms my thoughts down. My  
17 thoughts, my mind is always racing.

18 THE COURT: Does it have any effect --

19 THE WITNESS: It helps me concentrate. It don't  
20 have no effect on my motor skills or thinking or anything  
21 like that.

22 THE COURT: Okay.

23 THE WITNESS: Or -- you know, if I had to pick  
24 something up, I wouldn't fall over or nothing like that.

25 THE COURT: Does it have any similar properties to

1 alcohol --

2 THE WITNESS: No, sir.

3 THE COURT: -- or marijuana, or --

4 THE WITNESS: No, sir.

5 THE COURT: -- any other type of intoxicating  
6 substance?

7 THE COURT: Okay.

8 MR. BRANNON: Could we look it up?

9 THE COURT: You can.

10 MR. BRANNON: Well, I don't have access to a  
11 computer.

12 THE WITNESS: Well, I can tell the side effects, I  
13 mean -- or what do you want to know about it?

14 THE COURT: Well, we will find out. All right.  
15 Let's -- y'all got a Physicians Desk Reference back there?

16 MS. LESKANIC: I don't know. I can check. I'm  
17 not sure, Your Honor.

18 THE COURT: All right. Let me bring the jury back  
19 and excuse them and we will address this issue.

20 Bring them back.

21 Let me ask you to step down. Don't talk about  
22 your case or anything about it.

23 (The following takes place in the presence of the  
24 jury panel)

25 THE COURT: Ladies and gentlemen, Mr. Elliott is

1 coming back, but we have got a witness that came from out of  
2 town and she can't be here tomorrow, so we are going to take  
3 her testimony now so that her testimony -- she will be  
4 available, and then we will go back to Mr. Elliott. It  
5 might be tomorrow, but we will be going back to Mr. Elliott.

6 MS. LESKANIC: The State calls Maribeth McCormack.

7 SLED AGENT MARIBETH MCCORMACK, having been first  
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. LESKANIC:

10 Q. Would you please introduce yourself to the ladies and  
11 gentlemen of the jury?

12 A. Yes, my name is Maribeth McCormick.

13 Q. And where are you employed, Ms. McCormack?

14 A. At the South Carolina Law Enforcement Division,  
15 commonly known as SLED.

16 Q. Okay. And what are your job duties there?

17 A. I'm a forensic scientist in the Drug Analysis  
18 Department.

19 Q. Okay. And would you tell the jury about your education  
20 and training to be able to do that job in drug analysis?

21 A. Yes, I have a Bachelor of Science Degree in Chemistry  
22 and also a Masters in Teaching Secondary Science both from  
23 the University of South Carolina, and I have been trained at  
24 SLED in the Drug Analysis Department.

25 Q. Okay. And have you had occasion to analyze substances

1 to determine whether they are narcotic substances or not?

2 A. Yes.

3 Q. Okay. Approximately how many times have you tested  
4 different substances?

5 A. Over five thousand.

6 Q. Okay. Have you ever testified as an expert before in  
7 the Court of General Sessions?

8 A. Yes.

9 Q. Approximately how many times?

10 A. 28 times.

11 Q. Have you been in Cherokee County before?

12 A. Yes.

13 Q. And different counties in South Carolina?

14 A. Yes.

15 MR. BRANNON: Your Honor, defense would stipulate  
16 to her qualifications as an expert in drug analysis.

17 THE COURT: Okay.

18 MS. LESKANIC: Thank you, Your Honor.

19 Yes, we would offer her as an expert in the field  
20 of chemistry and the analysis of narcotics.

21 THE COURT: She is so qualified.

22 MS. LESKANIC: Thank you.

23 If I may I approach the witness?

24 THE COURT: You may.

25 BY MS. LESKANIC:

1 Q. Ms. McCormack, I'm going to show you what's been marked  
2 State's Exhibit 2. Take a look at that and tell me if you  
3 recognize it.

4 A. Yes.

5 Q. And what is that?

6 A. This is a heat-sealed pouch containing drug evidence.

7 Q. Okay. And how did you receive that?

8 A. I received it from the Evidence Log-In Department at  
9 SLED and I added this outer heat-sealed pack, but it would  
10 have been received -- we call it a BEST Kit. It is a  
11 tamper-evident bag that officers use to submit evidence to  
12 SLED.

13 Q. Okay. So in this case -- I know we are taking your  
14 testimony out of order, but what you would have received  
15 would have been in a tamper-evident package?

16 A. Yes.

17 Q. Did you receive something from the Cherokee County  
18 Sheriff's Department that was sealed in a tamper-evident  
19 package?

20 A. Yes.

21 Q. And had that package been tampered with?

22 A. No.

23 Q. And then what do you do with that package after you  
24 receive it?

25 A. I inspect the package to make sure it hasn't been

1 tampered with. And I know that, because I wrote okay on the  
2 bag. That means that it was sealed. Then I proceed to open  
3 the bag, take out the evidence, inventory the evidence, and  
4 test the evidence.

5 Q. Okay. And what did you find in the BEST bag that was  
6 submitted by the Cherokee County Sheriff's Department?

7 A. There were two whole white tablets and two partial  
8 white tablets.

9 Q. And so a total of three pills, in essence?

10 A. Yes.

11 Q. And what is the first thing that you do with the  
12 substance when you take it out?

13 A. With tablets I do a visual inspection. I record the  
14 markings that are on the tablets making sure they all are  
15 consistent. And then I use published literature that we  
16 have in-house to look up the markings to see, you know, what  
17 those tablets should be. And then I take a sample of the  
18 tablet and run it on our GCMS, which is Gas Chromatograph  
19 Mass Spectrometer, and I got results that did match up with  
20 the published literature.

21 Q. First of all, did all three of the tablets appear to be  
22 the same visually?

23 A. Yes.

24 Q. And visually what did they appear to be?

25 A. Oxycodone and Acetaminophen.

1 Q. And is there another name for that? Is there what is  
2 called Percocet?

3 A. It is commonly referred to as Percocet, yes.

4 Q. That's the same thing, Percocet and Oxycodone,  
5 Acetaminophen are the same thing?

6 A. Yes.

7 Q. Is that a scheduled drug?

8 A. It is a C-II.

9 Q. So it's a controlled substance Schedule II --

10 A. Yes.

11 Q. -- correct?

12 Now, what did you use in order to test the sample? You  
13 did the visual inspection and then you stated that you did a  
14 testing on it as well. How do you do the testing?

15 A. I took half of a tablet and I did instrumental  
16 analysis, which was the Gas Chromatograph Mass Spectrometer.

17 Q. So there were three tablets in the bag and now there  
18 are two pills and half a tablet?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. And that is because you took half of a tablet to use  
23 for your testing?

24 A. Yes.

25 Q. All right. And what did your test results show you as

1 far as what those tablets are?

2 A. Oxycodone and Acetaminophen.

3 Q. After you finish your testing what do you do with the  
4 pills?

5 A. I repackaged the tablets in a zip lock bag and then put  
6 everything into this heat-sealed bag, initialed the bag,  
7 dated it, and placed it in our evidence locker, which is  
8 a -- it's a very secure vault, and then I returned it to the  
9 Evidence Log-In Department for return to agency.

10 Q. And is the tamper-evident package that it is in today  
11 the same tamper-evident package that you placed it in after  
12 you finished your testing at SLED?

13 A. Yes.

14 Q. And are your initials on that package to show that that  
15 is, in fact, what you tested and that it's related to this  
16 case?

17 A. Yes.

18 Q. Okay. And how can you tell what case a certain package  
19 goes to? Is there an identifying number for each case that  
20 comes into SLED so that you know which defendant or which  
21 law enforcement agency of the particular evidence belongs  
22 to?

23 A. Yes, each case that comes in to SLED is assigned a bar  
24 code with a lab number that's electronically generated and  
25 also each BEST Kit has a tracking number, so those are the

1 two ways to separate each case.

2 Q. Okay. Thank you very much. Please answer any  
3 questions Mr. Brannon has.

4 CROSS EXAMINATION BY MR. BRANNON:

5 Q. Ms. McCormack, I only have a couple of questions.

6 Did you check those pills for fingerprints?

7 A. No, sir.

8 Q. Okay. Is there any evidence on any of those bags or  
9 any of the pills anywhere that says where they came from,  
10 other than the Cherokee County Sheriff's Department?

11 A. No, sir.

12 Q. So do you know, because of any of the testing that you  
13 did, that those pills were ever in that man's hand, the guy  
14 with the striped shirt?

15 A. I don't know.

16 Q. And then because you don't know if they were ever in  
17 his hands, you don't know if they were ever in his hands, do  
18 you?

19 A. No.

20 Q. Okay. Is there any evidence that would say to you  
21 definitively beyond a reasonable doubt that those pills  
22 weren't in a plastic bag laying on the side of the road on  
23 Highway 29 in Cherokee County?

24 A. No, sir.

25 Q. Thank you.

1 MR. BRANNON: Nothing further.

2 MS. LESKANIC: Nothing further, Your Honor.

3 THE COURT: You may step down.

4 All right, we are going to recess for the  
5 afternoon.

6 I'll remind the jury of the caution I gave you  
7 previous prior to going to your lunch break. No discussions  
8 about the case with anybody. Don't allow anyone to discuss  
9 it with you. No research. No investigation.

10 You have a good evening.

11 Please report to your jury room at 9:30 in the  
12 morning. 9:30 in the morning.

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

15 THE COURT: All right, Mr. Elliott, come back up  
16 here.

17 (Whereupon, Mr. Anthony Elliott re-took the  
18 witness stand)

19 THE COURT: All right. Tell me again in  
20 November of 2014 the prescriptions that you had. One was  
21 for Remeron?

22 THE WITNESS: Yes, sir.

23 THE COURT: And that was to treat?

24 THE WITNESS: Help me fall asleep.

25 THE COURT: It was a sleep aid?

1 THE WITNESS: Yes.

2 THE COURT: And the other was Effexor?

3 THE WITNESS: Effexor. E-F-F-E-X-O-R.

4 THE COURT: All right. And that was for a mood  
5 stabilizer?

6 THE WITNESS: Yes. It was a chemical in -- the  
7 chemical involved. Seratonin, or something like that.

8 THE COURT: Seratonin?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 THE WITNESS: It's to replenish it.

12 THE COURT: Anything else?

13 THE WITNESS: Levothyroxine.

14 THE COURT: Theraxin?

15 THE WITNESS: Levothyroxine. It's my thyroid  
16 medicine.

17 THE COURT: Levothyroxine?

18 THE WITNESS: Yes.

19 THE COURT: And that's for your thyroid?

20 THE WITNESS: That's the one I took in the  
21 daytime.

22 THE COURT: All right. Anything else?

23 THE WITNESS: No, sir, not at that time.

24 THE COURT: Okay. All right, you can step down.

25 You can't discuss the testimony during overnight recess

1 because you are still on the witness stand, but you can step  
2 down.

3 All right, those are the three.

4 MR. BRANNON: I will research in the morning.

5 THE COURT: All right. Then y'all let me know in  
6 the morning, if you need to --

7 MR. BRANNON: Do you want us back here before  
8 9:30?

9 THE COURT: No. I mean, 9:15, whatever.

10 MR. BRANNON: All right.

11 THE COURT: All right. Who is on Mr. Cole's bond?

12 MR. BRANNON: Debbie McCluney, but, Your Honor,  
13 he's on -- he's got an electronic monitor on, so, I mean, he  
14 ain't going nowhere.

15 THE COURT: Why not? Oh, he's staying there with  
16 you?

17 MR. BRANNON: No, Your Honor. He's got an  
18 electronic monitor and we know where he's going to be.

19 THE COURT: Well, I don't know if they know that  
20 or not, but the thing is that the trial has started.

21 Is Ms. McCluney agreeing to continue her  
22 obligations, because if she's not, then he's not going  
23 anywhere.

24 MR. BRANNON: I will have to make a phone call.

25 THE COURT: Better make it quick because it's five

1 minutes to five, and she will need to -- she will need to  
2 come and tell me that.

3 MR. BRANNON: The court wouldn't take my --

4 THE COURT: Well, no, because you are not the one  
5 that's obligated. She's the one. She's the one that's  
6 going to be obligated, so if she's willing to tell me she's  
7 going to continue her obligation, I'm good with it. She can  
8 talk to the clerk on the phone. The clerk knows her, don't  
9 you?

10 THE CLERK: Yes, sir.

11 THE COURT: We are going to be at ease until she's  
12 contacted and we will come back.

13 MR. BRANNON: Thank you.

14 (Whereupon, proceedings were recessed)

15 (Whereupon, proceedings were reconvened).

16 MR. BRANNON: The bondsman said she would stay on  
17 the bond.

18 THE COURT: All right. Madam Clerk, you talked to  
19 the bonds person?

20 THE CLERK: Yes, sir, Debbie McCluney.

21 THE COURT: And she's willing to stay on the bond?

22 THE CLERK: She is.

23 THE COURT: All right, Mr. Cole, your bondsman has  
24 indicated to the court that she's willing to stay on the  
25 bond. However, the conditions for your overnight release is

1 that while you are still on bond, you are under house  
2 arrest. In other words, when you leave here today you are  
3 going home and that's where you are going to be. You don't  
4 get to stop at the drug store. You don't get to go to the  
5 grocery store. You don't get to stop by somebody's house.  
6 When you leave the courthouse, you go straight to your house  
7 and you stay there until in the morning and you come  
8 straight back to the courthouse.

9 I don't know what time Mr. Brannon needs you here,  
10 but I need you here not later than 9:30 in the morning. And  
11 if you don't appear or you are late, this trial will  
12 continue, even in your absence. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Anything else?

15 MS. LESKANIC: Not from the State, Your Honor.

16 MR. BRANNON: No.

17 THE COURT: Court is in recess until 9:30 in the  
18 morning.

19 MS. LESKANIC: Thank you.

20 (Whereupon, proceedings were adjourned to June 29,  
21 2016)

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

THE STATE )  
 )  
-vs- ) TRANSCRIPT OF RECORD  
 ) 2015-GS-11-00044  
JEFFERY WILLIAM COLE, )  
 ) JUNE 29, 2016  
DEFENDANT. ) GAFFNEY, SOUTH CAROLINA

(VOLUME II)

B E F O R E:

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

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

KIMBERLY L. LESKANIC, ASSISTANT SOLICITOR  
ATTORNEY FOR THE STATE

N. DOUGLAS BRANNON, ESQUIRE  
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS  
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, JUNE 29, 2016)

2 THE COURT: All right, any matters to address  
3 before the jury is brought in?

4 MR. BRANNON: Yes, Your Honor.

5 Remeron, while it may assist Mr. Elliott's  
6 sleeping, that's not its intended purpose. It is a  
7 mood-stabilizing drug prescribed in conjunction with Effexor  
8 for those who have been diagnosed with bipolar. So both  
9 Effexor and Remeron are mood-stabilizing medications.

10 THE COURT: Okay.

11 MR. BRANNON: Your Honor, I went back to the  
12 office and pulled some cases. The two cases that are most  
13 closely on point that I could find are back from 19 -- well,  
14 one of them is from the seventies and one from 1993. State  
15 v. China, 440 S.E. 2d 382, 312 S.C. 335, and China cites  
16 Pitts, which is the 1970 case, Your Honor.

17 I'm not suggesting that I don't know where I  
18 believe the court is going, but I have got to make my record  
19 here. So, Your Honor, the case, again, China says "it's the  
20 duty of the trial judge to determine the competency of a  
21 witness to testify and to make an appropriate examination of  
22 the witness on a timely motion of counsel that will reveal  
23 to the trial judge's satisfaction the witness' ability to  
24 give competent testimony. And, again, right there is where  
25 it cites State v. Pitts, the other case, Your Honor.

1 "To make such an inquiry, however, there must be  
2 some evidence of the lack of capacity of the offered  
3 witness. Lack of capacity may be evidenced by general  
4 demeanor of the witness, the age of the witness, or the  
5 presentation to the court of the witness' psychological  
6 profile through expert testimony."

7 Your Honor, based on that case law I would ask the  
8 court for a brief continuance in this matter so that I could  
9 get the gentleman's medical records and potentially put on  
10 one of the doctors, or the doctor, that diagnosed him with  
11 bipolar disorder and the other maladies that he's enumerated  
12 before the court.

13 It's also, I believe, important to determine what  
14 was actually prescribed in November of 2014. And then to  
15 extrapolate that out, Your Honor, he says that he's now on  
16 additional medications that he was not on in November of  
17 2014, and I need this expert then to testify to determine  
18 does that means that he was not properly medicated in  
19 November of 2014, and is that why these additional meds were  
20 prescribed. Thank you.

21 THE COURT: All right.

22 MS. LESKANIC: May it please the court, I guess  
23 there are two issues, Your Honor.

24 First is the condition that he was in during the  
25 time of the buy in 2014. He has testified to the court what

1 he was taking. Those are antidepressant medications. There  
 2 are probably folks on the jury or in the courtroom that are  
 3 on antidepressants as well. That information is not  
 4 relevant, number one. If it is relevant, the prejudicial  
 5 effect is greatly outweighed by any probative value. The  
 6 whole intent it seems is just to confuse the jury and get  
 7 them to think that he's some kind of mental patient because  
 8 he takes anxiety pills. I don't think there has been any  
 9 testimony or even the prescribed medication that he has  
 10 testified to taking would make any of this relevant, but it  
 11 would just confuse the issues and confuse the jury, so we  
 12 would ask that he not be able to go into that.

13 As far as the China case, I don't have a copy of  
 14 it, but I believe Mr. Brannon stated that the trial court  
 15 makes a determination of whether or not a witness is  
 16 competent to testify.

17 So that brings us to yesterday's testimony and  
 18 today. He testified on the stand. Your Honor has had ample  
 19 opportunity, not only to hear his testimony during the  
 20 direct and cross-examination, but also to conduct your own  
 21 independent questions, and I trust that Your Honor has made  
 22 a decision as to his competency and that there is no reason  
 23 to delay or continue this matter. Thank you.

24 MR. BRANNON: Brief response?

25 THE COURT: Okay.

1 MR. BRANNON: Your Honor, this is not a ploy.  
2 This is an investigation into evidence that was derived  
3 through direct examination. Now, it was redirect  
4 examination, but the State's own witness identified himself  
5 as being mentally disabled.

6 Your Honor, when the witness describes himself as  
7 mentally disabled, I think I have an obligation in defending  
8 my client to go down that road as far as it goes, so this is  
9 not a ploy to delay this trial. I simply need to cover  
10 these bases. And to do it appropriately I need his medical  
11 records.

12 THE COURT: All right. Well, I have observed the  
13 witness testify and I have heard him testify and there is no  
14 indication to me that he's not competent to testify in the  
15 trial of this case.

16 The purpose of the overnight recess was for y'all  
17 to do some research on the prescriptive drugs that he's  
18 taking. And the reason I wanted that research is to  
19 determine whether or not if there was something he was  
20 taking at the time of this event was something that could  
21 cause him to be confused or failed to be able to remember  
22 clearly or affect his judgment in some fashion so as to  
23 prevent him to be able to accurately testify during the  
24 trial of the case that it was something that happened in  
25 November of 2014, and there is no indication that these

1 drugs are of those types.

2 It's often allowed that when a person is  
3 testifying about their recollection of their events they  
4 were under the influence of alcohol; or marijuana, or some  
5 other drug that would perhaps cause you to have a lack of  
6 judgment and would be unable to clearly recollect what  
7 occurred at a given time, then examination on that point is  
8 allowed, but that's not the case here. He's taking --  
9 presumably was taking some type of prescriptive drug then.  
10 He said that he took something at night to help him sleep.  
11 That was the Remeron.

12 He took an Effexor also, but that's not something  
13 that clouded his judgment or affected his ability to recall.  
14 It's simply something to stabilize the mood and to allow him  
15 to actually function better than he would be able to  
16 function if he weren't taking the drug. So that's the  
17 purpose of it.

18 And so there is no indication whatsoever that I  
19 have seen or that I have been made aware of that would  
20 indicate that anything that Mr. Elliott was taking, if at  
21 all at that time, would affect his ability to recall to  
22 testify and be able to testify accurately about the events  
23 in question.

24 Obviously he can be examined and you can comment  
25 about his ability to recall from 2014, or other reasons he

1 might be biased or prejudiced in the case, but,  
2 nevertheless, I don't find that his competency in this case  
3 to be an issue and I don't find that his testimony regarding  
4 the prescriptive drugs that he was provided would affect his  
5 ability to also testify competently or be able to recall the  
6 events occurring in November of 2014. And so for that  
7 reason your request and motion for a continuance is denied.

8 MR. BRANNON: Thank you, Your Honor.

9 When he retakes the witness stand will I be able  
10 to ask him when he was diagnosed and what medications he was  
11 taking?

12 THE COURT: No, as I have said yesterday, and  
13 that's the reason I gave you all a chance to research that  
14 overnight is to find out about it, but there has been  
15 nothing that's occurred during the overnight recess  
16 apparently that would change my mind about that.

17 The fact that he has a mental condition is  
18 apparently not something that affects his ability to  
19 testify. It doesn't affect his competence. It doesn't  
20 affect his recall ability, or anything else, that I have  
21 been made aware of. And so simply providing the jury with  
22 information about a mental condition doesn't help them in  
23 any way, because we don't have anybody that can testify  
24 or -- unless you tell me that you have someone, that could  
25 testify that his condition would be something that would

1 affect his ability to be able to testify accurately or  
2 recall and make him incompetent and that sort of thing.

3 So, in other words, I think you and I would agree  
4 that he has testified that he has a thyroid condition.  
5 Well, that's his medical condition, but you and I, I think,  
6 will agree that that doesn't have anything to do with his  
7 competency. It wouldn't be relevant to the jury, because a  
8 thyroid condition, unless you have got some medical  
9 testimony that tells us that that affects his competency or  
10 affects his ability in some way to be able to accurately  
11 recall an event, it's not relevant to anything and it's just  
12 a source of confusion and misdirection insofar as the jury  
13 is concerned and it doesn't help in any way to decide any  
14 fact that they have to decide.

15 So I say that simply because of the fact that you  
16 have a bipolar condition does not necessarily mean that you  
17 are not competent and cannot testify accurately. And, you  
18 know, you have seen and heard him today -- or yesterday.

19 I presume some officer is going to testify about  
20 their interaction?

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

22 THE COURT: Are going to testify about their  
23 interactions with him back in June of 2014 -- or excuse me,  
24 November of 2014. And, you know, if there is some evidence  
25 that you have that would indicate at that time that he

1 wasn't competent, or he was acting crazy, or whatever you  
2 want to say about him, then, you know, I'll hear you on it,  
3 but right now I think the introduction of that type of  
4 evidence or examination of the witness about those types of  
5 conditions is simply something which is more prejudicial  
6 than it is probative and so I sustain the State's objection  
7 to it yesterday.

8           And that testimony wasn't elicited by the  
9 prosecutor. That was simply something that the witness  
10 testified to.

11           MR. BRANNON: I -- I understand that. And, again,  
12 I don't think that Kim or the law enforcement withheld any  
13 information.

14           THE COURT: I know you -- I know you are not  
15 suggesting that. I'm just saying but in fairness he  
16 volunteered that information. He stated it. It was not in  
17 response to a question by the prosecutor.

18           It's a different thing if the prosecutor brings  
19 those things out, then clearly you have got a right to go  
20 into -- if she's got a right to go into it, you have got a  
21 right to go into it, but she didn't elicit that. He simply  
22 volunteered that. It was not responsive and that's why she  
23 objected to it, and I do find it's more prejudicial than  
24 probative. It doesn't help the jury decide anything, at  
25 least so for as I can tell at this point.

1 MR. BRANNON: I understand the court's ruling.  
2 Then do we even put him back on the witness stand in the  
3 presence of the jury?

4 THE COURT: Yeah, we'll put him back up there to  
5 see if you have any other questions of him, because she did  
6 bring out some additional matters on redirect, I think, but  
7 you may not. If all you wanted to ask him about was that,  
8 then you can just simply say "I don't have any further  
9 questions," but, yes, he -- where is he?

10 MS. LESKANIC: He's in our office, Your Honor,  
11 I'll get him.

12 THE COURT: But he was on the stand, so he will  
13 have to be step back on.

14 MR. BRANNON: Thank you, Your Honor.

15 THE COURT: Mr. Brannon, I think you did -- if I'm  
16 not mistaken, you did inquire of the witness as to whether  
17 or not he was using any illegal substances on that day.  
18 Have you not already asked him about that?

19 MR. BRANNON: I did, and she objected and you  
20 sustained it.

21 THE COURT: About the use of illegal substances?

22 MR. BRANNON: Yes, sir.

23 THE COURT: I don't think I would have sustained  
24 that objection. Clearly that's -- that's relevant if it's  
25 something that would affect his ability to recall, or

1 judgment, and that sort of thing, but that's the reason I  
2 said alcohol, marijuana, illegal drugs, or whatever,  
3 that that's not -- that's not precluded.

4 The prescribed drugs for mental -- for a condition  
5 is -- I have sustained that objection.

6 I know the Remeron and the Effexor, I sustained  
7 that objection, because that's more prejudicial than  
8 probative, but if he was using marijuana that day, or taking  
9 Percocet, or was drunk, then obviously that's allowed.

10 MR. BRANNON: Thank you.

11 THE COURT: Anyway, he's on the stand.

12 Bring the jury back, please.

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

15 THE COURT: Good morning, ladies and gentlemen.

16 As you know when we recessed yesterday Mr. Elliott  
17 was on the stand and we interrupted that testimony in order  
18 to take a witness who could not be available today and so we  
19 did that and then when we recessed.

20 Mr. Elliott will resume his seat on the witness  
21 stand and we will continue with any further examination,  
22 should there be any.

23 (Whereupon, Mr. Anthony Elliott re-took the  
24 witness stand)

25 THE COURT: You are still under oath, of course.

1 THE WITNESS: Yes, sir.

2 THE COURT: All right, Mr. Brannon?

3 MR. BRANNON: Thank you.

4 RECROSS EXAMINATION BY MR. BRANNON:

5 Q. Mr. Elliott, I just have a couple of questions and then  
6 I'll be done.

7 You signed a contract with the sheriff's department, is  
8 that correct, to be a confidential informant? Is that  
9 correct?

10 A. Yes.

11 Q. Is that the contract?

12 A. Yes.

13 Q. I'm sorry, it is?

14 A. Yes.

15 MR. BRANNON: Move to admit.

16 MS. LESKANIC: No objection.

17 THE COURT: It's admitted.

18 (Confidential Informant Contract marked and  
19 entered into evidence as Defendant's Exhibit No. 1)

20 BY MR. BRANNON:

21 Q. And you were paid \$60 for your services, is that  
22 correct?

23 A. Yes.

24 Q. Is this the document that verifies the payment of the  
25 \$60?

1 A. Yes.

2 Q. And your signature is down there at the bottom right  
3 there, is that correct?

4 A. Yes.

5 Q. Okay.

6 MR. BRANNON: Move to admit.

7 MS. LESKANIC: No objection.

8 THE COURT: It's admitted.

9 (Voucher marked and entered into evidence as  
10 Defendant's Exhibit No. 2)

11 BY MS. LESKANIC:

12 Q. Mr. Elliott, on November 26th, 2014, were you using any  
13 illegal drugs?

14 A. No.

15 Q. Thank you.

16 MR. BRANNON: Nothing further.

17 MS. LESKANIC: Nothing further Your Honor.

18 THE COURT: You may step down.

19 MS. LESKANIC: The State calls sergeant Brandon  
20 Gardner.

21 SERGEANT BRANDON GARDNER, having been first duly  
22 sworn, testified as follows:

23 MS. LESKANIC: May it please the court?

24 THE COURT: Yes, ma'am.

25

1 DIRECT EXAMINATION BY MS. LESKANIC:

2 Q. Could you please state your name to the ladies and  
3 gentlemen of the jury?

4 A. Yes, ma'am, I'm Brandon Gardner.

5 Q. And where are you employed?

6 A. At the Cherokee County Sheriff's Office.

7 Q. And what is your current rank?

8 A. I'm currently a sergeant.

9 Q. And how long have you been employed with the sheriff's  
10 department?

11 A. Since January of 2009.

12 Q. And what different positions have you held with the  
13 sheriff's department since January of 2009?

14 A. I started off at the sheriff's office on road patrol.

15 I remained on road patrol as a deputy up until around

16 February of 2012, and then I went to the Special

17 Investigation Division, which is our main responsibility is

18 investigating illegal narcotics. And I got moved or made

19 the rank of a sergeant at the end of 2012. I can't remember

20 the exact month, but it was at the end of 2012.

21 Q. Can you explain a little bit about the differences in

22 your duties when you were a road deputy and then once you

23 were moved to Special Investigation, and specifically a

24 narcotics officer?

25 A. Yes, ma'am. Road patrol, road deputies, their main

1 responsibility is to ride in our community, in our county,  
2 and to answer 911 calls, to investigate suspicious  
3 activities, to enforce speeding, criminal complaints of that  
4 nature, but mainly to answer 911 calls.

5 Special Investigation are -- as being a narcotics  
6 agent, our main responsibility is to investigate illegal  
7 narcotics. And, you know, we also have to investigate other  
8 crimes, such as prostitution, underage alcohol buys, or  
9 underage drinking problems, EBT fraud, but our main  
10 responsibility revolves around investigating illegal  
11 narcotics through different techniques and investigation.

12 Q. Okay. So back in November when this occurred in 2014,  
13 you were working with the Special Investigations Unit in  
14 narcotics?

15 A. That's correct.

16 Q. And what were you doing that day?

17 A. That day myself and my Lieutenant Ronnie Painter -- I  
18 don't recall if we had planned to meet with one of his  
19 informants that day, or that day we had come to work after  
20 speaking with him we determined that we were going to use  
21 the undercover operative in efforts to make purchases of  
22 illegal narcotics.

23 Q. All right. Can you explain a little bit to the jury  
24 about what an undercover operative is and also why you use  
25 undercover operatives?

1 A. Undercover operatives are crucial in helping us  
2 investigate illegal narcotics. As you know, in our county,  
3 it's a small county, we work in a small division and it's  
4 tough for us as law enforcement to purchase illegal  
5 narcotics. Has it been done? Yeah, it has been. Through  
6 the use of other agencies, other law enforcement, you know,  
7 we might get someone from out of the county to come in to  
8 make purchases. It's small. It's happened a few times.

9 One thing, as -- as the drug world, so to speak, has  
10 evolved, it's tough. It's not necessarily people standing  
11 out on the corner selling drugs any more. A lot of times  
12 they deal with individuals that they have known, have seen  
13 before, their buddies may know so they can somewhat trust  
14 them. So sometimes we have to -- instead of using law  
15 enforcement we have to use civilians, so to speak.

16 And undercover operatives, they are gained from, you  
17 know, various ways. One way is, you know, it can be someone  
18 who has had a drug problem in the past and for some reason  
19 or other they want to do some good and help us clean up the  
20 drug problem, so they contact us.

21 It can be someone that we have arrested, as far as  
22 illegal narcotics, and, you know, during our investigation  
23 and interviewing them they explain to us that they want to  
24 cooperate and lead us in the investigations of capturing or  
25 arresting the person who give them the drugs or distributed

1 the drugs to them.

2 It's on a weekly conversation on how that has gone  
3 about with the court proceedings, you know, an agreement  
4 with the solicitor's office and with us to lessen their  
5 charges. In essence, it's just to help us move up the  
6 ladder and hopefully cut off the head of the snake, so to  
7 speak, and get the person that's responsible for  
8 distributing drugs in our county.

9 Q. And what do you mean by moving up the ladder? Who  
10 might you arrest and then what do you try to get from that  
11 person, if you are going to use them as an operative?

12 A. We try to get the main people who are responsible for  
13 distributing drugs in our county, you know, and with us  
14 investigating illegal narcotics, using undercover operatives  
15 to make purchases, that furthers our investigation.

16 You know, it's -- you know, during -- when we are using  
17 an undercover operatives we are not targeting one person.  
18 You know, we are allowing the undercover operatives to  
19 purchase from a large amount of people. By large, I mean,  
20 you know, it may be only that person can buy from five  
21 people, or they can buy from thirty people. That way when  
22 we complete that operation we interview them and try to  
23 figure out, you know, who they are getting their supplies  
24 from, how they are doing it.

25 And it's different from every drug. You know, meth, we

1 may be able to run it back all the way up to different  
2 states, even different countries. Cocaine is the same way.  
3 And a lot of times when we deal with synthetic marijuana or  
4 pills, we can run it back up just to who in our county is  
5 getting prescriptions filled or selling from them or how  
6 they are obtaining those illegal substances to sell.

7 Q. And did you meet with Anthony Elliott about being an  
8 undercover operative?

9 A. Oh, yes, ma'am, we -- we met with him. The first time  
10 I had met with him was on that date. I'm sorry, I believe  
11 it was November the 26th, that day.

12 Q. Okay. And what was your conversation with him? What  
13 was the agreement with Mr. Elliott?

14 A. I don't recall how Lieutenant Painter received the  
15 phone call. He just explained to me we were going to pick  
16 up Mr. Elliott that day. He was signed up, so to speak. He  
17 filled out the application or the paperwork being an  
18 undercover operative under the advisement of Lieutenant  
19 Painter, so I -- I was there present in the room. There are  
20 several questions that we read and discuss that are on that  
21 packet.

22 Q. Okay. And Defense Exhibit 1 that Mr. Brannon put in,  
23 will you take a look at that and tell me if that's the  
24 agreement that you are referring to?

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

1 Q. All right. And what was your agreement with Mr.  
2 Anthony? If you can review that document and explain to the  
3 jury what the process is when you sign someone up.

4 A. Yes, ma'am. Would you like for me to read the whole  
5 first page to them, or just --

6 Q. That would be fine. I can put it up on the screen if  
7 you want to step down and that way they can read along with  
8 you.

9 (Witness off the witness stand)

10 BY MS. LESKANIC:

11 Q. Can you read that, Sergeant Gardner?

12 MS. LESKANIC: I also have another copy, Mr.  
13 Brannon. Do you have any objection to him reading?

14 MR. BRANNON: No.

15 A. So when we bring someone in that are wanting to  
16 cooperate with us, and like I mentioned, it may be due to we  
17 have arrested him for a charge and they wish to cooperate  
18 and lead us to whoever they are purchasing their drugs from,  
19 or it may be someone who just wants to help us for whatever  
20 reason to help us rid the drugs in our county. And we sit  
21 down and we review their criminal history. We also review  
22 any pending information we may have on them, cases they have  
23 been involved in with our county, and then we -- we have  
24 them sit down and the -- let me get my terminology correct.

25 THE COURT: Excuse me, let me stop just a minute.

1 If he has a copy he can testify from the stand.

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

3 (Witness back on the witness stand).

4 A. We get them to -- Lieutenant Painter on this day read  
5 everything with Mr. Elliott beside him and I was sitting at  
6 the same table as well.

7 It says the undersigned cooperating  
8 individual/confidential informant agrees to the following:

9 Not to violate criminal laws in furtherance of  
10 gathering information or providing service to the sheriff's  
11 office. Any violation or misconduct will be reported  
12 immediately.

13 That you have no official status, implied or otherwise,  
14 as an agent or employee of the sheriff's office.

15 The information that you provide may be used in  
16 criminal proceedings and that you may be called upon to  
17 testify to such information in a court of law and although  
18 the sheriff's office will use all lawful means to protect  
19 your confidentiality, it's not guaranteed.

20 You are advised that it is a state offense to threaten,  
21 harass, or mislead anyone who provides information about a  
22 crime. If you experience anything of this nature, as a  
23 result of your cooperation with the sheriff's office, that  
24 you will contact your controlling agent immediately.

25 You do hereby knowingly, intelligently, and voluntarily

1 agree to cooperate with the sheriff's office in  
2 investigations and do not hold the Cherokee County Sheriff's  
3 Office liable for any reason. You do agree to cooperate  
4 with the Cherokee County Sheriff's Office of your own free  
5 will and without compulsion, or persuasion by any person or  
6 persons whomsoever.

7 You do hereby knowingly, intelligently, and voluntarily  
8 assume any and all risks associated with this participation.  
9 Further, you hereby waive any and all claims and release the  
10 sheriff's office, its officials, its officers,  
11 representatives, employees, and/or agents from any liability  
12 for any injuries, damages, losses, or expenses that may be  
13 caused by or arise from your participation pursuant to this  
14 agreement.

15 You have read and understood those conditions regarding  
16 my conduct as a Cherokee County Sheriff's Office cooperating  
17 individual/confidential informant.

18 And then we have them date and sign and initial to the  
19 left that we read each paragraph to them.

20 And then the next page it just -- their current  
21 information. You know, their address, their name, phone  
22 number, date of birth, identifying characteristics.

23 And then we have a reason for cooperating. And Mr.  
24 Elliott's on this date the reason he was willing to  
25 cooperate was for money. It was not because he had been

1 charged for anything and was trying to cooperate or lessen  
2 his charge.

3 Q. Let me stop you right there for the reason for  
4 cooperating. Is it usually one or the other, or are there  
5 different things? What things would you write in that spot?

6 A. Yes, ma'am. Since I have been in narcotics the only  
7 two reasons that we have for cooperating is for money or for  
8 charges.

9 Q. And what do you mean for charges?

10 A. And what I mean by charges is just if we had arrested  
11 an individual for possession of marijuana and he wanted to  
12 lead us to who he was receiving his marijuana from, we would  
13 just write charges and then -- in parenthesis, or sometimes  
14 they just put he was charged with marijuana.

15 And then down at the bottom we explain who the  
16 arresting officer was, whether it be in our county or  
17 another county, and the date of the arrest and write the  
18 details of how that arrest came.

19 Q. And there is nothing in that link on this case. Is  
20 that because he was not working off charges? He was being  
21 paid?

22 A. That's correct.

23 And then it has down, you know, he was arrested, if he  
24 went to jail, if he posted a bond.

25 Continuing to the next page we have is subject on

1 probation or parole. You know, if they are on probation, we  
2 have to contact the probation officer.

3 Q. What was the answer with Mr. Elliott?

4 A. The answer was no.

5 Q. Okay.

6 A. And then it says criminal record, if any, attached.

7 He has photograph attached? Yes.

8 Does this individual agree to notify agent of any  
9 future arrest. Yes.

10 And along with this packet we -- for our records we  
11 fingerprint the informant and those documents are attached  
12 and kept in a filing cabinet that's secured in Lieutenant  
13 Painter's office.

14 Is this individual now, or a past drug user? And we  
15 explain to them that, you know, this is for our records and  
16 we are not going to charge them or hold them accountable,  
17 or, you know, in a court of law for anything that they  
18 answer here, and he did admit to us that he was a user.

19 Types of crimes individual is specifically  
20 knowledgeable in? He was in meth, pills, and crack, and  
21 marijuana.

22 Q. What does that mean? Can you explain that question and  
23 answer?

24 A. Yes, ma'am. That -- you know, when we -- when we  
25 interview them we ask them if they are a past user or

1 seller, or anything of that nature, and he admitted to us  
2 that he had used before. He admitted -- and I -- I don't  
3 recall if he admitted to using crack cocaine before, but I  
4 do recall him admitting that he had used meth, pills, and  
5 marijuana before.

6 He explained to us how he was knowledgeable on crack  
7 and he had seen crack and stuff of that nature and I don't  
8 recall if he mentioned he had used crack before, but he did  
9 mention he had used the other three drugs before.

10 Q. And why is that important for an undercover operative  
11 to be knowledgeable in those drugs?

12 A. It's really important because what will happen is once  
13 we begin a relationship with an informant, you know, a lot  
14 of times we will interview them and we will see if we can  
15 prove any credibility of things they tell us about certain  
16 drugs. And then we will -- not always. Most of the time.

17 The first few things we do is is with the camera, you  
18 know, to see if they tell us they know what pills look like,  
19 if they know what marijuana looks like, meth. You know, we  
20 take their word for it, but then we watch them. You know,  
21 if they bring us back pills, marijuana and stuff, it kind  
22 of -- it gains their credibility for us. You know, it may  
23 not be through a camera. It may be through us visually  
24 trying to watch them go to a house where they say crack is  
25 being sold at and to show how knowledgeable they are in that

1 particular drug. And then later on in some investigations  
2 we execute search warrants based on all their knowledge and  
3 how we can show their credibility.

4 Q. Okay. Then you can continue with the agreement,  
5 please.

6 A. Anticipated level of arrest on information provided.

7 You know, through the information that myself and  
8 Lieutenant Painter talked with this gentleman about today,  
9 we anticipate he may be able to get us some trafficking  
10 offenses, PWID, street pushers, as well as users. He  
11 mentioned that he was knowledgeable of Cherokee County,  
12 Spartanburg County, and Cleveland County, and all that means  
13 is that he mentioned individuals in all three of those  
14 counties he believed were involved in illegal narcotics.

15 Does the solicitor or representative or any other  
16 agency object to using this individual as a CI, and the  
17 answer was no by Lieutenant Painter.

18 As the individual admitted or is there any indication  
19 that this individual has ever been a CI for any other police  
20 officer or government agency in the past, and he answered  
21 yes. The reason we ask him that is if they have cooperated  
22 before and -- you know, if they have cooperated in  
23 California, or as close as Gaffney city, you know, we try to  
24 contact that officer and see how their relationship was and  
25 see if the information he provided to that law enforcement

1 agency. There was no other vital information that was noted  
2 by Lieutenant Painter.

3 And then at the bottom, I don't know if you can see, we  
4 have assigned him a number and that number, it's a made up  
5 number. All that number means is -- it's been blacked out  
6 there, is because that's where we put on the records that we  
7 have to turn in BEST bags and stuff with -- to try to  
8 protect their confidentiality. So it's just a number so  
9 they don't have to sign a BEST bag, which the SLED agent  
10 discussed yesterday. We put that number instead of having  
11 them sign, so when defendants get their Rule Five or motion  
12 of discovery they can't identify who we used in the case.

13 And then we have them sign, as well as their  
14 controlling officer sign, just that everything was correct  
15 and has he reviewed all the papers or everything just --

16 Q. All right. And going back to the assigned number, why  
17 is that important in cases like this to protect their  
18 confidentiality?

19 A. It's important. We -- when we are doing undercover  
20 operative buys we are not necessarily going to target one  
21 person. You know, we may have one informant. We may have  
22 five informants. Of course, they don't know about each  
23 other, and during the same time they are making purchases  
24 from us. And, you know, we may be using one informant one  
25 day, one the next day, or in the same day at different times

1 and we are allowing them to purchase from who they know is  
2 involved in illegal narcotics. And, you know, so sometimes  
3 we have to wait six months. Sometimes we have to wait a  
4 month. Sometimes we have to wait two months for them to  
5 kind of lead us to whoever they know is distributing illegal  
6 narcotics. And once that's done, we might have fifteen  
7 people. We might have as much as sixty people, and we  
8 decide, okay, we don't have any informant that's doing  
9 undercover purchases at this time, so we are going to do  
10 what we call a roundup and what individuals in our county  
11 call a roundup. One day we go out there and we arrest all  
12 those individuals. Some people call it a sweep, so to  
13 speak, and so that's the reason we have to keep their  
14 secrecy. I mean, it is a -- there is danger involved in  
15 purchasing illegal narcotics. You know, we have had --

16 MR. BRANNON: Object to relevance, Your Honor.

17 THE COURT: Sustained.

18 BY MS. LESKANIC:

19 Q. Okay. I would like --

20 Let me ask you. Do you typically make an arrest  
21 immediately following one of these controlled buys? Do you  
22 arrest the suspect right then when the informant comes back  
23 with drugs and a video?

24 A. I don't recall one time in my five years that we have  
25 used a camera to make a purchase of narcotics and went back

1 that day or the day after and made an arrest.

2 Q. And what would happen if you did make the arrest that  
3 day?

4 A. We would put our confidential informant in danger of  
5 his confidentiality being revealed and for individuals, and  
6 specifically the defendant, knowing who our informant was to  
7 make the purchase.

8 Q. Okay. So that is -- is that the purpose of the --

9 MR. BRANNON: Objection to relevance.

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

11 (Whereupon, the lawyers approached the bench for  
12 an off-the-record discussion).

13 THE COURT: Sustained.

14 BY MS. LESKANIC:

15 Q. Sergeant Gardner, during your time in law enforcement,  
16 and specifically narcotics, have you had occasion to deal  
17 with people who were under the influence of drugs or  
18 alcohol?

19 A. Yes, ma'am.

20 Q. All right. Approximately how many times?

21 A. I venture to say at least once every two weeks.

22 Q. Okay. And that's once every two weeks since you  
23 started back in 2009?

24 A. Yes, ma'am, that's correct.

25 Q. Now, you met with Mr. Elliott on the day of this

1 purchase, correct?

2 A. That's correct.

3 Q. Did he appear to you to be under the influence of  
4 anything?

5 A. No, ma'am.

6 Q. And would you have let him work if he did?

7 A. No, ma'am, we wouldn't have.

8 Q. Okay. All right.

9 Now, specifically going to November 26th of 2014, do  
10 you recall how you and Lieutenant Painter met up with Mr.  
11 Elliott that day?

12 A. Yes, ma'am. We -- we both drove -- I rode with  
13 Lieutenant Painter and we went to a location near Mr.  
14 Elliott's house and picked him up and brought him back to  
15 our office, which is at the sheriff's office.

16 Q. And then what happened once you arrived at the  
17 sheriff's office?

18 A. We spoke with him briefly about individuals that he  
19 knew or people he knew who were involved in illegal  
20 narcotics. We had him fill out the packet we discussed  
21 earlier.

22 We went to make an undercover purchase of another  
23 suspect not involved in this case; completed that operation.  
24 We viewed the video and then we decided to conduct another  
25 operation, which would be this investigation today.

1 Q. And what is the first thing that you did before you go  
2 out in the operation with an informant?

3 A. Typically we will get them to make a phone call, text  
4 message. In the past we have used Facebook to contact  
5 whoever they believed that they are going to be meeting with  
6 or bringing the drugs.

7 On this date Mr. Elliott didn't know the contact  
8 information for anyone at the residence we went to. He  
9 explained to us that he knew an individual named Luke. We  
10 had been made aware that Luke was selling illegal narcotics  
11 from that address. He explained to us that he believed that  
12 the defendant was responsible for other narcotics, but -- he  
13 would possibly be able to go to Luke a couple times and  
14 maybe get introduced to Mr. Cole.

15 So we searched him. Typically if I'm responsible for  
16 that operation I'll do the searching. You know, we search  
17 from making them take their shoes and socks off, go through  
18 their pockets, to shaking their pants, to lifting up their  
19 shirt, if it's a male, to make sure they are not concealing  
20 anything, and then they are provided money. We document  
21 that money and then they are taken with us to conduct the  
22 operation.

23 Q. Specifically with Mr. Elliott, was he searched before  
24 he was going out to River Drive?

25 A. He was searched. And after the informant or undercover

1 operative, after they are searched they don't leave our  
2 sight. We don't let them go to the bathroom. We don't let  
3 them run around the sheriff's office. You know, as soon as  
4 they are searched, you know, they stay with us until they  
5 are sent out for the operation.

6 Q. All right. And is that photographed or videotaped?

7 A. We can't -- we don't video us searching whoever is  
8 cooperating with us. One reason is that if an individual is  
9 cooperating with me, we try to hide their confidentiality.  
10 You know, we don't -- we try to make them stay clear,  
11 pointing the video at their selves or getting in front of a  
12 window or in front of a mirror so their reflection may show  
13 who is cooperating. So when we are searching them, we don't  
14 take the video and video another officer searching them  
15 because, of course, that would reveal their -- who they are.  
16 And so when a defendant, it is possible for them to get that  
17 video and then they can show others they're involved with,  
18 who their informant is, which would probably hinder our --

19 MR. BRANNON: Objection.

20 THE COURT: Sustained.

21 MR. BRANNON: Thank you.

22 MS. LESKANIC: May we approach, Your Honor?

23 THE COURT: Yes.

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

1 BY MS. LESKANIC:

2 Q. Sergeant Gardner, after you searched Mr. Elliott, what  
3 is the next step that you do?

4 A. We will -- after we search them -- before we search  
5 them we go over how to use that particular device, whatever  
6 we are using that day. Then we search them and then we want  
7 to make a copy of the money that we are using for that  
8 purchase.

9 Q. All right. The device that you were using that day,  
10 can you explain that to the jury?

11 A. That device, it is a key fob. When we -- you can pull  
12 off one end of it. We cut the device on, we put it in  
13 recording and we lock it. Once we have locked that device,  
14 most -- anybody who has not had experience with that device  
15 wouldn't know how to cut it off. So it can't be tampered  
16 with by whoever is using it, you know. And if it is  
17 tampered with, once they get back and we watch the video  
18 footage, we can determine if it has been tampered with at  
19 all. I mean, in this case it had not been tampered with.  
20 It had remained on from the start to the finish.

21 Q. Okay. So you go over the device with him. You search  
22 him. And then how did you determine where you were going to  
23 go that day?

24 A. He had actually -- we hadn't contacted anyone at that  
25 residence where they incident took place. He said that he

1 believed or had knowledge that he thought drugs were being  
2 sold at that residence and he felt like he could purchase  
3 Suboxone or pills from that residence and we dropped him off  
4 near there and he walked to the incident location.

5 Q. Okay. And where did you park and let him out and who  
6 was with you?

7 A. Lieutenant Painter, we were riding in his vehicle. We  
8 went down -- I'm not sure if we went down Cherokee Avenue or  
9 Beech Street and come up on Madison, but we eventually ended  
10 up behind East Gaffney Church and kind of in between East  
11 Gaffney and Hamricks. It was in the area back in there.  
12 I'm not sure which one we were directly behind, but we were  
13 behind those two locations when we dropped Mr. Elliott off.

14 Q. And once you dropped him off, do you have continued  
15 contact with him?

16 A. Not on this particular occasion we did not.

17 Q. Okay. Do you know what area he went to?

18 A. Yes, ma'am, he had told us he was going to Jeff Cole's  
19 scrap yard and we are familiar where that is at and --

20 Q. What is the address or what is the road that that's on?

21 A. It's River Drive.

22 Q. Is that here in Cherokee County?

23 A. Yes, ma'am, it's at the intersection of Cherokee Avenue  
24 and River Drive. There is a trailer there with a scrap yard  
25 behind it.

1 Q. And what did you and Lieutenant Painter do after  
2 dropping off Mr. Elliott?

3 A. We -- we stayed behind those two buildings there and --  
4 I mean, it's what we discussed before why it's difficult for  
5 law enforcement to make a purchase in a county of our size.  
6 Also people involved in illegal narcotics know our vehicles,  
7 even though they are unmarked, so we stayed behind those two  
8 locations, because we were in a vehicle that's well known as  
9 being a narcotics vehicle, so no one could see it.

10 Q. And then did he return to your vehicle?

11 A. Yes, ma'am, he did.

12 Q. All right. What did he bring with him when he  
13 returned?

14 A. He brought back a cellophane pack, a plastic bag  
15 containing three pills; the key fob, which is the camera;  
16 and a \$5 bill.

17 Q. Okay.

18 A. Or I believe it was \$5. I'm not sure if it was five  
19 ones or a \$5 bill, but it was \$5.

20 MS. LESKANIC: May I approach the witness, Your  
21 Honor?

22 THE COURT: You may.

23 MS. LESKANIC: Thank you.

24 BY MS. LESKANIC:

25 Q. First I'm going to show you State's Exhibit 2. Can you

1 tell me if you recognize that?

2 A. Yes, ma'am.

3 Q. And what is that?

4 A. It is a BEST bag that appears to be completed by me.

5 Q. Okay.

6 A. And two and a half white pills.

7 Q. And are those pills that were returned to you by Mr.  
8 Elliott back on November 26th of 2014?

9 A. It appeared to be the pills, one half missing, which  
10 the SLED agent described as she had took for testing, but it  
11 appears to be the same.

12 Q. Okay. And what did you do with the pills once you  
13 received them from Mr. Elliott?

14 A. I would -- you know, we keep the pills in our  
15 possession. So when he handed them to me I hold onto them.

16 We go back to the office. We complete a BEST bag. A  
17 BEST bag is -- it's a sealed plastic bag. Once it's sealed,  
18 if it's tampered with or taken back off, they can determine  
19 it had been tampered with.

20 So we fill out a sheet of paper that goes inside the  
21 BEST bag and that sheet of paper, it just -- it gives the  
22 case number, the incident location, the suspect information,  
23 and a description of what we are putting inside the bag.  
24 You know, pills, meth, heroin, anything like that we  
25 describe it. We put that paper inside this BEST bag along

1 with the illegal substance and then we seal it and then we  
2 also complete a chain of custody form. And all that shows  
3 is what took place; you know, where the incident location  
4 was and who had touched the drugs before they get placed in  
5 our evidence vault.

6 On this particular incident no one else had possession  
7 of the drugs. You know, it's simply my -- you know, I  
8 signed that I put them in our evidence drop box. And what  
9 that is is it's inside the back of the sheriff's office and  
10 there is a door that stays locked and I only believe three  
11 people at the sheriff's office have a key to it. I know  
12 it's -- I think the sheriff and there is two evidence  
13 custodians, but that door is always locked, unless one of  
14 them are in there for some reason, but there is a small --  
15 it's in the wall. There is a small flat metal flap. I mean  
16 you can't stick your arm up in it, but it's just wide enough  
17 to stick paperwork or evidence in. I slipped it in there  
18 and then it was taken by one of the evidence custodians at  
19 SLED.

20 Q. All right. So did you seal it in the BEST bag the day  
21 that you received it from Mr. Elliott?

22 A. I did. I believe it was sealed less than two hours  
23 after the incident took place. If I can -- yes, ma'am, it  
24 was sealed that day within two hours of when the incident  
25 took place.

1 Q. And then you placed it in the drop box, secured it at  
2 the sheriff's department when?

3 A. That day.

4 Q. The same day?

5 A. Yes, ma'am.

6 Q. Now, you gave Mr. Elliott \$20 to make the purchase, is  
7 that correct?

8 A. That's correct.

9 Q. All right. I'm going to show you State's Exhibit 8 and  
10 tell me if you recognize that?

11 A. Yes, ma'am.

12 Q. And what is that?

13 A. It is a fund expenditure voucher that we complete  
14 anytime we distribute money for any purpose.

15 Q. Okay. And does that -- what does that show or  
16 document?

17 A. It documents, you know, our accountability of what we  
18 spend money for, so it's got a case number. Case name, we  
19 simply put the suspect's name. The location. The officer  
20 signed was me. And we put that CRI number that was  
21 mentioned before on the wall. It's got several places we  
22 can check. The expenditure type, this one was evidence  
23 purchased listed out like we do a check, write it. So it's  
24 \$20. And details, we explain what the money was used for,  
25 and it says "money given to CRI for purchase of pills on

1 camera."

2 Q. So that's the 20 -- that evidences the \$20 that you  
3 gave Mr. Elliott to make a purchase?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. And then it's signed by myself and Lieutenant Painter.

7 MS. LESKANIC: Your Honor, at this time I would  
8 offer State's Exhibit 8.

9 MR. BRANNON: Without objection, Your Honor.

10 THE COURT: It's admitted.

11 (Whereupon, State's Exhibit No. 8 was entered into  
12 the record as evidence).

13 BY MS. LESKANIC:

14 Q. Now I would like to show you State's Exhibit 9, if you  
15 can tell me what that is?

16 A. It's the same form that I mentioned before, except the  
17 expenditure type, it's just a box that was created for  
18 return, which is the \$5 he returned to me after the  
19 purchase.

20 Q. Okay. So that is showing what?

21 A. It's typically completed in red. And the reason it's  
22 just a copy of it is that it shows that he brought back \$5  
23 and we document the \$5 was returned.

24 Q. Okay.

25 MS. LESKANIC: At this time I would offer State's

1 Exhibit 9 for admission.

2 MR. BRANNON: Without objection, Your Honor.

3 THE COURT: It's admitted.

4 (Whereupon, State's Exhibit No. 9 was entered into  
5 the record as evidence)

6 BY MS. LESKANIC:

7 Q. Were you able to watch the video, State's Exhibit 1 in  
8 this case?

9 A. I was.

10 Q. All right. And did you recognize the individual in the  
11 driver's seat of that truck?

12 A. I did.

13 Q. And who was that individual?

14 A. Jeff Cole.

15 Q. Do you see him in the courtroom today?

16 A. Yes, ma'am.

17 Q. An could you please identify him for the court?

18 A. Yes, ma'am, he's sitting to the right of Mr. Brannon  
19 with the yellow shirt.

20 Q. That's all I have. If you would please answer any  
21 questions for Mr. Brannon.

22 THE COURT: Hold on. Before we do that I have got  
23 something I need to address. Let me ask the jury to please  
24 go to your jury room. Don't discuss the case yet. I'll  
25 bring you back shortly.

1 (The following takes place outside the presence of  
2 the jury panel)

3 THE COURT: You can step down from the stand.  
4 We are going to take ten minutes.

5 MR. BRANNON: Thank you, Your Honor.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: All right, bring the jury in, please.

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

11 THE COURT: All right, the jury is present.

12 Mr. Brannon?

13 MR. BRANNON: May it please the court?

14 CROSS EXAMINATION BY MR. BRANNON:

15 Q. Sergeant, how are you doing today?

16 A. All right, sir.

17 Q. Good.

18 MR. BRANNON: Approach the witness, Your Honor?

19 THE COURT: You may.

20 BY MR. BRANNON:

21 Q. I'm showing you what I marked as Defense 1. That's  
22 that contract or questionnaire that you went over with Mr.  
23 Elliott, right?

24 A. Yes, sir.

25 Q. Okay. Can you turn to that page where the reason that

1 he's working?

2 A. Yes, sir.

3 Q. And it says "money" right?

4 A. That's correct.

5 Q. Who wrote that in?

6 A. Lieutenant Painter.

7 Q. Okay. Now, do you have any rules or -- I mean, are  
8 there a list of words that you can use to write in there?

9 A. There is.

10 Q. There is?

11 A. Yes.

12 Q. Okay. Well, does that list of words include "I want to  
13 clean up the drug problem in Cherokee County?"

14 A. No, sir, it does not.

15 Q. So you can only write "money" or "charges"? That's all  
16 you can put in there?

17 A. That's typically all we write on these.

18 Q. Okay. I understand that's typically all you write, but  
19 I'm asking you are you limited as to what you can put in  
20 there?

21 A. Not limited, no, sir.

22 Q. Okay. So you could have written in there what he said  
23 was "I want to clean up the drug problem in Cherokee  
24 County," right?

25 A. We could have.

1 Q. You could have, but you chose not to, right?

2 A. Because that's not the way we fill out the paper.

3 Q. And you did, in fact, pay him \$60 for his work,  
4 correct?

5 A. We did, yes.

6 Q. Okay. All right.

7 Now, what has been marked as State's Exhibit 8, this is  
8 the \$20 expense report, right?

9 A. Yes, sir, it is.

10 Q. Okay. Now, why did you fill that out after the alleged  
11 buy instead of before the alleged buy?

12 A. We would have filled it out before the alleged buy.

13 Q. I thought you would have, and I thought that's what you  
14 testified to, but my recollection is that he told you he was  
15 going to buy from Luke. He was going to buy from Luke.

16 And, in fact, when he walked up to my client in the truck he  
17 first said "Luke. Where is Luke? Is Luke in the house?"

18 A. That's correct.

19 Q. But before, before, I mean, you are still at the police  
20 department or the sheriff's department and you are allegedly  
21 filling out a piece of paper and you write my client's name?

22 A. Yes. I can explain why.

23 Q. Well, but isn't it true that he was going to buy from  
24 Luke?

25 A. That's true. We thought he would be able to purchase

1 from Luke, that's correct.

2 Q. Thank you.

3 A. Would you like for me to explain?

4 Q. No, you have answered my question.

5 A. All right.

6 Q. Okay. Now, I understand that there are reasons why you  
7 would not want to videotape a snitch's face or any  
8 identifying marks or tattoos or scars. I understand that,  
9 but you have testified, and as has Mr. Elliott, that you  
10 searched him, correct?

11 A. That's correct.

12 Q. Okay. Well, what did you find?

13 A. I don't recall. I mean, nothing illegal, or we would  
14 have been --

15 Q. I understand that, but did you find a driver's license?

16 A. I can't recall.

17 Q. Well, but you have written everything else down. Why  
18 don't I know what he had when you searched him?

19 A. We don't typically write down what they had in their  
20 possession.

21 Q. Okay. Well, then tell me whatever -- I mean, then  
22 would you agree with me that he probably had something, you  
23 just didn't write it down?

24 A. He may not have had anything.

25 Q. Okay.

1 A. But if he did have something, we would -- if he had a  
2 wallet with an ID, we would not have wrote it down.

3 Q. Well, where would you have kept that while he was going  
4 with you to create crime? Where would you have kept that?

5 A. Their property stays on a center table in our narcotics  
6 office.

7 Q. Okay. But I don't have any list of that, right?

8 A. You don't.

9 Q. Okay. And you didn't -- is it -- is it possible to  
10 videotape the search of an informant without showing  
11 identifying marks or that person's face?

12 A. I don't believe so, no, sir.

13 Q. Well, now, your snitch videotaped --

14 A. Yes, sir.

15 Q. Let me rephrase. Your confidential informant made a  
16 video and didn't show his face, didn't show his body, didn't  
17 show anything except his left hand, and you are telling me  
18 that a law enforcement officer for nearly ten years can't  
19 make a video and not show his face?

20 A. We could not show his face, but I don't know about  
21 identifying marks. He has two tattoos on his arms that  
22 identify him.

23 Q. All right. Could you see those tattoos in the video  
24 that he made?

25 A. I don't believe, no, sir.

1 Q. All right. So you could make a video without showing  
2 tattoos, right?

3 A. Not get a full search like we do, no, sir.

4 Q. Okay. All right.

5 You have -- through the questions of the State, both of  
6 you and of Mr. Elliott, you have made it well known that you  
7 documented the \$20 bill that you gave to Mr. Elliott?

8 A. Yes, sir.

9 Q. My understanding is that you made a copy of it?

10 A. Yes, sir.

11 Q. Okay. You know what discovery is, right?

12 A. I do.

13 Q. Okay. Well, here is the discovery that I was provided.

14 A. That's correct.

15 Q. What is discovery?

16 A. All the evidence.

17 Q. It's the evidence.

18 Okay. I don't have a copy of a \$20 bill nowhere.

19 A. Yes, sir.

20 Q. Guess what else I don't have?

21 A. I'm not sure.

22 Q. A copy of a \$5 bill or five one dollar bills.

23 A. Yes, sir.

24 Q. But you testified you made a copy of the 20 and you  
25 made a copy of whatever else --

1 A. No, sir, I testified I made a copy of the \$20 bill.

2 Q. Okay. Okay. Well, where is that copy?

3 A. Destroyed.

4 Q. Why would you do that?

5 A. We -- we make the copies at the time. We had a --  
6 previously before that we sent an undercover operative out  
7 where the defendant jerked off the camera that they were  
8 wearing that day. We were able to --

9 MR. BRANNON: Object, Your Honor. This is not  
10 responsive to my question. I asked him why he destroyed a  
11 copy. I don't need him to go into another case.

12 THE COURT: Well, if that's the reason he's doing  
13 something in the future, then that's the reason. That's  
14 what you asked him.

15 MR. BRANNON: All right.

16 BY MR. BRANNON:

17 Q. But you are testifying about another case unrelated to  
18 this one at this point?

19 A. I'm explaining why the \$20 bill was destroyed.

20 Q. But nobody ripped the camera off or anything in this  
21 case, is that correct?

22 A. No, sir, but I'm explaining why I destroyed it.

23 Q. I just wanted to --

24 A. Why we made a copy.

25 Q. Go ahead.

1 A. We -- we had an undercover operative that had a camera  
2 on that a defendant jerked off. We were able to detain that  
3 defendant. It was brought to us through discussion that it  
4 would help us if that happened again if we made a copy of  
5 the money they were using. That way when we approached them  
6 and we had them, they would have the money that we had  
7 provided.

8 On that date, during that time, I would have made  
9 copies of the money that they would go out to make the  
10 purchase. Once everything was fine, their camera didn't get  
11 jerked off of them, there is no reason for us to need to  
12 approach the defendant to see if that money was in there  
13 possession, that copy was put in the shredder and destroyed.

14 Q. Well -- so, in other words, you make a copy of it in  
15 case something goes wrong?

16 A. At the time we did, yes, sir.

17 Q. Okay. Well, you have seen the video in this case,  
18 right?

19 A. Yes, sir.

20 Q. Did you ever see the \$20 bill come out of that man's  
21 hands?

22 A. I saw it in his hand handed it to this man. I did not  
23 see it leave his hands.

24 Q. You never saw it leave his hands, right?

25 A. No, sir, that's correct.

1 Q. You have seen the video. Did you ever see my client  
2 hand him anything?

3 A. Not hand him anything, no, sir.

4 Q. Okay. But you destroyed the \$20 bill?

5 A. Yes, sir.

6 Q. Excuse me, the copy of the \$20 bill?

7 A. Yes, sir.

8 Q. You know how you could have proved that that man gave  
9 my client a \$20 bill?

10 A. (No response).

11 Q. Is if you had searched my client and found a \$20 bill,  
12 right?

13 A. I don't arrest them the day after the day of the  
14 transaction.

15 Q. Okay. But you just testified you never saw him hand my  
16 client a \$20 bill and you never saw my client hand him  
17 anything, right?

18 A. I didn't see it, no, sir.

19 Q. Okay. Cool.

20 All right. I'm going to show you what's -- it's a  
21 still shot from the video. It's marked as State's Exhibit  
22 4.

23 A. Yes, sir.

24 Q. Do you see that?

25 A. I do.

1 Q. Okay. I'm going to show you another photo that is of  
2 the same still shot enlarged. First, I just want you to  
3 look at it and tell me if you believe that they are the same  
4 photo.

5 A. I do believe they are the same photo.

6 Q. Okay. Now, can you look -- do you see the face of the  
7 person in the middle?

8 A. Yes, sir, with the ball cap on.

9 Q. The ball cap on.

10 Do you see a mustache under the nose?

11 A. I don't see a mustache.

12 Q. Okay. But do you see the nose?

13 A. I see a nose.

14 Q. The two eyes?

15 A. Yes.

16 Q. Ball cap.

17 A. That's correct.

18 Q. Okay. So do you believe that this is simply an  
19 enlargement of this photo?

20 A. I do.

21 Q. Okay.

22 MR. BRANNON: I would move to admit this photo,  
23 Your Honor.

24 THE COURT: Let them see it.

25 MR. BRANNON: I have shown it to her.

1 THE COURT: Okay.

2 MS. LESKANIC: I don't have any objection.

3 THE COURT: It's admitted.

4 (Whereupon, Photograph marked and entered into  
5 evidence as Defendant's Exhibit No. 3)

6 BY MR. BRANNON:

7 Q. Now, you said that after you search someone that you  
8 never let them out of your sight, right? You don't let them  
9 go to the bathroom? You don't let them do anything?

10 A. Not before we leave for the operation. That was my  
11 testimony.

12 Q. Okay. All right.

13 But in this case you drove him to the back of the  
14 church or Hamricks, right, and then he walked from there for  
15 what was three or four minutes, or however long it was in  
16 the video?

17 A. Right.

18 Q. You couldn't see him the entire time, could you?

19 A. I could not.

20 Q. Okay. And, in fact, you couldn't see him when he was  
21 there, could you?

22 A. I do not.

23 Q. And you couldn't see him as he walked back either,  
24 right?

25 A. The majority of the way, no, sir.

1 Q. Okay. All right.

2 Now, I want to go back to this discovery that I was  
3 provided. Do you remember completing an incident report?

4 A. I do.

5 Q. Is this it?

6 A. That's it.

7 Q. Okay. About halfway down, five lines down, you see  
8 where it starts "Cherokee County Sheriff's Office and  
9 equipped with an audio video camera and given instructions  
10 on what to do?" Do you see that?

11 A. I do, yes, sir.

12 Q. "Lieutenant Painter and myself dropped the undercover  
13 operative off near the listed incident location. He/She  
14 walked to the incident location. The recording from the  
15 camera device is included in the case file and shows the  
16 undercover operative exchange the money that was provided to  
17 him or her with Jeff Cole for three pills marked block." Do  
18 you see that?

19 A. It do.

20 Q. It doesn't show that, though, does it?

21 A. It shows what I -- it shows the money being handed from  
22 the informant towards Jeff Cole.

23 Q. Now -- well, wait a minute. "Camera included in the  
24 case file shows the undercover operative exchange the  
25 money." Is there any exchange?

1 A. It appears that there was one.

2 Q. On the video?

3 A. Yes, sir.

4 Q. Okay. Cool. All right.

5 Show me in here where you say anything about the  
6 undercover operative returned to you \$5.

7 A. It's not mentioned in that. It's noted on the  
8 receipts.

9 Q. Right, but it's not in your report, right?

10 A. Yes, sir, it's not.

11 Q. Okay. All right.

12 Now, you gave him \$20. Did you limit how much of that  
13 20 he could spend?

14 A. No, sir.

15 Q. He could have spent it all, right?

16 A. He could have.

17 Q. Okay. Did you tell him not to spend it all?

18 A. I did not.

19 Q. But then you didn't write down that he didn't spend it  
20 all in your incident report, right?

21 A. It's documented on the receipts.

22 Q. Okay. But not in your incident report?

23 A. That's correct.

24 Q. And then, again, can you show me any of those receipts  
25 in the discovery that was provided to me by the State?

1 A. I believe they are in evidence, but, no, I don't know  
2 if it's in the discovery or not. I would have to look at  
3 it.

4 Q. Okay.

5 MS. LESKANIC: Your Honor, may we approach?

6 THE COURT: Yes, ma'am.

7 (Whereupon, the lawyers approached the bench for  
8 an off-the-record discussion)

9 BY MR. BRANNON:

10 Q. All right. Was this the first time that you personally  
11 ever worked with this CI?

12 A. Yes, sir.

13 Q. Okay. Then can -- why are you the lead officer in this  
14 case? Why didn't -- why didn't Painter take this lead role?

15 A. Typically there is a lot of paperwork that goes into  
16 one undercover operative person and what we typically do is  
17 is if Lieutenant Painter controlled the first buy, I would  
18 control the second buy. If Sergeant Federico would have  
19 been there, he would have controlled the third one. It's  
20 simply to make it easier for us to follow up on all the  
21 paperwork that day.

22 Q. Okay. All right.

23 And where did you go pick my -- where did you go pick  
24 the CI up at?

25 A. Somewhere near his house. I'm not sure exactly where

1 at.

2 Q. Was it at his house or near his house?

3 A. Near his house, I believe.

4 Q. Near his house. Okay. All right.

5 Is it against the law to purchase prescription drugs  
6 off the street or that you don't have a prescription for?

7 A. Yes.

8 Q. Okay. Is it illegal to possess prescription drugs that  
9 you don't have a prescription for?

10 A. Yes.

11 Q. Is it illegal to possess prescription drugs, even if  
12 you have a prescription for them, when they are not in their  
13 prescription bottle?

14 A. That's correct.

15 Q. Okay. When did Mr. Elliott tell you that he was  
16 mentally disabled?

17 A. Yesterday.

18 Q. So you didn't --

19 A. He didn't tell me. I heard him admit it in court.

20 Q. He didn't tell you before he signed up to be a snitch?

21 A. He wasn't asked.

22 MS. LESKANIC: Objection, Your Honor. I think we  
23 have addressed this.

24 THE COURT: Sustained.

25 MS. LESKNANIC: Thank you.

1 BY MR. BRANNON:

2 Q. I think I'm good. Thank you.

3 A. Yes, sir.

4 MS. LESKANIC: If it please the court?

5 REDIRECT EXAMINATION BY MS. LESKANIC:

6 Q. Sergeant Gardner, is it your responsibility to provide  
7 discovery to the defense attorney or is that my  
8 responsibility?

9 A. It's your responsibility.

10 Q. And do you know what was or was not turned over to Mr.  
11 Brannon?

12 A. No, ma'am.

13 Q. Okay. Let's start and show you State's Exhibit 8. I  
14 want you to look at it first and then I'm going to put it up  
15 on the screen.

16 Do you recognize that?

17 A. Yes, ma'am.

18 Q. All right. I'm showing you State's Exhibit 8 -- could  
19 you step down for just a moment?

20 (Witness off the witness stand).

21 BY MS. LESKANIC:

22 Q. This is the exhibit that Mr. Brannon asked you about  
23 and wanted to know about the case name, I believe. There  
24 was a question about when the voucher was filled out and I  
25 wanted to give you an opportunity to explain how this form

1 works, and how it worked specifically in this case.

2 A. Yes, ma'am. When we hand an undercover operative the  
3 money we would put an X in the evidence purchase. We would  
4 fill out the 20 and no, just like you would a check. Put  
5 the amount here. And we write why we give them that money.  
6 They would sign for it, fingerprint. Myself and Lieutenant  
7 Painter who are present signed and put a date.

8 This here, we can't fill it out yet. And the reason  
9 being is if even if we had plans to meet a certain  
10 individual, when we go to meet with them they may send one  
11 of their so-called runners or one of their buddies to bring  
12 us the dope. They may tell us they are going to be at [REDACTED]  
13 River Drive and they may end up -- the location may be 2400  
14 block of Cherokee Avenue.

15 We don't know the case number yet because obviously we  
16 don't have an incident yet. You know, a lot of times we are  
17 not able to purchase. You know, for whatever reason they  
18 may not want to sell it to us. So all of this is filled out  
19 once we know those -- you know, it's often that even though  
20 we plan to buy from a certain individual, someone else is  
21 the one who actually makes the transaction.

22 Q. Okay. So here the voucher amount is filled out prior  
23 to the purchase showing that you had given him the money?

24 A. Yes, ma'am, because a lot of those details are not  
25 known at the time that we fill it out.

1 Q. Thank you.

2 (Witness back on the witness stand).

3 BY MS. LESKANIC:

4 Q. Now, during the search of Mr. Elliott after, you don't  
5 have a list of property that he had on his person, is that  
6 correct?

7 A. That's correct, we don't.

8 Q. Does any of that property, whatever he may have had,  
9 does that stay on him when he leaves the sheriff's  
10 department to go and attempt to make a purchase?

11 A. If he is driving we will -- you know, we will leave the  
12 driver's license in his possession, but in this incident he  
13 wasn't, so everything is left. There is a center table in  
14 our office. It's left there, or sometimes the undercover  
15 operative will want to leave it on the desk the controlling  
16 agent has, but on that date it was left in the middle of the  
17 office.

18 Q. So did he have anything of his personal property in his  
19 possession when he got out of the vehicle at Eastside  
20 Baptist Church and was walking towards River Drive?

21 A. I don't recall him having anything on -- since I have  
22 met and discussed with him, he doesn't have a cell phone  
23 currently. I don't know if he even had one then, but I  
24 don't recall him having any property, but if he did, it  
25 would have been left at the office.

1 Q. Okay. Now, Mr. Brannon was asking you about  
2 videotaping the search, specifically how, Mr. Elliott, the  
3 informant, could make a video of the defendant without  
4 capturing himself, but if you are doing a video of Mr.  
5 Elliott, wouldn't you have to capture Mr. Elliott on that?

6 A. Or something identifiable. I mean, I could leave his  
7 face out of it, but there may be a tattoo on -- he may be  
8 wearing a shirt that day that -- you know, that the  
9 defendant could remember who was wearing that shirt,  
10 something identifiable to identify the informant we were  
11 using.

12 Q. But there would be two separate purposes for that  
13 video? One would be not to capture Mr. Elliott, and the  
14 other would be specifically designed to capture Mr. Elliott,  
15 so they are not the same thing, is that correct?

16 A. That's correct.

17 Q. The \$20 bill -- I think this has already been covered,  
18 but Mr. Cole was not arrested on November 26th, is that  
19 correct?

20 A. That's correct, he was not.

21 Q. Do you know how much later until he was part of the  
22 roundup or sweep when he was arrested?

23 A. I'm sorry, I don't know how much longer. I know it  
24 wasn't anytime in the near time. It was later on.

25 Q. Did you sign a warrant in this case?

1 A. I did.

2 Q. Okay. And if you looked at that warrant, would it have  
3 the date that he was arrested on this charge?

4 A. Yes, ma'am. We typically sign or obtain the warrants  
5 the night before we do the operation, so it may be --

6 Q. But would it have a service date --

7 A. Oh, yes, ma'am, it would. Yes, ma'am, it would. It  
8 would have a service date. I apologize.

9 Q. I'm going to show you now what's marked just for --  
10 State's Exhibit 10.

11 MR. BRANNON: I have no objection to that document  
12 being marked as a Court's Exhibit, Your Honor.

13 MS. LESKANIC: I'm not going to offer the document  
14 into evidence. I just want to be able to show what he's  
15 looking at to read the date of arrest, Your Honor. That's  
16 all I'm trying --

17 THE COURT: Mark it for identification, but not  
18 for admission.

19 MR. BRANNON: Thank you, Your Honor.

20 MS. LESKANIC: State's Exhibit 10 for  
21 identification only.

22 (Arrest Warrant marked as State's Exhibit No. 10  
23 for identification)

24 BY MS. LESKANIC:

25 Q. I'm showing you State's Exhibit 10. Do you recognize

1 that?

2 A. Yes, ma'am.

3 Q. And what is that?

4 A. It's a warrant.

5 Q. It's a warrant for who?

6 A. Jeffery William Cole.

7 Q. Is it related to this incident that we are here about  
8 today?

9 A. Yes, ma'am.

10 Q. And does it state the date that he was arrested?

11 A. Yes, ma'am.

12 Q. And what is that date?

13 A. December 30th of 2014.

14 Q. Thank you.

15 MS. LESKANIC: That's all I have.

16 MR. BRANNON: One real quick question.

17 RE-CROSS EXAMINATION BY MR. BRANNON:

18 Q. You said that you couldn't fill out the top part of  
19 this State's No. 8. You knew where you were going, right?

20 A. Yes, sir, but it oftentimes changes. If they tell us  
21 to go to a certain -- he may have met someone there who said  
22 walk across the street.

23 Q. Okay. So your testimony is you didn't fill any of this  
24 out, but you knew where you were going, right?

25 A. We had an idea, that's correct.

1 Q. Thank you.

2 MR. BRANNON: Nothing further.

3 THE COURT: You may step down.

4 MS. LESKANIC: The State calls Billy Anthony.

5 INVESTIGATOR BILLY ANTHONY, having been first duly  
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. LESKANIC:

8 Q. Would you please state your name for the ladies and  
9 gentlemen of the jury?

10 A. Billy Anthony.

11 Q. And where are you employed?

12 A. The Cherokee County Sheriff's Office.

13 Q. And how long have you been employed there?

14 A. I have been employed there sixteen years.

15 Q. And what is your current title and position at the  
16 sheriff's department?

17 A. I'm a crime scene investigator and evidence custodian.

18 Q. And as the evidence custodian that's relevant in this  
19 case, what are your duties?

20 A. We log in all the evidence that's submitted by officers  
21 that come from different divisions. It may come from the  
22 road patrol officers, drug evidence that's submitted by the  
23 Special Investigative Division, evidence from burglaries, or  
24 any other type crimes that may come from any division in the  
25 sheriff's office.

1 Q. Did you receive evidence in this case?

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

3 Q. I'm going to show you State's Exhibit 2. Would you  
4 take a look at that and tell me if that's the evidence that  
5 you received in this case?

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

7 Q. And when did you first come into possession of that?

8 A. I'm going to refer to the chain.

9 Q. What are you looking at right now? Tell the jury what  
10 you are looking at.

11 A. Evidence chain of custody.

12 When the officers, whether it be a road patrol officer,  
13 Special Investigative Division officer, when they submit any  
14 evidence, they must fill a chain of evidence out to show the  
15 date and time that they took it and anybody that the  
16 evidence had went to.

17 Q. Okay.

18 A. On this copy it's his copy. It doesn't have when I  
19 received it.

20 Q. Okay.

21 (Chain of Custody Form marked as State's Exhibit  
22 No. 11 for identification)

23 BY MS. LESKANIC:

24 Q. I'm going to show you State's Exhibit 11 marked for  
25 identification. Is that what you were looking at for the

1 chain of custody?

2 A. Yes, ma'am.

3 Q. Okay. And based on that can you testify as to when you  
4 received it and from who?

5 A. Yes, ma'am.

6 On December the 3rd, 2014, I took this particular BEST  
7 kit out of the evidence drop box.

8 The evidence drop box we have, it's a metal slot that's  
9 in the sheriff's office that officers can drop evidence.  
10 They can drop anything in, small items, but it cannot be  
11 retrieved out of it until the evidence custodian goes  
12 inside. There is a box in there that all evidence falls  
13 into and we will retrieve it out. If it's over a weekend  
14 that we are not there, it will be the following Monday.  
15 Sometimes, depending on holidays and different cases, it may  
16 be there a week, two weeks before we can actually log it in  
17 our computer system, but the only people that has access to  
18 it is myself, another evidence custodian Jimmy Henson and  
19 the sheriff.

20 Q. Okay. Does the documentation show what date it was put  
21 into the drop box by Sergeant Gardner?

22 A. Yes, ma'am.

23 Q. When was that?

24 A. It was dropped in the drop box November the 26th, 2014,  
25 at two p.m..

1 Q. All right. And then when did you take it out of that  
2 box that the evidence falls into to log it into the  
3 sheriff's department?

4 A. December the 3rd, 2014, at 6:51 p.m..

5 Q. Okay. Now, do you do drug testing at the sheriff's  
6 department, or are the drugs taken somewhere else?

7 A. They are taken to the South Carolina Law Enforcement  
8 Division.

9 Q. All right. Now, when you received the package in the  
10 drop box, was it in a tamper-evident package?

11 A. Yes, ma'am, it was.

12 Q. All right. And did you open that or do anything with  
13 that package, or what do you do when you receive it in the  
14 drop box?

15 A. When we receive it in the drop box, it is actually  
16 inside of another envelope. When I pull it out it has the  
17 chain of custody information, all the paperwork with it. I  
18 pull it out and inspect it. If the evidence is in the same  
19 condition as the officers have listed it as being dropped, I  
20 then log it into a computer system and would place our bar  
21 code on it for our tracking purposes. Then after it's  
22 entered in, I transport it to the South Carolina Law  
23 Enforcement Division for testing.

24 Q. All right. And is that what you did in this case? You  
25 took that package to SLED?

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

2 Q. Okay. And then did you also, after the testing at SLED  
3 Ms. McCormack testified to yesterday, did you then retrieve  
4 it back from SLED when the test was complete and return it  
5 to the sheriff's department?

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

7 MS. LESKANIC: Your Honor, at this time we would  
8 offer State's Exhibit 2 for admission.

9 MR. BRANNON: No objection.

10 THE COURT: It's admitted.

11 (Whereupon, State's Exhibit No. 2 was entered into  
12 the record as evidence)

13 MS. LESKANIC: And that's all the questions I  
14 have. Please answer any questions Mr. Brannon has.

15 CROSS EXAMINATION BY MR. BRANNON:

16 Q. Mr. Anthony, tell me the time again that it was dropped  
17 in the evidence mail slot.

18 A. It says 14:00, which is two p.m..

19 Q. Two p.m.?

20 A. Yes.

21 Q. Now, the first time that you ever saw that evidence, it  
22 was in a BEST bag and it was in the mail evidence slot,  
23 right?

24 A. Yes, sir, it was.

25 Q. And then the next time you would have seen it was when

1 you were taking it to Columbia, correct?

2 A. It was --

3 Q. After you logged in it, then --

4 A. I log it in and we have a separate fenced-in area that  
5 all drugs are housed in. Only myself and the sheriff has an  
6 access to it. We store it in there until I transport it to  
7 SLED when we transport multiple cases at one time.

8 Q. All right. But your knowledge and -- the extent of  
9 your knowledge concerning this evidence is from the day that  
10 you found it in that box in the door until you brought it  
11 here for this trial, right?

12 A. That's correct.

13 Q. You didn't see where it came from?

14 A. No, sir.

15 Q. Thanks.

16 MR. BRANNON: I don't have anything further.

17 THE COURT: Step down.

18 MS. LESKANIC: The State rests, Your Honor.

19 THE COURT: All right. That's all the testimony  
20 and evidence to be offered by the State. Before we go  
21 further I have got a couple of matters I will need to  
22 address. It shouldn't take only a few minutes. I'll bring  
23 you back and continue.

24 Please go to your jury room. Don't discuss the  
25 case.

1 (The following takes place outside the presence of  
2 the jury panel)

3 THE COURT: Mr. Brannon?

4 MR. BRANNON: Your Honor, at this point I move for  
5 a directed verdict. The State has alleged that my client  
6 sold drugs to an undercover informant. The court has seen  
7 the video. There is no such transaction that takes place on  
8 the videotape. And based on that, Your Honor, I would move  
9 for a directed verdict.

10 THE COURT: Ms. Leskanic?

11 MS. LESKANIC: May it please the court, Your  
12 Honor, in the light most favorable to the State there was an  
13 eyewitness who conducted the transaction that testified that  
14 the transaction took place and there is sufficient evidence  
15 I believe on the video to the jury to infer that that  
16 transaction did occur.

17 THE COURT: The motion is denied.

18 MR. BRANNON: Thank you.

19 Your Honor, I would renew my objections in this  
20 matter, most particularly the motion to suppress or dismiss  
21 based on the lack of evidence contained in the videotape.

22 And, Your Honor, I would ask for a few minutes to  
23 talk with my client about the potential for his testimony.

24 THE COURT: All right. We will take five minutes.

25 MR. BRANNON: Thank you, Your Honor.

1 additional evidence?

2 MR. BRANNON: Your Honor, the defense rests.

3 THE COURT: All right. That's all the evidence  
4 that's going to be presented. What remains to be done are  
5 the lawyers final summations, after which I'll instruct you  
6 on the law, and then you can begin with your deliberations  
7 in the case. So please give the lawyers your attention now  
8 as they give you their final summations.

9 Mr. Brannon?

10 MR. BRANNON: May it please the court, ladies and  
11 gentlemen, I thank you for your patience and attention in  
12 this matter.

13 I submit to you that it's got to be more. It's  
14 got to be better.

15 On November the 26th, 2014, law enforcement set  
16 out to create crime.

17 You saw a video. It was a total of about eight  
18 minutes, a little bit less than eight minutes, and that  
19 camera went off. And when I say off, I meant when the  
20 picture ended there was a dollar bill, like a paper bill, in  
21 that man's hand and no transaction had taken place.

22 It has to be more. The State of South Carolina  
23 has to do better to get the twelve of you to convict my  
24 client and to get that man and to put him in jail. It has  
25 to do better than that. If you are going to create the

1 crime, then you better have everything that you say that you  
2 created where you could put it on paper, on video, or in  
3 your hands. They didn't do it.

4 You are going to have all kinds of stuff back  
5 there for your review.

6 State's 8, this is the one where they say they  
7 gave Mr. Elliott a \$20 bill. And Sergeant Gardner says "we  
8 don't fill out the top part." Well, I'm sorry, he told you  
9 that he went to see Luke. They knew they were going to  
10 River Road because they were going to my client's scrap  
11 yard. They knew all of that. Ladies and gentlemen, I  
12 submit to you that each and every line of this was filled  
13 out after whatever happened happened.

14 Here is a still shot photo from that video. The  
15 snitch said there were three people in the truck and the one  
16 in the middle was a female. Ladies and gentlemen, I blew  
17 the picture up. You will have this back there with you too.  
18 You can see the man's baseball cap. You can see the man's  
19 nose.

20 MS. LESKANIC: Objection. There is no evidence to  
21 that that he is arguing.

22 THE COURT: He's showing them a picture and  
23 telling them what's in it. I understand it.

24 MS. LESKANIC: But he's telling them what's in it  
25 and there is no testimony to support what he's saying is in

1 it.

2 THE COURT: Well, you are going to get to respond  
3 to it, but that's his interpretation of what's in that  
4 photograph, I guess. I mean, the photograph is in evidence.

5 Go ahead.

6 MR. BRANNON: You are going to have both of these  
7 back there. You have to believe -- to convict my client,  
8 you have to believe every word that that man says. He tells  
9 you that the person in the middle of the vehicle was a  
10 woman. The picture is right there. Look at it. I won't  
11 tell you it's a man. I won't tell you it's a woman. Look  
12 at the picture. He can't even tell you who is two feet or  
13 two inches from my client.

14 You are going to have this contract back there.  
15 You heard Mr. Elliott's testimony, "I want to clean up the  
16 drug problem in Cherokee County." No, he did it for money.  
17 He did it for \$60.

18 Ladies and gentlemen, something that everybody,  
19 except for Mr. Elliott, learned yesterday is that Mr.  
20 Elliott is mentally disabled.

21 MS. LESKANIC: Objection, Your Honor.

22 THE COURT: Sustained.

23 MR. BRANNON: May we approach?

24 THE COURT: Yes.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion).

2 MR. BRANNON: Thank you, Your Honor.

3 MS. LESKANIC: Thank you.

4 MR. BRANNON: Ladies and gentlemen, you heard his  
5 testimony yesterday and I submit to you that was the first  
6 time I ever heard anything about that and I believe it's  
7 also the same time that Ms. Leskanic --

8 MS. LESKANIC: Objection, Your Honor.

9 THE COURT: Sustained. I just sustained the  
10 objection.

11 MR. BRANNON: Thank you, Your Honor. Forgive me.  
12 You heard the testimony.

13 You will have these documents back there. You  
14 will have -- you heard the testimony.

15 It has to be more. It has to be better. They  
16 want you to convict in a situation where they created the  
17 crime. They created the incident, but they didn't show it  
18 to you.

19 Ladies and gentlemen, I submit to you that the  
20 State has failed to prove beyond a reasonable doubt that any  
21 crime was ever committed.

22 They tell you -- they make this big deal out of  
23 making a copy of a \$20 bill. If they want to prove to you  
24 beyond a reasonable doubt that there was a transaction, then  
25 go and arrest the guy that you think that made the

1 transaction, get the \$20 bill and compare it to the copy,  
2 but they don't do that, and then they destroyed the copy, so  
3 there is no way to ever tie the money with the copy of the  
4 bill.

5 I submit to you that they have failed to prove  
6 beyond a reasonable doubt not only that my client is guilty  
7 of a crime, but they failed to prove beyond a reasonable  
8 doubt that any crime was committed.

9 Ladies and gentlemen, after your deliberations I  
10 ask that you come back not guilty. Thank you.

11 THE COURT: Ms. Leskanic?

12 MS. LESKANIC: May it please the court?

13 They created the crime?

14 An undercover operative, who had not made a phone  
15 call, had agreed to meet somebody, just walked up to the  
16 defendant's scrap yard and the defendant had Oxycodone pills  
17 in cellophane packaging and had a price, \$5 per pill, and he  
18 sold them to the undercover operative. Pulled the pills out  
19 of his shirt pocket, gave him three in the cellophane, kept  
20 one, according to Mr. Elliott, and gave him \$5 back.

21 Law enforcement didn't create a crime. The crime  
22 was sitting there waiting for someone to come and buy and  
23 that's what happened. Law enforcement didn't do anything  
24 wrong in trying to catch someone selling drugs here in  
25 Cherokee County. That's what Sergeant Gardner is paid to

1 do. He works in narcotics. He's not on road patrol. He's  
2 not out to answer 911 calls. He's here to try to clean up  
3 the drug problem in Cherokee County. And one way to do  
4 that, one main way to do that is to try to find out who is  
5 selling the drugs in Cherokee County, and back in November  
6 of 2014, that defendant, Jeff Cole, was selling drugs in  
7 Cherokee County.

8 To find him guilty you have to be firmly convinced  
9 that he gave one pill -- there were three, that Oxycodone  
10 pill to Anthony Elliott.

11 We talked about the \$20 bill. He doesn't have to  
12 sell it. I believe the evidence shows that he did, because  
13 he set his price at \$5 per pill. Mr. Elliott had a \$20 bill  
14 in his hand and came back with \$5 and three pills, but we  
15 don't even have to prove that, that he sold it. It's  
16 delivering, giving the pill to someone without a  
17 prescription. A drug dealer. A drug dealer.

18 So you can talk about the \$20. You can talk about  
19 things that don't matter, but what we have to prove is did  
20 that defendant, Jeff Cole, hand over at least one Oxycodone  
21 pill to Anthony Elliott back in November of 2014. If you  
22 are firmly convinced that that happened, he's guilty.

23 How do we know that that happened? Number one,  
24 Mr. Elliott came in to testify. Mr. Brannon wants to say  
25 there is nothing on the video, there is no proof, but the

1 video isn't the only evidence. There is not even a  
2 statutory requirement that drug buys be videotaped. That's  
3 just another form of evidence that law enforcement tries to  
4 gather so that you can see what's going on, so we can see  
5 what's going on. But the only requirement is that there be  
6 evidence of it. Mr. Elliott provided that. He came in and  
7 he told you "I went to the sheriff's department. I wanted  
8 to work." He said "I got paid." Yes. He said he wanted to  
9 clean up Cherokee County, but he also told you he was paid.  
10 That's the way that they conduct these transactions. He  
11 didn't lie to you about anything. He said they searched  
12 him. He showed you on the map where they parked, where he  
13 walked and who he walked up to. And on the video you hear  
14 him say "what's up, Jeff?" He knew the defendant. He  
15 recognized him. And he told you he pulled the pills out of  
16 his shirt pocket. Mr. Cole, the defendant, pulled the pills  
17 out of his shirt pocket and then he was able to get a shot  
18 with the camera of the defendant's face. He put the camera  
19 up. He put his arm up on the side of the pickup truck and  
20 got a view with it down into the truck. You see the pills  
21 in his hand. They discussed "how many do you want?" He  
22 said -- Mr. Elliott said "four or five." And he said "well,  
23 how much," and he said "five." Mr. Cole said five. They  
24 are \$5 apiece. He said "I'll take three," which is \$15, and  
25 comes back with three pills and \$5.

1 State Exhibit 3, and you will have all of these  
2 back with you, ladies and gentlemen, but this shows the  
3 defendant's face. It shows Mr. Cole right here, and it  
4 shows the \$20 right there.

5 You will also have the video. You can watch the  
6 video.

7 There is a few pictures of Mr. Cole's face.

8 State's Exhibit 4 shows Mr. Cole again looking  
9 down. What is he looking down at?

10 State's Exhibit 5. He's looking down at the pills  
11 in his hand. He's got the cellophane package and he has the  
12 pills in there and they are discussing how much for the  
13 pills. He gave the cellophane package to Mr. Elliott and he  
14 kept one pill.

15 And there is another, State's Exhibit 6, which is  
16 just another still shot from the video showing the pills in  
17 his hand in the driver's seat.

18 Mr. Brannon said there has got to be more and it's  
19 got to be better. There is not much better than an  
20 eyewitness to a crime. Mr. Elliott saw what happened. He  
21 told you what happened and the video confirms what happened.  
22 When he walks away from the truck he says "I appreciate it,  
23 Jeff." Jeff Cole. "I appreciate it, Jeff."

24 There is no evidence other than what Mr. Elliott  
25 testified to. He walked to River Drive. He saw Jeff Cole.

1 "What's up, Jeff?" He asked for Luke, "was Luke around?"  
2 Luke wasn't around, so then they start talking about the  
3 pills. "How many do you want?"

4 "Four or five.

5 "How much?

6 "Five.

7 "I'll take three. I appreciate it, Jeff."

8 I don't know how it gets any better than that,  
9 ladies and gentlemen. He's on video doing a drug  
10 transaction. Maybe the entire transaction is not on there,  
11 but the CI has concern. He's got a key chain. You can't  
12 just can't hold it out there and say I'm going to videotape  
13 you while I do this, but we have the audio also. I would  
14 like to play the video for you again also.

15 I would say one thing. This case reminds me of  
16 there is a story I was told when I became a prosecutor and  
17 it's about a prosecutor standing in front of a puddle and  
18 there is a shiny quarter in the bottom of the puddle. And  
19 the defense attorney walks up and says what are you doing  
20 and the prosecutor says well, I see a shiny quarter in the  
21 bottom of the puddle. The defense attorney grabs a stick  
22 and walks over to the puddle and swirls it around and says I  
23 don't see anything, and that's all that this is. It's smoke  
24 and mirrors. He don't want you to see what's right in front  
25 of your face, what you heard on the video. Well, they

1 didn't do well enough because -- I don't know what else they  
2 want.

3 Are you firmly convinced that on this day Mr.  
4 Elliott bought pills or received pills from the defendant.  
5 If so, he's guilty. There is no other question that you  
6 will have to answer back in the jury room.

7 I would play State's Exhibit 1.

8 And you can hear other voices on this. I don't  
9 know what the relevance is who else was in the truck. Mr.  
10 Brannon put a photograph of that in, but you can hear other  
11 voices in the truck, but you hear who Mr. Elliott dealt  
12 with. He testified to you who he dealt with that day and  
13 the only person he dealt with, the only person he spoke to  
14 about the transaction is the defendant. There was nobody  
15 else there. He was back from walking to the car, from the  
16 car to the location, making the purchase and walking back  
17 was less than eight minutes.

18 Now, if you think that somehow on the way there he  
19 found three Oxycodone pills lying on the ground with a \$5  
20 bill and Mr. Cole happened to have the same thing in his car  
21 but didn't conduct the transaction, then I guess you can  
22 find him not guilty, but he didn't have anything on him when  
23 he left the sheriff's department. And the only way he came  
24 back to that vehicle less than eight minutes later is one of  
25 two things: That defendant sold him the pills that you see

1 in his hand and we hear them talking about a drug  
2 transaction; or, Mr. Elliott happened to find three of the  
3 exact same pills he had in his possession along with a \$5  
4 bill during that eight minute walk.

5 And luckily, you can't bring pen and paper in, but  
6 you get to bring in your common sense, and common sense says  
7 you only have one answer and that is what the testimony is,  
8 that Anthony Elliott bought Oxycodone from this defendant.

9 (Whereupon, the videotape was started)

10 MS. LESKANIC: And that's it. And you will have  
11 the video where you can watch it and listen to it as many  
12 times as you need to or want to. I think the video is very  
13 clear as to who he was talking to, what they were doing and  
14 what he was trying to get, and I respectfully request that  
15 you return a verdict of guilty. I believe the evidence  
16 shows beyond a reasonable doubt that this defendant was  
17 selling drugs here in Cherokee County in November of 2014.  
18 Thank you.

19 (Whereupon, at 11:50 a.m., the Court instructed  
20 the jury panel with the jury instructions)

21 THE COURT: Madam Forelady, ladies and gentlemen  
22 of the jury, you, of course, have heard and seen all the  
23 evidence in the case and now you have heard the final  
24 summations of the lawyers, so I'm now going to instruct you  
25 on the law that's applicable in the case and then you will

1 THE COURT: Okay. Yeah, that's fine.

2 I assume you are going to have Mr. Cole with you?

3 MR. BRANNON: I'm not going to have him with me,  
4 but I'm going to instruct him to stay close, and I have got  
5 his phone number right here.

6 THE COURT: So you know how to get him if I need  
7 you?

8 MR. BRANNON: Yes, sir.

9 THE COURT: All right.

10 (Whereupon, at 12:15 p.m. proceedings were  
11 recessed, pending the verdict of the jury)

12 (Whereupon, at 1:15 p.m., proceedings were  
13 reconvened)

14 THE COURT: We have been told the jury has reached  
15 a decision. Are we ready to receive it?

16 MS. LESKANIC: The State is ready, Your Honor.

17 MR. BRANNON: Defense is ready.

18 THE COURT: All right, bring them in.

19 (Whereupon, at 1:16 p.m., the jury panel returned  
20 to open court to render its verdict)

21 THE COURT: Madam Forelady, have you and your  
22 fellow jurors reached a unanimous decision?

23 JURY FORELADY: Yes, Your Honor.

24 THE COURT: Have you indicated that decision on  
25 the back of the indictment as requested?

1 JURY FORELADY: Yes.

2 THE COURT: Did you sign it and date it?

3 JURY FORELADY: Yes.

4 THE COURT: If you will please hand that form up  
5 by way of the bailiff.

6 You may publish the verdict.

7 THE CLERK: Indictment 2015-GS-11-44, the State  
8 versus Jeffery William Cole, indictment for distribution of  
9 Oxycodone, the jury responds guilty.

10 Signed by our Forelady Kimberly Propst.

11 Ladies and gentlemen of the jury, if this is the  
12 verdict of you all, please indicate by raising your right  
13 hand.

14 (Whereupon, all twelve jurors raised their right  
15 hand)

16 THE COURT: Thank you.

17 THE COURT: All of them responded in the  
18 affirmative.

19 Does the defendant wish to have the jury polled?

20 MR. BRANNON: No, Your Honor.

21 THE COURT: All right. Thank you, ladies and  
22 gentlemen, for your participation in the trial of this case.  
23 You are going to be excused for the balance of the  
24 afternoon. I'm told we have other nonjury matters, but we  
25 might have another case to select a jury on tomorrow, so

1 please call back to the number that you have after six  
2 o'clock this evening to receive that further reporting  
3 information.

4 Thank you again for your participation.

5 (Whereupon, at 1:18 p.m., the jury panel was  
6 discharged)

7 THE COURT: All right, Mr. Brannon, any other  
8 matters we need to address prior to the imposition of  
9 sentence?

10 MR. BRANNON: Your Honor, we would move for a  
11 verdict notwithstanding the judgment. Your Honor, I believe  
12 the verdict goes against the greater weight of the evidence.

13 THE COURT: That motion is denied.

14 MR. BRANNON: I move for a new trial, Your Honor.

15 THE COURT: That motion is denied also.

16 MR. BRANNON: Thank you, Your Honor.

17 THE COURT: Okay. Do you want to bring the  
18 defendant around for sentencing?

19 All right, Ms. Lesknic?

20 MS. LESKANIC: Your Honor, his prior history, in  
21 2001 he has a conviction for possession of a controlled  
22 substance, Schedule I through V.

23 It appears there is also a possession of marijuana  
24 conviction in 2004.

25 And there is a federal charge for possession with

1 intent to distribute cocaine guilty plea in 2008.

2 THE COURT: And that's the only prior conviction  
3 that can be used for enhancement?

4 MR. BRANNON: Yes, Your Honor.

5 MS. LESKANIC: Yes, Your Honor.

6 THE COURT: So it's a second offense under  
7 44-53-370, which carries not less than five, not more than  
8 thirty, or a fine of \$50,000, or both?

9 MS. LESKANIC: Yes, Your Honor.

10 THE COURT: Okay.

11 All right, Mr. Brannon.

12 MR. BRANNON: Your Honor, I'll be very short.

13 My client is 44 years of age. He has two  
14 children, both of whom are grown. He is self employed. He  
15 owns a scrap yard, as the court heard.

16 I would ask the court to consider that that  
17 statute does also say that that five years may be suspended.

18 Your Honor, he's been on an electronic monitor  
19 with home detention which was imposed by this court I  
20 believe in December.

21 Is that right, Kim?

22 MS. LESKANIC: I'm sorry, I --

23 THE COURT: Well, that's all right. I mean, that  
24 could be calculated if he's going to be credited. I don't  
25 know if it will or it will not.

1 MR. BRANNON: I'm asking for credit for that time,  
2 Your Honor, on the electronic monitoring.

3 THE COURT: Okay.

4 MR. BRANNON: Thank you.

5 THE COURT: All right, Mr. Cole, anything you want  
6 to add to what your lawyer has told me?

7 THE DEFENDANT: No.

8 MR. BRANNON: Your Honor, forgive me, it was  
9 December 11th, 2015, when that electronic monitor was  
10 ordered.

11 THE COURT: All right. On Indictment 2015-44,  
12 State versus Jeffery William Cole, wherein the jury has  
13 found you guilty of distribution of Oxycodone, it being a  
14 second offense under the statute, the sentence of the court  
15 is that you, Jeffery William Cole, be confined to the South  
16 Carolina Department of Corrections for a period of 15 years  
17 and pay a fine of \$15,000. However, that sentence shall be  
18 suspended upon the service of five years and the payment of  
19 \$5,000, plus the costs and assessments, placed on probation  
20 for five years.

21 MR. BRANNON: Credit for the time?

22 THE COURT: No, I'm not inclined to give that  
23 credit.

24 MR. BRANNON: Thank you, Your Honor.

25 MS. LESKANIC: Thank you, Your Honor.

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MR. BRANNON: I understand he will be taken into custody, but may I have just a brief word with him before he --

THE COURT: If they permit it.

MS. LESKANIC: Thank you, Your Honor.

(END OF REQUESTED TRANSCRIPT OF RECORD)

WITNESSES

Cherokee County Sheriff's Office

*[Signature]*

ARREST WARRANT NUMBER

2014A1110100876

ACTION OF GRAND JURY  
TRUE BILL

*[Signature]*  
Foreperson of Grand Jury  
Date: 1-21-15

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO  
**15-GS-11-00044**

The State of South Carolina

County of Cherokee

Barry Bannette, Solicitor

COURT OF GENERAL SESSIONS

JAN 29 2015

TERM

THE STATE

vs.

JEFFERY WILLIAM COLE

Indictment for

DISTRIBUTION OF OXYCODONE

SC Code: 44-53-375

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

2015 JAN 29 PM 12 11

BRANDY W. MCBEE

STATE OF SOUTH CAROLINA )  
COUNTY OF CHEROKEE )

INDICTMENT

At a Court of General Sessions, convened on JAN 29 2015, the  
Grand Jurors of Cherokee County present upon their oath:

**DISTRIBUTION OF OXYCODONE**

That Jeffery William Cole, did in Cherokee County on or about November  
26, 2014, manufacture, distribute, dispense, deliver, purchase, aid, abet,  
attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or  
possess with intent to manufacture, distribute, dispense, deliver, or purchase a  
quantity of Oxycodone, a schedule II controlled substance under provisions  
Code §44-53-375, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as  
amended, such distribution not having been authorized by law.

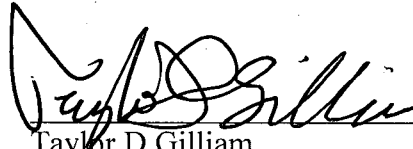
Against the peace and dignity of the State, and contrary to the statute in  
such case made and provided.

  
ASSISTANT SOLICITOR

## 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,



Taylor D Gilliam  
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 24<sup>th</sup> day of August, 2017.

**RECEIVED**

AUG 24 2017

SC Court of Appeals