

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 16 2017

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

S.C. SUPREME COURT

G. Thomas, Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2017-001350

Billy Joe Griggs #124983,..... Petitioner,

vs.

State of South Carolina,Respondent.

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF CHESTERFIELD) COURT
3)
4 STATE OF SOUTH CAROLINA,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 JOEY GRIGGS,) 2013-GS-13-00590
9 DEFENDANT.)

10

11

NOVEMBER 12, 2013

12

CHESTERFIELD, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15

HONORABLE CLIFTON NEWMAN, JUDGE;

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

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FOR THE PLAINTIFF:

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ADAM FOARD, ESQ.

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FOR THE DEFENDANT:

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JOYNER FRANKLIN, JR., ESQ.

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JURY QUALIFICATION:

PG.
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REPORTER CERTIFICATION:

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(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

1 (The following proceedings were held on
2 November 12, 2013.)

3 THE COURT: Ready to proceed on the first case.

4 MR. FOARD: Thank you, Your Honor. The State
5 calls the State v. Joey Griggs, docket number
6 2013-GS-13-0591.

7 THE COURT: All right. May I have the indictment?

8 Ladies and gentlemen, the State has called to
9 trial the case of the State v. Joey Griggs. Mr. Griggs has
10 been indicted by the Grand Jury of this county and charged
11 with the offense of possession with intent to distribute a
12 schedule one, two, three drug or a controlled substance
13 analogue. He's pled not guilty to the charge contained in
14 the indictment. He's presumed to be not guilty of the
15 charge and cannot be proven -- cannot be found guilty unless
16 the State presents evidence which convinces a jury of his
17 guilt beyond a reasonable doubt. Mr. Griggs is in court
18 with counsel.

19 Counsel, if you will stand, introduce yourself.

20 Mr. Griggs, you stand as well and face the jury
21 panel.

22 MR. JOYNER: My name is J.R. Joyner, I'm from
23 Patrick, South Carolina. This is my client Joey Griggs,
24 also, from Patrick, South Carolina.

25 THE COURT: All right. You may be seated.

1 And the State is represented through the Fourth
2 Circuit Solicitor's Office, who's the assistant deputy
3 solicitor.

4 If you will introduce yourself as well.

5 MR. FOARD: Thank you, Your Honor. My name is
6 Adam Foard, and I serve under elected Solicitor Will Rogers
7 as assistant solicitor for Chesterfield County. I, also,
8 have a private law practice in the Town of Pageland.

9 MR. FORDHAM: My name is Jack Fordham. I'm an
10 assistant solicitor for the Fourth Circuit, also, under
11 Solicitor William Rogers. And I will be helping in this
12 trial, also.

13 THE COURT: All right. Ladies and gentlemen, if
14 you are a friend or relative, a personal acquaintance of any
15 of the folks who have introduced themselves thus far, the
16 lawyers involved in the trial of the case, or Mr. Joey
17 Griggs, if so, please stand. If you are a friend, relative,
18 associate or an acquaintance of any of them, or if you have
19 been represented in the past by any of the lawyers or are
20 currently being represented by any of the lawyers. If so,
21 please, stand.

22 (Jurors stand.)

23 THE COURT: All right. And we'll start here,
24 ma'am. If you will tell us your name and juror number and
25 why you're standing.

1 PROSPECTIVE JUROR: Juror No. 16, Vickie S. Bray.

2 I've known Mr. Foard since he was a boy.

3 THE COURT: All right. Would that fact affect
4 your ability to be a fair and impartial juror?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 PROSPECTIVE JUROR: Jury No. 136 -- I'm --

9 THE COURT: And would that fact affect your
10 ability to be fair and impartial?

11 PROSPECTIVE JUROR: No, sir.

12 THE COURT: Thank you.

13 Yes, sir?

14 PROSPECTIVE JUROR: I'm an acquaintance of Mr.
15 Fordham and I'm in the process of a closing a mortgage
16 closing through his law firm.

17 THE COURT: He's currently representing you?

18 PROSPECTIVE JUROR: We've going to him for a
19 closing for a mortgage, yes, sir.

20 THE COURT: All right. We will not consider you
21 for selection in this case. Your juror number again is?

22 PROSPECTIVE JUROR: 128.

23 THE COURT: 128 will not be selected in this case.

24 Thank you, you may be seated.

25 Yes, ma'am?

1 PROSPECTIVE JUROR: I'm Elizabeth Laney. I'm No.
2 80. I'm acquainted with Adam Foard.

3 THE COURT: All right. Would that affect your
4 ability to be fair and impartial?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: All right.

7 PROSPECTIVE JUROR: Yes, sir -- no, sir. Wait,
8 wait.

9 (Laughter.)

10 THE COURT: Would the fact that you know him
11 prevent you from being a fair and impartial juror?

12 PROSPECTIVE JUROR: I will be fair and impartial.

13 THE COURT: All right. Thank you.

14 Yes, ma'am?

15 PROSPECTIVE JUROR: Yes, Your Honor, Kendra
16 Miller, Juror No. 26. I'm -- I've had cases with them in
17 the past. It will not affect my ability.

18 THE COURT: All right. Thank you.

19 Yes, sir?

20 PROSPECTIVE JUROR: Franklin Crolley. I don't
21 remember my juror number, I know J.R. and I know Joey.

22 THE COURT: Say your name one more time.

23 PROSPECTIVE JUROR: Franklin Crolley.

24 THE CLERK: Number 35.

25 THE COURT: Juror No. 35. And would that fact

1 prevent you from being a fair and impartial juror?

2 PROSPECTIVE JUROR: Yes, sir, Your Honor.

3 THE COURT: All right. We will not consider you
4 for selection in this case. You may stay with us, though.

5 Yes, ma'am?

6 PROSPECTIVE JUROR: Ethel Bowman. I didn't catch
7 my number. I couldn't hear it.

8 THE COURT: We'll find your name on the list
9 there.

10 THE CLERK: Ethel Bowman is No. 14.

11 THE COURT: No. 14.

12 PROSPECTIVE JUROR: Okay. And I know Joey Griggs.

13 THE COURT: And the fact that you know him, could
14 you still be a fair and impartial juror or not?

15 PROSPECTIVE JUROR: I don't think so.

16 THE COURT: You don't think so?

17 PROSPECTIVE JUROR: (The witness shakes head.)

18 THE COURT: All right. We'll not consider you for
19 selection in the case. Thank you. Stay with us.

20 Ladies and gentlemen, this offense occurred on or
21 about October -- allegedly occurred on or about
22 October 19th, 2010.

23 And what area of this county, Solicitor?

24 MR. FOARD: In the Patrick area of Chesterfield.

25 THE COURT: In the Patrick area of Chesterfield

1 County. If you know anything about this case or if you have
2 heard anything about this case, please stand.

3 (There was no response.)

4 THE COURT: No one is standing.

5 If you know of any reason why you should not be
6 selected to be a juror on this case, if you know of any
7 reason why you cannot be or should not be selected to be on
8 this case, please respond.

9 (There was no response.)

10 THE COURT: And no one's standing.

11 Anything else the State or the Defense would like
12 for me to ask?

13 MR. FOARD: None from the State, Your Honor.

14 MR. JOYNER: Judge, just if any of the jury
15 members are members of MADD or SADD.

16 THE COURT: All right. If any member of the jury
17 panel is a member of MADD, SADD or any other group the
18 primary purpose of which is to support law enforcement or if
19 you are a member of the ACLU or any other organization the
20 primary purpose of which is to support the rights of the
21 accused or defendants? If so, please stand.

22 (There was no response.)

23 THE COURT: And no one's standing.

24 Anything else from either side?

25 MR. JOYNER: No, Your Honor.

1 MR. FOARD: No, Your Honor.

2 THE COURT: Madam Clerk, you'll use the computer
3 to take a list?

4 THE CLERK: We will, it will take just a few
5 minutes.

6 THE COURT: All right. I don't know if I gave the
7 list of the possible witnesses, I don't think I did. Let me
8 tell you who may testify in this case. The following people
9 may testify, Michael -- if you're here, please stand.
10 Michael Ervin, Dwayne Gillispie, Richard Carns, John
11 Chapman, Willie C. Smith, Richard Gregory, Chris Page,
12 and/or Ronald Griggs.

13 If you are a friend, relative or associate of any
14 of those people, please stand.

15 (Jurors stand.)

16 THE COURT: Michael Ervin, Dwayne Gillespie,
17 Richard Carns, John Chapman, Willie C. Smith, Richard
18 Gregory, Chris Page, Ronald Griggs.

19 All right. Yes, ma'am?

20 PROSPECTIVE JUROR: I'm number 80. I want to say
21 I've met Michael Ervin, but I don't think I would consider
22 us as friends.

23 THE COURT: Thank you.

24 Yes, ma'am? Juror number?

25 PROSPECTIVE JUROR: Seventy-four --

1 THE COURT: Would that fact affect your ability to
2 be fair and impartial?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Okay. Thank you.

5 Yes, ma'am?

6 PROSPECTIVE JUROR: I'm No. 104. I work with
7 Richard Carns, Chris Page --

8 THE COURT: All right. Thank you.

9 PROSPECTIVE JUROR: I'm Juror No. 6 and I've also
10 worked with Carns and Page with different initiatives
11 involving underage drinking.

12 THE COURT: All right. Thank you.

13 PROSPECTIVE JUROR: Juror No. 47. I'm a relative
14 of Dwayne Gillispie. And it should not affect my ability to
15 be a juror.

16 THE COURT: All right. Thank you.

17 PROSPECTIVE JUROR: Juror No. 150. I know Michael
18 Ervin, but it will not affect my ability.

19 THE COURT: All right. thank you.

20 PROSPECTIVE JUROR: Jury No. 136, I'm acquainted
21 with Carns, Ervin and Page. It should not affect my
22 ability.

23 THE COURT: All right. Thank you.

24 Ladies and gentlemen, the jury selection process
25 involves the computer generating a list of all of those of

1 you who are qualified to serve and who have not been excused
2 from serving on this case and to randomly spit out a list
3 from which your names will be called and the jury will be
4 selected. This process takes a few minutes for the clerk to
5 input the information and for a list to be printed out. We
6 will do that in just a moment.

7 I ask you give the clerk your attention.

8 THE CLERK: Okay. When I call your name, if you
9 will please come forward, standing right here in front of me
10 and bring everything with you.

11 No. 7, Jeffrey L. Autry.

12 (Jeffrey L. Autry, a white male, came
13 forward.)

14 THE CLERK: What says the State?

15 MR. FOARD: Please present Mr. Autry.

16 THE CLERK: Defense?

17 MR. JOYNER: Please seat the juror.

18 THE CLERK: Have a seat in the jury box, please.

19 No. 124, Kenneth W. Rivers.

20 (Kenneth W. Rivers, a white male, came
21 forward.)

22 THE CLERK: What says the State?

23 MR. FOARD: Please present Mr. Rivers.

24 THE CLERK: Defense?

25 MR. JOYNER: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, please.
2 No. 80, Elizabeth T. Laney.
3 (Elizabeth T. Laney, a white female,
4 came forward.)
5 THE CLERK: What says the State?
6 MR. FOARD: Please present Ms. Laney.
7 THE CLERK: Defense?
8 MR. JOYNER: Please excuse the juror.
9 THE CLERK: You may have a seat.
10 PROSPECTIVE JUROR: Go back?
11 THE CLERK: Yes, ma'am.
12 No. 39, Rita M. Darnell.
13 (Rita M. Darnell, a white female, came
14 forward.)
15 THE CLERK: What says the State?
16 MR. FOARD: Please present Ms. Darnell.
17 THE CLERK: Defense?
18 MR. JOYNER: Please seat the juror.
19 THE CLERK: Have a seat in the jury box, please.
20 No. 81, Ted W. Laney.
21 (Ted W. Laney, a white male, came
22 forward.)
23 THE CLERK: What says the State?
24 MR. FOARD: Please seat Mr. Laney.
25 THE CLERK: Defense?

1 MR. JOYNER: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please.

3 No. 31, Gay C. Cox.

4 (Gay C. Cox, a white female, came

5 forward.)

6 THE CLERK: What says the State?

7 MR. FOARD: Please present Ms. Cox.

8 THE CLERK: Defense?

9 MR. JOYNER: Please excuse Ms. Cox.

10 THE CLERK: You may have a seat.

11 No. 144, John R. Usher.

12 (John R. Usher, a white male, came

13 forward.)

14 THE CLERK: What says the State?

15 MR. FOARD: Please present Mr. Usher.

16 THE CLERK: Defense?

17 MR. JOYNER: Please seat the juror.

18 THE CLERK: Have a seat in jury box, please.

19 No. 79, Teressa L. King.

20 (Teressa L. King, a black female, came

21 forward.)

22 THE CLERK: What says the State?

23 MR. FOARD: Please present Ms. King.

24 THE CLERK: Defense?

25 MR. JOYNER: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, please.
2 No. 47, Pauline E. Ellerbe.
3 (Pauline E. Ellerbe, a black female,
4 came forward.)
5 THE CLERK: What says the State?
6 MR. FOARD: Please present Ms. Ellerbe.
7 THE CLERK: Defense?
8 MR. JOYNER: Please seat the juror.
9 THE CLERK: Have a seat in the jury box, please.
10 No. 51, Nathan Fluellen.
11 (Nathan Fluellen, a black male, came
12 forward.)
13 THE CLERK: What says the State?
14 MR. FOARD: Please present Mr. Fluellen.
15 THE CLERK: Defense?
16 MR. JOYNER: Please seat the juror.
17 THE CLERK: Have a seat in the jury box, please.
18 No. 138, Rhonda E. Sturgeon.
19 (Rhonda E. Sturgeon, a white female,
20 came forward.)
21 THE CLERK: What says the State?
22 MR. FOARD: Please present Ms. Sturgeon.
23 THE CLERK: Defense?
24 MR. JOYNER: Please seat the juror.
25 THE CLERK: Have a seat in the jury box, please.

1 No. 113, Mary A. Outlaw.

2 (Mary A. Outlaw, a white female, came
3 forward.)

4 THE CLERK: What says the State?

5 MR. FOARD: Please present Ms. Outlaw.

6 THE CLERK: Defense?

7 MR. JOYNER: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, please.

9 No. 16, Vickie S. Bray.

10 (Vickie S. Bray, a white female, came
11 forward.)

12 THE CLERK: What says the State?

13 MR. FOARD: Please present Ms. Bray.

14 THE CLERK: Defense?

15 MR. JOYNER: Please excuse the juror.

16 THE CLERK: You may return to your seat.

17 No. 110, Rita M. Oliver.

18 (Rita M. Oliver, a white female, came
19 forward.)

20 THE CLERK: What says the State?

21 MR. FOARD: Please present Ms. Oliver.

22 THE CLERK: Defense?

23 MR. JOYNER: Please seat the juror.

24 THE CLERK: Have a seat in the jury box, please.

25 No. 145, Randy K. Vick.

1 (Randy K. Vick, a white male, came
2 forward.)

3 THE CLERK: What says the State?

4 MR. FOARD: Please present Mr. Vick.

5 THE CLERK: Defense?

6 MR. JOYNER: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please.
8 No. 106, Shericka B. Myers.

9 (Shericka B. Myers, a black female, came
10 forward.)

11 THE CLERK: What says the State?

12 MR. FOARD: Please present Ms. Myers.

13 THE CLERK: Defense?

14 MR. JOYNER: Please seat the juror.

15 THE CLERK: Have a seat in the jury box, please.

16 THE COURT: Are there any matters of law regarding
17 jury selection?

18 MR. FOARD: None from the State, Your Honor.

19 MR. JOYNER: None, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 you've been selected to be the jury in the trial of the
22 case. I'm going to have you go to the jury room right there
23 for a few minutes while we discuss scheduling. We'll have
24 you come back real soon. Please do not discuss the case
25 while you break.

1 (Whereupon, the jury left the courtroom
2 at 11:30 AM)

3 THE COURT: All right. Will you bring the jury
4 in?

5 (Whereupon, the jury returned to the
6 courtroom at 11:43 AM)

7 THE COURT: All right. Ladies and gentlemen, as I
8 stated to you earlier, we're going to start the trial of
9 this case tomorrow morning. I'm going to excuse you all for
10 the day and need you back at 9:30 tomorrow morning. And
11 when you come back --

12 Is this the only entrance?

13 BAILIFF: Yes, sir.

14 THE COURT: Through the courtroom?

15 BAILIFF: Yes, sir.

16 THE COURT: All right. So we'll need you back at
17 9:30 tomorrow morning. And you all are free to go. 9:30,
18 need everyone back.

19 (Whereupon, the jury left the courtroom
20 at 11:44 AM)

21 THE COURT: All right. All right. So we'll see
22 y'all at 9:30 tomorrow morning.

23 MR. JOYNER: Yes, Your Honor.

24 (Proceedings were concluded for November
25 13, 2013.)

1 COUNTY OF RICHLAND)

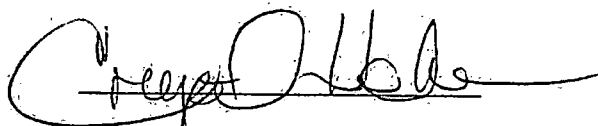
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled State of SC V. Joey Griggs Case
5 No. 2013-GS-13-00590, at the Richland County Courthouse,
6 November 12, 2013.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 18 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 10th day of September,
15 2014.

16 

17 Crystal Holmes, Official Court Reporter

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2013-GS-13-00590

STATE OF SOUTH CAROLINA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
JOEY GRIGGS)
) DEFENDANT)

November 12-13, 2013
 Chesterfield, South Carolina
 VOLUME 02 OF 02

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE AND A JURY.

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

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

FRANKLYN JOYNER, ESQUIRE
 Attorney for the Defendant

MICHAEL IRVIN, CHERAW POLICE DEPARTMENT (FORMER)
 RICHARD GREGORY,
 WILLIE SMITH, SOUTH CAROLINA LAW ENFORCEMENT DIVISION

HATTIE O. GORDON
 Circuit Court Reporter

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STATE'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	D.V.D.	7	32
2	Drug Analysis Report	7	70
3	Photo	7	32
4	Photo	7	32
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DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Drug Analysis	78	79

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COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Jury Question	117	117

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COLLOQUY

(WHEREUPON, State's Exhibit Nos. 1 THROUGH 4 were marked for identification only.)

MR. FOARD: Your Honor, I think we gave a couple of pre-trial matters.

THE COURT: A couple of pre-trial matters. All right. What are they?

MR. FOARD: Your Honor, I believe that in my conversations with the Defense we have agreed that he is going to stipulate to the chain of custody of the drug evidence in this matter thereby allowing me not to have to call at least two witnesses.

THE COURT: All right. Is that right?

MR. JOYNER: That's right, Your Honor.

THE COURT: Okay. Very good. It's an order of the Court based on the stipulation.

MR. FOARD: And, Your Honor, I believe the Defense has a couple of other things to put on the record.

MR. JOYNER: Yes, Judge, the video in this case is I would say two thirds static from driving the automobile to and from the incident site. And I told the Solicitor that I don't have a problem with him skipping over that and not publishing that to the jury cause it would save time.

THE COURT: All right.

MR. JOYNER: I've already seen it, and it just

1 doesn't show anything.

2 THE COURT: All right. Now, this video, do you have
3 it on a D.V.D.? You have something ---

4 MR. FOARD: It's on a disk, Your Honor, which I can
5 connect to my laptop and play on this television.

6 THE COURT: You're going to leave the t.v. right
7 there?

8 MR. FOARD: No. It would need to be moved up here.

9 THE COURT: Okay. So let me finish my statement
10 then. Do you have a desk where I can view the evidence?

11 MR. FOARD: I do, Judge. It's in possession of the
12 Clerk.

13 THE COURT: All right. Okay. Well, I don't come out
14 from behind the bench and sit out there with you all and
15 watch videos. So do you have a second copy?

16 MR. FOARD: I do not have a second copy, Your Honor.

17 THE COURT: All right. Okay.

18 MR. JOYNER: Judge, I have my copy if Your Honor
19 would like.

20 THE COURT: All right. Thank you.

21 MR. JOYNER: Would you like to use it, Judge?

22 THE COURT: You know, quite often evidence is
23 introduced during a trial, objections are made, and the
24 lawyers expect the Judge to rule on things that the Judge
25 hasn't seen such as videos being shown to the jury. And

1 unless the Judge gets up and goes and sit in the jury or
2 stand where the bailiff is, and I don't think judges
3 should have to do that.

4 MR. FOARD: I understand, Your Honor.

5 THE COURT: All right.

6 MR. JOYNER: And, Judge, if I may approach?

7 THE COURT: It's easier just to make a copy for the
8 Judge.

9 MR. FOARD: Yes, sir.

10 MR. JOYNER: And, Judge, he may have not done that
11 because we had stipulated beforehand.

12 THE COURT: Okay. I mean the last trial I had made
13 objections left and right for this video and I hadn't seen
14 it. I mean how can I rule.

15 MR. FOARD: I understand, Your Honor.

16 THE COURT: Anything else?

17 MR. JOYNER: Yes, Your Honor, Judge. This, of
18 course, is a distribution of controlled substance third
19 offense. I would just very respectfully request that
20 during deliberations the indictment goes back; that the
21 jury not be allowed to see the actual portion that
22 describes it as a third offense.

23 THE COURT: It's a third offense then the indictment
24 will not go back.

25 MR. JOYNER: Okay, thank you, Judge. And, finally, I

1 just wanted to put on the record that my client was
2 originally offered a plea to a first offense and with a
3 recommendation from the State of a three year sentence. I
4 communicated that offer to him, and we spoke at length
5 about it and he chose not to accept that offer which means
6 that now, due to the fact that this is a third offense,
7 that the sentencing range that Your Honor may sentence him
8 to is as low as five and as high as 20.

9 THE COURT: The penalty for a third is five? Minimum
10 five, maximum 20?

11 MR. JOYNER: Yes, Your Honor. And, of course, as I
12 read the statute it's a non-parolable offense as well.

13 THE COURT: All right. Is that right, Solicitor?

14 MR. FOARD: That's correct, Your Honor.

15 THE COURT: All right. Sir, if you will stand, Mr.
16 Griggs, to be sworn.

17 JOEY GRIGGS, after being duly sworn, testified
18 as follows:

19 THE COURT: All right. Mr. Griggs, your counsel --
20 say that name one more time.

21 MR. JOYNER: Joyner.

22 THE COURT: Mr. Joiner has indicated that he has
23 communicated to you this plea offered from the State
24 whereby the -- you would plead guilty to a first offense
25 and the State would recommend a sentence of up to three

1 years; is that right?

2 MR. GRIGGS: Yes, sir.

3 THE COURT: And have you decided you do not want to
4 accept that offer?

5 MR. GRIGGS: Yes, sir.

6 THE COURT: You understand that if you go to trial
7 and if you are convicted of a third offense the minimum
8 sentence that you will get will be five years. The
9 maximum sentence you will get will be 20 years.

10 MR. GRIGGS: Yes, sir. I'm not sure why it's a third
11 offense. That's what I'm not understanding because I've
12 not been in trouble in 20 years unless they're going back
13 20 years, I guess. I don't know. Only thing I can
14 understand why it's a third offense.

15 THE COURT: Why is it a third offense, Mr. Solicitor?

16 MR. FOARD: Your Honor, the record is lengthy, Your
17 Honor. It's actually in excess of third offense, Judge.
18 He is correct. Some of it has not been in the last 10
19 years, Your Honor, but I believe the enhancement would
20 still apply.

21 THE COURT: All right. Well, of course, if it's
22 based on an enhancement that the Court has to interpret
23 then than interpretation would take place after the trial
24 as to whether it's third or second, but the indictment is
25 as a third offense. The jury is going to be asked to

1 determine whether you're guilty or not guilty of the
2 primary offense which is distribution of these drugs.

3 MR. FOARD: Of a controlled substance.

4 THE COURT: Controlled substance. So I have not seen
5 your record. I don't know whether it's a third offense or
6 not.

7 MR. GRIGGS: Like I said I've had no drug charges.
8 I've never had a charge like this, ever. I have had a
9 drug charges and I done my time, but that was 20 years
10 ago.

11 THE COURT: Explain the law to me on that a little
12 bit, Solicitor as to how ---

13 MR. GRIGGS: That's what I don't understand.

14 THE COURT: I understand you don't understand it. I
15 want the Solicitor explain to me the law dealing with what
16 can be used for enhancement purposes and what his record
17 is that you have.

18 MR. FOARD: Your Honor, it's my understanding of the
19 law is that we may use convictions -- any conviction from
20 General Sessions Court, Your Honor, regardless of the time
21 period when it occurred for enhancement purposes, Your
22 Honor.

23 I believe that upon my review of his record I believe
24 he has two prior General Sessions level drug offenses for
25 enhancement purposes.

1 THE COURT: What are those offenses and when were
2 they?

3 MR. FOARD: Your Honor, it was -- he received a
4 unlawful drug charge in 1981 where sentence was three
5 years suspended to 18 months confinement.

6 THE COURT: Unlawful what?

7 MR. FOARD: It's just listed as unlawful drugs, Your
8 Honor ---

9 THE COURT: All right.

10 MR. FOARD: --- on the N.C.I.C. That was in 1981,
11 and I am skipping numerous marijuana offenses. He then
12 was convicted of trafficking of cocaine in 1984, Your
13 Honor. Received ten years. He then was convicted of
14 possession with intent to distribute cocaine in 1990 where
15 he received four months confinement. I believe that would
16 be an enhancing underlying crime. Possession of cocaine
17 listed as fourth offense. It was in 1992, Judge.

18 THE COURT: So this is third or subsequent offense?

19 MR. FOARD: It is, Judge.

20 THE COURT: What statute -- what is the enhancement
21 statute?

22 MR. JOYNER: Judge, it's 44-53-370.

23 THE COURT: 44-53?

24 MR. JOYNER: 370(a), Subsection Four. It basically
25 says that if the offender at any time has been convicted

1 of a second or subsequent violation of the Controlled
2 Substance Statute relating to narcotic drugs or
3 hallucinogenic drugs that he is -- that he is eligible to
4 face an enhancement sentence.

5 THE COURT: All right. You understand that, sir?

6 MR. GRIGGS: I guess so. Yes.

7 THE COURT: Well, what is it then that you don't
8 understand?

9 MR. GRIGGS: Well, like I said my last drug charge
10 was 18 years ago.

11 THE COURT: Go on.

12 MR. GRIGGS: Twenty-one years ago.

13 THE COURT: The law says at any time.

14 MR. GRIGGS: Yes, sir. I just didn't know that you
15 can go that far. I did that 20 years ago. I didn't know
16 you could go that far back.

17 THE COURT: Well, he's telling you that there is
18 no -- yes, if it's a D.U.I. you may go back five or ten
19 years or driving under suspension. You may go back a
20 certain number of years on drug charge, but on a drug
21 charge you go back to the time you were born.

22 MR. GRIGGS: Okay.

23 THE COURT: Or at least the time you were an adult.

24 MR. JOYNER: And, Your Honor, for the record I've
25 explained that there is a ten year time limit in

1 accordance with this statute based on marijuana.

2 THE COURT: All right.

3 MR. JOYNER: But, unfortunately, on controlled
4 substance any substance other than marijuana there is no
5 time limit. It can go back.

6 THE COURT: So your lawyer has studied that, and he
7 explained that to you?

8 MR. GRIGGS: Yes, sir.

9 THE COURT: But you don't accept what he's saying.

10 MR. GRIGGS: I didn't understand. I understand it
11 now. Yes, sir.

12 THE COURT: You want to go to trial?

13 MR. GRIGGS: Yes, sir.

14 THE COURT: All right. And, you know, the reason
15 that counsel is mentioning it to me is that so I can
16 mention it to you to be certain that you understand the
17 possible implications and ramification of your decision.

18 MR. GRIGGS: Yes, sir.

19 THE COURT: And the time, if you have some question
20 about it whether or not you understand what you're facing,
21 that you understand it now and not after the trial when
22 you're there if I give you 20 years in prison, you know,
23 at that point it's too late to say I want to go back and
24 accept what I could have accepted this morning.

25 MR. GRIGGS: Yes, sir.

1 THE COURT: So the ultimate decision regarding
2 pleading guilty or not pleading guilty is your decision.
3 The lawyer wants to be sure that you understand it, and I
4 want to be sure that you understand that if you roll the
5 dice and you lose you're going to lose big.

6 MR. GRIGGS: Yes, sir.

7 THE COURT: You know that and you want to roll the
8 dice?

9 MR. GRIGGS: Yes, sir, I guess I would.

10 THE COURT: All right, sir.

11 MR. GRIGGS: I'll roll the dice. I'll take my
12 chances.

13 THE COURT: You need any more time to think about it
14 or you need to talk to your lawyer any more?

15 MR. GRIGGS: No, sir.

16 THE COURT: All right. Anything else?

17 MR. JOYNER: No, Your Honor.

18 MR. FOARD: No, Your Honor.

19 THE COURT: All right. Let's bring in that jury in.
20 Thank you, sir.

21 (WHEREUPON, the jury panel enters the courtroom at
22 11:02 a.m.)

23 THE COURT: All right, ladies and gentlemen, welcome
24 back. If y'all will stand at this time to be sworn.

25 (WHEREUPON, the jury panel was sworn in at 1103 a.m.)

1 THE COURT: Well, ladies and gentlemen, as I watched
2 the snow fall last night I didn't know if I would see
3 y'all today. I didn't know whether we would have gotten a
4 snow day or not, but seems as if everything cleared up
5 nicely and didn't see very much evidence of it this
6 morning. And then when I know got here is discovered that
7 the Solicitor's Office had other business that I needed to
8 attend.

9 Solicitor's Office and Defense attorney had some
10 other business for me to attend to, and it's taken us over
11 an hour or so to tend to that other business. So we have
12 heard you in the jury room enjoying yourselves, and we
13 have not enjoying yourselves, but we have been busy. So I
14 didn't want you to think that we were just being late
15 because I hate to have juries waiting. I like to keep
16 things moving when we have a trial and treat your time as
17 valuable.

18 But in a county where there is one judge, one
19 courtroom and more than one thing to be do then sometimes
20 it might cause you to have to wait. But now you have been
21 selected and sworn to be the jury in this case, and out of
22 all the other people who were summoned for jury duty out
23 of all of the other people who live in Chesterfield
24 County, out of all the other people who live in the State
25 of South Carolina, out of all the people who live in the

1 United States, out of all the people who live on earth
2 only the 12 of you who deliberate can decide the facts of
3 this case, and that's why you all were selected to decide
4 the facts of this case.

5 And in this case the Defendant, Mr. Joey Griggs, was
6 indicted by the grand jury of this county and charged with
7 the offense of distribution of -- I'm sorry. With
8 possession with intention to distribute a controlled
9 substance. He has pled not guilty to this charge, and
10 he's presumed to be not guilty of this charge, which
11 places the burden on the State to prove him guilty because
12 no person is required to prove himself or herself
13 innocent.

14 And your role in this case is to determine whether
15 the defendant is guilty or not guilty based on evidence
16 presented during the course of this trial. And as I say
17 you all -- only the 12 of you who will deliberate can make
18 that decision. My role as a judge is to preside over the
19 case, to rule on questions regarding the admissibility of
20 the evidence and testimony and to instruct you the law
21 that you are to apply to this case.

22 So just as only you can decide the facts of this case
23 as the presiding judge I am the sole judge of the law of
24 this case. And you must accept as correct the law as I
25 state it to you at this time during the trial and in

1 greater detail at that end of this trial.

2 Now, you're to decide the facts of this case by
3 weighing and evaluating the credibility of the witnesses
4 who testify and of the evidence presented during this
5 trial. I look forward to working with you on this case.
6 And we hope to get the case moving on as expeditiously as
7 possible, but we will not sacrifice speed for justice.

8 And in the end the case will be submitted to you for
9 your deliberations, but until the case is submitted to you
10 for your deliberations at the end you must not discuss the
11 case at all with each other or anyone else or to allow
12 anyone to discuss it in your presence.

13 Later in the process I will appoint one of you to
14 serve as the foreperson of the jury. The foreperson will
15 be the spokesperson for the jury and will have the role of
16 presiding over jury deliberations and of completing the
17 verdict form representing the unanimous verdict of the
18 jury.

19 Now, we're going to move now into opening statements
20 by the State. The Defense will also be given an
21 opportunity to make an opening statement. Then we will
22 proceed with testimony. Mr. Solicitor.

23 MR. FOARD: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes.

OPENING STATEMENT BY MR. FOARD

1
2 MR. FOARD: Mr. Joyner, ladies and gentlemen of the
3 jury, my name is Adam Foard, and it is my pleasure to
4 appear before you today serving the citizens of this
5 county as Assistant Solicitor in the prosecution of Mr.
6 Joey Griggs who sits before you in judgment for the
7 accused crime of possession with intent to distribute a
8 controlled substance.

9 Ladies and gentlemen of the jury, October the 19th
10 2010 started just like any other day here in Chesterfield.
11 Sun rose here in Chesterfield County. We all know we live
12 here. It's a beautiful place. And it would appear that
13 things were going normal that day. Our law enforcement
14 officers were working, and they had received some
15 information that Mr. Griggs was selling prescription drugs
16 out of a location in the Patrick area of Chesterfield
17 County.

18 So as part of their duties one of the things they
19 normally do is they spoke with someone who indicated that
20 they had the ability to be able to illegally purchase
21 drugs from Joey Griggs, and they outfitted that person
22 with monitoring equipment. And that person then went to
23 the Patrick area of Chesterfield County, encountered Mr.
24 Griggs and purchased a quantity of Lorcet, ladies and
25 gentlemen.

1 And as you will hear through the trial of that case
 2 that is a controlled substance. A prescription is
 3 required for it. It cannot be sold over the counter. It
 4 can only be prescribed by a doctor and be filled by a
 5 pharmacist. Mr. Joey Griggs is not a pharmacist, ladies
 6 and gentlemen. He was working out of a store or really a
 7 convenience store I would say in Patrick.

8 And, ladies and gentlemen, I'm not going to belabor
 9 the point because that's what this case is about. It's
 10 that's simple. It's about Mr. Griggs selling pills
 11 without the authority of law to do so. Ladies and
 12 gentlemen, he is guilty of the crime of possession with
 13 intent to distribute. He possessed the pills. He had the
 14 intent to distribute them. And that intent is
 15 demonstrated by the fact that he actually did distribute
 16 them.

17 And I believe after you view all of the facts and
 18 evidence that you will find Joey Griggs guilty of the
 19 offense charged. And I thank you very much for your
 20 attention to this matter.

21 THE COURT: Mr. Joyner.

22 MR. JOYNER: Thank you, Your Honor.

23 OPENING STATEMENT BY MR. JOYNER

24 MR. JOYNER: Ladies and gentlemen, the title of this
 25 case is State v. Joey Griggs. That's absolutely the title

1 of the case. And on one side you have the government.
2 And the government is comprised of what I would say is
3 three parts in this case. You've got a snitch. You've
4 got a guy that was working for law enforcement working for
5 the government. Then you have law enforcement itself
6 which is made up of the officers in this case. Then you
7 have the third part which is a S.L.E.D. analyst. And, of
8 course, S.L.E.D. stands for South Carolina Law Enforcement
9 Division.

10 It's another government entity within our state, and
11 there is an analyst that has tested this substance, and in
12 his expert opinion has determined that it was in fact
13 drugs. That is the government's side. On our side we
14 have our client, Joey Griggs. Joey Griggs is from
15 Patrick, South Carolina. He has two children. He has two
16 grandchildren. He has a job. He works shut downs. He
17 does construction work. She pays his bills. He has a
18 job. He's a private citizen.

19 Now, there's a piece of evidence that is going to be
20 introduced to you to see, a video. A video of this
21 incident taking place. And I would expect that as the
22 case goes on the State will rely very heavily on this
23 video. And the video shows some things, but I can tell
24 you that there are some things -- there are some evidence
25 that the video does not show. And some of the things the

1 video -- some of the things that it does not show are,
2 Number One, the type of person that the confidential
3 informant is.

4 He is a snitch. He is an extreme drug addict. He's
5 done virtually every drug I would expect that we've ever
6 heard of. I believe the evidence will show he is a user
7 of cocaine. He's a user of meth. He's a user of
8 methadone on virtually a daily basis.

9 I will even show that he has used all type of pills:
10 Lorcets, Percocets, Darvocets, Oxycotins. It will show
11 that he's used everything, and it will show that he is a
12 person who is desperate. It will show that he is a person
13 that will do anything to get these drugs because of
14 extreme addiction that he has.

15 The video will also not show the type of person that
16 this C.I. is in that there will be evidence that he has
17 actually used this job as a government snitch; this job
18 working for the government to actually skim drugs off the
19 top. I believe the evidence will show that he would go
20 and do many, many buys for the government as he did, and
21 as he did these buys -- let's stay for instance he got ten
22 pills. He might skim two or three off the top for
23 himself. I believe the evidence will show that.

24 The video won't show that, but I believe the evidence
25 will. Another key aspect of this case is the fact that

1 those pills that he would skim off the top, he was working
2 for the government. They would obviously search him
3 before he did buys; that kind of thing. So he had to do
4 something with the pills. So he gave to his friend the
5 pills to keep for him so that law enforcement wouldn't
6 find them on him.

7 Gave it to his friend. What my client thought was
8 his friend. He gave it to Joey to keep for him.
9 Something that will also be in evidence that will not be
10 in this video is the fact that the confidential informant
11 in this case, the snitch, Richard Gregory, on Labor Day of
12 this year, in September, had his brother contact Joey
13 twice and try to bribe him.

14 He contacted him and tried to get Joey to pay him
15 money in order to not come and testify. He said, "Look, I
16 got you, but my wife's got a speeding ticket. And if you
17 would be willing to pay us cash when the police come look
18 for me to have me come testify I magically won't be home.
19 I won't be there." The evidence will show that today.

20 And the final thing that the evidence will not
21 show -- excuse me. Or the video will not show, but I
22 believe will be in evidence is the S.L.E.D. analyst, the
23 expert that tested the drugs. You went see him testing
24 the drugs. You won't see the method he used. You won't
25 see anything about how he came to his determination that

1 this was in fact even drugs. You won't see that in the
2 video. There will certainly be evidence presented to you
3 today concerning that matter.

4 And finally, ladies and gentlemen, I'll say this.
5 There is one thing, one key piece of evidence that you
6 will see in this video. A key thing you will see in this
7 video is the fact that the Snitch, Richard Gregory,
8 searched Joey out. He sought Joey out. He found Joey,
9 and had he and the government not worked together to
10 search out Joey we wouldn't be here today. This incident
11 would have never happened. This alleged crime would have
12 never taken place. That will in fact be in the evidence.

13 I believe, ladies and gentlemen, at the end of this
14 case when you go back to deliberate and you have all of
15 this evidence and you're able to look at all this evidence
16 I believe that the decision that you will have to make
17 will not be a difficult one. I believe it will be easy
18 because I believe that the evidence will show clearly that
19 Joey is not guilty. Thank you.

20 THE COURT: First witness.

21 MR. FOARD: Yes, Your Honor. The State calls Mike
22 Irvin to the stand.

23 MICHAEL IRVIN, after being duly sworn, testified
24 as follows:

25 MR. FOARD: May it please the Court.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. FOARD:

4 Q. Good morning, sir?

5 A. Good morning.

6 Q. Would you please give us your name?

7 A. Michael Irvin.

8 Q. And what is it that you do for a living, sir?

9 A. Currently, I'm Asset Protection with Wal-Mart.

10 Q. All right. And in October of 2010 what was your
11 employment?

12 A. I was with Chesterfield County Sheriff's Office.

13 Q. And in what capacity did you serve with the
14 Chesterfield County Sheriff's Office?

15 A. I was a narcotics investigator.

16 Q. All right. If I could get you to speak just a tad
17 bit louder?

18 A. Okay.

19 Q. Thank you. You were in narcotics?

20 A. Yes.

21 Q. Okay. And as a narcotics investigator what were your
22 regular job duties?

23 A. To purchase drugs from people that were selling drugs
24 in order to make charges to stop the drug problem in
25 Chesterfield County.

1 Q. All right. And when you say to purchase drugs how is
2 that accomplished?

3 A. You can have informants. In some cases you can do it
4 yourself.

5 Q. Okay then. And in your -- how long have you been in
6 law enforcement?

7 A. I was in law enforcement for 14 years.

8 Q. For 14 years. And how long of that in drugs?

9 A. I would say I think four.

10 Q. Okay. And in your experience as a seasoned law
11 enforcement officer is the use of confidential informants
12 as you've described, is that an effective method of
13 combatting the drug problem?

14 A. Sometimes it's the only method because people know
15 who we were so we would have to depend on informants to
16 make purchases for us.

17 Q. All right. So as a law enforcement officer in the
18 community it would be impossible for you to go out and
19 purchase drugs?

20 A. In a lot of cases, yes, it would.

21 Q. All right. Tell us how did you come to be involved
22 in this transaction with Joey Griggs?

23 A. We made contact -- well, actually, the confidential
24 informant made contact with us. We interviewed the
25 confidential informant on people that he had -- that he

1 could purchase drugs from. We started using the
2 confidential informant and he purchased from Mr. Griggs.

3 Q. All right. And who was the confidential informant in
4 this case?

5 A. Richard Gregory.

6 Q. Richard Gregory. All right. And was Mr -- did Mr.
7 Gregory -- I think you said that he purchased from other
8 people as well?

9 A. Yes.

10 Q. All right then. So tell us the specific event --
11 events of October the 19th 2010?

12 A. On October 19th 2010 the Defendant, Joey Griggs, did
13 sell a quantity of pill presented as and believed to be
14 Lorcet.

15 Q. And when you say he sold these pills where did he
16 sell these pills at?

17 A. The Patrick General Store.

18 Q. Where is -- and that's located here in Chesterfield
19 County?

20 A. Yes, sir.

21 Q. Okay. And he sold them to Mr. Gregory?

22 A. Yes, he did.

23 Q. And is there a certain procedure that you follow to
24 prepare the confidential informant for a purchase of this
25 type?

1 A. The confidential informant would meet us at an
2 assigned location that nobody else would be at. Myself
3 and another officer, we would visually search the vehicle.
4 We would also search the confidential informant. We would
5 then put monitoring device on them. Hand them the buy
6 money for the exact amount of drugs we wanted to purchase.
7 Or the deal had been set up for.

8 They would go to the buy location, do the
9 transaction, come back to the assigned location where they
10 would turn over the drugs and the equipment. They would
11 then be -- again be searched and the vehicle would be
12 searched, and then they would be free to do whatever they
13 had to do the rest of the day.

14 Q. All right. So let's speak on how those procedures
15 correlate to the events of that day. Did you meet Mr.
16 Gregory at a third party location?

17 A. Yes.

18 Q. All right. And did you search Mr. Gregory's person?

19 A. Yes.

20 Q. All right. And when you say you searched him was
21 this just a visual search? Pat down? How was the search
22 accomplished?

23 A. Usually there would be two officers there. One
24 officer would watch the confidential source while the
25 other searched the vehicle first. Then the other officer

1 would watch the officer search the confidential informant
2 by patting him down and have him pull his pockets inside
3 out. Check his shoes, socks. Actually, pretty thorough
4 search.

5 Q. And was that done in this case?

6 A. Yes, it was.

7 Q. All right. And did it reveal any quantity of drugs
8 in the car or on the person of the confidential informant?

9 A. None.

10 Q. All right. Did it reveal any money?

11 A. None.

12 Q. None. All right. And so at that point I believe you
13 said you outfit the confidential informant with monitoring
14 device?

15 A. Yes.

16 Q. Will you elaborate on that device for us, please?

17 A. Actually, we would put two devices. One would be
18 video and an audio device in one. Actually another audio
19 device. That's in case one went bad so we would still
20 have some type of way of listening to the transaction.

21 Q. All right then. And I take it that this video
22 monitoring device is concealed?

23 A. Actually, it's held in their hand.

24 Q. Okay. All right. And does this capture the entire
25 transaction as you know it?

1 A. Yes.

2 Q. Okay.

3 MR. FOARD: Your Honor, may I approach?

4 THE COURT: Yes.

5 MR. FOARD: Thank you.

6 BY MR. FOARD:

7 Q. Mr. Irvin, I'm holding in my hand what's previously
8 been marked for identification purposes only as State's
9 Exhibits Three and Four. Would you please review those
10 and tell me when you've had a chance to look them over
11 thoroughly. Are you finished, sir?

12 A. Yes.

13 Q. I'm also handing you what's been previously marked as
14 State's Exhibit One. Sir, can you identify State's
15 Exhibit One for us?

16 A. That is the disk that we would have recorded the
17 video buy on.

18 Q. Okay then. And would you have had the opportunity to
19 review this video?

20 A. Usually, we review it as soon as we got back to make
21 sure that we had the person on video that we were going to
22 get the warrant on.

23 Q. Okay then. And in this instance did you review the
24 video?

25 A. Yes.

1 Q. And on State's Exhibits Three and Four can you
2 identify those for us as well?

3 A. Yes, I can. That is Joey Griggs holding what appears
4 to be a pill. And that is a picture of money exchanging
5 hands going to Joey Griggs.

6 Q. All right then. And do you recognize the source of
7 these photographs?

8 A. It would have come from our equipment?

9 Q. From the videotape?

10 A. Right.

11 Q. By your equipment?

12 A. Right.

13 Q. Okay.

14 MR. FOARD: And, Your Honor, at this time I would
15 move to have State's Exhibits One, Three and Four moved
16 into evidence?

17 THE COURT: Any objection.

18 MR. JOYNER: No, Your Honor.

19 THE COURT: They're admitted.

20 MR. FOARD: Thank you.

21 (WHEREUPON, State's Exhibit Nos. 1, 3 and 4 were
22 admitted into evidence.)

23 BY MR. FOARD:

24 Q. There a one point of clarification that I would like
25 to make on State's Exhibit Three, is there a notation on

1 that imagine as to the date and/or time that the video
2 monitoring device was recording at the time?

3 A. Yes.

4 Q. All right then. Does that date and time appear to be
5 correct with regards to the date and time when the
6 transaction actually occurred?

7 A. No, it wasn't. We actually had something going on
8 within the piece of equipment, and the date would
9 constantly change on its own.

10 Q. All right then. So this is -- would this be akin to
11 the date and time set like on a hand held camera?

12 A. Right.

13 Q. So it's your testimony here today that that's just an
14 error in the camera equipment? It's -- there is no error
15 in the date alleged?

16 A. Right.

17 MR. FOARD: Permission to publish, Your Honor?

18 THE COURT: You may.

19 MR. FOARD: Thank you, Your Honor.

20 BY MR. FOARD:

21 Q. I believe you testified that the confidential
22 informant did go and complete the transaction?

23 A. Yes.

24 Q. All right then. And after that what happened?

25 A. Once the transaction was done the informant would

1 come back to where we were. They would turn over the
2 evidence to myself. The equipment would be removed, and
3 they again would be searched and the vehicle would be
4 searched as well.

5 Q. All right. Did that occur in this case?

6 A. That occurred.

7 Q. And was anything found out of the ordinary?

8 A. No.

9 Q. All right. Was it found that the confidential
10 informant had any other pills or any elicited drugs on his
11 person other than the ones that had been purchased from
12 Mr. Griggs?

13 A. There was nothing else on his person.

14 Q. All right. And was it found that he had any other
15 money on his person?

16 A. There was no other money on his person.

17 Q. All right?

18 MR. FOARD: Beg the Court's indulgence just a moment?

19 THE COURT: Okay.

20 BY MR. FOARD:

21 Q. And, again, the person identified in the exhibits
22 that the jury is viewing that is the Defendant, Mr. Joey
23 Griggs?

24 A. Yes, it is.

25 Q. And do you recognize the inside or the location in

1 which that video is taken?

2 A. I can only say where he went. I don't know. I
3 wasn't inside the store if that is what you mean.

4 Q. You weren't inside the store?

5 A. Right.

6 Q. Have you ever been inside that store?

7 A. Very few times.

8 Q. Very few times. But is it your belief that that
9 store is located in Patrick, South Carolina.

10 A. Yes.

11 Q. Here in Chesterfield County?

12 A. Yes.

13 Q. All right. On October the 19th of 2010?

14 A. Yes.

15 Q. All right.

16 MR. FOARD: No further questions at this time, Your
17 Honor.

18 THE COURT: Cross-examination?

19 MR. JOYNER: Yes, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. JOYNER:

22 Q. Mr. Irvin, you testified that you want to stop drugs?

23 A. Right.

24 Q. Drugs are bad?

25 A. They are.

- 1 Q. They're not good?
- 2 A. No, they're not.
- 3 Q. And if you had it your way there wouldn't be any
4 drugs?
- 5 A. If I had it my way, no, there wouldn't be any drugs.
- 6 Q. And then there wouldn't be much need for you to have
7 a job, now, would there?
- 8 A. Right.
- 9 Q. And you testified, basically, that you get a
10 confidential informant, Richard Gregory, in this case?
- 11 A. Right.
- 12 Q. And he goes and buys drugs for you?
- 13 A. In some cases we use informants. Yes, sir.
- 14 Q. In this case you used an informant?
- 15 A. Yes.
- 16 Q. And his name is Richard Gregory?
- 17 A. Yes.
- 18 Q. And he went and bought drugs; that is your testimony?
- 19 A. Yes.
- 20 Q. Did he use his own money ---
- 21 A. No, sir.
- 22 Q. --- to buy these drugs?`
- 23 A. No.
- 24 Q. Where did he get the money?
- 25 A. From the Sheriff's Office.

1 Q. So in a way the Sheriff's Office took its own money
2 and bought drugs?

3 A. The Sheriff's Office has money used to purchase drugs
4 in order to get buys on people selling drug, yes.

5 Q. It's money that's the Sheriff's Office?

6 A. Right. Yes.

7 Q. Okay. So the C.I, Richard Gregory ---

8 A. Right.

9 Q. --- gets money from you?

10 A. Right.

11 Q. He takes the money that you have given him?

12 A. Right.

13 Q. And he goes and buys drugs; that's your testimony?

14 A. Yes, it is.

15 Q. Okay. And, again, drugs are bad, you said?

16 A. They are.

17 Q. And, well, the second this alleged transaction was
18 completed, and Mr. Gregory gave the money and got these
19 drugs that are bad you didn't rush in and arrest this drug
20 dealer, did you?

21 A. No.

22 Q. But you could have?

23 A. I could have.

24 Q. You could have. You could have run in and got him
25 and arrested him?

1 A. I could have.

2 Q. And according to you that would be a drug dealer in
3 jail and off the streets?

4 A. Yes, sir.

5 Q. But you didn't do that, did you?

6 A. No, sir.

7 Q. If you had watched a murder take place in front of
8 you you would have immediately arrested the person?

9 A. That's right.

10 Q. Okay. But drugs are bad?

11 A. They are.

12 Q. And in this case if what you say is true you allowed
13 a drug dealer to stay on the street?

14 A. I did.

15 Q. Okay?

16 MR. JOYNER: No further questions, Judge.

17 THE COURT: Yes, sir.

18 MR. FOARD: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FOARD:

21 Q. Without getting too far into things would you
22 investigate a drug crime the same way that you would
23 investigate a murder as Mr. Joyner has used as an example?

24 A. Not at all.

25 Q. Okay. And so the procedures that you as law

1 enforcement would use after the discovery of a crime had
2 occurred would that be different than say if you were
3 investigating a murder?

4 A. Yes. Drugs and murder are two separate crimes and we
5 investigate them totally different.

6 Q. And so it's your testimony and your experience as a
7 seasoned law enforcement officer that not arresting that
8 drug dealer immediately on the spot that's not some kind
9 of a deficiency? That's just a tactic of law enforcement
10 that they use in the investigation of drug crimes?

11 A. That is right.

12 MR. FOARD: No further questions, Your Honor.

13 THE COURT: Anything further.

14 MR. JOYNER: No, Your Honor.

15 THE COURT: Thank you, sir.

16 COLLOQUY

17 MR. FOARD: Your Honor, the State would call
18 Willie -- excuse me. The State would call Richard
19 Gregory.

20 THE COURT: All right. Richard Gregory.

21 MR. FOARD: Your Honor, may Mr. Joyner and I approach
22 while the witness is coming in?

23 THE COURT: Yes.

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

1 hearing of the jury.)

2 THE COURT: We'll take a break for a few minutes.
3 When you come back, Mr. Fluallen, we'll name you as the
4 foreperson of the jury. If you will play that role, and
5 where does the foreperson sit.

6 BAILIFF: Right here, Your Honor.

7 THE COURT: We've got a spot reserved for you. All
8 right. If you would go into the jury room. Please do not
9 discuss the case, and we'll take a few minutes.

10 (WHEREUPON, the jury panel was excused from the
11 courtroom at 11:35 a.m.)

12 (WHEREUPON, Court was in recess at 11:36 a.m. and
13 reconvenes at 11:45 a.m.)

14 THE COURT: All right. Are we ready to go?

15 MR. FOARD: We are, Your Honor.

16 THE COURT: All right. Bring them in.

17 (WHEREUPON, the jury panel enters the courtroom at
18 11:47 a.m.)

19 THE COURT: All right. You may proceed.

20 MR. FOARD: Thank you, Your Honor. The State calls
21 Richard Gregory to the stand.

22 THE COURT: All right. Come forward.

23 RICHARD GREGORY, after being duly sworn,
24 testified as follows:

25 DIRECT EXAMINATION

1 BY MR. FOARD:

2 Q. Morning, sir.

3 A. Good morning.

4 Q. If you could speak up a little bit louder for us?

5 A. I said good morning.

6 Q. Please tell the jury your name?

7 A. Richard Gregory.

8 Q. Richard Gregory. And, Mr. Gregory, do you live here
9 in Chesterfield County?

10 A. I live in Patrick.

11 Q. You live in Patrick. All right then. And do you
12 know the Defendant, Mr. Joey Griggs?

13 A. I do.

14 Q. Okay then. And how is it that you know the
15 Defendant, Joey Griggs?

16 A. He was living in the same town. I've known him
17 probably 20, 30 years. Just his dad owns the store.

18 Q. Okay. His dad owns a store?

19 A. Patrick General. Yes, sir.

20 Q. Patrick General Store. All right. And let's talk a
21 little bit about you before we proceed. Can you tell us
22 are you presently employed, sir?

23 A. Yes, sir.

24 Q. And where do you work?

25 A. G & R Transport. Auto transport.

1 Q. Okay. And what is it that you do for the auto
2 transport company?

3 A. I actually work with my cousin. He hauls cars and I
4 work with him.

5 Q. All right then. And were you in the courtroom from
6 the beginning of this trial?

7 A. I was. Yes, sir.

8 Q. All right then. Did you have a chance to hear the
9 opening statements in this trial?

10 A. Yes, I did.

11 Q. Okay. I'm going to ask you about some of the things
12 I believe we heard during opening statements. Counsel for
13 Mr. Griggs eluded that you are some kind of heavy drug
14 user, sir. Is that true?

15 A. In the past.

16 Q. In the past. All right then. And because you say in
17 the past I'm assuming that you are not presently using any
18 illicit drugs?

19 A. I go to I go to methadone clinic.

20 Q. You do?

21 MR. JOYNER: Your Honor, I would just object to the
22 leading nature of the question.

23 THE COURT: All right. Don't leading. You may
24 proceed.

25 MR. FOARD: Thank you, Your Honor.

1 BY MR. FOARD:

2 Q. You mentioned a clinic?

3 A. Yes, sir.

4 Q. Can you expound on that? Tell us a little bit more
5 about that?

6 A. It's just a place to help get you off of drugs.

7 Q. All right then. And what treatment do they use to
8 get you off of drugs?

9 A. It's an opiate based chemical you take to, you know.

10 Q. And what's the name of that chemical?

11 A. Methadone.

12 Q. Methadone. All right then. And is that procedure --
13 is that just something you go and get or is there ---

14 A. It's a doctor prescribed.

15 Q. Doctor prescribed. All right.

16 A. Yes, sir.

17 Q. And so whose care are you under?

18 A. Dr. Merlin.

19 Q. Who?

20 A. Dr. Merlin.

21 Q. Merlin?

22 A. Yes, sir.

23 Q. Okay. And the ultimate goal of this treatment is to
24 what?

25 A. To clean me up.

1 Q. To clean you up.

2 A. To get me sober.

3 Q. All right so why are you now presently on methadone?
4 You testified that you are not using an illicit drugs at
5 this time?

6 A. No, sir. I take drug screens at the clinic.

7 Q. All right then. But you do readily admit to prior?

8 A. Yes, sir.

9 Q. And is that prior use of drugs is what lead you to
10 work with law enforcement on this enforcement action?

11 A. Not really.

12 Q. Okay then. And so how did you become connected with
13 law enforcement?

14 A. I've known Mike for years, and I just wanted to clean
15 up the streets. I mean basically, you know.

16 Q. Okay. And what did you do for law enforcement as
17 part of those actions?

18 A. I purchased drugs.

19 Q. Okay then. And specifically did you purchase drugs
20 on October the 19th 2010 from the Defendant, Joey Griggs?

21 A. Yes, sir.

22 Q. And just for clarification purposes would that be the
23 individual sitting at the Defense table in the courtroom
24 now?

25 A. Yes.

1 Q. Okay?

2 A. Sure.

3 Q. All right. And tell us about that day and that

4 transaction and the transaction specifically. Was that

5 being monitored with any equipment?

6 A. Yes, sir, I had the F.O.B.

7 Q. The F.O.B. What's the F.O.B, sir?

8 A. It's like a key chain deal. It looks like a key

9 chain and it's got a camera on it.

10 Q. It's got a camera inside of it?

11 A. Yes, sir.

12 Q. And so you carry this FAD, I take it?

13 A. Yes, sir.

14 Q. Okay. And did you carry it through the entire

15 transaction?

16 A. Yeah.

17 Q. Okay. What vehicle were you driving that day?

18 A. I think it was an Impala. It was one of the

19 County's.

20 Q. Okay.

21 A. Malibu, maybe. I'm not sure.

22 Q. All right. And did you meet up with Mike before this

23 purchase?

24 A. Yes, sir.

25 Q. All right then. And do you recall what happened in

1 preparation for that purchase?

2 A. He thoroughly searched me and ---

3 Q. And did you have anything on your person at that
4 time?

5 A. No, sir. No, sir.

6 Q. Did you have any prescription drugs?

7 A. No, sir.

8 Q. All right then. Did you have any money?

9 A. No, sir.

10 Q. And where did you received the money from for this
11 transaction?

12 A. From Mike.

13 Q. From Mike Irvin?

14 A. Yeah.

15 Q. All right then. And after being searched what
16 happened?

17 A. He outfitted me with the equipment, and I went and
18 made the buy.

19 Q. Okay then. And when you say you went and made the
20 buy, tell us some more specifics about that. Where did
21 the buy take place at?

22 A. In the store in Patrick General. Inside the store.

23 Q. In Patrick General Store?

24 A. Yes, sir.

25 Q. And this is the store that I believe you eluded to a

1 few moments ago?

2 A. Yes, sir.

3 Q. That's owned by Joey Griggs' father?

4 A. Yes, sir.

5 Q. All right then. And so that sale did happen in that
6 store here in Chesterfield County?

7 A. Yes, it did.

8 Q. Okay then. And did you just go in and ask for pills?
9 How does that work? How does that purchase work?

10 A. Well, he had been selling them for a while. So I
11 called him, and we set it up and I went in and got them.

12 Q. Okay. And so when you say that you went in and got
13 them did you explain money for the pills?

14 A. Yes, sir.

15 Q. Okay. And what did you do after you purchased these
16 drugs?

17 A. I went back to Mr. Irvin.

18 Q. Okay?

19 A. Straight back to him.

20 Q. All right then. And what procedures were followed
21 once you went back there?

22 A. I gave him the drugs, and he searched me again in the
23 vehicle.

24 Q. All right. And did you have any illicit drugs on you
25 at that time?

1 A. No, sir, I did not.

2 Q. Did you have any money on you at that time?

3 A. No, sir.

4 Q. Sir, did you at any time, and I'm going to use the
5 Defense's word here. Did you at any time skim any drugs
6 as part of this transaction?

7 A. No, sir.

8 Q. All right then. So the drugs that you received are
9 what was turned over to law enforcement?

10 A. Yes, sir.

11 Q. All right then. You didn't keep any for yourself?

12 A. No, sir.

13 Q. All right.

14 MR. FOARD: Your Honor, at this time the State would
15 move to publish State's Exhibit One, the video, that's
16 been referenced.

17 THE COURT: All right. It's been admitted into
18 evidence.

19 MR. JOYNER: No objection.

20 THE COURT: All right. You may publish it.

21 MR. FOARD: Thank you, Your Honor.

22 (WHEREUPON, State's Exhibit One was played for the
23 jury in open Court.)

24 MR. FOARD: Beg the Court's indulgence just one
25 moment.

1 BY MR. FOARD:

2 Q. Mr. Gregory, were you able to see that as it was
3 playing?

4 A. Yes, sir.

5 Q. All right then. And does that accurately represent
6 the transaction as it were on October the 19th of 2010?

7 A. Yes, sir.

8 Q. All right then. And, again, I notice this sounds
9 elementary, but tell us what did we just witness, sir?

10 A. I went in. He went back. I spoke to him for a
11 minute. He was on the phone. He went back and got the
12 pills. He brought them back to me. And I got them and
13 left. It's pretty much it.

14 Q. All right. And the gentlemen on the telephone it was
15 Joey Griggs?

16 A. Yes, sir.

17 Q. All right then. And I believe at some point we were
18 able to see some money in Mr. Griggs' hand. Is that the
19 money you used to purchase the drugs?

20 A. Yes, sir.

21 Q. All right then. And towards the end of the video
22 when we see him walking back towards you after he's gone
23 into a back room what happens as he comes back towards
24 you?

25 A. He brings the pills with him.

1 Q. He brings the pills to you?

2 A. Yes, sir.

3 Q. At that time he did have the pills in his possession?

4 A. Yes, sir.

5 Q. And he then gave those pills to you?

6 A. Yes, sir.

7 Q. He distributed them to you?

8 A. Yes, sir.

9 Q. Okay.

10 MR. FOARD: Beg the Court's indulgence for just a
11 moment. If I may approach, Your Honor?

12 THE COURT: Yes, sir.

13 BY MR. FOARD:

14 Q. Mr. Gregory, I'm handing you what's previously been
15 entered as State's Exhibits Three and Four. Do those look
16 familiar to you?

17 A. Yes, sir.

18 Q. All right then. And where do those photographs --
19 where do they come from?

20 A. The Patrick General Store.

21 Q. All right then. And are they from the video that we
22 just watched?

23 A. Yes, sir.

24 Q. All right. And please tell the jury what is pictured
25 in State's Exhibit Three?

1 A. It's him handing me the money.

2 Q. Him handing you the money?

3 A. I mean I'm -- okay. He's giving me the pills. I'm
4 giving -- he -- I'm buying the pills from him.

5 Q. Okay.

6 A. I'm kind of nervous. I'm sorry.

7 Q. All right then. It shows you buying the pills from
8 him?

9 A. Yes, sir.

10 Q. All right then. And Number Four, does it show that
11 as well?

12 A. Yes, sir. Those are the pills in his hand.

13 Q. Okay then. The pills in his hand, is that a white
14 spot that we see in the palm of his hand?

15 A. Yes, sir.

16 Q. Or what appears to be a white spot?

17 A. Yes, sir.

18 Q. All right then.

19 MR. FOARD: Thank you, Your Honor. I have no further
20 questions for this witness.

21 THE COURT: All right. Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. JOYNER:

24 Q. Your name is Richard Gregory?

25 A. Yes, sir.

- 1 Q. From Patrick?
- 2 A. Yes, sir.
- 3 Q. You have a twin brother?
- 4 A. No, I don't.
- 5 Q. You got a brother?
- 6 A. Yes, sir. I've got two brothers.
- 7 Q. Named Chris?
- 8 A. Chris and Tony.
- 9 Q. You're 41 years-old?
- 10 A. Yes, sir.
- 11 Q. You don't have any medical problems, do you?
- 12 A. I have high blood pressure.
- 13 Q. Other than that you have no disabilities?
- 14 A. No.
- 15 Q. Now, Mr. Gregory, you will steal, won't you?
- 16 A. Not any more.
- 17 Q. Not anymore?
- 18 A. No. I cleaned my act up.
- 19 Q. Had an awakening?
- 20 A. Sir?
- 21 Q. You had an awakening?
- 22 A. You could call it that.
- 23 Q. You're shooting -- you're going straight now?
- 24 A. Yes, sir.
- 25 Q. But you admit that you have stolen in the past?

1 A. Yes, I have.

2 Q. In fact you've been convicted of stealing in the
3 past, haven't you?

4 A. Yeah.

5 Q. You've been convicted for other things, haven't you?

6 A. A couple, yeah.

7 Q. And, of course, now we know that you're Snow White,
8 but you have used drugs in the past, haven't you?

9 A. Yes, sir.

10 Q. And you would admit that you use marijuana in the
11 past?

12 A. Marijuana, yes, sir.

13 Q. And you admit that you've smoked crack in the past,
14 haven't you?

15 A. Yes, sir.

16 Q. And you've snorted cocaine in the past?

17 A. Yes, sir.

18 Q. And you've used meth in the past?

19 A. No, I have not used meth.

20 Q. Oh, excuse me. I'm sorry. So you've used marijuana.
21 You've used cocaine. You smoked crack. You have used all
22 sorts of pills. You've used hydrocodone?

23 A. Yes, sir.

24 Q. Okay. And you've used Oxycontin before?

25 A. Yes, sir.

1 Q. And you have used Lorcet?

2 A. Yes, sir.

3 Q. Percocet?

4 A. Yes, sir.

5 Q. And even now you use methadone?

6 A. Yes, sir.

7 Q. You have used all of those things. You have used all
8 of those things?

9 A. Yes, sir.

10 Q. And in fact you actually have used things other than
11 methadone currently, haven't you?

12 A. Uh uh. I take drug screens at the clinic, and if y
13 ou don't -- if you're not clean then you can get kicked
14 out so.

15 Q. Mr. Gregory, you admit while you were employed by the
16 Sheriff's Department as a snitch you admit that you were
17 using drugs at that time, weren't you?

18 A. Yes, I was.

19 Q. Cause you even say on the video you were using drugs,
20 don't you?

21 A. Yes.

22 Q. You say on the video -- I believe you said that, "I
23 don't use a whole lot of hard stuff now. It's been a
24 couple of months since I've used any hard stuff. Any
25 strong stuff."

1 A. I'm not sure about the specifics, but probably so.

2 Q. And we'll just say because the jury will have another
3 opportunity to look at it. It's your allegations on the
4 video at 50 -- excuse me. At 21:57:45 you do say that
5 that, "It's been a few months since I've used any really
6 strong stuff." You agree that you say those things at
7 that point in the video?

8 A. If it says it on the video then, yeah, I said it.

9 Q. So you were using many drugs at the time this video
10 was made?

11 A. The pills and marijuana at the time and alcohol.

12 Q. And, of course, you were that day fulfilling your
13 role as a snitch for the Sheriff's Department?

14 A. Yes, sir.

15 Q. And in fact you got that job because they agreed to
16 help you out with some charges, didn't they?

17 A. I had one charge.

18 Q. Yeah, you had some charges pending against you,
19 didn't you?

20 A. I had one charge.

21 Q. You didn't go and volunteer like a good samaritan to
22 work for the Sheriff's Department?

23 A. Actually, I did.

24 Q. Okay.

25 A. My wife is the one that ---

- 1 Q. Excuse me.
- 2 A. Okay.
- 3 Q. You had a charge pending against you?
- 4 A. Yes, sir.
- 5 Q. The Sheriff's Department helped you out with that
- 6 charge in return for you being a snitch?
- 7 A. Yes, sir.
- 8 Q. Okay. And so you gained a benefit from working for
- 9 the Sheriff's Department?
- 10 A. Yes.
- 11 Q. The benefit was that they would help you on your
- 12 criminal charges?
- 13 A. Yes.
- 14 Q. So you had an incentive to do a good job?
- 15 A. Yes, sir.
- 16 Q. You had an incentive to produce? You had an
- 17 incentive to produce?
- 18 A. I guess.
- 19 Q. Because if you do good they take care of your charge?
- 20 A. Yes, sir.
- 21 Q. And you wanted your charge taken care of?
- 22 A. Yes, sir.
- 23 Q. You didn't want to go to prison?
- 24 A. Right.
- 25 Q. You didn't want to have to be locked up in a cage,

1 did you?

2 A. No.

3 Q. You didn't want any of those things. So you wanted
4 to work hard and produce very well for the Sheriff's
5 Department, didn't you?

6 A. Yes.

7 Q. And you would actually admit that during this time
8 you bragged about the fact that you had sort of duped law
9 enforcement, didn't you?

10 A. Uh uh.

11 Q. It's your testimony today under oath that you never
12 bragged to anyone that you were kind of taking advantage
13 of the Sheriff's Office?

14 A. No. I didn't speak with anyone.

15 Q. Now, would you consider Joey your friend?

16 A. No.

17 Q. You've been in his house before?

18 A. Yes.

19 Q. But he's not your friend?

20 A. No.

21 Q. You've been to his house more than one time before?

22 A. Maybe a handful of times. He's always at the store.

23 Q. You've been to his home before?

24 A. Yes, sir, I have.

25 Q. And is it your normal practice to invite enemies in

1 your home?

2 A. No.

3 Q. You invite your friends into your home?

4 A. I would say so, yeah.

5 Q. Okay. And you've been to Joey's house numerous
6 times, haven't you?

7 A. Yes.

8 Q. Okay. And you will admit that a man who has invited
9 you into his home numerous times that it was your hope to
10 set him up in this case?

11 A. Not before. No.

12 Q. It was your hope to go in and wear a camera and video
13 him? It was your hope to get him? It was your hope to
14 get drugs from him, wasn't it?

15 A. Yes.

16 Q. Because although he was a friend and you've been to
17 his house before this was important for you, wasn't it?
18 You said earlier that you wanted to produce so that you
19 wouldn't be facing prison time, didn't you?

20 A. Right.

21 Q. And, of course, had you not gone and bought those
22 pills that day and sought out Joey we wouldn't even be
23 here, would we?

24 A. That's right.

25 Q. Now, at this time you said earlier that you were

1 doing a significant amount of drugs. You would admit that
2 drugs are not free, are they?

3 A. No, sir.

4 Q. And you would admit that it takes money to buy drugs,
5 correct?

6 A. Yes, sir.

7 Q. And at that time drugs were very important to you,
8 weren't they?

9 A. It was. I guess so. Yeah.

10 Q. Okay. Because drugs are important to an addict,
11 aren't they?

12 A. Exactly.

13 Q. They're addictive?

14 A. Yes, sir.

15 Q. And you were addicted?

16 A. Yes, sir.

17 Q. And you will in fact be an addict the rest of your
18 life, won't you?

19 A. It's an illness, yes. It's a disease, yes.

20 Q. And just so we're clear money is an absolutely
21 critical item when it comes to being a drug addict?
22 Without it you can't support your drug habit, can you?

23 A. Exactly. Right.

24 Q. And in fact this need for money that is actually the
25 reason that you had your brother, Chris, try to bribe

1 Joey, isn't it?
2 A. No, it's not.
3 Q. That's not the reason.
4 A. He approached my brother.
5 Q. Okay. You admit that your brother, Chris, on Labor
6 Day went to Joey's house?
7 A. I don't know.
8 Q. You don't know?
9 A. I don't know. My brother called me and said ---
10 Q. Excuse me.
11 A. All right. Sorry.
12 Q. You would admit -- let me do this. You're married?
13 A. Yes, sir.
14 Q. Married to Jennifer?
15 A. No, sir.
16 Q. Whose married to -- tell me who is married to
17 Jennifer?
18 A. My brother, Chris.
19 Q. Your brother, Chris?
20 A. James Christopher Gregory.
21 Q. Okay. And you would admit that Jennifer had a
22 traffic ticket around Labor Day, didn't she?
23 A. I don't know. I'm not sure. I'm not sure. I don't
24 know.
25 Q. So it's your allegation today that your brother,

1 Chris -- you have no idea about his wife having a traffic
2 ticket?

3 A. He may have. I mean I don't know. I don't remember.

4 Q. But you said that Joey approached him?

5 A. Several times.

6 Q. Several times. Is it -- let me ask you this. So you
7 have no idea -- you know that Joey did all these things,
8 but you don't know that your brother went to Joey's house
9 on Labor Day, do you?

10 A. I'm not sure about the exact date. I don't know.

11 Q. Of course you're not, and also you're not sure about
12 the fact that later that same day he called him at the
13 store or are you?

14 A. I don't know.

15 Q. I'm sure you're not, and you're not sure that when he
16 called him he asked him for cash to pay off -- so his wife
17 could pay this traffic ticket?

18 MR. FOARD: Objection, Your Honor. Counsel is
19 testifying through his questions. This line of
20 questioning the witness has indicated that he does not
21 know anything about it.

22 THE COURT: Objection sustained.

23 BY MR. JOYNER:

24 Q. You've had contact with Joey since this incident,
25 haven't you?

1 A. No.

2 Q. You haven't had any contact with him?

3 THE COURT: You must answer verbally.

4 THE WITNESS: No, sir, I have not.

5 BY MR. JOYNER:

6 Q. And just ---

7 A. I'm not allowed at the store.

8 Q. Just for the record, Mr. Gregory, the charges that
9 you were working for to avoid jail -- to avoid prison, you
10 never went to prison for those, did you?

11 A. No.

12 Q. No. Because law enforcement helped you out with it,
13 didn't they?

14 A. Yes, sir.

15 Q. That's what I thought.

16 MR. JOYNER: No further questions, Judge.

17 THE COURT: Any re-direct?

18 MR. FOARD: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. FOARD:

21 Q. Mr. Gregory, you admit that you were a drug user?

22 A. Yes, sir.

23 Q. All right. And for how long were you a drug user?

24 A. Twenty years.

25 Q. Twenty years.

1 A. Yes.

2 Q. So you've been around the drug culture for a long
3 time?

4 A. Yes, sir.

5 Q. Okay then. Would it be possible, based on your
6 knowledge of the drug culture, would it be a -- would it
7 be possible for?

8 MR. JOYNER: Your Honor, I would just object to the
9 leading nature of the question.

10 THE COURT: Haven't heard the question.

11 BY MR. FOARD:

12 Q. Would it be possible for a police officer to purchase
13 drugs from a drug dealer?

14 A. No, sir. I don't think so.

15 Q. Would it be possible for a stranger to be able to go
16 up to a drug dealer and just be able to purchase drugs?

17 A. No, sir. I don't think so.

18 Q. Does it -- is some kind of connection required
19 between the dealer and the purchaser?

20 A. Yes, sir.

21 Q. That's your experience?

22 A. Yes, sir.

23 Q. All right.

24 MR. FOARD: Thank you, Your Honor. No further
25 questions.

1 MR. JOYNER: Nothing further of this witness.

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

3 MR. FOARD: Thank you, Your Honor. The State calls
4 Willie Smith.

5 WILLIE SMITH, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. FOARD:

9 Q. Good morning.

10 A. Good morning.

11 Q. Can you give us your name and occupation, please?

12 A. My name is Willie C. Smith the Third, and I work at
13 the South Carolina Law Enforcement Division also known as
14 S.L.E.D. as a chemical analyst in the Drug Analysis
15 Department

16 Q. Please tell us about your educational background.

17 A. I have a Bachelor of Sciences in biology and
18 chemistry from the University of South Carolina. I've
19 taken additional graduate course work for the purposes of
20 drug analysis. I went through the Criminal Justice
21 Academy to become a sworn law enforcement officer in the
22 State of South Carolina, and I went through a year of
23 training to become a certified analyst.

24 Q. All right then. And how long has it taken you to get
25 to the position where you are today?

1 A. Well, I've been at S.L.E.D. for 13 years and four
2 months.

3 Q. All right. And have you been in drug analysis for
4 that entire time?

5 A. Yes, the whole time.

6 Q. All right then. And so have you had the opportunity
7 to testify in Court previously?

8 A. Yes, I have.

9 Q. Do you know approximately how many times?

10 A. Sixty-eight times.

11 Q. Sixty-eight times.

12 MR. FOARD: Your Honor, at this time I would move to
13 have Mr. Smith admitted as an expert in the field of
14 chemical analysis and drug identification.

15 THE COURT: Any voir dire or objection.

16 MR. JOYNER: No objection.

17 THE COURT: Ladies and gentlemen, this witness is an
18 expert witness in the field of drug analysis. An expert
19 witness can offer opinion in areas where non-expert
20 witnesses cannot. You may proceed.

21 MR. FOARD: Thank you, Your Honor.

22 BY MR. FOARD:

23 Q. Mr. Smith, did you have the occasion to analyze any
24 substances related to the case of Joey Griggs for which we
25 are here today?

1 A. Yes, I did.

2 Q. All right then. And can you please tell us what
3 happens in your position when you receive substances for
4 testing?

5 A. Basically, what we do is we send out a Best Evidence
6 Sample Testing Kit to seal the evidence in to submit it
7 for the laboratory to look at for analysis.

8 Once they submit it in the Best Kit it has a control
9 number on that Best Kit which we give a laboratory number
10 to. That way we can trace the evidence from the beginning
11 to end of the whole case.

12 Q. All right then. And so in this case is there a lab
13 number that is assigned to this case, sir?

14 A. Yes. The lab number in this case is L10-12220, and
15 it corresponds to our Best Control Kit Number B216054.

16 Q. All right?

17 MR. FOARD: Now, may I approach, Your Honor?

18 THE COURT: Yes.

19 MR. FOARD: Thank you.

20 BY MR. FOARD:

21 Q. Sir, I've been handing you -- I'm handing you what
22 has been pre-marked as State's Exhibit Five. Can you look
23 that item over and please identify what it is?

24 A. Yes, sir. This is the Best Kit that I was explaining
25 earlier. It's a tamper indicative bag. If the bag had

1 been tampered with in any way whatsoever I would return it
2 to the agency. Once I receive the bag I write the
3 laboratory number on it. And write the words, 'seal
4 intact,' and the date that I examine the bag before I
5 open -- do my analysis on this type of case.

6 Q. All right. And the numbers that you just referenced,
7 the lab number and the Best Kit Number, do you see those
8 appearing on State's Exhibit Five anywhere?

9 A. Yes. The lab number which in this case is L1012220.
10 It's right at the top. And then our pre-printed Best
11 Control Numbers are on these bags. And in this case it is
12 B216054 which corresponds to this case that I did my
13 testing.

14 Q. All right. So, sir, can -- you're identifying what
15 you hold as State's Exhibit Five as being the specific
16 Best Kit bag that relates to Mr. Joey Griggs?

17 A. That is correct.

18 Q. All right.

19 MR. FOARD: And at this time, Your Honor, I would
20 move to have State's Exhibit Five moved into evidence?

21 THE COURT: Any objection?

22 MR. JOYNER: Judge, I would just like to see it.

23 THE COURT: All right.

24 (WHEREUPON, State's Exhibit No. 5 was admitted into
25 evidence.)

1 BY MR. FOARD:

2 Q. Now, sir, of you would for us explain your procedures
3 once you receive that Best Kit through the testing
4 process?

5 A. The first thing that I do is examine the evidence
6 along with the request form of this case. In this case it
7 said that there were seven green pills with the label,
8 'Watson 503' on one side. I examined them, and I made
9 sure there were seven tablets inside the case.

10 The next thing I do is I do a visual examination to
11 make sure all the tablets were the same. In this case all
12 the tablets were the same with the same Watson 503 on it.

13 The next thing I do is look up published literature
14 to see exactly what type of tablet that I'm looking at.
15 In this case it said it was a hydrocodone and
16 acetaminophen tablet.

17 The next thing I do after that I take a sample and I
18 test it on a molecular level. And the molecular level
19 that I tested it on in this case was gas chromatography
20 and mass spectroscopy was identified as hydrocodone and
21 acetaminophen.

22 Q. Thank you. So you have identified that the pills in
23 question are in fact a controlled substance?

24 A. Yes. The seven tablets that are in here with the
25 label 'Watson 503' that were light green tablets, the

1 testing that I did on them on the gas chromatography and
2 mass spectroscopy came out to be hydrocodone and
3 acetaminophen and I identified them that way.

4 Q. All right.

5 MR. FOARD: Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 MR. FOARD: Thank you.

8 BY MR. FOARD:

9 Q. I'm handing you what has previously been marked for
10 identification purposes as State's Exhibit Five. Oh,
11 excuse me. State's Exhibit Two. Can you please review
12 that and identify it for me?

13 A. After we get our results we generate a report, and
14 that is a report of my results for this case which was
15 the -- for Lab Number L1012220 which corresponds to our
16 Best Number B216054 which was green tablets. And it's
17 hydrocodone and acetaminophen found, seven tablets.

18 Q. All right.

19 A. My report.

20 Q. All right then. And is that chemical composition,
21 hydrocodone and acetaminophen, does that go by a
22 pharmaceutical name, sir?

23 A. Yes, that is correct. Just like pharmaceuticals may
24 call it Lortab or Lorcet. Just to say like you bought
25 Tylenol you know it's acetaminophen but the Tylenol

1 company calls it Tylenol.

2 Q. That goes by the name of Lorcet. Okay. So
3 hydrocodone and acetaminophen, that goes by the name of
4 Lorcet?

5 A. That is correct.

6 Q. All right then. And, sir, if I can draw your
7 attention -- excuse me -- at this time.

8 MR. FOARD: Would you like to see it, counselor?

9 MR. JOYNER: I don't have no objection to it.

10 MR. FOARD: Request to move this in evidence, please.

11 THE COURT: Admitted without objection.

12 (WHEREUPON, State's Exhibit No. 2 was admitted into
13 evidence.)

14 MR. FOARD: Thank you.

15 BY MR. FOARD:

16 Q. Sir, if I could draw your attention to the second and
17 third page of that report. Can you identify those for us,
18 please.

19 A. These are that chain of custodies that go with the
20 case. Every time the evidence leaves one person's hand
21 and goes to another person's hand they need to fill out
22 paperwork until it gets to me, and that's what this other
23 documentation that's attached to the report is.

24 Q. All right then. And, obviously, you did not prepare
25 these documents, correct?

1 A. No, I did not.

2 Q. Okay. But they're indicative, I believe on the
3 second page which is Form B, that the pills in question
4 were initially received from Richard Gregory?

5 A. That is correct.

6 Q. All right then. And could you, please, identified
7 for us what pills were listed on Form B as being received
8 from Richard Gregory?

9 A. On Form B it states that seven green pills with
10 Watson 503 on one side were received from Richard Gregory.

11 Q. All right then. Is that consistent with the items
12 that you received in your Best Kit?

13 A. Yes. Those are the types of items that are received
14 from my testing in the Best Kit.

15 Q. All right then.

16 MR. FOARD: Your Honor, may I publish to the jury
17 State's Exhibits Two and Five, please?

18 THE COURT: Yes.

19 MR. FOARD: Thank you.

20 BY MR. FOARD:

21 Q. So, sir, just to conclude matters. In your expert
22 opinion to a degree of scientific certainty the item
23 contained in State's Exhibit Five do represent a
24 controlled substance?

25 A. Yes. That item in that exhibit does represent a

1 controlled substance.

2 Q. All right. And those would commonly go by the name
3 of Lorcet?

4 A. That is correct.

5 Q. All right. And what do they contain? What
6 controlled substance?

7 A. They contain hydrocodone and acetaminophen.

8 Q. All right then. And is that an item you can purchase
9 over the counter?

10 A. No, it's not.

11 Q. Is it an item that requires a prescription from a
12 physician?

13 A. Yes, it does require a prescription.

14 Q. All right then. And is it the type of item that you
15 would expect to be purchased at a general store that does
16 not contain a pharmacy?

17 A. No

18 Q. All right. And to your knowledge, sir, would it be
19 illegal to do so?

20 A. Yes, it would be.

21 Q. All right. It would be illegal to sell those items
22 without a prescription?

23 A. That is correct.

24 Q. Or distribute them?

25 A. That is correct.

1 Q. Or to possess them with intent to distribute?

2 A. That is correct, too.

3 Q. All right.

4 MR. FOARD: Your Honor, I have no further questions
5 for this witness at this time.

6 THE COURT: Cross-examination.

7 MR. JOYNER: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. JOYNER:

10 Q. Good afternoon, Mr. Smith.

11 A. Good afternoon.

12 Q. Now, Mr. Smith, you said earlier that you used gas
13 chromatography with mass spectrometry?

14 A. Spectroscopy.

15 Q. Spectroscopy?

16 A. Right.

17 Q. To examine these?

18 A. To test them on a molecular level.

19 Q. Okay. And would it be okay if we just referred to
20 that a G.C. for gas chromatography, M.S. for mass
21 spectroscopy?

22 A. Yes. That's the way we do it in the scientific
23 field.

24 Q. All right. Now, sure, G.C. and M.S. will be what we
25 use. Okay. Now, of course the G.C. stands for gas

1 chromatography. So it is fair to say that the machine can
2 only test something in a gaseous or a vaporous state; is
3 that correct?

4 A. Yes. We use a carrier gas.

5 Q. Okay. That's right. And, of course, if something is
6 a -- at room temperature is a vapor or a gas we would call
7 that a volatile compound, wouldn't we?

8 A. It could be a volatile substance.

9 Q. Okay. We would call it a volatile substance. It
10 would be volatile?

11 A. That is correct.

12 Q. And it would be volatile because it would have a low
13 boiling point?

14 A. It depends on the substance that you're testing.

15 Q. It would have a low vapor pressure is what I'm
16 saying?

17 A. Yes.

18 Q. Okay. For example, water boils at 212 degrees, and
19 it begins to make a vapor at 212 degrees, right?

20 A. Yes.

21 Q. Water does boil at 212 degrees? I mean that is
22 correct, isn't it?

23 A. It depends on the situation. It depends on the --
24 where it's elevated.

25 Q. Right now?

1 A. Yes.

2 Q. Where we are in Chesterfield County. If I was to sit
3 water on the stove at the point that it reached 212
4 degrees it would begin to boil?

5 A. All right. Yes.

6 Q. Okay. Okay. And so the boiling would cause the
7 water to evaporate?

8 A. Yes, sir.

9 Q. Okay. It would turn from a liquid into a vaporous
10 stage?

11 A. That is correct.

12 Q. Okay. An example of a -- of this volatile substance
13 could be formaldehyde? It could be -- or it could even be
14 a paint solvent with a strong odor, the vapors. That
15 could be an example, couldn't it?

16 MR. FOARD: Objection, Your Honor. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, it could be a volatile substance.

19 BY MR. JOYNER:

20 Q. Okay. Thank you. Now, of course, you would readily
21 admit that the pills you tested in this case are not
22 volatile substances, are they?

23 A. No. We use an extraction method to put in the
24 instrumentation.

25 Q. In fact it's called derivatization, isn't it?

1 A. No, derivitization is totally different than what I
2 do. I do a basic extraction in this type of case where I
3 extract the substance out so it can be ran with methylene
4 chloride instrumentation.

5 Q. And is this -- you do this process via a tubial,
6 correct?

7 A. No. I guess I need to explain G.C.M.S. and how it
8 works. Basically, I do an extraction. What it does is it
9 pulls out the substance into a methylene chloride
10 substance that goes into the instrumentation. It goes
11 into a little valve in the methylene chloride. It goes
12 into the injection port. And once it goes into the
13 injection port it ramps it up to a certain temperature,
14 and the temperature that it ramps it up to the gas form is
15 300 degrees on our instrumentation.

16 And it goes through the column, and once it goes
17 through the column it separates it on the G.C. part. Then
18 it goes into the mass spec part in which it breaks it up
19 into ions, and it gives like a fingerprint of some unique
20 substance. And the way I know this is what it is because
21 I run a known substance from a company and I compared it
22 to the spectrums.

23 Q. Okay. And, now, you said you heat it up until it
24 vaporizes.

25 A. The instrument heats it up until it goes into the gas

1 phase.

2 Q. Okay.

3 A. That's why it's gas chromatography.

4 Q. Okay. So when the machine heats it up you can't --

5 you cannot test the substance, the pill, as it is? It

6 must be altered?

7 A. It is extracted into a form so that you can put it on

8 the instrumentation.

9 Q. Right. So what is ended up tested by the machine is

10 in fact not the same as what you have when you have the

11 pill; is that correct?

12 A. That is correct. I use the same type of method that

13 pharmaceutical companies use to identify drugs.

14 Q. You make the substance more volatile?

15 A. You have to make the substance into a gas phase in

16 order for it to be tested on the instrument.

17 Q. But it's accurate that you have to make the substance

18 more volatile, don't you, in order to test it?

19 A. Yes. You can look at it that way.

20 Q. Okay. So once you have manipulated the substance and

21 made it more volatile then it can be run through the

22 machine? It can be run through G.C.M.S. machine at that

23 point?

24 A. Once I extract the substance into methylene chloride

25 it can be run into the instrumentation.

1 Q. Okay. Now, the gas chromatography produces a
2 chromatogram, does it not?

3 A. Yes, it does.

4 Q. Okay. And this process of making the compound more
5 volatile is beneficial for testing because it allows you
6 to get a better resolution on the machine. When you want
7 to look at the total spectrum it allows you to get a
8 better resolution?

9 A. As a chemist and in the industry you're going to need
10 to break down the substance to look at it on a molecular
11 level. And the main way to do this is by using G.C.M.S.

12 Q. Sure. But my point is this. As process of you
13 analyzing the substance when you do that, when you make
14 the substance more volatile, and it goes through the
15 machine it allows you to have a greater view of the tall,
16 skinny peaks on the chromatogram, is that correct?

17 A. That is correct.

18 Q. Okay. And I would like to ---

19 MR. FOARD: Would you mark that?

20 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
21 identification only.)

22 BY MR. JOYNER:

23 Q. Mr. Smith, I'm now showing you what has been marked
24 as Defendant's Exhibit One. I ask do you recognize that?

25 A. Yes. This is a copy of my G.C.M.S. data for this

1 case right here which corresponds to Lab Number L1012220.
2 And the item number which corresponds to the report is
3 1.1.

4 Q. Okay. And that is -- that's the data that you based
5 your opinion on?

6 A. That is correct.

7 Q. Okay.

8 MR. JOYNER: And, Judge, at this time I would move
9 that this be entered as Defense Exhibit One.

10 MR. FOARD: No objection.

11 THE COURT: It's admitted.

12 (WHEREUPON, Defendant's Exhibit No. 1 was admitted
13 into evidence.)

14 BY MR. JOYNER:

15 Q. Now, you said earlier that in breaking the compound
16 down you -- well, let me say. As part of the process you
17 have to select the tubular column, don't you?

18 A. Well ---

19 Q. That the carrier gas those through?

20 A. Right. The company recommends a column that we use.
21 I usually use the column that the company requests that we
22 use on that type of instrumentation.

23 Q. Sure. But the option is totally yours? You can pick
24 any kind or any size column that you would want to?

25 A. Well, you're sort of limited by the instrumentation

- 1 that you use. By the type of column that you use.
- 2 Q. But you do have the option of more than one column?
- 3 A. Not in the type of instrumentation that we have.
- 4 Q. There is only one type of column to run every type of
- 5 substance that you would possibly test on your machine?
- 6 A. There is a different type of columns, but the type of
- 7 columns that we use for our instrumentation the company
- 8 recommends one type of column.
- 9 Q. But you do have the option. If you wanted to you
- 10 could use another type of column is what I'm asking?
- 11 A. You could use another column from a different
- 12 company, but they are similar in the function that they do
- 13 and stuff.
- 14 Q. Okay.
- 15 A. That's just like saying, you know ---
- 16 Q. And they're ---
- 17 A. --- you're using different types of tennis shoes. If
- 18 you want a pair of tennis shoes you will have to buy a
- 19 pair of Adidas tennis shoes, a pair of Niki tennis shoes.
- 20 Q. Fine. And that's good. You would admit that this
- 21 column is useful to you because it helps you to determine
- 22 retention times?
- 23 A. That is correct.
- 24 Q. Okay. And retention time is important in a G.C.M.S.
- 25 analysis because basically if retention times don't match

1 it can't be that substance, can it?

2 A. What retention time, you have range that you go
3 through. Our range is .02 plus or minus for the retention
4 time. It's more than just involving the retention time.
5 You've got to look at both the M.S. and G.S. parts before
6 you determine the substance. And you're also looking at
7 your internal standard and also you're looking at your
8 known standards and comparing their retention times, too.

9 Q. Right. But before you get to any of those things,
10 first, you must have a consistent retention time between
11 you library match and the substance that you're testing it
12 against, isn't that right?

13 A. That's correct.

14 Q. Okay. So you do have to have matching retention
15 times. And, again, if your retention times don't match it
16 can't be the substance that you are testing it against,
17 isn't that correct?

18 A. Well, you look at the retention time. Like I said
19 it's plus or minus, 0.02. You like at that range of
20 retention time and you look at the substance. Just say if
21 I was testing for hydrocodone, like in this case, the
22 retention time for hydrocodone was 5.5 -- well, was 7.56.

23 The known standard is going to be really, really
24 close to that window frame; that plus or minus 0.02
25 percent. If I had a retention time of say like four

1 minutes instead of the 7.56 minutes I would know that this
2 is not hydrocodone. This would be a totally different
3 substance, but I also go by also the markings on the
4 tablet and what my known standard that I ran and look at
5 that retention time and my retention time of the unknown
6 substance.

7 Q. Right. So, and let me be more specific. You have a
8 range, a retention time range. As long as it falls within
9 the range that's acceptable?

10 A. That is correct. That is part of our policy and
11 procedure.

12 Q. Right. And if it falls outside of the range it can't
13 be that substance?

14 A. You would have to examine why it falls outside of the
15 range. It could be several factors that cause it to fall
16 outside of the range. You would just have to examine that
17 case.

18 Q. Let me ask you this. Which of these -- and the top,
19 this is?

20 A. Diiodobenzine.

21 Q. Okay. And this is the test substance at the top?
22 This is that substance you're testing?

23 A. That is correct.

24 Q. And this is your library match?

25 A. That is correct.

1 Q. All right. And this, the databases you used here,
2 are the S.L.E.D. database and here you used the National
3 Institute of Standards and Techniques or Technology; is
4 that correct?

5 A. Right. But the basic -- what this match is you put
6 with the one on top which is the S.L.E.D. instrumentation
7 that I used that shows that I used the known standard from
8 a company that all -- there is a company that sells all
9 known standards that all laboratories use.

10 I used that standard from that known company to
11 identify it cause any time I receive a substance I treat
12 it as an unknown even though it had those markings on the
13 tablet. I do not assume that hydrocodone and
14 acetaminophen. I test my -- run my known standard and I
15 compare it with my unknown tablet.

16 Q. Okay. And so this is your library standard on the
17 bottom?

18 A. Right.

19 Q. This is the test subject on the top?

20 A. That is correct.

21 Q. Okay. And here, for acetaminophen, this is the
22 library subject on the bottom?

23 A. That is correct.

24 Q. This is the test substance on the top?

25 A. That is correct.

1 Q. Okay. And here hexadecanoic acid; is that correct?

2 A. Right. That's actually a breakdown from the column.

3 Q. Okay. This is your library on the bottom?

4 A. Right. Right.

5 Q. And this is the test subject on the top?

6 A. That is correct.

7 Q. And then, finally, this is the hydrocodone? This is
8 your library match on the bottom?

9 A. That is correct.

10 Q. And this is your test? The substance you tested on
11 the top?

12 A. That is correct.

13 Q. Okay. Thank you.

14 A. But even though it matches with my library I run an
15 additional standard of the hydrocodone to match it with my
16 sample. That's additional data with this that was part of
17 my run. I just don't go with the library match to see the
18 library match is going to match it. I run a standard of
19 the item that I suspect to make sure that during that day
20 that that item that I am looking for is what it's supposed
21 to be.

22 MR. JOYNER: And I think that's all the questions I
23 have, Judge.

24 THE COURT: Any redirect?

25 MR. FOARD: Briefly.

REDIRECT EXAMINATION

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BY MR. FOARD:

Q. Mr. Smith, the testing that counsel has asked you about, again, within a degree of scientific certainty does it indicate that the drugs in question were a controlled substance?

A. Without any uncertainty I know that this substance is hydrocodone and acetaminophen.

Q. Okay. All right. And regarding the procedure that counsel has taken you through can you tell us the setting that this occurs in?

A. This occurs in our laboratory, and I have a work space. And it's part of our policy and procedure that we're supposed to clean our area, and I always do before each and every case. And I only work with one case at a time, and that's how I do all my cases.

Q. Okay. And it sounds like these policies are intended to keep a clean and secured area?

A. That is correct because you do not want to have any false reports go out, and you want to make sure you're only reporting out what needs to be reported.

Q. And do you regularly follow S.L.E.D.'s policies and procedures?

A. I do, and on top of that after I do my case work I have to send to an additional laboratory analyst where

1 they have to rework or go through all my data to make sure
2 I did everything correctly in the case. And that they
3 would come up with the same results.

4 Q. So I'm presuming that the fact that you issued a
5 report on this means that your findings were in fact
6 reviewed and approved on the procedure that you just set
7 forth?

8 A. That is correct.

9 Q. All right then. And, finally, is this procedure that
10 Mr. Joyner has asked you about it this something that just
11 anybody can go and take part in and view?

12 A. No. We have a very restricted lab. Just like our
13 evidence we have very restricted access to our evidence.
14 Even our standards, we have very restricted access to
15 everything due to we do not want any interference with our
16 case work or our evidence or our standards.

17 Q. All right. And that's not something -- you're not
18 videotaping and doing the test or anything of that nature,
19 correct?

20 A. No, I'm not.

21 Q. All right then. Thank you. No further questions.

22 MR. JOYNER: I have nothing further.

23 THE COURT: All right. You may step down.

24 MR. FOARD: Your Honor, may we approach.

25 THE COURT: Yes.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 COLLOQUY

5 THE COURT: All right, ladies and gentlemen, we are
6 going to break now for lunch. And the intention -- the
7 intent is to start back at two o'clock. What's the plan
8 for lunch, Madam Clerk?

9 CLERK OF COURT: Carolina Restaurant.

10 THE COURT: All right. You want to tell them about
11 it or the bailiff will or what.

12 CLERK OF COURT: Do all of you know where the
13 Carolina Restaurant is? Okay. They know that you're
14 coming.

15 THE COURT: All right. Well, we've arranged to have
16 the County treat you to lunch at the Carolina Restaurant,
17 and I guess you all know where it's located. If y'all
18 will go there I believe that they're expecting you.

19 Please do not discuss the case, and we will proceed
20 back at two o'clock. It's not even 1:00 yet. Maybe 1:45.
21 That should be good. If y'all can be back by 1:45.
22 Please do not discuss the case.

23 (WHEREUPON, the jury panel was excused from the
24 courtroom at 12:44 p.m.)

25 THE COURT: Before we leave I think it's probably a

1 good time to advise the defendant of his rights. And, Mr.
2 Griggs, you're still under oath. I think you were sworn a
3 little bit earlier. We are or soon will be at the stage
4 of the trial where you have the right to present your
5 defense.

6 Now, you have the right to claim the protections of
7 the Fifth Amendment to the Constitution. You have the
8 right to claim the protections given to you under the
9 Fifth Amendment of the Constitution of the United States,
10 and this amendment say in part that no person shall be
11 compelled in a criminal case to be a witness against
12 himself.

13 Now, this means that you cannot be required to
14 testify in this case. However, you do have the right to
15 testify if you want to. No one can make you testify, and
16 your right to testify or not testify is a personal right.
17 And no one can waive this right except you.

18 Now, if you decide to testify you will be subject to
19 the same rules that govern other witnesses, and you may be
20 examined or cross-examined on any relevant issue in this
21 case.

22 In addition if you have any convictions involving
23 dishonesty or false statement or for crimes punishable by
24 imprisonment for more than one year, and we have discussed
25 to some extent your criminal history a little earlier.

1 And if I determine that the probative value of admitting
2 this evidence outweighs its prejudicial affect to you the
3 Solicitor then would be able to use your record to attack
4 your credibility.

5 Now, if you decide to testify the decision to testify
6 by you must be a free, voluntary and intelligent decision
7 that you must make with full knowledge of the protections
8 given to you by the Fifth Amendment and the consequences
9 of your decision to testify.

10 Now, if you decide not to testify I will instruct the
11 jurors that they cannot give the fact that you did not
12 testify any consideration whatsoever. There is to be
13 absolutely no prejudice to you because you did not
14 testify. It is left entirely up to you whether or not you
15 testify.

16 Now, certainly, you may talk with your lawyer, Mr.
17 Joyner, family, friends or anyone else you have that you
18 might want to talk to, but the final decision will be left
19 entirely up to you. Do you explain -- do you understand
20 what I've explained to you?

21 MR. GRIGGS: Yes, sir.

22 THE COURT: Do you have any questions about what I've
23 explained to you?

24 MR. GRIGGS: No, sir.

25 THE COURT: Have you talked to your lawyer about

1 whether or not you should testify?

2 MR. GRIGGS: Yes, sir.

3 THE COURT: You want to talk with him some more about
4 it?

5 MR. GRIGGS: I want to talk some more with him.

6 THE COURT: Okay.

7 MR. GRIGGS: I'm not sure right now about it. I want
8 to talk to him.

9 THE COURT: Well, I will come back to you regarding
10 that after lunch.

11 MR. GRIGGS: Yes, sir.

12 THE COURT: All right. Very good. So we'll break
13 now for one hour.

14 MR. FOARD: Thank you, Your Honor.

15 THE COURT: All right.

16 (WHEREUPON, Court was in recess at 12:52 p.m. and
17 reconvened at 1:56 p.m.)

18 THE COURT: All right.

19 MR. FOARD: I believe the State is prepared to rest,
20 Your Honor.

21 THE COURT: All right. And the Defense?

22 MR. JOYNER: Judge, we're not going to put up any
23 case.

24 THE COURT: Okay. Do all that in the presence of the
25 jury, and then we'll move into closing.

1 MR. FOARD: Thank you.

2 THE COURT: First, Mr. Griggs, you've thought about
3 it as to whether or not you're going to testify?

4 MR. GRIGGS: No, sir, I'm not going to testify.

5 THE COURT: All right. That's your decision?

6 MR. GRIGGS: Yes.

7 THE COURT: Not the lawyer's decision? It's your
8 decision?

9 MR. GRIGGS: Yes, sir.

10 THE COURT: All right. Very good. And we'll bring
11 the jury out.

12 (WHEREUPON, the jury panel enters the courtroom at
13 Jury enters 1:59 p.m.)

14 THE COURT: All right, Mr. Foreman, how is the jury
15 doing?

16 JURY FOREPERSON: Doing well, sir.

17 THE COURT: Very good. Very good. All right. We'll
18 proceed on with the State. Mr. Solicitor.

19 MR. FOARD: Thank you. Thank you, Your Honor. At
20 this time the State would rest its case.

21 THE COURT: All right. And, ladies and gentlemen,
22 the State has rested. You've heard the State's case, and
23 it's the Defense's turn. Mr. Joyner.

24 MR. JOYNER: Judge, I would have some directed
25 verdict motions I'd like to make.

1 THE COURT: All right. We need to discuss a few more
2 matters and we'll have you go to the jury room for a few
3 more minutes.

4 (WHEREUPON, the jury panel was excused from the
5 courtroom at 2:00 p.m.)

6 THE COURT: Yes, sir.

7 MR. JOYNER: Judge, of course, the standard for
8 directed verdict is whether there is any evidence that
9 reasonably tends to prove guilt, and I would say that the
10 State has failed to produce testimony that would rise to
11 that level due to the fact that the expert's testimony, I
12 believe, is unreliable based on my cross-examination of
13 him and how he discussed that he actually had to change
14 the substance, the drug, from its original state to even
15 be able to test it.

16 So what he was testing was not the same substance
17 that the State alleges to have bought from my client. And
18 I think, Judge, that that certainly -- I think that the
19 manipulation of the drug rises to the level that there
20 would be a question about guilt.

21 THE COURT: All right, how about that, Mr. Solicitor?

22 MR. FOARD: Yes, Your Honor. Given that the standard
23 is in the light most favorable to the State I believe that
24 we have presented evidence -- specifically with regard to
25 what counsel has stated I believe that we've presented

1 evidence from the chemist to indicate that it is within a
2 reasonable degree of scientific certainty that the drugs
3 is in fact what he reported that it is, Your Honor.

4 And any discussion or any argument regarding the
5 manner in which it was tested is a jury question, Your
6 Honor, which should be submitted to them.

7 THE COURT: All right. I agree with the State. It's
8 a jury issue, and I respectfully deny the motion.

9 MR. JOYNER: Thank you, Your Honor.

10 THE COURT: All right. Anything else?

11 MR. FOARD: No, Your Honor. Nothing else.

12 THE COURT: All right. Madam Clerk, is that a copier
13 there or just a printer?

14 CLERK OF COURT: It's just a printer.

15 THE COURT: Okay. We will be at ease just a moment.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Okay. Now, the Defense has introduced
18 one exhibit. So the State has the right to final
19 argument. Are you going first, last or just last?

20 MR. FOARD: No, Your Honor. I waive opening on the
21 law.

22 THE COURT: Okay. Very good. So you're first and
23 then the State.

24 MR. FOARD: Yes, Your Honor.

25 THE COURT: All right. And you will rest in the

1 presence of the jury.

2 (WHEREUPON, the jury panel enters the courtroom at
3 2:09 p.m.)

4 THE COURT: All right then. The Defense's turn, Mr.
5 Joyner.

6 MR. JOYNER: Judge, the Defense would rest at this
7 time.

8 THE COURT: All right. Ladies and gentlemen, the
9 Defense has rested. That means that you have heard all of
10 the testimony at this time besides closing arguments.
11 First by the Defense.

12 CLOSING STATEMENT BY MR. JOYNER

13 MR. JOYNER: I told you in my opening statement that
14 there were things that this video did not show. Some of
15 the things I told you about the analyst and how he
16 examined the drugs and those kinds of things. I'm going
17 back over that with you, and I will show you the evidence
18 that we have presented here and draw some things to your
19 attention.

20 Number One, please don't forget that had the
21 government -- he's not even in here now. Had the
22 government not got the snitch we would not be here anyway.
23 The government sought out Joey. They sought him out. And
24 they used a person who was already charged with crimes, a
25 person who was already a criminal and they agreed just to

1 get rid of those crimes and throw those out like they
2 never existed in order for him to help them. In order for
3 him to go along with their plan, and that's exactly what
4 happened here. He admitted it on the stand.

5 And because he's so biased, because he had a reason
6 to be biased and not go to prison, which he admitted,
7 that's why you can't trust him. He's not reliable. He's
8 just not reliable.

9 The next thing that really stuck with me about this
10 case are the pills themselves. And if you take a look at
11 the pills in this case -- you've already all seen them.
12 They're green. It's very clear that the pills are green,
13 and it's very clear in the analysis' report, it says that,
14 "I received items from Dwayne Gillespie."

15 And if you look on the back it says, "Seven green
16 pills," and of course, you will have a chance to look at
17 this when you deliberate. And if you look on the next
18 page it says the same thing, "Seven green pills." The
19 officer says the same thing, "Seven green pills."

20 And there was testimony that the pills in this case
21 that were handed to the snitch were not green. They're
22 white. If you look at this still frame that was entered
23 by the State it is unquestionably a white pill. It is not
24 a green pill. They are not the same item. The items that
25 the analyst tested is not a white pill. It's a green

1 pill, and you will have an opportunity to look at the
2 video when you deliberate. Look at the video. See if you
3 can find a green pill anywhere in the video. They simply
4 cannot be the same thing. They simply cannot prove that
5 that's -- that that is what happened.

6 I mean they have impeached their own case by
7 introducing evidence of something other than what they
8 have brought before you today.

9 And, finally, another key thing to me is the fact
10 that the analyst is not reliable. The so called expert.
11 He was a little difficult with me and didn't want to just
12 answer my questions when I asked him about changing the
13 pills, using the column that changes the pills. Every
14 other drug, and remember this, the machine he uses is
15 called a gas chromatograph.

16 Gas, what is gas? Gas is a vapor. Gas is a vapor.
17 Well, the white pills, the green pills, you take a pill
18 and you sit it right here, it's not gas. It's not going
19 to evaporate into the atmosphere. We can come back a year
20 from now and that pill will still be sitting here.

21 So what that means is that his machine cannot test
22 the pill. His machine is incapable of testing that pill,
23 but that's okay. We'll just change the pill. We'll make
24 it into something that it's not so that we can test it.
25 And he admitted, yes, well, we have to change it. Then we

1 have to heat it up so that the machine can even test it.
2 But, again, a I just don't understand how you can prove an
3 item is something if you have to change it. It's no
4 longer what it is. You have changed it. And that's
5 exactly what he said. He had to change it to test it.

6 And, finally, the thing that I asked him if he
7 remembered that we discussed pretty heavily is retention
8 time. We discussed retention time, and he said that that
9 was very important. I pressed him on that, and I said,
10 "You would admit that this retention time," and he said
11 there is a range.

12 He said that the retention time must match. He said
13 that if it doesn't match it can't be the same drug. It
14 can't be the same drug, and he said, "Then I would need to
15 examine it some more to see why it didn't match." But it
16 all goes back to the key if that retention time -- if they
17 can't prove to you that the retention times match then it
18 cannot be the same substance.

19 This is all about hydrocodone. That's what the trial
20 involves, and this is the test subject that comes from his
21 government database, from his S.L.E.D. database. This is
22 what he matches it to. This is the type -- this is the
23 test sample, and you will notice right here, average of
24 7.4 to 7.6. That is the retention time for our substance.
25 For the substance that was tested in this case. That is

1 the retention time.

2 When you go back and deliberate you look and try to
3 find and retention time on the bottom substance. You will
4 have this, and I ask every one of you to analyze it
5 closely. Find one retention time. Find one. If you can
6 find a retention time on here that matches, good.

7 But I tell you that he said sitting right there this
8 day that if they don't match, if the retention times are
9 not consistent, it can't be the substance. It can't be.
10 There is no retention time for what he based it on. It's
11 just not here. And it can't be proven that it is the
12 substance. It can't be proven that it's hydrocodone.

13 The job of the State is to prove it, is to prove that
14 it was hydrocodone. They present a picture to you of a
15 white pill, yet, they actually bring in green. Their own
16 expert says that if the retention times aren't proven it
17 match then it can't be the substance. They can't prove
18 that the retention times match because there is not a
19 retention time here. Their standard.

20 You can't find him guilty. He is not guilty because
21 the State can't prove this is even drugs. It's very
22 simple, ladies and gentlemen. And for that reason I would
23 very respectfully request that you find Joey Griggs not
24 guilty. Thank you.

25 THE COURT: By the State.

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CLOSING STATEMENT BY MR. FOARD

MR. FOARD: May it please the Court.

THE COURT: Yes, sir.

MR. FOARD: Mr. Joyner, ladies and gentlemen, I thank you for your attention here today. Thankfully for you this has been a relatively short trial. It hasn't lasted that long, but your attention has been very closely paid throughout the process. I have watched each and every one of you, and I certainly appreciate all of you getting into this and being as closely attentive to this matter as you have been. Because even though it was a short trial, and even though we're only talking about seven Lorcets it's still an important trial, ladies and gentlemen.

It's important because it is symptomatic of what is going on today. It's symptomatic of the drug use that's going on in this community. And, ladies and gentlemen, I find it probably most disturbing that, as you saw on this video, this drug transaction happened in a public store which for all intents and purpose it's a public place. It's open to anyone who comes in and does business there.

In front of individuals just sitting around. it's really sad, ladies and gentlemen. It's extremely sad where we have come. And we've come to the point where a man like Joey Griggs thinks that he can just sell drugs without the lawful authority to do that. And he thinks

1 that he can just do it in the broad open where God and
2 anybody can see it, ladies and gentlemen. It's disturbing
3 is what it is. And it makes me as a prosecutor pause, and
4 I hope it makes you ladies and gentlemen pause also to
5 know what's going on in your county.

6 Now, with regard to things that Mr. Joyner has said
7 in both opening and closing and the testimony that you've
8 heard Mr. Joyner has done a fantastic job of defending his
9 client. And what the most masterful thing about what he's
10 done is he's done what very good magician does. When they
11 can't make something real they create an illusion. That's
12 what Mr. Joyner has spun for you, an illusion.

13 He's taken the hard, true facts that you have seen
14 right here on this television screen showing Joey Griggs
15 selling pill around, and he's tried to spin this illusion
16 that, oh, the pills in the video are not the same pills
17 that got tested at S.L.E.D. or, oh, S.L.E.D. has some
18 magical way of transforming the molecules of this item
19 into something that it really isn't, ladies and gentlemen.

20 It's fiction is what it is. You heard from a
21 scientist, from a man who has spent his career studying
22 chemicals and substances. You heard him say, and I asked
23 the question specifically, I said, "Can you with a degree
24 of scientific certainty say that this is a controlled
25 substance," and I believe his response was, "It is

1 undisputable that this is hydrocodone." So we can talk
2 about gas chromatography. We can talk about columns. We
3 can talk about gaseous states all day long, ladies and
4 gentlemen. But at the end of the day the scientist says
5 it's hydrocodone. I'm going with the scientist, ladies
6 and gentlemen.

7 With regards to the confidential informant is he a
8 perfect person? Absolutely not. We made no bones about
9 that. We didn't try to hide that. We put that out there
10 for everyone to see. He's done drugs in the past. He's
11 currently in a methadone rehab program. We've admitted
12 his faults. He admitted his faults. But, ladies and
13 gentlemen, that confidential informant is the type of
14 person that Joey Griggs would trust to sell pills to.

15 He's not going to trust somebody he doesn't know.
16 He's doesn't -- he's not going to trust somebody that just
17 walks in. He would know better than that, ladies and
18 gentlemen. When you are fighting the fight that our law
19 enforcement fight every day when it comes to drugs you
20 have to utilize the people who can get you where the drug
21 dealers are. And more often than not that's going to be
22 fellow drug users. It's the reality, ladies and
23 gentlemen.

24 You heard Mike Irvin state that's how they get to
25 drug dealers by using those types of people. You heard

1 the confidential informant himself say that in his 20
2 years of being involved in drugs -- he readily admitted
3 his 20 years of being involved in drugs, he believed that
4 a drug dealer, and specifically Joey Griggs, would not
5 sell to someone other than someone like him.

6 So to find fault with the fact that law enforcement
7 did their job and that law enforcement utilized the only
8 means by which they can successfully ferret out these drug
9 dealers. If that's where we are, ladies and gentlemen,
10 then we might as well just quit even pursuing drugs. If
11 we can't utilize the only means that work then the whole
12 point is fruitless, ladies and gentlemen. That's how you
13 do the job. That's how you get the dealers. And I am
14 unapologetic about that because I trust my law
15 enforcement, and I trust them when they say that that is
16 only means that works.

17 Now, with regard to the pills, ladies and gentlemen,
18 yes, the pills as you can see in here are a light green
19 color. And, yes, on this photograph they appear, that
20 little sliver there, appears to be a light color that I
21 won't say is probably more akin to white than it is to
22 green in this photograph. But, ladies and gentlemen,
23 let's not turn that into something that it isn't. We all
24 know that when you print a photograph it doesn't necessary
25 mean that it's perfectly true to the colors that you see

1 with your eyes in living color. They use that term, 'in
2 living color' for a reason because what you see here
3 doesn't always read the same on a piece of paper or on a
4 television screen or somewhere else.

5 So, again, masterful job of weaving this illusion,
6 ladies and gentlemen. But sometimes the truth is the most
7 simple thing that's in front of you, and the simple truth
8 that is in front of us today is that Richard Gregory
9 walked in to Joey Griggs' father's store in Patrick. He
10 handed him money. Joey Griggs handed him pills.

11 And Joey Griggs did not lawfully possess those pills
12 and he clearly has the intent to distribute them because
13 not only did he get to the back and get the pills and come
14 back out, he actually did distribute them. He even went
15 further than the crime that we're alleging here, ladies
16 and gentlemen.

17 As I stated at the beginning of this I'm not going to
18 belabor the point. I think this case is simple. I think
19 it's clear cut. and I think that Joey Griggs sold
20 controlled substances on October the 19th of 2010. And I
21 believe that you good people will find him guilty of that
22 crime. Thank you very much.

23 CHARGE OF THE COURT

24 THE COURT: Mr. Foreman, ladies and gentlemen, you
25 have heard the testimony and the evidence and arguments of

1 the State and the Defendant. I will now explain to you
2 the law that you are to apply to this case. Under the
3 constitution and laws of South Carolina, as I indicated
4 earlier, you are the finders of the facts in this case. I
5 do not have a right to pass upon the facts or express any
6 opinion that I might have as to them because this is a
7 matter solely for you the jury to determine.

8 You are also the judges, the sole judges of the
9 credibility; that is the believability, of the witnesses
10 who have testified and of the evidence that has been
11 offered. In passing upon credibility you may take into
12 consideration many things such as the demeanor or manner
13 of testifying, whether a witness had reason to be a biased
14 or prejudiced. And whether a witness' testimony was
15 contradicted on the one hand or supported and corroborated
16 on the other hand. All these things you will consider
17 bearing in mind that you should give the defendant the
18 benefit of any reasonable doubt.

19 It becomes your duty as jurors to analyze and to
20 evaluate the evidence and determine that evidence which
21 convinces you of its truth. As the trial judge it is my
22 responsibility to preside over the case and rule upon the
23 admissibility of the evidence offered. You are to
24 consider only the testimony which has been presented from
25 this witness stand together with any exhibits which have

1 been made a part of the record along with any stipulations
2 or agreements by counsel.

3 I have the additional duty to charge you the law
4 applicable to this case, and as the presiding judge, as I
5 indicated earlier, I am the sole judge of the law of this
6 case. You must accept as correct the law as I state it to
7 you and reach your verdict.

8 Now, the fact that the defendant was arrested,
9 charged and indicted in this case is not evidence of guilt
10 and cannot be considered by you as evidence of guilt. Nor
11 does it create any inference or presumption of guilt. The
12 indictment is simply the formal written document which
13 contains the charge made against the defendant. The
14 indictment is the formal document by which the case is
15 brought into Court.

16 The defendant has pled not guilty to this indictment,
17 and that plea puts the burden on the State to prove the
18 defendant guilty. A person charged with committing a
19 criminal offense in South Carolina is never required to
20 prove himself innocent. And I charge you that it is an
21 important rule of the law that the defendant in a criminal
22 trial, no matter what the seriousness of the charge may
23 be, will always be presumed to be innocent of the crime
24 for which the indictment was issued unless guilt has been
25 proven by evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2 This presumption of innocence does not end when you
3 begin your deliberations, but it accompanies the defendant
4 throughout the trial until you reach a verdict of guilt
5 based on evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the defendant
9 which remains with the defendant until it has been
10 stripped from the defendant by evidence satisfying you of
11 the defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not a mere legal
13 theory. It's not just a legal phrase. It is a
14 substantial right to which every defendant is entitled
15 unless you the jury are satisfied from the evidence of the
16 defendant's guilt beyond a reasonable doubt.

17 The State must prove the defendant guilty beyond a
18 reasonable doubt. So what is a reasonable doubt in the
19 law. A reasonable doubt is the kind of doubt that would
20 cause an honest, sincere, conscious juror in search of the
21 truth to hesitate to act.

22 Proof beyond a reasonable doubt must, therefore, be
23 proof of such a convincing character that a reasonable
24 person would not hesitate to rely and act upon it in the
25 most important of his or her own affairs. Proof beyond a

1 reasonable doubt can also be described as proof that
2 leaves you firmly convinced of the defendant's guilt.

3 Now, there are very few things in this world that we
4 know with absolute certainty, and in criminal cases the
5 law does not require proof that overcomes every possible
6 doubt. If based on your consideration of the evidence you
7 are firmly convinced that the defendant is guilty then you
8 must find him guilty. If on the other hand you think that
9 there is a real possibility that he is not guilty you must
10 then give the defendant the benefit of the doubt and find
11 him not guilty.

12 Now, I instruct you and emphasize that the fact that
13 the defendant did not testify is not a factor to be
14 considered by you in your deliberations and in your
15 consideration on the question of the guilt or innocence of
16 the defendant. It must not be considered by you in any
17 manner whatsoever.

18 A defendant has a constitutional right to remain
19 silent, and the assertion of this right must not be
20 considered by you in your deliberations. So I repeat.
21 Under your oath you are to draw no conclusions whatsoever
22 from the fact that the defendant in this case did not
23 testify. The fact that this defendant did not testify
24 should not even be discussed in the jury room. The burden
25 of proof as I stated is on the State. The defendant is

1 not required to prove his innocent. The burden of proof
2 remains on the State to prove guilt beyond a reasonable
3 doubt.

4 The defendant is charged with possession with intent
5 to distribute a controlled substance which in this case
6 the State alleges to be Lorcet. The State must prove
7 beyond a reasonable doubt that the defendant possessed the
8 controlled substance, Lorcet, with the intent to
9 distribute it.

10 To prove possession the State must prove beyond a
11 reasonable doubt that the defendant had both the power and
12 the intent to control the disposition or the use of the
13 Lorcet.

14 Possession, actual possession means that the Lorcet
15 was in the actual physical custody of the defendant. The
16 State must also prove beyond a reasonable doubt that the
17 defendant intended to distribute the Lorcet.

18 Intent may be shown by acts and conduct of the
19 defendant and other circumstances from which you may
20 naturally and reasonably infer intent. In determining
21 whether the defendant had the intent to distribute the
22 Lorcet you may consider the circumstances surrounding the
23 alleged possession by the defendant. You may consider the
24 amount of the substance alleged to have been possessed.
25 The manner in which it was allegedly possessed. The place

1 where it was allegedly possessed. And other factors which
2 you consider to be important. You must find that the
3 defendant did not intend to have the Lorcet solely for his
4 own use.

5 Distribute means to deliver other than by
6 administering or dispensing of a drug.

7 Now, you have been selected by both the State and the
8 Defendant to be fair and impartial jurors. It is your
9 duty then in your joint deliberations to determine the
10 truth in this case giving the defendant the benefit of
11 every reasonable doubt on each and every issue. And from
12 the facts as you determine to be true you take and apply
13 the law which I have just given you and thus arrive at a
14 verdict which speaks the truth in this case.

15 I've told you the standards that you have to apply to
16 the charge of possession with intent to distribute a
17 controlled substance, Lorcet.

18 You're heard the evidence and now you've heard the
19 law. Whatever your verdict as to the charge, Mr. Foreman,
20 you will indicate by checking the box guilty or not guilty
21 on this verdict form. You check the appropriate box and
22 sign and date it. Remember that only -- that although the
23 foreperson is the only juror who signs this verdict it is
24 not hers -- it is not his alone. I'm sorry.

25 The verdict has to be a unanimous verdict as to the

1 charge. And, Mr. Foreman, you're not authorized to write
2 the verdict or sign the verdict until all of you have
3 agreed as to what the verdict should be.

4 Now, ladies and gentlemen, I'm going to send you to
5 the jury room; all of you except the last juror selected.
6 But do not begin to discuss the case until you have
7 received a copy of this verdict form and the exhibits.
8 Once you have received those things that will be your
9 signal to begin your deliberations.

10 Once you begin your deliberations you will deliberate
11 until you have reached a verdict of guilty or not guilty
12 at which time you will knock on the door, advise the
13 bailiff and we will bring you out to receive your verdict.
14 Please go to the jury room at this time.

15 (WHEREUPON, the jury panel was excused from the
16 courtroom at 12:40 p.m.)

17 THE COURT: Are there any additions or exceptions to
18 the charge.

19 MR. FOARD: None from the State, Your Honor.

20 MR. JOYNER: No, Your Honor.

21 THE COURT: All right. We'll check the exhibits and
22 make sure the lawyers agree on the exhibits.

23 (WHEREUPON, the jury panel began deliberations at
24 12:41 p.m.)

25 COLLOQUY

1 THE COURT: Alternate Myers, we picked 13, but we can
2 only use 12. I was hoping you'd be in that first 12, but
3 you missed you. Luck of the draw. You're number 13. So
4 we can't use you to deliberate, and we are through with
5 using you as a juror.

6 JUROR: You used me?

7 THE COURT: We're through with using you as a juror.
8 Yeah, we've used you. So you will be able to make it back
9 to Florence or you're going to stay in Chesterfield?

10 JUROR: Going back to Florence.

11 THE COURT: Back to Florence. All right. Well, if
12 you want to serve on jury duty in Florence rather than
13 Chesterfield you will need to switch your registration to
14 Florence County. You rather vote here or there?

15 JUROR: It doesn't really matter.

16 THE COURT: It doesn't matter. All right. Well, so
17 that's your choice, but you're a registered to vote here
18 so this is still your official residence as long as you
19 still maintain a residence here.

20 All right. So we will excuse you from jury duty.
21 You're welcomed to stick around if you want to see what
22 the jury is going to do. We want to speak with you a few
23 minutes before you leave. We're in recess pending the
24 verdict in this case. The Defendant is in custody pending
25 a receipt of the jury's verdict.

1 (WHEREUPON, Court was in recess at 2:44 p.m. and
2 reconvenes at 2:56 p.m.)

3 QUESTION FROM THE JURY

4 THE COURT: All right. The jury sent out a note to
5 the Judge, right? And it says, "Can we see the video?"
6 Y'all can be seated. They want to see the video, so what
7 do you want to do; from the State?

8 MR. FOARD: Your Honor, that sounds fine to us. We
9 have brought the television back out as we do not have the
10 means to show it in the jury room. We could take the
11 computer back there, Judge, but that's the only means we
12 have to show the video.

13 THE COURT: All right. Mr. Joyner.

14 MR. JOYNER: Judge, I would just say what he
15 suggested is fine to show it right here that way everybody
16 can actually see. It's so small.

17 THE COURT: You know, the problem with evidence that
18 is introduced but it's introduced but not introduced in a
19 fashion that is usable by the jury in the jury room it
20 places the jury at a disadvantage because once the case is
21 given to the jury then they -- once the evidence is given
22 to the jury then they have the evidence to use as they see
23 fit including looking at it and talking about it as they
24 are looking at it. Whichever way they want to use it.

25 But when the jury has to come back into to courtroom

1 to see the evidence then are they to deliberate in public?
2 Are they to discuss what they're looking at in the
3 presence of everyone. And then it becomes a public
4 deliberation as opposed to a jury room deliberation. And
5 so that's the problem when evidence is introduced and not
6 introduced in a fashion that is usable by the jury.

7 That's a pet peeve that I have as well. How do y'all
8 deal with that?

9 MR. FOARD: Your Honor, in my experience in trials in
10 the past the Judge has just brought them out and let them
11 watch the video and immediately ask them to return to the
12 jury room.

13 THE COURT: The Judge tells them not to talk about it
14 while they're looking at it?

15 MR. FOARD: I believe the Judge has instructed them
16 that before. I believe so. The only other thing we've
17 done, Judge, is some judges brought them out. Other
18 judges did send a computer and a disk in the jury room
19 because there is no equipment in there to view it on.

20 THE COURT: All right.

21 MR. FOARD: That's the only other thing we've done in
22 the past, Judge.

23 THE COURT: All right. Mr. Joyner.

24 MR. JOYNER: Judge, I would say the vast majority of
25 the times that I've been involved in trials this is

1 exactly how they've done it. The jury comes out and
2 watches the video.

3 THE COURT: I know that is how's it's typically done,
4 but you know, these days -- this day -- during these times
5 of enhanced use of technology, with many things being
6 recorded and shown to juries constantly in almost every
7 case. The evidence is presented to the jury, but then
8 it's not presented in a fashion where the jury can use it
9 during deliberations.

10 So when you do not anticipate -- well, how was the
11 jury going to use this evidence? Then unless there is an
12 agreement, like, for example, the t.v. is not in evidence.
13 The jury only get what's in evidence. If the parties can
14 agree then it's one thing, but I mean I've had many
15 instances when the parties don't agree and many instances
16 where they don't agree on computer because if it's a
17 highway patrolman stop like the bailiff there used to do
18 in his hay day there may be 10 or 15 stops on that video
19 and then you turn it over, the video, and then the jurors,
20 you can't control what they're seeing at that point.

21 So but that's just a conversation more than anything.
22 So if y'all want them to come out and look at it then
23 we'll do that.

24 MR. FOARD: Yes, Your Honor.

25 THE COURT: Fast forward? Are you going to fast

1 forward it at a certain point as you did before?

2 MR. FOARD: Yes, Your Honor.

3 THE COURT: All right. Let's bring them out.

4 MR. FOARD: Your Honor, if I may. If we can get the
5 disk first I can queue it to right spot before they come
6 out.

7 THE COURT: All right. I spend a lot of time on the
8 seminar circuit talking about trials. various aspects of
9 trials and problems with trials, and that's one of them.
10 How is it -- how do you present evidence in a fashion that
11 is user friendly to a jury during deliberations.

12 We had a trial in Columbia last week where the lawyer
13 presented -- he had -- what was that thing?

14 LAW CLERK: He used a projector.

15 THE COURT: Yeah, he used a projector, and he put his
16 pictures up on a projector. And then the jurors saw the
17 pictures -- black and white pictures on a projector that
18 he introduced black and white photographs into evidence.
19 So ---

20 MR. FOARD: I'm sorry, Your Honor.

21 THE COURT: So when the jury went out their first
22 question is, "You know, what are these black and white
23 photos? Where are the color photos that were showed --
24 that they showed us during the trial," but those were not
25 introduced into evidence. So they only had them -- they

1 had to -- and they could not see as well looking at black
2 and white, so.

3 Needless to say the party that introduce those, the
4 black and white -- it was the plaintiff in that case, lost
5 his case because he didn't have an efficient use of the
6 evidence. So it comes up all the time.

7 MR. FOARD: Complete, Your Honor. It's queued up.

8 THE COURT: All right. Bring them on. I'll tell
9 them not to deliberate while they're watching the video.

10 (WHEREUPON, the jury panel enters the courtroom at
11 3:03 p.m.)

12 THE COURT: All right. Mr. Foreman, ladies and
13 gentlemen of the jury, I have a note from the jury which
14 says, "Can we see the video," and certainly, you can.
15 Typically, when the trial is over and the evidence is
16 presented and the jury goes to the jury room then the jury
17 reviews the evidence in the jury room and deliberate in
18 the jury room.

19 Since there are no facilities in this jury room for
20 you all to view the video it's necessary to bring you out
21 here to view the video. Please remember, however, that
22 you are not to deliberate in the courtroom. You just
23 watch the video and you deliberate in the jury room. All
24 right. So, you may proceed.

25 MR. FOARD: Thank you, Your Honor.

Verdict of the Jury

1 (WHEREUPON, State's Exhibit Number One was played for
2 the jury in open Court.)

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification and received into evidence.)

5 THE COURT: All right. Is that the extent of what
6 you would like to see, Mr. Foreman?

7 JURY FOREPERSON: Yes, sir.

8 THE COURT: All right. Thank you very much.

9 (WHEREUPON, the jury panel was excused from the
10 courtroom to continue deliberations at 3:09 p.m.)

11 THE COURT: All right. Any additions or exceptions
12 by the State or the Defense?

13 MR. FOARD: None from the State, Your Honor.

14 MR. JOYNER: No, Your Honor.

15 THE COURT: All right. Thank you very much.

16 (WHEREUPON, other Court-related business was
17 conducted on the record but not related to the trial
18 of this case and not included in this transcript of
19 record.)

20 VERDICT OF THE JURY

21 (WHEREUPON, Court reconvened at 4:17 p.m.)

22 THE COURT: I understand there is a verdict. You can
23 bring them in.

24 (WHEREUPON, the jury panel enters the courtroom at
25 4:18 p.m.)

1 THE COURT: All right. Mr. Foreman, if you will
2 stand for me. The defendant will stand. Have you reached
3 a verdict?

4 JURY FOREPERSON: Yes, sir.

5 THE COURT: Is it a unanimous verdict?

6 JURY FOREPERSON: Yes, sir, Your Honor, it is.

7 THE COURT: All right. And if you will pass it up,
8 and you may be seated. Madam Clerk, you may publish the
9 verdict.

10 CLERK OF COURT: State of South Carolina v. Joey
11 Griggs, 2013-GS-13-591, we the jury find the defendant
12 guilty of possession with intent to distribute a
13 controlled substance. Foreperson, Nathan Fluellen.
14 November the 13th 2013. Mr. Foreman, is this your verdict
15 and still your verdict?

16 JURY FOREPERSON: Yes, ma'am.

17 THE COURT: Is this the verdict of all 12?

18 JURORS: Yes, ma'am.

19 THE COURT: Any additional polling requested or
20 individual polling requested?

21 MR. JOYNER: No, Your Honor.

22 THE COURT: All right. The verdict is the unanimous
23 verdict of the jury. Any -- and, Madam Clerk, you're
24 going to have the foreperson sign the verdict form
25 conforms with the indictment itself. Any -- show him

1 where to sign. Any post-trial motions?

2 MR. JOYNER: Not at this time, Your Honor.

3 MR. FOARD: None from the State.

4 THE COURT: All right. Well, ladies and gentlemen,
5 give them a chance to write the verdict underneath there
6 where it says, 'verdict'.

7 Ladies and gentlemen, once you have found someone
8 guilty then it becomes my duty to sentence -- impose the
9 sentence. You have no role in that, but my experience is
10 that jurors typically are interested in witnessing the
11 sentence after having participated in the trial and
12 reached a verdict.

13 So we're going to move to the sentencing phase at
14 this time. I want to thank you for your services. You
15 didn't volunteer. You were drafted. You were called upon
16 to decide the case, and you have done that. And once you
17 have done that then nobody has any basis to criticize your
18 verdict, and I want to thank you for your service on
19 behalf of the citizens of the County and on behalf of this
20 State. Mr. Solicitor.

21 SENTENCE OF THE COURT

22 MR. FOARD: Yes, Your Honor.

23 THE COURT: Ready to proceed to sentencing?

24 MR. FOARD: I am, Your Honor.

25 THE COURT: All right. The Defendant will come and

1 stand in front of me with counsel.

2 CLERK OF COURT: Do you want me to put him under
3 oath, Mr. Griggs?

4 THE COURT: He's still under oath from earlier today.
5 Yes, sir, Solicitor.

6 MR. FOARD: Thank you, Your Honor. You're well
7 acquainted with the facts of this case, Judge. I would
8 just like to bring a few additional items to your
9 attention. First and foremost, Mr. Griggs does have an
10 extensive criminal history especially of this same type of
11 issue. I would read it in its entirety, Judge.

12 Starting in 1980 when he was found guilty of simple
13 possession of marijuana.

14 In 1981 he was convicted of unlawful drugs and
15 received a sentence of three years suspended to 18 months
16 confinement and two years probation.

17 He followed that up in 1983 with another conviction
18 for simple possession of marijuana receiving a Y.O.A.
19 sentence at that time, Judge.

20 He then was convicted later on of failure to stop for
21 a blue light receiving 18 months in prison for that.

22 Judge, moving along his largest conviction was --
23 actually came in 1984 when he was convicted of trafficking
24 in powder cocaine for which he received a ten year
25 sentence.

1 Concurrent with the trafficking of powder cocaine he
2 was sentenced for possession of marijuana with intent to
3 distribute receiving ten years for that as well.

4 A weapons charge for which he received 30 days. And
5 possession of cocaine receiving two years confinement
6 concurrent to the trafficking charge for that.

7 Your Honor, then in 1990 he was convicted again of
8 possession of cocaine with intent to distribute receiving
9 four months confinement. And also simple possession of
10 marijuana at the same time as that conviction.

11 In 1992 he was found guilty of possession of cocaine
12 fourth offense receiving a sentence of three years
13 suspended on receiving drug treatment and two years
14 probation.

15 Your Honor, in 1996 he was convicted of D.U.I. second
16 offense.

17 In 1997 he was convicted of D.U.I. third offense as
18 well as possession of marijuana in 1996.

19 In 1997 he was convicted of driving under suspension
20 third or greater offense.

21 In 1999 he was convicted of various driving offenses
22 as well as disorderly conduct and open container, Judge.

23 That would be the completion of his criminal record,
24 and I would candidly tell the Court, and perhaps, some
25 people have heard me do sentencings before and say, "Adam,

1 you say this every time," but I think the record speaks
2 for itself, Judge. Joey Griggs is the textbook definition
3 of a drug dealer, Judge. That's just all there is to it.

4 He has repeatedly been convicted of drug crimes in
5 the State of South Carolina. He has received prison
6 terms. He received probation. He has received drug
7 treatment, and yet we still stand here today, Judge, with
8 him having been convicted of this new offense.

9 I feel there is nothing that the State can do other
10 than ask for the maximum penalty in this case which as you
11 know, because it's subsequent to a third offense, the
12 mandatory minimum is five years imprisonment. The maximum
13 is 20 years, Judge. And, therefore, we are asking for a
14 20 year sentence. And my understanding is that that is
15 classified as a no parole offense, Your Honor.

16 THE COURT: Mr. Attorney.

17 MR. JOYNER: Judge, that's correct. It is in fact a
18 no parole offense. So the -- any amount that you give,
19 Your Honor, or sentences him to he will be basically doing
20 that amount of time and won't be any early releases or
21 anything of that nature.

22 Briefly, Judge, he has two children. One is 28 years
23 old, his daughter. The other is 22. He has two
24 grandchildren. One is six and one is two. Up until today
25 he had a job. He worked constructions. In fact he was

1 gone last week on a job, and so he has been productive.

2 Judge, for other a decade he's been productive.

3 The most recent drug conviction he has had, the
4 possession of cocaine in 1992, was obviously two decades
5 ago, Judge. It was 21 years ago, Judge. And I would just
6 beg Your Honor to please take that into consideration the
7 fact that you obviously know the facts and there is no
8 excuse for what he did.

9 The fact that I would ask Your Honor to just keep in
10 mind that he sold it to a person that was a drug user that
11 had used for a long time. I mean they were friends, and
12 he -- I mean he didn't sell it to a young child. Judge,
13 he didn't sell it to somebody he didn't know, Judge. You
14 know, that could go off and get into the hands of a young
15 child.

16 Judge -- and, again, Judge, the other two decades
17 with no drug issues I will very respectfully request Your
18 Honor would consider that to mitigate downward to close to
19 the minimum of five years, Judge.

20 THE COURT: All right. Solicitor.

21 MR. FOARD: Your Honor, respectfully I have to
22 disagree with Mr. Joyner. While it may have been 20 years
23 since the last conviction, Judge, in my experience, Your
24 Honor, rarely do we see these things turn off and turn
25 themselves on at will, Judge. Candidly, he has two other

1 charges of the same nature that are pending before this
2 Court. So, therefore, I respectfully have to disagree and
3 ask again for the maximum penalty.

4 THE COURT: All right. Mr. Griggs, what do you want
5 to say about it?

6 MR. GRIGGS: Like I say all of these drug charges
7 they were 20 years ago.

8 THE COURT: I'm not going to sentence you for what
9 happened 20 years ago.

10 MR. GRIGGS: I know it, but all my previous drug
11 record is 20 years old, and I feel like I paid for it. I
12 spent ten years in prison.

13 THE COURT: As I said I'm not going to sentence you
14 ---

15 MR. GRIGGS: Okay.

16 THE COURT: --- for what happened 20 years ago except
17 that under the law it's an enhanced penalty. So the
18 penalty, of course, for a first offense would be one
19 thing, but for a third or subsequent offense the penalty
20 is what it is.

21 MR. GRIGGS: Yes.

22 THE COURT: You know, the law recognizes that a
23 person who continues to commit the same offense should be
24 treated more severely than someone who is a first time
25 offender.

1 MR. GRIGGS: Yes, sir. Well, I was -- I don't know.
2 It's hard to answer. I was hoping to have a day or so to
3 get my -- put my things in order. I'm not going anywhere.
4 My father owns the store in Patrick. I got a nice house
5 in Patrick. I'm definitely not going nowhere. I need to
6 put some finances together and stuff. I wasn't prepared
7 for all this today.

8 THE COURT: You weren't prepared for it?

9 MR. GRIGGS: I wasn't prepared, no, not for this much
10 time. No, sir.

11 THE COURT: Well, you selected the jury and picked
12 the jury yesterday, didn't we?

13 MR. GRIGGS: Yes, sir.

14 THE COURT: When did you give him notice of his case
15 going up for trial?

16 MR. GRIGGS: I had notice, but like I say I ---

17 MR. FOARD: Your Honor, he had more than the ten days
18 notice required by the rules. We've actually been
19 discussing this trial for a few months now, Judge.

20 THE COURT: What else Mr?

21 MR. FOARD: Your Honor, that's all I have.

22 THE COURT: What else, Mr. Griggs?

23 MR. GRIGGS: Well, like I said I've got a bad knee.
24 I was looking to have an operation real soon, but now I
25 guess that's going to be put off. I'm under several

1 medications, and I don't know if I'm able to take them, my
2 medication, with me or how that works. I take blood
3 pressure. I take pain medication for my knee. And like I
4 say -- I've got insurance. I was scheduled to have a
5 surgery pretty soon, but I was trying to wait and see what
6 happened here before I scheduled it.

7 THE COURT: Okay. Well.

8 MR. GRIGGS: I've got to do something. I kind of
9 need to go somewhere, maybe, where I can get a little bit
10 of hospital chair somehow because I'm not -- I'm 53
11 years-old, and this construction work has got me where I'm
12 in real bad health.

13 THE COURT: The State provides free medical care to
14 inmates. The State of South Carolina provides free
15 medical care to all inmates.

16 MR. GRIGGS: Yes, sir, I understand. Is there any
17 way I can get to a place where I can get -- that's what
18 I'm trying to insinuate. Is there any way I can get to a
19 place where I can receive the medical care that I need?

20 THE COURT: All right. Well, now, you said you're 53
21 now?

22 MR. GRIGGS: Yes, sir.

23 THE COURT: Born in 19?

24 MR. GRIGGS: Sixty.

25 THE COURT: Sixty.

1 MR. GRIGGS: Sixty-one.

2 THE COURT: Sixty-one.

3 MR. GRIGGS: I was born in '52.

4 THE COURT: And your first conviction was in 1981 at
5 the age of 20.

6 MR. GRIGGS: Yes. I was young back then. Yes, sir.

7 THE COURT: Then you had another one in '83 and a big
8 one in '84.

9 MR. GRIGGS: Yes, sir.

10 THE COURT: And you got a ten year sentence. How
11 long did you stay in prison?

12 MR. GRIGGS: I spent four years and nine months on a
13 ten year sentence.

14 THE COURT: And you were out for a while, and then
15 another conviction in 1990, P.W.I.D. cocaine in '92?

16 MR. GRIGGS: I might have been still on probation.
17 The reason I'm not sure is like I said it's been a long
18 time ago. I'm not sure exactly what the charge was.

19 THE COURT: Well, your case is an interesting and
20 unusual case in that typically when we get people
21 convicted of drug dealing it's usually the same drug.
22 Methamphetamine or pills or crack cocaine or cocaine or
23 marijuana, but you run the gammit.

24 MR. GRIGGS: No. Well, I'm not a drug dealer now. I
25 mean I've not ever been a drug dealer for ten years. I

1 just got tied up in a bad situation here. I've been out
2 of dealing drugs for 15 years.

3 THE COURT: But if you're not a doctor and you're
4 dispensing pills, medicine, that's a drug. These are
5 drugs.

6 MR. GRIGGS: Yes, sir.

7 THE COURT: You all don't have a pharmacy down there,
8 do you?

9 MR. GRIGGS: No, sir.

10 THE COURT: So how would you -- why would you put
11 yourself in this position all over again?

12 MR. GRIGGS: I sure didn't mean to put myself in this
13 position. Like I said this case here happened like, what?
14 Three and a half years ago? And this has been three and a
15 half years ago when this happened.

16 THE COURT: Let me see that indictment again.

17 MR. GRIGGS: I don't know why it took so long to go
18 to Court. It's been a little over three years ago.

19 THE COURT: All right. This is October 19th 2010.

20 MR. GRIGGS: Yes, sir.

21 MR. FOARD: I may have a Scribner's error on there.

22 THE COURT: And on the sentencing sheet you wrote
23 2013.

24 MR. FOARD: I'm sorry, Judge.

25 THE COURT: Now, Mr. Griggs, when I see the man who

1 testified against you, the user, of course, listen to
2 Mr. Joyner said you didn't sell to a child or innocent
3 kids. You told to a man who testified, and he's very --
4 almost like a child given his addiction. And the long
5 range ramifications of people who deal drugs that's the
6 source of probably 80 percent of the crime that we see in
7 this Court.

8 People who are here for stealing, breaking into
9 houses, running away from the police and running over
10 innocent people. Probably 80 percent of the crime that we
11 see stem from someone under the influence of drugs.
12 Someone who has been distributed drugs by a drug dealer.
13 So the person who is the drug dealer they may not be the
14 one who is stealing the lawn mowers or the four wheelers
15 and breaking into storage houses and houses and residences
16 and any an everything. But they are the recipients of the
17 benefits of people who commit those crimes. They steal in
18 order to give you the money.

19 MR. GRIGGS: I've been working shuts. I sure haven't
20 sold any drugs in the last three or four years.

21 THE COURT: Like the fellow we had yesterday who was
22 stealing a saw. What, a \$100 saw from the -- what store
23 was that? M and M?

24 MR. FOARD: I'm not sure, Your Honor.

25 MR. JOYNER: C and C.

1 THE COURT: C and C. Stealing a saw because me
2 needed money for drugs. And it's a -- it's the root of
3 most of the crime that we see in Court. So the question
4 is always what is the drug dealer. Who is the man behind
5 it. And here you're right in a store selling the drugs
6 out of the store as if it's -- I mean very cool and calm
7 and collected on the phone. Guy waits until you get
8 through with your business on the phone and just as if
9 it's no big deal.

10 MR. GRIGGS: I know when I was on the phone the
11 conversation on the phone I know that didn't look good,
12 but I was on the phone about a job when I was on the
13 phone.

14 THE COURT: Well.

15 MR. GRIGGS: That was about a motel, getting a motel
16 and stuff like that we were talking about.

17 THE COURT: But the poor man that you were going --
18 the poor man who is addicted to it all and he's been
19 addicted for many years who apparently has had a long
20 running relationship with you. He just waited patiently
21 while you tended to your business, and it's really a
22 troubling thought. I'm sure Patrick -- is it Patrick
23 General Store?

24 MR. GRIGGS: Yes, sir.

25 THE COURT: It's probably on the outside from

1 everyone's appearance seemed like a regular old routine
2 country store. Good people go in, and I'm sure there are
3 many good people that go there. But for you it was
4 your -- seemingly your place to operate your enterprise.

5 So the minimum sentence you're facing is five years,
6 and the maximum is 20 years. Now, the Solicitor wants me
7 to give you that 20 years and put you into retirement
8 based on the fact that you've been a thorn in the side of
9 law enforcement from 1981 to 2000, and you have a gap
10 there. I don't know where you were during the early
11 2000's.

12 MR. GRIGGS: Like I was saying I was straight.

13 THE COURT: You weren't in prison anywhere?

14 MR. GRIGGS: No, sir, I wasn't in prison. I was
15 working.

16 MR. FOARD: He was in the State of Georgia, Your
17 Honor, where he was getting convictions for driving
18 offenses and D.U.I.

19 THE COURT: Oh, you were gone far a while. When did
20 you come back here?

21 MR. GRIGGS: I didn't have no time for it. I had to
22 go pay a \$2,500 fine. I didn't do no time for it. If I
23 did it wasn't no more than two or three days.

24 THE COURT: Of course, you know, you can't be
25 sentenced for the times that you may have been operating

1 and sell drugs.

2 MR. GRIGGS: I was working a job in Georgia, and I
3 think I was caught drive under the influence.

4 THE COURT: Of course, you can work and be a drug
5 dealer, too, at the same time.

6 MR. GRIGGS: I'm just asking for your leniency to
7 give me any leniency I'll ---

8 THE COURT: Well, we had that conversation this
9 morning before the jury came out to hear your case, and
10 you decided you wanted to roll this dice in the face of
11 the evidence that seemed to be quite clear that you were
12 guilty. And it makes me wonder what makes you tick. Do
13 you think you're just untouchable? Unstoppable?

14 Clearly the State had the evidence on you. A fairly
15 clear cut case, and you just wanted to have a trial which
16 is your constitutional right. And I could never punish
17 anyone for exercising their right to a trial.

18 MR. GRIGGS: Well, out of the other 25 people that
19 were involved I believe the worse case scenario one of
20 them got 90 days and I was offered three years. I mean
21 worse case scenario out of the other 25 that was involved
22 worse case scenario one of them got 90 days.

23 THE COURT: What are the 25 people you're talking
24 about?

25 MR. GRIGGS: The other 25 people that was involved in

1 this case.

2 MR. FOARD: Your Honor, there weren't 25 other people
3 involved in this case. I think he's alleging that this
4 same C.I. bought from other drug dealers in the County.

5 MR. GRIGGS: And what all of the rest of them got
6 offered probation. One I think ---

7 THE COURT: Well, I haven't been in this County in
8 about four or five years. I think it was 2008.

9 MR. GRIGGS: Yes, sir.

10 THE COURT: The last time that I rolled through these
11 parts. None of them came before me, and I have no concern
12 about any other case other than yours.

13 MR. GRIGGS: Yes, sir.

14 THE COURT: Anything else from the State?

15 MR. FOARD: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. JOYNER: No, Your Honor.

18 THE COURT: All right. Final words, Mr. Griggs.

19 MR. GRIGGS: No.

20 THE COURT: Sentence of the Court is that you be
21 committed to the State Department of Corrections for a
22 period of 13 years. Given credit for time served. Thank
23 you.

24 MR. JOYNER: Thank you, Your Honor.

25 MR. FOARD: Thank you, Your Honor.

END OF TRANSCRIPT OF RECORD

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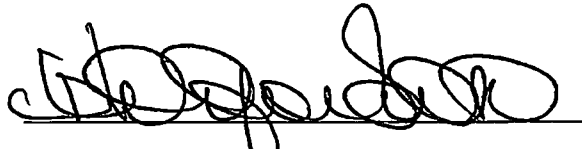
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Chesterfield County, South Carolina, on the 13th day of November, 2013.

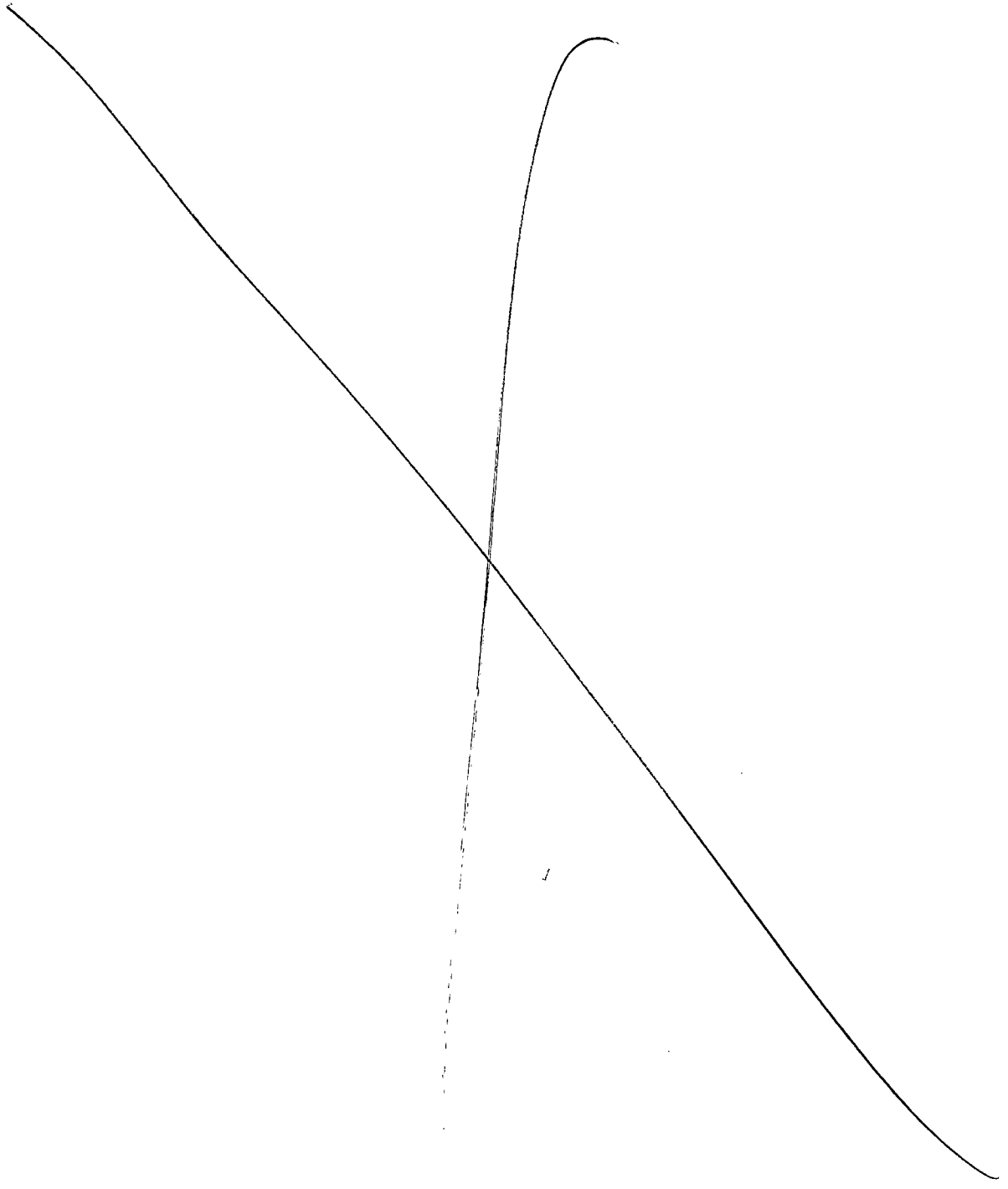
I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 22, 2014



HATTIE O. GORDON, Court Reporter

00154



State of South Carolina)
)
County of Chesterfield)

In Circuit Court of the
Fourth Judicial Circuit
2015-CP-13-0061

BILLY JOE GRIGGS,)
)
Plaintiff,)
)
vs.)
)
THE STATE,)
)
Defendant.)
)
_____)

Transcript of Record

Marlboro, South Carolina
January 9, 2017

B E F O R E:

The Honorable G. Thomas Cooper, Jr.

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

Mr. Tommy A. Thomas, Esquire
Attorney for Plaintiff

Ms. Valerie Giovanoli, Esquire
Attorney for Defendant

Lisa Carter
Circuit Court Reporter

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I N D E X

DESCRIPTION

NO.

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Copy of Statue

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44-53-370

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Letter dated 03/06/14

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1 THE COURT: Tell Mr. Griggs to come on in.

2 MS. GIOVANOLI: May it please, the Court? This is
3 Billy Joe Griggs versus the State of South Carolina ---

4 THE COURT: Wait a minute. Let him settled.

5 MS. GIOVANOLI: Sorry, judge.

6 THE COURT: You ready to proceed, Mr. Thomas?

7 MR. THOMAS: Yes, Your Honor.

8 THE COURT: All right. Have a seat. Yes, ma'am?

9 MS. GIOVANOLI: Thank you, Your Honor. This is Billy
10 Joe Griggs versus the State of South Carolina. Case number
11 2015- CP-13-0061. We're before the Court on applicant's
12 post-conviction relief application filed on February 2,
13 2015. The applicant is presently confined to the South
14 Carolina Department of Corrections pursuant to orders of
15 commitment of Chesterfield County Clerk of Court.

16 The applicant was indicted during the November of 2013
17 term of the Chesterfield County grand jury for possession
18 with intent to distribute a controlled substance. That was
19 case number 2013-GS-13-0591. Applicant proceeded to trial
20 and was found guilty as indicted. Franklin B. Joyner, Jr.,
21 Esquire, represented applicant.

22 On November 13, 2013, the Honorable Clifton Newman
23 sentenced applicant to thirteen (13) years imprisonment.

24 The applicant filed a notice of appeal on March 13,
25 2014. He later withdrew this appeal and the South Carolina

Billy Griggs- Direct Examination by Mr. Thomas:

5

1 Court of Appeals dismissed the matter on January 13, 2015.

2 The remittitur was issued on February 4, 2015. The
3 State is present and ready to proceed. The applicant is
4 also present and represented by Mr. Tommy Thomas and I'll
5 hand it over to counsel.

6 THE COURT: Mr. Thomas?

7 MR. THOMAS: Your Honor, if it pleases the Court?

8 THE COURT: Yes, sir.

9 MR. THOMAS: We would call Mr. Griggs to the stand.

10 THE COURT: Come around, Mr. Griggs.

11 THE CLERK: Do you swear to tell the truth, the
12 whole truth, and nothing but the truth so help you God?

13 MR. GRIGGS: Yes, ma'am.

14 THE CLERK: Okay. Have a seat right there and
15 state your full name please.

16 MR. GRIGGS: Billy Joe Griggs.

17 MR. THOMAS: Your Honor, May it please, the Court?

18 THE COURT: I'm sorry.

19 MR. THOMAS: Please the Court?

20 THE COURT: Yes, sir. You may proceed.

21 MR. THOMAS: All right, sir.

22 BILLY GRIGGS, first being
23 duly sworn, testified as follows:

24 Direct Examination by Mr. Thomas:

25 Q. Billy Joe, I wanted to -- you're here for a post-

- 1 conviction relief ---
- 2 A. Yes, sir.
- 3 Q. - - - action today?
- 4 A. Yes.
- 5 Q. Okay. How old are you, Billy?
- 6 A. Fifty-five (55) years old.
- 7 Q. And you are serving time for what?
- 8 A. PHID, (sic) third offense.
- 9 Q. Of what kind of drug?
- 10 A. Lorcets.
- 11 Q. Controlled substance?
- 12 A. Controlled substance.
- 13 Q. Okay. Prescription medication?
- 14 A. Prescription medication, yes, sir.
- 15 Q. Billy, you've had some problems in the past? You've
- 16 some other offenses?
- 17 A. Thirty (30) years ago, yes, sir.
- 18 Q. All right. And how long -- you were arrested on this
- 19 charge when?
- 20 A. 2010.
- 21 Q. 2010. And you were -- when did you go to court on it,
- 22 do you remember?
- 23 A. 2013.
- 24 Q. 2013.
- 25 A. November, '13.

Billy Griggs- Direct Examination by Mr. Thomas:

7

1 Q. Okay. '13. And how long had you been out of trouble,
2 so to speak?

3 A. I've had some drinking offenses but I haven't had no
4 drug offenses since 1989.

5 Q. All right, sir. So ---

6 A. Which was twenty-five (25) years before I got this
7 charge.

8 Q. So you had not been arrested for any kind of drugs
9 related ---

10 A. I got no drug offenses, no, sir, in twenty-five (25)
11 years.

12 Q. You got some prior to that?

13 A. Prior, I had trouble in the early 80's with drugs and
14 I've done a ten (10) year sentence for trafficking cocaine
15 in 1984.

16 Q. You have an injury, is that what ---

17 A. I got a -- I had a total hip replacement surgery since
18 I've been incarcerated. So I've been having hip problems
19 but now I'm in good shape ---

20 Q. Okay. But prior to that ---

21 A. --- since I've been ---

22 Q. --- you were having pain, back pain ---

23 A. Yes, sir.

24 Q. --- hip pain? Okay. Now, did you have a -- enter a
25 plea or a trial.

1 A. I had a trial.

2 Q. Okay. And you were found guilty and you were
3 sentenced to how much time?

4 A. Thirteen (13) years.

5 Q. Okay. And this was a third offense?

6 A. They said it was third offense. I question a lot in
7 my transcripts because I can't figure out why it's third
8 offense.

9 Q. Okay. We'll go into that.

10 A. Yes, sir.

11 Q. And you are facing five (5) to twenty (20) years, is
12 that right?

13 A. Five (5) to twenty (20) -- if I pled guilty they was
14 going to give me a one (1) to five (5) but if I didn't
15 plead guilty they was -- if I said not guilty, they was
16 going to make it a five (5) to twenty (20).

17 Q. All right. Now, the reason I ask you that is that you
18 understand, you understand that today you're asking for new
19 trial?

20 A. Yes, sir.

21 Q. And that if the Court was to grant your post-
22 conviction and give you a new trial that you have exposed
23 your over and above what you received at your sentence?

24 A. I feel like I have already done -- I've done, done
25 more than I, for a first offense, yes, sir -- I've done,

1 done three (3) and half years.

2 Q. All right. But you want to go forward today?

3 A. Yes, sir.

4 Q. And you're willing to accept any of the responsibility
5 or the potential that you could be looking at more time if
6 you were to win your post-conviction?

7 A. Yes, sir.

8 Q. All right. Now, Billy, when were you arrested?

9 A. I was arrested in 2010.

10 Q. All right. And what kind of -- what were you doing at
11 the time, what kind of work were you doing?

12 A. I was helping my father at his store and I was working
13 construction shutdown. I was going around the power plants
14 and doing shutdowns on power plants for places like
15 Progress Energy and Duke Energy.

16 Q. Okay.

17 A. I was going to their places doing shut downs.

18 Q. All right. Did you have an appointed attorney or did
19 you retain an attorney?

20 A. I had a paid attorney.

21 Q. And who is that?

22 A. Mr. Joyner.

23 Q. And Mr. Joyner's here in the courtroom today with you?

24 A. Yes, sir.

25 Q. Okay. Now, did you get out on bond or were you in the

1 county jail?

2 A. I was -- I got out on bond.

3 Q. And how long were you out on bond before this trial
4 occurred?

5 A. I was arrested in 2010. The trial took place in 2013
6 so it was over three (3), over three (3) years.

7 Q. Okay. Now, during that period of time, did you meet
8 with your attorney to discuss this case?

9 A. I met with my attorney after these charges happened,
10 some in 2011 and some in 2012. But we didn't meet none in
11 2013, I don't think. But he was handling a driving under
12 suspension charge for me also.

13 Q. Tell me about that. What was going on with the
14 driving under suspension?

15 A. On the driving under suspension charge it happened
16 after this, after this charge. It was -- it probably
17 happened in 2011.

18 Q. Yeah.

19 A. So he was representing me on that. And when we went
20 to court he talked to the solicitor and the solicitor, I
21 didn't hear the conversation, but he come back to me and
22 said, "well," he said, "this is what they're going to do,"
23 he said, "they're going to drop this fifth offense driving
24 under suspension to a third offense driving under
25 suspension and recommending you to do thirty (30) days if

1 you would to plead guilty." I said, "well, how about the
2 PHID (sic) chargers?" He said, "they're going to drop the
3 PHID (sic) charge and you won't no longer have no charges
4 on you." And I said, "okay, I'll do that," because that
5 was the charge I was worried about was the driving under
6 suspension because it was fifth offense, automatically
7 going -- time.

8 Q. All right. So it was your understanding when you pled
9 to the driving of suspension that this also, this offer
10 also involved the drug charge?

11 A. Yes, sir.

12 Q. And what was your understanding about what was going
13 to happen to the drug charge?

14 A. The drug charge is going to be dropped and the reason
15 I thought at the time that, that was probably so. A lot of
16 the other people -- there was a drug sting of about twenty-
17 five(25) people and a lot of them were going to court at
18 the time to get their case taken care of. So I said well -
19 - I thought maybe this was correct.

20 Q. Okay. All right. So that was your motivation for
21 entering into the plea for the driving under suspension?

22 A. Yes, sir.

23 Q. Now, did, did anything happen after that in regards to
24 this charge for the controlled substance?

25 A. I, I got out -- I thought everything was fine and I

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1 went on and I went back to work for probably a year. A
2 year later, I imagine, he called me and said, "well, they
3 still got this PHID (sic) charge on you." I said, "you've
4 got to be kidding me." I said, "I thought all of that was
5 taking care of." He said, "no." He said, "I didn't tell
6 you that." Which I know if I'm facing time for something
7 and I realize if somebody tells me something like that.
8 It's not -- I don't make a mistake with something like
9 that.

10 Q. Have you serve time before?

11 A. I've done -- I've done close to ten (10) years in the
12 80's for drugs when I had a bad drug problem in the 80's,
13 yes, sir.

14 Q. All right.

15 A. So he never did get back to me until close to that
16 court date and he said, "well, they want you to plead
17 guilty and do three (3) years." I'm really upset because I
18 done thought it was all taken care of. I thought
19 everything was under control but that didn't seem like the
20 case.

21 Q. All right. So the controlled substance charge
22 reappeared, it came back?

23 A. The charge reappeared and what's confusing about that
24 is as busy as these court systems is why would you hold a
25 charge like that and take somebody to court for an older

Billy Griggs- Direct Examination by Mr. Thomas:

13

1 charge, a more recent charge and not take care of both
2 charges at the time. I was under the impression that, you
3 know, the courts were busy that if we're going to take a
4 man to court we're going to take him to court for
5 everything he's got right then and try to settle
6 everything. I can't understand why you would save an older
7 charge for two (2) years later. I can't understand it.

8 Q. All right. And your driving under suspension charge
9 was in General Sessions court?

10 A. Yes, sir.

11 THE COURT: When was that plea?

12 Q. When were you convicted of it?

13 A. January of 2012. My nephew gave me a copy of that
14 this morning.

15 Q. Okay.

16 A. I got a copy of the 2012 plea where I got the thirty
17 (30) days.

18 Q. Okay. All right. Now, so the drug charge reappears,
19 did you get an opportunity to sit down with your attorney
20 and go over the discovery in this case?

21 A. Well, it reappeared, like I say, I was truly upset
22 still, you know, going to court about it and I was -- but I
23 still felt like I was entrapped by this informant and I --
24 and he kept pushing me wanting me to plead guilty. I said
25 well, I don't want to even plead guilty because I was

1 entrapped by the informant.

2 Q. All right. Let me ask you this, so this was a sale to
3 a confidential informant?

4 A. Yes, sir.

5 Q. All right. And did you know who the informant was?

6 A. Yes, sir. Mmm, hmm.

7 Q. After the fact?

8 A. He was supposed to be a friend of mine.

9 Q. All right. And did he have a history of drugs as
10 well?

11 A. He had a very bad history of drug problem. You can
12 read that in the transcripts so the trial.

13 Q. Okay. Now, was it necessary to hire a private
14 investigator in this case, did you hire one?

15 A. No, sir. I wish now I would have but no, sir, I
16 didn't.

17 Q. Okay. Now, what kind of discussions, if any, did you
18 have with your attorney?

19 A. Well ---

20 Q. Because he wanted to defend you?

21 A. I told him I wanted to pursue with this traffic
22 offense that we'd talked about a year and half earlier. He
23 know my nephew was willing to take the stand about the
24 entrapment too because he know the informant was going
25 around to several places and bothering several people

Billy Griggs- Direct Examination by Mr. Thomas:

15

1 trying to buy pills so he could get his charge dropped. It
2 wasn't just me he was, he was really targeting our store at
3 the time because, you know, I was telling you about the
4 check. And he was really targeting our store and people at
5 our store that's selling pills.

6 Q. Okay. Well, let me -- let me ask you this, let's kind
7 of simplify it and then we'll get into some of the other
8 stuff. In regards to a defense, did you, did your attorney
9 tell you how he was going to defend you at this trial?

10 A. Well, everything was still a go with my nephew going
11 to testify for me and all until the solicitor he rested at
12 lunchtime. And that's when my attorney come to me at
13 lunchtime, the day right before he was supposed to put up a
14 defense, and he said, "well," he said, "I don't want to put
15 up a defense." He said, "the color of the pills, that the
16 analyst analyzed, and that's in evidence, are different
17 colored pills that's on the videotape."

18 Q. All right. Now, did you talk about that prior to the
19 trial?

20 A. No, sir. Never -- he had a copy of the videotape the
21 whole time and that's what I can understand now why he, why
22 did he wait until lunchtime, after they done rested their
23 case, before he even told me about this.

24 Q. All right. Let's stop. We're kind of getting ---

25 A. Yes, sir.

1 Q. --- the cart before the horse.

2 A. Yes, sir.

3 Q. Let me ask you about during the pendency, this is
4 prior to trial, you had a plea offer?

5 A. Yes, sir.

6 Q. And what was that plea offer?

7 A. The plea offer was three (3) years.

8 Q. And was that to plea to a first offense?

9 A. The plea was to a first offense PHID (sic), yes, sir.

10 Q. And for a recommendation of three (3) years?

11 A. For a recommendation of three (3) years, yes, sir.

12 MR. THOMAS: Your Honor, if it pleases the Court,
13 what I'd like to do if it's all right with the Court, I can
14 just tell you -- I'd like to just kind of publish where
15 this is in the transcript just for the Court's help ---

16 THE COURT: Go ahead.

17 MR. THOMAS: --- or information than rather going to
18 the transcript itself and have him read these things, I can
19 just give you the page and line numbers, Your Honor.

20 THE COURT: Go ahead.

21 MR. THOMAS: Your Honor, in regards to the plea
22 offer that's on Page 10 of the transcript it's Line 1
23 through 8.

24 Q. Now, when you appeared in front of Judge Newman, he
25 appeared to be concerned about this plea offer, is that

1 correct?

2 A. Yes, sir. You can read about that in the transcripts
3 too.

4 Q. All right. And that's in the transcript, same page,
5 page ---

6 A. He's confused how their enhancement.

7 Q. All right.

8 A. I'm confused how about the enhancement sentence, yes,
9 sir.

10 Q. All right. And that's beginning on Line 22. He
11 actually swears, puts you under oath and he asked you about
12 the plea offer, is that correct?

13 A. Yes, sir.

14 Q. And you tell -- what you tell the judge? Did you tell
15 the judge that ---

16 A. I tell the judge I hadn't had no drug charges in over
17 twenty (20) years and I didn't think you could go back
18 over, over ten (10) years to get these old drug charges to
19 enhance a sentence.

20 Q. All right. Well, let's go on to the enhancement.

21 A. Sir?

22 Q. Let's move on to the issue of the enhancement. Now,
23 you indicated to Judge Newman in the transcript and this
24 runs from, again from transcript, Page 11 all the way
25 through Page 15 of this transcript---

1 A. Yeah -- Yes, sir.

2 Q. --- there is a conversation between you and your
3 attorney, the solicitor, and the judge?

4 A. Yes, sir.

5 Q. All right. And tell us what your concern was about
6 the enhancement?

7 A. My concern was it being so long ago from all the drug
8 charges and I wasn't aware of the law and surely you can
9 read by the transcripts that Mr. Newman wasn't quite, Judge
10 Newman, excuse me, sir, wasn't not quite sure neither. So
11 he questioned solicitor Foard about it. But what puzzles
12 me now is my attorney, they question him about it, and my
13 attorney states that you can't, you can't go back over ten
14 (10) years on marijuana but you can go back over ten (10)
15 years on the other charges.

16 Q. All right. In those pages on the transcript I think
17 they informed Judge Newman that the statute that they're
18 using to enhance is 44-53-370?

19 A. That's what they said, yes, sir.

20 Q. Is that correct?

21 A. No, sir.

22 Q. All right. What is the proper statute in regards to
23 the enhancement?

24 A. The statute is 44-53-470 § (a) (3).

25 Q. All right.

Billy Griggs- Direct Examination by Mr. Thomas:

19

1 MR. THOMAS: Your Honor, if it please, the Court? I
2 have a copy of 44-53-470 that I'd to just introduce this as
3 applicant's one, Your Honor.

4 THE COURT: All right. Any objection?

5 MS. GIOVANOLI: None, Your Honor. Thank you..

6 MR. THOMAS: You're welcome.

7 (Whereupon, the Statue 44-53-470 Statue has been marked and
8 entered into evidence as Applicant's No. 1)

9 MR. THOMAS: Your Honor, May I approach the witness?

10 THE COURT: Yes.

11 Q. Billy, I'm going to show you this.

12 A. Yes, sir.

13 Q. And it's been marked as applicant's one, do you know
14 what that is?

15 A. Yes, sir. I am well aware of this law.

16 Q. And what is that?

17 A. This is an enhancement law.

18 Q. All right. And what specifically in that statue are
19 you pointing to that says you think that you're charged was
20 improperly enhanced?

21 A. Okay. Section (3) it says, "for events involving a
22 controlled substance other than marijuana pursuant to this
23 article a defendant has been convicted within the previous
24 ten (10) years of the first violation of a controlled
25 substance, other than marijuana". From what I'm taken for

1 it, they can't -- what I understand it to say, is that you
2 can't go over ten (10) years to get a controlled substance
3 charge. And then it says, you can't even use a marijuana
4 charge to enhancement a sentence.

5 Q. All right.

6 A. That's what I'm perceiving from this.

7 Q. If you go to the end of that statute, if you'll look at
8 the end of the statute.

9 A. Yes, sir.

10 Q. I think it's on the second page where it says about,
11 effective date, do you see that?

12 A. Effective -- effective date was in 2010.

13 Q. All right. Now there been a made -- has there been a
14 change made since 2010?

15 A. In 2016 they come up with a, you know, where you can't
16 use the simple possessions.

17 Q. All right. And on that document it explains what
18 changes they made in '16?

19 A. Sir?

20 Q. On the document it explains what changes they made in
21 '16?

22 A. On my indict -- what did you say?

23 Q. On that document ---

24 A. Yes, sir.

25 Q. --- it talks about the '16 changes.

1 A. Okay -- (b) (b) (c) -- I'm not -- I'm not ---

2 Q. That's okay, Billy. At the time, that you were
3 arrested and that you went to trial and you were convicted,
4 was that 2010, modification of the statute, was in effect?

5 A. All the investigating I've done that law was in effect
6 when I went to court in 2013.

7 Q. All right. And tell me or tell the Court,
8 specifically, why you think that you were improperly
9 enhanced?

10 A. I was improperly enhanced because another paper I've
11 got over there that you could see is I've been dealing with
12 the parole board trying to go up for parole and they stated
13 they went through all my record, all my record and we've
14 had several briefs about it and they come down there and
15 said they get my first offense, 1984, for marijuana. My
16 second offense for trafficking cocaine, 1984, and they are
17 considering this my third offense.

18 Q. All right.

19 A. And from what I understand that's been twenty-seven
20 (27), '84, that's been over thirty-two (32) years ago.

21 Q. So you were told at trial that you were not eligible
22 for parole, is that correct?

23 A. Yes, sir.

24 Q. All right. And then were you later screened for
25 parole?

1 A. The Department of Corrections said I was eligible for
2 parole.

3 Q. And why was that?

4 A. They must have the same interpretation I did, I'm not
5 sure. But the parole board went -- I done three(3) years
6 thinking I was going to be able to go up for parole.

7 Q. And then they said that you were subsequent violent
8 offender, is that correct?

9 A. Yes, sir.

10 Q. That you have prior violent crimes which would've been
11 a drug charge?

12 A. Yes, sir.

13 Q. All right. Now, your attorney made some pre-trial
14 motions, is that correct?

15 A. Sir?

16 Q. Your attorney made pre-trial motions?

17 A. Yes, sir.

18 Q. All right. Do you know what they are?

19 A. I have to look through my transcripts.

20 Q. That's okay. That's all right.

21 A. Yes, sir.

22 Q. I'll ask your attorney about that because I know
23 you're not an attorney. But you were concerned about the
24 enhancement?

25 A. I was very concerned about the enhancement ---

1 Q. All right.

2 A. --- all along.

3 Q. All right. Now, you felt like -- let me ask you this,
4 why did you go to trial with this case?

5 A. I went to trial because I was, at the time, I was
6 getting these pills from this doctor. I was getting them
7 for my hip. I had no intentions of selling these pills. I
8 wasn't selling pills. This was a guy, the informant, was a
9 friend of mine. He kept calling me. Aggravating me. Said
10 my back's hurting! My back hurting! Please help me! He
11 kept -- and that's the reason I took it to trial because
12 this man entrapped me to selling the pills. I didn't have
13 -- I just thought he was a friend of mine. I didn't -- I
14 wasn't concerned -- I didn't want to sell my pills because
15 I needed them badly then. I had a bad hip. I wasn't -- I
16 wasn't in the game of selling pills. But, undoubtedly, he
17 was in trouble and he didn't care about our friendship and
18 he used me and he entrap me, in other words.

19 Q. And this fellow was pretty candid at this trial,
20 wasn't he?

21 A. Yes, sir.

22 Q. I mean, he admitted on the stand that he had the
23 charges against him, that were dismissed?

24 A. He admitted to all of that.

25 Q. And did you discuss this possible defense, this

1 entrapment defense, with your attorney?

2 A. I discussed it with him several times, but, like I
3 said, for about a year before I went to court I thought
4 everything was clear. I didn't even know I was going to
5 court so me and him had no contact until a few, a month
6 before he come up and said, "well, you still got this
7 charge on you." At that time all he was concerned is about
8 me pleading guilty. He wasn't concerned about -- I felt
9 like he wasn't concerned about taking this to trial.

10 Q. Okay. And what other potential defenses did you have
11 in your case?

12 A. Do you want me to go into the color of the pills?

13 Q. Well, um, no, let's talk about first, you mentioned to
14 me something about a check.

15 A. Okay. The informant wrote my father -- my father he
16 owns a store in Patrick, Patrick General Store, and the
17 informant's wife wrote a bad check to my father and my
18 father kept trying to get the money for the check. Never
19 could get it. So he ended up having to turn it in to the -
20 - now you gotta take them, you use to be able to take them
21 to small magistrate, but now you've got to take them to be
22 courts. So he took it to be court and I felt like this
23 informant was mad because my father turn the check in on
24 him, on his wife and I feel like that's the reason he
25 targeted our store trying to buy pills from several people

1 -- even, he tried to buy some from my nephew. He tried to
2 buy pills from several other people in that store. But he
3 did, eventually, buy some from other places. But I showed
4 Mr. Joyner this check and I said I feel like this might be
5 good to saying he entrapped me by -- because this would
6 show motive that he was wanting to entrap me at the store.
7 He said that check was irrelevant that he didn't think the
8 check was important.

9 Q. All right. Did the confidential informant ever
10 approach you asking for money?

11 A. His brother, he's got a twin brother, and his twin
12 brother must've got into some trouble, his wife got into
13 some trouble, and they called me and said well, he's not
14 going to show up for court against you or nothing like
15 that. We need some help to take care of this ticket for my
16 brother -- they twins.

17 Q. Right.

18 A. They're hard to tell apart but they -- he got his
19 brother to try to get money out of me a few times.

20 Q. Did you tell your attorney that?

21 A. I felt like he -- yeah, he use that from what I read
22 in the transcript, he did use that in the trial.

23 Q. Okay. Now, let's talk about the color of the pills.

24 MR. THOMAS: Now, for the Court's indulgence, Your
25 Honor -- for the Court's information, Your Honor, I'm

1 talking about transcript's, Page 51, Line 16, and then
2 transcript Page 68, Lines 5 through 9. And then the
3 transcript's Page 95, lines 9 through 25, Your Honor.

4 Q. Billy, what if anything, were you concerned about,
5 about the color of these pills?

6 A. At the time of the trial, I was -- I was -- I had -- I
7 was on pain medicine heavy myself and I was drinking so I
8 wasn't as sharp as I am would be now. After looking
9 through this right here, the problem I've got with it, you
10 can see where Foard, the solicitor Foard -- that's on 51,
11 he questions the informant, 51, Line 12 through 18, he
12 questions the informant about the pills and what color the
13 pills are. They say a white spot but they referred to it
14 as pills, one time in there. And so, I mean, so what I can
15 take from that right there is, all right, the pills were
16 white. And then you come down when director -- direct from
17 solicitor Foard on Line, let's see, bear with me, sir --
18 the drug analyst on page 68, Line 5 through 9, Line 5
19 through 9, the analyst says the pills are green. He tested
20 seven green pills. My concern is when attorney Joyner
21 cross-examined the informant, why didn't he ask the
22 informant, he had the evidence, the green pills, why didn't
23 he show the green pills to the informant and say, "are
24 these the pills you sold to Mr. Griggs", because evidently
25 they were not, they were white pills I sold the informant.

1 He didn't do that. Another thing I got is the analysts,
 2 when the analyst, excuse me, sir, I don't mean to get so
 3 loud. I apologize.

4 THE COURT: I can hear you.

5 A. I'm just -- but the analyst -- when the analyst was up
 6 there and when he cross-examined the analyst, he never
 7 questions the analyst about the color of the pills. He
 8 never at one time asked the questioned -- why didn't he
 9 show the video to the analyst, and say, "are these the same
 10 pills that you analyzed that's in this video?" He didn't
 11 do that. He decided he'd wait and use it all in cross --
 12 at the end of the trial. He had several chances. Several
 13 chances of questioning ---

14 (Whereupon, the witness needed something to drink)

15 A. He had several times to cross-examine the informant
 16 and cross-examine the analyst about the pills because he
 17 had the evidence up there and you had the video. But he
 18 didn't attempt to do that. All he wanted to question the
 19 analyst was something that was way over my head about gases
 20 and all this. Nothing to do with the color of the pills.

21 Q. All right. Did your attorney stipulate to the chain
 22 of custody?

23 A. Yes, sir. In the transcript he did stipulate to chain
 24 of custody.

25 Q. All right. So ---

1 A. I'm not -- you might be more aware of what -- I know
2 they skip some processes in that chain of custody. But you
3 might be more aware of that than I am.

4 Q. Okay. Now, did counsel ever raise the issue about the
5 difference of color in those pills?

6 A. Did my attorney?

7 Q. Yes, sir.

8 A. Not during -- the only time I ever heard was his went
9 after the solicitor done rested his case, then he called me
10 and my nephew to the room which my nephew was already
11 willing to testify for me on the entrapment process that we
12 was involved in or we felt like we was involved in and
13 about the check that he said was irrelevant. But he never
14 -- that's the only time like I say my judgment was cloudy
15 at the time because I was nervous about going to court. I
16 know what I was facing. All I know was thinking about the
17 entrapment. I didn't have no idea that the pills that
18 they, undoubtedly, the informant the pills he got for me,
19 undoubtedly, is not the pills he gave to the analyst. So
20 the chain of custody somewhere was broken. I don't know
21 where but for them transcripts -- and he never did question
22 the informant or the analyst about these color pills and
23 that's what I felt was a really bad mistake. And I felt
24 like if he had show that analyst that video. And showed
25 that analyst that transaction, the analyst which was from

Billy Griggs- Direct Examination by Mr. Thomas:

29

1 SLED, he would have, off his top, would have said those
2 ain't the same pills that I analyzed.

3 MR. THOMAS: Your Honor, if it please, the Court?
4 I've spoken to the attorney general about the video. I
5 would assume, I do not have a copy of it but I assume that
6 it exist and we agreed that if the Court wishes, at the
7 conclusion of this to see the video, we'll make it
8 available for the Court.

9 THE COURT: Would you like

10 MR. THOMAS: I think I'll just leave it to the
11 Court's discretion, Your Honor, because, I mean, the
12 testimony and it's clear in the transcript that there is
13 testimony in regards that the pills were white. But I
14 would certainly, if the Court wishes to see, we can make it
15 available.

16 THE COURT: Well, what does the video show? Have
17 you seen the video?

18 MR. THOMAS: I have not seen the video, Your Honor.
19 It's just my understanding that video shows the allege
20 sell.

21 THE COURT: All right. Is that correct, Ms.
22 Giovanoli?

23 MS. GIOVANOLI: Your Honor, actually what was used in
24 the trial were stills from the video and the State's
25 position is that the actual image captured looked like a

1 white pill but the pill was actually a very light lime
2 green color so it was just based on the printing quality
3 and the way it appeared on the monitor. But we do have the
4 picture of that still that was used at trial and the State
5 has no opposition if, Your Honor, would like to see that.

6 THE COURT: Well, and abundance of caution, I'll
7 take a look at it.

8 MS. GIOVANOLI: Okay.

9 MR. THOMAS: Thank you, Your Honor.

10 MS. GIOVANOLI: And how would you like that submitted?

11 THE COURT: We'll talk about it when he's....

12 MS. GIOVANOLI: Thank you, Your Honor.

13 Q. Billy, I'm sorry to interrupt you but I did want to
14 raise that issue before I forgot it. Now, how about the
15 closing, did your attorneys talk about the difference in
16 color in closing?

17 A. Yeah, he, in the closing which he, he was aware the
18 pills were different colors too. I don't know what kind of
19 picture they've got but in the closing remarks which would
20 be in, let's see, Page 95, Line 10 through 25, -- 96, 1
21 through 8. In other words, in the closing arguments he put
22 up -- so he was under the assumption, I don't know what
23 picture they've got, but him and solicitor Foard were under
24 the assumption, they watch the same video -- they all
25 watched the same video and they all were under the

1 assumption they were white. I don't know where this light
2 green is coming from ---

3 Q. Okay.

4 A. --- but they are under the assumption. He was under
5 the assumption because he put it in the closing arguments,
6 he questioned about the pills ---

7 Q. All right.

8 A. --- being a different color, being white.

9 Q. Billy, you had filed an appeal or an appeal was filed
10 on your behalf after this trial?

11 A. Okay, he filed an appeal for me and then I went to R&E
12 and while I was at R&E, he wrote me a letter stating that
13 he couldn't represent me on the appeal because I informed
14 him that I didn't have the money for an appeal. My father
15 is back there. My father was willing to pay for an appeal.
16 And he knows my father well. And he knows my father has
17 money, was trying to do everything he could help me, to
18 help me. So I don't understand why he didn't think he had
19 no money for an appeal and if he know the pills was a
20 different color, I feel like he -- I don't know why he
21 didn't want to carry on with the appeal. But later on, a
22 month later, I got a letter from my father and I've got
23 that in that folder I was wanting you to turn in, a letter
24 from my father where he states -- my father wrote me a
25 letter and he states that he had talked to JR and this is a

1 month later, and J.R. tells my father, he says, "I'm
2 working on getting your sons time reduced." He's writing
3 me a letter stating, "I can't handle your appeal because
4 you don't have the money." But he's telling my father a
5 month later that he's trying to help me. I don't
6 understand that.

7 Q. Do you know if a motion to reconsider the sentence was
8 ever filed?

9 A. He never did -- he didn't put in for a motion for
10 reconsider. I know about it now. At the time, I wasn't a
11 lawyer. I've learned a lot over these three (3) and half
12 years. And he had an opportunity to put in a motion and it
13 takes, you've got to put it in within fifteen (15) days and
14 he didn't do that.

15 Q. What happened to your appeal?

16 A. Okay. When my appeal come up, I was in the process
17 then, I was going up for parole or I was under the
18 impression I was going up for parole in two (2) years. I
19 was incarcerated with a lot of people that was telling me,
20 oh, you'll be going up for parole before your appeal ever
21 comes up. Okay. So the time factors that I was seeing and
22 then my nephew contacted another lawyer about an appeal,
23 Bledsoe, out of Hartsville, and Bledsoe told my nephew,
24 said, ---

25 Q. Let's talk -- we don't -- let's don't say what

1 somebody told you.

2 A. Okay. Well, he's willing to testify to that if you
3 need ---

4 Q. Well, what -- just what happened to your appeal
5 though, did it go forward?

6 A. I withdrew the appeal because this lawyer was telling
7 me that he didn't want to handle an appeal but he would
8 handle a PCR.

9 Q. All right.

10 A. And under the time -- and under the time restraints I
11 felt comfortable with my parole date because I felt like my
12 age and my previous record that I would probably have a
13 good shot at parole. That was before I found out, I found
14 out I wasn't eligible for parole a month before I was
15 supposed to go up.

16 Q. All right. No, there's a couple of things that you
17 mentioned to me that you were concerned about and one was
18 the disparaging in sentences, do you know what that means?

19 A. Yes, sir.

20 Q. Okay.

21 A. Out of the twenty (25) people that was caught in this
22 drug sting, I'm the only one that got severe time. A lot
23 of them -- my lawyer, he represented a man named Delmas
24 Freeman. Me and Delmas were good friends and I'm the one
25 that recommended Delmas Freeman to attorney Joyner. He got

1 Delmas Freeman, me and him have the same previous record
2 where we had an old record, we were charged with the same
3 thing, this PHID (sic) first offense. He was able to get,
4 the attorney, Delmas Freeman in front of a judge and Delmas
5 Freeman had to pay a fine with my same attorney, same
6 charge, similar previous record. I can't understand why he
7 can't get me when he had this going on, why didn't he carry
8 me up in front of that judge and try to get me -- I felt
9 like the solicitor waited on the right judge to get me this
10 sentence. I'm not sure. But out of the other twenty (24)
11 people, I think the worst person might have got six months.
12 The majority of them come out with ---

13 MS. GIOVANOLI: Objection, Your Honor. At this point,
14 I think every one else's sentence are relevant to this
15 proceeding.

16 THE COURT: I'll hear him out.

17 A. Yes, sir.

18 THE COURT: Thank you.

19 A. Well ---

20 THE COURT: Go ahead.

21 A. Some of them got -- one of my friends, he got ninety
22 (90) days on the county. And several of them got pre-trial
23 intervention. But what I'm just stating is I'm the only
24 one out of the whole twenty (25) with any sentence that
25 amount to anything. feel like -- I felt like I was used

1 because all of them got off I felt like I was the
2 scapegoat. I don't know that but something don't seem
3 right. I'm the only one that gets the major time.

4 Q. Billy, let me ask you this, we kind of move on to
5 something else ---

6 A. Yes, sir.

7 Q. --- the trial strategy about you not testifying
8 because you did testify at trial ---

9 A. My attorney -- we was all plan for me to testify, my
10 nephew testify, all of this was the plan. He come up at
11 lunch after the solicitor rested his case. He seemed real
12 excited that he had a good defense. He know more about it
13 then and I realize now my mistake is I trust in my lawyer.
14 I wish now I had more, know more about the law than I did
15 then, but I didn't and I trusted him and I trusted what he
16 was saying. And like I say he felt that he could -- he
17 felt like he could do me good in the final arguments with
18 the jury about the color of the pills so he didn't want to
19 put up a defense. You can see on Page 90 -- and he -- like
20 I say, I was planning to take the stand up until then when
21 he told me he didn't want to use no defense. I told him I'd
22 think about it. So we went to lunch and me and my nephew
23 talked about it. And like I say I trusted my lawyer and I
24 went his route.

25 Q. Did your attorney call any witnesses on your behalf?

1 A. No, sir.

2 Q. Did he discuss with you at all what the legal concept
3 of who gets the closing argument, who has the last
4 argument?

5 A. Well, I know he had the closing argument coming up. I
6 kinda understood that probably the solicitor would go last.

7 Q. All right. But you didn't really discuss that with
8 him?

9 A. No, sir, we didn't discuss that.

10 Q. All right. Billy, you and I talked about this and I
11 know that you've been waiting for a long time for this
12 hearing to come up and for you to be able to address the
13 Court, I don't believe that I've left anything out that you
14 and I've talked about, I don't think that I forgot anything
15 that you felt, that you've told me that you thought was
16 important, but if I have, this is your opportunity ---

17 A. Yes, sir.

18 Q. --- to tell the Court if there's anything else you
19 would like to say?

20 A. I just, judge, I just feel like the time I've done I
21 feel like it's overbearing compared to what I was charged
22 with. I know I, excuse me, I made mistakes in the 80's but
23 this happened in 2010. I've been locked up now for three
24 (3) and half years. Level III, Level II, I finally worked
25 myself up to Level I. I have not been in no trouble. No

Billy Griggs- Cross Examination by Ms. Giovanoli: 37

1 disciplinary's. I just want this nightmare to be over. I
2 would be willing to just, right now, I would just be
3 willing to time served if the thing would work. I know you
4 can't do -- I don't know though. I just -- I want it to
5 just be over with.

6 THE COURT: All right. Thank you.

7 MR. THOMAS: Your Honor, I have no further questions
8 of this witness.

9 THE COURT: Cross-examination?

10 MS. GIOVANOLI: Yes. Thank you, Your Honor.

11 **Cross Examination by Ms. Giovanoli:**

12 Q. Good morning, Mr. Griggs?

13 A. Good morning.

14 Q. Earlier you testified that you had no other charges or
15 convictions after 1989?

16 A. 1989.

17 Q. That was your last drug offense? 1989 was your last
18 drug ---

19 A. 1989, yes.

20 Q. Okay. Do you remember a trafficking of cocaine 10 to
21 28 grams, you had in 1992, you receive three (3) years ---

22 A. That was -- if you can find it, that case -- his
23 secretary got that throw'd out. That was holding me back
24 from getting a Level II. See. I would have never went to
25 court for that. I don't know where you -- do you got

1 anything showing I went to court in '92 for trafficking?

2 Q. Well, it's say ---

3 A. They had it on my record but I ---

4 Q. But you didn't do any time for that, did you do drug
5 treatment?

6 A. No. The charge was never -- the charge was never --
7 his secretary was able to get expunged off my record for me
8 to go to a Level I. It stayed on my record the whole time
9 I was locked up.

10 Q. By expunged, what you mean?

11 A. The judge -- by expunged because it was on my record
12 when I was in the department and it was holding me from
13 going to a Level I institution. So I talked to one of his
14 secretaries and she helped me and my nephew helped me get
15 the charge taken care of. He went to Chesterfield -- he
16 called Chesterfield. Wasn't it in Chesterfield?

17 Q. Let me clear up, clarify what you're saying. You're
18 saying that you were convicted of the trafficking cocaine
19 and later ---

20 A. I was -- I was not convicted. I was never even ---

21 Q. Then what was expunged?

22 A. --- I was charged. I was charged but it was throw'd
23 out because I've testified against, the state grand jury
24 was going around then, I testified in this courtroom right
25 here against Rob Keith in the state grand jury and they

1 throw'd this charge out on me.

2 (Whereupon the witness was given more water)

3 A. Thank you, sir. Appreciate that.

4 Q. So on March 30, 1993, you didn't appear in court for
5 these charges?

6 A. If I did I appeared here and the charges were dropped.

7 Q. And you didn't receive three (3) years suspended with
8 drug treatment and two (2) years of probation?

9 A. No. I don't know where that's coming from.

10 Q. Okay. And then in ---

11 THE COURT: Where is that coming from? Just

12 MS. GIOVANOLI: Your Honor, I have a copy of his NCIC
13 report. I can't submitted as an exhibit because it has ---

14 A. I've got a ---

15 MS. GIOVANOLI: --- confidential information.

16 THE COURT: Would you show -- you seen this, Mr.
17 Thomas?

18 MR. THOMAS: I've got a copy of it, Your Honor, and
19 I am familiar with the charge that it was dismissed, that
20 my office helped him in regards to having the arrest
21 expunged.

22 A. Sir, I've got something over there, if you'd like to
23 see. I ---

24 THE COURT: Just wait.

25 A. Yes, sir.

1 (Whereupon, the judge takes a moment to look at the report)

2 THE COURT: What's the year, 2003?

3 MS. GIOVANOLI: 1993, was the date of ---

4 THE COURT: Oh, '93.

5 MS. GIOVANOLI: A 1993 conviction. A 1992 offense
6 date. May I continue?

7 THE COURT: Yes, ma'am. But, I mean, I want the
8 record to be clear not just an assertion or a question to
9 the witness.

10 MR. THOMAS: Your Honor, what I would be glad to do
11 and I can be wrong. I thought that this was the one that
12 we had assisted and that it was a non-conviction but
13 clearly this document shows that it is a, that it was a
14 conviction. I will be more than happy to contact the
15 clerk's office and get a copy of the warrant and
16 disposition sheet or sentencing sheet on the trial.

17 THE COURT: Sure. Okay. As long as....

18 MR. THOMAS: That way we can definitely say if it's
19 a conviction or not.

20 THE COURT: He denies it.

21 MR. THOMAS: Yes, sir, he does.

22 A. I deny it, yes, sir.

23 MS. GIOVANOLI: Thank you, Your Honor, there are
24 certain ---

25 THE COURT: Go ahead.

1 MS. GIOVANOLI: There's certain documents that I could
2 submit to the Court but if something has expunged it
3 wouldn't show up. If any -- the records that I have would
4 show all convictions, expungement or not.

5 Q. Okay. And then to follow up on May 8, 1997, do you
6 recall appearing in court and being sentenced to sixty (60)
7 days suspended to probation for driving under the influence
8 third-offense?

9 A. I have some -- I have had some drinking violations and
10 some driving under suspensions violations. Yeah, I have.

11 Q. Okay. So then ---

12 A. But I have no drug -- I have had no drug charges since
13 1989.

14 Q. Okay. And then on August 22, 1996, do you recall a
15 conviction for possession of 28 grams of marijuana or 10
16 grams of hash, you were fine \$376 and \$176, fine was
17 suspended. Do you recall that?

18 A. No. What year was that?

19 Q. That was 1996.

20 A. Marijuana? That's possible. I'm not sure but I don't
21 recall that.

22 Q. And lastly in 1999 on May 2nd you were convicted of
23 open container, disorderly conduct, and you will fine \$199
24 for the open container in \$373 or thirty (30) days for the
25 disorderly conduct?

1 A. I'm admitting that I've had some drinking charges.

2 Q. Okay. Thank you for your candor. Okay. And earlier
3 in your testimony you testified that when you pled to the
4 driving under a suspended license that you were told that
5 your drug charges would be dropped?

6 A. Yes.

7 Q. In exchange for that guilty plea?

8 A. Yes, ma'am.

9 Q. Who told you that?

10 A. Attorney Joyner.

11 Q. Okay. And do you still have that document that your
12 counsel provided to you with Section 44-53-470, do you
13 still have that?

14 A. Mmm, hmm. Yes, ma'am.

15 Q. And he had you read Subsection(3), but could you do is
16 read for me, Subsection(4)?

17 A. "And for an offense involving a controlled substance
18 other than marijuana pursuant to this article, the defender
19 has at any time been convicted of second or subsequent
20 violation of a controlled substance offense provision,
21 other than marijuana offenses possession." Okay.

22 Q. Did you finish the rest?

23 A. "Or another state federal statute relating to narcotic
24 drugs, present stimulants, hallucinate drugs."

25 Q. Do you understand that Subsection?

1 A. In other words, you can't use marijuana, right?

2 Q. Not quite. Okay. So let me verify your past record,
3 okay. In 1981, you had an unlawful drug charge. You were
4 sentenced three (3) years and was suspended to eighteen
5 (18) months?

6 A. Yeah, that's for the possession.

7 Q. Okay. And then in 1984, did you have a trafficking of
8 cocaine that you received ten (10) years for?

9 A. Yes.

10 Q. And then in 1990, you had a possession with intent to
11 distribute cocaine, you got four (4) months in prison for
12 that?

13 A. Okay, I got something on that right here. My
14 possession with intent to distribute that was my charge but
15 it was dropped to simple possession.

16 Q. Okay. Simple possession ---

17 A. When I pled guilty that was simple possession.

18 Q. Of cocaine?

19 A. Cocaine.

20 Q. Okay. And then in 1992, the other possession of
21 cocaine?

22 A. Possession, yes.

23 Q. Okay. Thank you.

24 A. I got one charge besides possession, besides this one.

25 Q. At any point did you tell your attorney, J.R., if you

1 will, that the confidential informant in this case was
2 holding, ask you to hold his pills for him?

3 A. He would -- the confidential informant was like I say,
4 was buying pills from a lot of times. I have -- I have at
5 times holded (sic) pills for him. Yes, I have.

6 Q. In this case, did you tell J.R. that you ---

7 A. But, I mean, -- sir?

8 Q. In this case, did you tell JR that you were holding
9 the pills for ---

10 A. That wasn't my defense but I was -- I have held pills
11 for him and I might have stated that I have held pills for
12 him before.

13 Q. But today you're testifying that they were your pills-
14 --

15 A. He sold me feel just like I sold -- if I was hurting
16 bad he might would sell me a few pills.

17 Q. To hold them or to use them?

18 A. I have -- I have bought pills from him also to use
19 because I would be in pain and he might would have them.

20 Q. Okay.

21 A. I thought we ---

22 Q. But this specific case, did you tell JR that you were
23 holding those pills for the confidential informant?

24 A. The pills that I was caught with?

25 Q. Yes.

1 A. No, ma'am.

2 Q. The pills that you were caught with, what were there
3 actual color?

4 A. White. The pills on the video are showing white
5 pills.

6 Q. But not what was on the video but the pills that you
7 actually were in possession of?

8 A. The ones I handed him on the video?

9 Q. Okay. You testified earlier that you had some hip
10 pain because you were receiving treatment?

11 A. Yes.

12 Q. And those were the pills that you were using?

13 A. I was -- the doctor was describing me Voltaren and he
14 was prescribing me 800 milligram ibuprofen. So I'm not
15 aware of what's on that video. I don't think it was
16 Lorcet. But the informant, I was being -- Voltaren, I
17 don't think it's a controlled substance or it's not a
18 narcotic anyway.

19 Q. Did you give the confidential informant those pills
20 that day?

21 A. I did. Yeah. It shows ---

22 Q. What color were those pills?

23 A. They were white.

24 Q. Do you know what kind of pills they were?

25 A. I think they might have been ibuprofen 800 or either

1 Voltaren.

2 Q. Are those medications that you can only get through
3 prescription by a doctor?

4 A. I think now you might -- back then you couldn't get
5 800 milligram ibuprofen from the doctor but now I think you
6 can. But, I mean, I think you can get them over the
7 counter but, yeah, that's the pills you get from a --
8 prescribed from him.

9 Q. Do you recall how much he paid you for those that day?

10 A. I want to say \$50 to \$60, something like that, seven
11 (7) pills.

12 Q. In cash or check?

13 A. He paid me in cash.

14 Q. Okay. And earlier you spoke about the other clients
15 that JR was helping and other people that got caught up in
16 the drug bust, do you know what -- specifically, you
17 testified one client got just a fine?

18 A. Yes, sir. Yes, ma'am.

19 Q. What was his name?

20 A. Delmas Freeman.

21 Q. You know what his prior record is?

22 A. Yes, ma'am. He done ---

23 Q. Exactly?

24 A. He done a twenty-five (25) year sentence over here at
25 Evans Correctional Institution. I know exactly what his

1 record is. I've been knowing him all of my life.

2 Q. And all the rest of the people that were in trouble
3 for the same drug bust, do you know their records too ---

4 A. Yes, ma'am.

5 Q. --- you know all of their ---

6 A. I know Carl Glitch got ninety (90) days. It was his
7 second offense for distribution of Lorcets.

8 Q. Well, not necessarily what he got in that case but,
9 his entire prior record?

10 A. I know he had a previous, a previous record, yes,
11 ma'am. I know he got caught before.

12 Q. Do you know, for a fact, what his previous record was?

13 A. I know for fact he got, he got caught one time before
14 selling pills, yes, ma'am. It's his second offense.

15 Q. Okay. And then you testified that during lunch you
16 and your attorney discuss whether or not to testify,
17 whether or not to put up a defense, witnesses and based on
18 your attorney's advice, was your decision not to plead
19 guilty?

20 A. Based on my attorney's advice wasn't my ---

21 Q. Your decision not to plea, not to, excuse me, not to
22 testify?

23 A. Yeah. On his advice, yes, it was my decision not to
24 -- he didn't push my arm to do it, no, ma'am.

25 MS. GIOVANOLI: I begged the Court's indulgence please.

1 Nothing further, Your Honor.

2 THE COURT: Mr. Thomas?

3 MR. THOMAS: Your Honor, May it please, the Court?

4 **Redirect Examination by Mr. Thomas:**

5 Q. Billy, let me make sure that I heard your testimony
6 correct. It appears that, that you said that you have a
7 trafficking charge back from 1984, is that correct?

8 A. 1984, I've got one trafficking charge. Now, when I
9 got into the department they come up with these other
10 charge and I kept having trouble getting moved. But this
11 charge was still pending. It was still pending the whole
12 time. And that's when Jackie, your secretary, and my
13 nephew called everybody trying to get the dropped where I
14 could go to Level I.

15 Q. All right. But I went to this courtroom right here
16 and testified against, with the state grand jury, and I'm
17 thinking that's where that charge come from and they
18 dropped that charge.

19 Q. Okay. But you do have a prior '84 trafficking
20 conviction?

21 A. Yes, sir.

22 Q. All right. In the others, PWID, possession with
23 intent to distribute, you said you pled to a simple
24 possession on that?

25 A. I got the paperwork right here where I pled to simple

1 possession.

2 Q. Okay. And then in '92 you had a possession charge?

3 A. I don't -- this is the last possession charge I had
4 was in 1990. You can look at the transcripts where it's
5 got my pictures on front of the transcripts.

6 Q. Yes, sir.

7 A. And if you turn over it will show you, it will show
8 you my previous charges. These are charges that I was
9 actually convicted of and it shows -- they don't show
10 nothing for '92 and it don't show nothing that she got for
11 '93.

12 Q. All right.

13 A. It shows the 1981 and it shows the possession with
14 intent to distribute charge and that was taken care of and
15 that was charged in 1989, but I went to court the first of
16 '91. I've got the court papers here where it was dropped
17 from possession with intent to distribute to simple
18 possession. It was less than 1 gram of cocaine and that
19 was in '89. And from what I can understand the charge that
20 she was talking about I -- I -- I think there was a charge
21 with the state grand jury but they was never no evidence
22 recorded it was just, back then there was a lot of court
23 going on with the state grand jury.

24 Q. All right. And it sure testimony that the pills that
25 were allegedly sold were white? The pills were white?

1 A. The pills were white that I handed the informant.

2 Q. Okay.

3 MR. THOMAS: Your Honor, I have no further questions
4 of this witness.

5 THE COURT: All right. Anything further?

6 MS. GIOVANOLI: Nothing further, Your Honor.

7 THE COURT: All right. You may come down.

8 MR. GRIGGS: Yes, sir.

9 THE COURT: Thank you very much.

10 MR. GRIGGS: Thank you.

11 MS. GIOVANOLI: Your Honor, may I approach the court
12 reporter just to have something marked as an exhibit while
13 we wait?

14 THE COURT: Sure.

15 (Whereupon, the AG's attorney takes a moment to have
16 exhibits marked)

17 THE COURT: All right. Mr. Thomas?

18 MR. THOMAS: Your Honor, if it pleases, the Court?
19 We'd call Mr. Joyner to the stand. Franklin?

20 MR. JOYNER: Yes, sir.

21 THE COURT: Okay.

22 THE CLERK: Do you swear to tell the truth, the
23 whole truth, and nothing but the truth so help you God?

24 MR. JOYNER: Yes, ma'am.

25 THE CLERK: Okay. Have a seat and state your full

1 name.

2 MR. JOYNER: Franklin Blair Joyner, Jr.

3 MR. THOMAS: Your Honor, May it please, the Court?

4 THE COURT: You may proceed.

5 FRANKLIN JOYNER, first being
6 duly sworn, testified as follows:

7 **Direct Examination by Mr. Thomas:**

8 Q. Mr. Joyner, you had an opportunity to represent Billy
9 Griggs?

10 A. Yes, sir.

11 Q. All right, sir. And in what capacity did you
12 represent him?

13 A. I was his defense attorney.

14 Q. Okay. And were you -- you were retained?

15 A. Yes, sir.

16 Q. All right, sir. And do you remember, I don't know the
17 exact date, but do you remember roughly when you were
18 retained?

19 A. I don't remember exactly. He had -- I've represented
20 him several times over the past and so it would sort of be
21 a ---

22 Q. Okay.

23 A. -- he would get a charge and hire me and then maybe
24 get another charge later and would hire me.

25 Q. Right.

1 A. I've got my file if you -- I can pull my retainer.
2 Q. No, that's okay. But you had, leading to the question
3 that you had ample opportunity to put this case together --
4 -
5 A. Yes, sir.
6 Q. --- for a while?
7 A. Yes, sir.
8 Q. Now, do you remember the driving under suspension that
9 he talked about?
10 A. I do.
11 Q. And what happened with that?
12 A. We went to court. He pled. And, I mean, that was the
13 end of that charge. And I don't -- I don't recall any --
14 any discussion about having other drug charges dismissed.
15 Q. But it was a general sessions charge, the driving
16 under suspension?
17 A. Yes, Your Honor, it was because I ---
18 Q. Okay. And were there plea negotiations in that or how
19 did that plea evolved?
20 A. Yes, sir. There were, if I remember correctly, this
21 was maybe when you include the DUIs and that the DUSs this
22 might have been seventh, or eighth, or ninth offense for
23 him on those.
24 Q. Right.
25 A. And it was originally a habitual offender which, of

1 course, carries five (5) years and a significant license
2 suspension. And so we, if I remember correctly and I don't
3 have my file on that, but if I remember correctly, we
4 negotiated that five (5) year potential sentence down to a
5 lesser amount of time.

6 Q. Okay. And during that period of time you were still
7 aware of the pending controlled substance charge?

8 A. Yes, sir. He actually had, I believe, three of those
9 pending at the time.

10 Q. All right.

11 A. On three separate buys that were done.

12 Q. The same confidential informant?

13 A. You know, maybe. To be honest with you I'm not one-
14 hundred percent sure who the CI was on each. I just know
15 that this particular case had a very, a very bad video for
16 us, a very good video for the State and I think that's why
17 they intentionally -- and as -- let me rephrase, it would
18 be better if I laid a foundation for it. With these cases,
19 if you represent someone with the CI, law enforcement
20 always gives you the same spiel over and over. This guy is
21 probably dangerous and could kill the CI and, you know,
22 they always say that same mess.

23 Q. Right.

24 A. So they'll give you all the written documentation, all
25 the Sled analysts information, all those things in a

1 reasonable amount of time. What they typically don't give
2 you in a reasonable amount of time is the video because
3 they don't want to reveal who the CI is. Okay. So in this
4 case, we went a significant amount of time without ever
5 having the video. They're, the solicitor's office at least
6 in Chesterfield County, they're sort of mode of operation
7 is this is the offer, if you don't accept the offer, then
8 we know it's a trial for sure. We'll pull this offer off
9 the table and then you can have the video at that time.
10 And, of course, my issue with that is that the chief
11 justice some years back ordered that, that you can't do
12 business that way. So in this case they turned over the
13 video to me. We saw the video. I had maybe, no question,
14 at least ten phone calls just for my office to Joey about I
15 wanted him to come look at it and he was just always
16 working or has some reason why he couldn't come for the
17 most part.

18 Q. So they gave -- they actually gave you the video
19 rather than asking you to come in there office to look at
20 it?

21 A. That's right. Yes, sir. I actually had the video
22 saved on my computer.

23 Q. Okay. All right. And from the video you said it was
24 good for the State?

25 A. It was, Your Honor, excuse me, yes, sir, it was.

1 Q. Okay. And that was why?

2 A. Well, I mean, it was, it's one of the best CI videos
3 I've ever seen. The CI walks into the store and Joey's on
4 the phone talking on the telephone and he comes up and he
5 hands him money and Joey counts the money, folds it up and
6 puts it in his shirt pocket. And then he goes back for a
7 time and comes back out and you can see him drop the pills
8 into the CI's hand. And so it was, I mean, it was not
9 good.

10 Q. Did you notice that the pills were white because you
11 use that in your closing statement?

12 A. Well, and that is the unique thing is that as much as
13 I hate to admit it, I think what the solicitor said about
14 seeing something in living color or the fact that maybe the
15 way we look at something in this room right now, if we take
16 a picture of it, it does, there are some slight hues and
17 color changes that happened. And the pills in this case,
18 you can see they're very light green, almost going into a
19 white color. I mean, they were very, very, very similar
20 from the video to the photo that was taken. And the reason
21 that I waited until my closing argument to bring that up is
22 because I didn't want them to have a chance to explain it.
23 I certainly could have asked them but I didn't, I felt like
24 that would be like me losing some of the impact of the
25 evidence when I made that argument to the jury. And so

1 that was my reason for not, for not cross-examining anybody
2 on it because then they couldn't go back and take the photo
3 out that showed it being a slightly different color.

4 Q. Right. How about, the chain, you stipulated to the
5 chain of custody?

6 A. I did. And the reason I did that was because, of
7 course, if you look at my Rule 5 I also included my Rule 6
8 rights in there. I said look I want to have the entire
9 chain of custody there and so the solicitor did that. They
10 subpoenaed those people and all of those people were there
11 when we showed up for court. When I saw that they were
12 present and spoke to them and figured out that, that they
13 would be able to fulfill that, at that point, I said well
14 then we will just, I'll be willing to waive it because
15 again my issue was the case was very bad for us. The
16 evidence was very bad. And so I didn't want to put more
17 people to just reinforce how well the State built this case
18 and how much evidence the State had. I thought if we could
19 -- that would just be another trial strategy issue, to be
20 honest with you, is that I would rather have just three
21 people testify for example as opposed to five people
22 testifying.

23 Q. So you had a plea offer for a first, a plea to a first
24 offense?

25 A. Yes, sir.

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1 Q. All right. With the recommendation of three (3)
2 years?

3 A. Yes, sir.

4 Q. And did you talk to Billy about that?

5 A. I did.

6 Q. And did you discuss with him the discovery of what
7 evidence that they had against him?

8 A. Yes, sir.

9 Q. And he indicated to you that he wanted to take the
10 case to trial?

11 A. He did.

12 Q. Did you discuss parole eligibility?

13 A. I did.

14 Q. And what was your understanding about parole
15 eligibility?

16 A. Is that there is none for a third subsequent offense.

17 Q. All right.

18 MR. THOMAS: Your Honor, I beg the Court's
19 indulgence for just a second.

20 (Whereupon, the attorney takes a moment)

21 MR. THOMAS: Your Honor, May I approach?

22 THE COURT: Certainly.

23 Q. Counsel, I'm going to show you this code section, 44-
24 53-470.

25 A. Yes, sir.

1 Q. And when you were talking to Judge Newman you were
2 talking, I think, it was mentioned that the enhancement
3 statute was 44-53-370?

4 A. Yes, sir.

5 Q. And that's not correct, is it?

6 A. Yes, sir.

7 Q. Yeah, 370 is the sentencing statute, the sentencing
8 portion?

9 A. It is. But what I mean to say is, if you look at the
10 370, 370 list what the sentencing statute is from a first,
11 second, the third and subsequent ---

12 Q. The amount of time you can get?

13 A. That's right.

14 Q. Okay.

15 A. And that's what we were talking about he had been
16 sentenced, he would be sentence under.

17 Q. Right.

18 A. But if you -- what I was going off is 470, when it
19 deals with, I think it's subsection (4), it says if the
20 offender has at any time. Because if you look at the
21 marijuana, the timeline, the restrictions based on time of
22 conviction only apply to marijuana.

23 Q. Now, it appears and I've printed that statute off, if
24 you look at the second page it says, that in 2015, is that
25 correct, that there was an additional made, an addition

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1 made to the 2010? Do you see that explanation at the
2 bottom?

3 A. Yes, sir. The 2010 amendment rewrote the section.

4 Q. All right. And there was a, I think, (b), a (b)
5 subsection was added and (b) became (c) or something like
6 that? Do you see that at the bottom of the second page?

7 A. Yes, sir.

8 Q. Okay. All right. So that statute has been modified to
9 add another paragraph?

10 A. Okay.

11 Q. It say, 2016 ---

12 A. It say, "2016 Act No. 154, Section (b), or excuse me,
13 Section (10) added (b) re-designated former (b) as (c) and
14 in (c) added the second sentence and that was 2016.

15 Q. '16?

16 A. Yes, sir.

17 Q. So in 2010 we would have to take (b) out, is that
18 correct?

19 A. I've got the one I had at the trial ---

20 Q. Oh, you do?

21 A. --- if you would like me to pull that.

22 Q. Okay.

23 A. I could do that.

24 Q. That would probably be better.

25 (Whereupon Mr. Joyner goes to retrieve document)

1 A. Okay. And this is from at the time of the trial.

2 This is, of course, research I did in preparation.

3 Q. Okay. Right.

4 A. It section 44-53-470 (a) Section (4) says, "for an
5 offense involving a controlled substance other than
6 marijuana pursuant to this article, the offender has at any
7 time been convicted of a second or subsequent violation of
8 a controlled substance offense provision other than
9 marijuana offense provision, of this article or of another
10 state or federal statute relating to narcotic drugs,
11 depressants stimulates or hallucinogenic drugs."

12 Q. All right. So I looked at that statute and maybe I'm
13 reading it incorrectly. It appears to me that the way that
14 statute is written, do you get a pass for a first offense?
15 You can only use a second to enhance? I mean, that's what
16 the plain reading of that statute seems to imply.

17 A. No, I don't read it that way. No, sir.

18 Q. All right. You don't think it says that?

19 A. No, sir.

20 Q. All right. Because it seems to me to say -- read that
21 section again?

22 A. Okay. I see where you're talking about where it says,
23 " a controlled substance offender has at any time been
24 convicted of a second or subsequent violation."

25 Q. Right. So doesn't that -- does that mean you get a

1 pass on a first?

2 A. No, it just means that this doesn't apply unless he's
3 been convicted of at least ---

4 Q. Oh, a second ---

5 A. --- his second offense of it.

6 Q. Right. So if we go to -- and I guess the next
7 question is that, does -- it says, does that apply to the
8 ten (10) year period of time?

9 A. No, because it says, "that marijuana offenses are
10 excluded."

11 Q. All right. I understand that and I think the intent
12 of that statute was to take out this confusion about this
13 uncanceled marijuana plea versus just a plea to a simple
14 possession first offense of marijuana. But ---

15 A. I don't -- I don't -- I think it just says other than
16 a marijuana offense.

17 Q. Other than marijuana.

18 A. So it could be, he could have distributed marijuana
19 and it still wouldn't apply because that would still be a
20 marijuana offense is, I think, is the plain reading of it.

21 Q. But you don't think the statute is talking -- it talks
22 about a second or above to use to enhance?

23 A. Well, why wouldn't they just write a third or why
24 wouldn't they just put a first then, if they ---

25 Q. Well, and where this leads us is, is that you've heard

1 the testimony of Mr. Griggs on the cross-examination and he
2 was saying that he had a, he admitted that he has a
3 trafficking from 1991 ---

4 MR. GRIGGS: '84.

5 Q. And then he had a PWID that was reduced to a simple
6 possession. And then he's saying that he had one that was
7 dismissed. My question leads to, is this a second rather
8 than a third pursuant to that statute?

9 A. No, I don't believe it is. I mean, I just -- I just
10 -- the statute to me does not make sense that way because if
11 it was the case to give you a free pass for your first
12 offense I think that, I mean, the legislature would've been
13 a little more clear than using this type of language, I
14 believe.

15 Q. Well, I mean, on this crime bill, changed a lot of
16 things in that it allows third offense drug offenders now
17 are eligible for parole if the priors were for possessions,
18 is that correct?

19 A. I'm sorry I can't answer that.

20 Q. All right. But, I mean, it appears that the whole
21 intent, intent of that statute was to potentially shorten
22 sentences or allow people to be more eligible for parole?

23 A. I don't know. I mean, I'm sorry I just ignorant as to
24 that.

25 Q. No, that's all right, because it's confusing to me.

1 And the question I had in reading the statute is one,
 2 whether or not the statute says that you get a free pass on
 3 a first and then after that is there ten (10) year
 4 limitation, a time limitation in there and if you look at
 5 the testimony of Mr. Griggs is he really looking at a
 6 second rather than a third?

7 A. I mean, the only thing that I can tell you is it seems
 8 clear to me that when you look, when it talks about a
 9 second or subsequent offense is defined. I mean, (4) says,
 10 "that at any time," and I just, you know, I don't know if
 11 that's an issue maybe he should appeal it and ask the Court
 12 of Appeals to answer that question. I don't know.

13 Q. And I don't know the answer and that's kind of why I
 14 was asking you in the process of determining this
 15 enhancement. It looks like to me in reading that statute
 16 why doesn't it say, you know, a first offense of some sort
 17 of distribution of a controlled substance or whatever ---

18 A. Well, because that would only be a second.

19 Q. --- other than a second ---

20 A. That would only be a second offense at that time.

21 Q. Right.

22 A. Which that was my reasoning, you can look in the
 23 record. This is something that I had poured over because
 24 as you said on its face it's not something that you just
 25 quickly can read over one time and know it. I mean, I

1 spent a significant amount of time preparing and studying
2 this and, you know, my issue is we're talking about a
3 second or subsequent offense. If, in fact, it had been, my
4 reading of it was, was that if that was the case they would
5 say first or subsequent and not a second or subsequent. If
6 they were going to give a free pass on the first, I mean, I
7 ---

8 Q. But if they said first offense and second offense,
9 wouldn't that just be inconclusive? It would say that the
10 first and the second of those would be used to be enhanced
11 versus the thought that you would get a free pass on the
12 first?

13 A. I mean, let me say this, I don't want to go around in
14 circles.

15 Q. Okay.

16 A. I would stand by whatever I said in the transcript ---

17 Q. Okay.

18 A. --- because I -- it was much more clear in my mind
19 before you and I started ---

20 Q. It's confusing. It is ---

21 A. --- before you and I started talking.

22 Q. That's why I was asking you about it because it is
23 confusing to me as well.

24 A. Yeah. I just -- like, again, I think, to me it seems
25 at fairly clear, I mean, they put second or subsequent in

1 there for a reason.

2 Q. All right.

3 A. And so that's what I went by.

4 Q. What's a -- do you know what the penalty difference
5 between a second and third is?

6 A. No, not off the top of my head. I just know that the
7 first was up to five (5) in the third or that the third
8 that we were doing was a minimum of five (5) and a maximum
9 of twenty (20).

10 Q. Okay. Now, so it was not your understanding on this
11 DUS, III, that if you pled to it they would dismiss the
12 pills?

13 A. No, Your Honor. No, sir.

14 Q. Okay.

15 A. Excuse me.

16 Q. Okay. All right. And....

17 MR. THOMAS: Your Honor, I beg the Court's
18 indulgence just for a second.

19 (Whereupon, Mr. Thomas took a moment)

20 Q. Did you see anything in the disparaging of sentences?
21 Was there anything there that you could've argued with the
22 solicitor about less time or a better plea or....

23 A. Well, I mean, he and I obviously discussed this case
24 at length. I don't think he, you know, as with anybody, I
25 mean, he would like to avoid the resources and time and

1 preparation of a trial like anybody would. And it was --
2 and I've got his NCIC right here but without looking into
3 it, I think total prior convictions for drugs I think maybe
4 were seven including marijuana which, of course, wouldn't
5 have mattered for the enhancement.

6 Q. Right.

7 A. But I remember the solicitor said -- in negotiations
8 with the solicitor I said, look he's not selling it to
9 children, you know, he selling it to a guy that is
10 admittedly a drug user. I don't see that he needs years in
11 prison over this and he says, but he's been a lifelong
12 criminal, you know, that's been what's been define his
13 adult life and ---

14 Q. And the CI was also a lifelong criminal.

15 A. I'm sorry, sir.

16 Q. And the CI was also a lifelong.

17 A. Absolutely. Absolutely. And -- but as far as
18 disparity I don't know, I'm unaware -- because, you know,
19 the thing to is I'm unaware about other people and how they
20 relate to it because I don't remember there being any kind
21 of a conspiracy charge brought or other people involved ---

22 Q. Right.

23 A. --- in this so that was, that was, I don't know
24 anything about ---

25 Q. Just a number of individual buys.

1 A. Maybe.

2 Q. Yeah.

3 A. Maybe.

4 Q. Now, did you talk to Billy about testifying?

5 A. I did.

6 Q. And he made the decision not to testify?

7 A. He did.

8 Q. And what was your theory about that? What was....

9 A. Well, at the time he -- today day, of course, he said
10 that they were his pills that he sold. But at the time, he
11 mentioned on one occasion that they were his pills that he
12 sold in so many words. But then on numerous other
13 occasions he said that, that Richard Gregory was his friend
14 and Gregory would do buys for the sheriff's office. Well,
15 he would buy, say ten pills, and he would maybe skim three
16 or four of those pills and hide those and would give them
17 to Joey to hold for him.

18 Q. Right.

19 A. And then whenever he needed them he would come back
20 and get them from him. And that was something that he
21 mentioned testifying about and I didn't want to go that
22 route because number one, it was still illegal. I still
23 think it falls into the dispense, distributing, it's very
24 broad language in that distributions statue and he would
25 still be in technical sense, guilty. And so I didn't want

1 to put that up. And then the other thing was I thought
2 that, you know, based on what my client had told me, what
3 Joey had told me, why would he have paid you \$50 or \$60 or
4 \$70 for what was already his and so I didn't, I mean, it
5 was, you know, the thing was this, like I said, the
6 evidence was very bad and if you have an opportunity to see
7 the video you'll understand what I mean, it's very, very,
8 bad, the video is. And so I had limited things that I
9 could attack. The State had done a very good job on a lot
10 of these, you know, on a lot of things that sometimes you
11 can, that cause problem in these cases, I mean, the State
12 just, they just did a good job on this case. That's....

13 Q. Did you think about or was it a concern at all about
14 who would have the last argument?

15 A. No.

16 Q. Okay.

17 A. I had already entered in ---

18 Q. You didn't mean to ---

19 A. --- some evidence ---

20 Q. Yeah, some evidence ---

21 A. That's right. I had entered in evidence when I
22 believe I was cross-examining Willie Smith ---

23 Q. Right.

24 A. --- who was the SLED analyst and -- because again
25 there were issues that, you know, whenever we talk about

1 the totality of the evidence, the totality of the evidence
2 was very bad and I was trying to do everything that I could
3 do within the rules of ethics to defend Joey and, you know,
4 bringing up the issue of retention times a lot of the
5 things that you see that's basic standard things when you
6 look at the functioning of a GCMS. Those are things that I
7 wanted to, that I wanted to bring up and, there just, there
8 just wasn't much to go -- and, you know, the other thing
9 too as far as him testifying is for him to do a direct
10 examination also means that he would have to do a cross-
11 examination.

12 Q. Right.

13 A. And it would based on the evidence it was just not
14 good. And, of course, he had, you know, he had the power,
15 I worked for him. He's the client and I'm the, I consider
16 it, technically is employee. I have to do what he
17 ultimately wants me to do. But, you know, under the
18 totality of the evidence it was not something that I felt
19 good about him testifying with evidence so bad to, you
20 know, to cross him on and then his only alternate story was
21 still technically be illegal and he would still technically
22 be guilty of the statue that he was charged with.

23 MR. THOMAS: Your Honor, I beg the Court's
24 indulgence. I have no further questions, Your Honor.

25 THE COURT: All right.

1 MS. GIOVANOLI: Thank you, Your Honor.

2 THE COURT: Cross examination?

3 **Cross Examination by Ms. Giovanoli:**

4 Q. Thank you for being here, Mr. Joyner. How did you
5 come on to represent Mr. Griggs?

6 A. We are both from the same town, from Patrick, South
7 Carolina and I need him. They just came and hired me.

8 Q. Okay. You said that you knew him, were you friends
9 with him?

10 A. Acquaintances.

11 Q. Okay. You mentioned a few meetings that you had to
12 view the confidential informant video that the State had as
13 evidence against Mr. Griggs and Mr. Griggs had missed a few
14 meetings, do you recall the number of meetings that he
15 missed?

16 A. Well, it wasn't so much that he missed meetings is
17 just that they were numerous of times that I called him. I
18 know of at least ten times that I called him to try to get
19 him to come in, but he was just unable to make it.

20 Q. Was it fair to say that he was difficult to reach in
21 order to discuss this case?

22 A. Yes.

23 Q. Do you recall how many meetings you actually did have
24 with him?

25 A. You know, I'm not sure, maybe two, maybe two actually

1 in the office.

2 Q. In this case no video was admitted into evidence, is
3 that correct?

4 A. No, it was.

5 Q. Were there stills of the video ---

6 A. There were also stills ---

7 Q. Was the video play for the jury?

8 A. It was.

9 Q. Okay.

10 A. The stills were, basically -- there is a part in the
11 video where he drops the pills into the, into the CI's hand
12 and what I think the solicitor did was actually, like,
13 freeze-framed that and actually printed out a still of
14 that.

15 Q. You pursued in closing arguments the argument about
16 the color of the pills, do you believe that they were not
17 the same pills in evidence that were actually given from
18 Griggs to the confidential informant?

19 A. No, they were the same pills.

20 Q. What was your purpose in arguing the color in closing?

21 A. Because the solicitor presented evidence and there was
22 a slight color difference and to be honest with you there
23 was just, basically, nothing else to argue.

24 Q. Okay. And you did not put up any witnesses including
25 Mr. Griggs, can you briefly describe your trial strategy?

1 A. Well, my strategy was to minimize their case because
2 there like I said, I mean, a lot of times, you know,
3 fifteen years ago, basically, when I started, you know, I
4 remember trials where all you had there was no video and
5 there was just (the witness made a static noise) of a shirt
6 scrubbing against an auto mic and you couldn't hear
7 anything.

8 Q. Mmm hmm.

9 A. And since then, you know, that's where we started and
10 now you see a lot of these HD videos that is as good as you
11 looking at me right now and it's very clear, there's no
12 confusion about who the people are, it's very easy to
13 identify the parties on it. The audio is very good on them
14 and it's just -- the evidence as I said in this case the
15 totality of the evidence was very, very bad for us and so
16 my strategy from the time that I stipulated to the chain of
17 custody from, you know, the moment that the CI had him
18 until the moment Willie Smith had him. I didn't want more
19 people reiterating a bad thing for us and, you know, the
20 same thing there was certainly strategy me waiting to make
21 those arguments in my closing. They were already in
22 evidence. You know, I didn't need, I didn't need some guy
23 to say hey, yeah, this picture is, you know, a slightly, a
24 slightly shade darker than what the video shows. I mean,
25 the people can see that with their own eyes. So I didn't

Franklin Joyner- Cross Examination by Ms. Giovanoli: 73

1 want to give them an opportunity to, basically, take one of
2 the few things that I felt was positive for us.

3 Q. Okay. So how would you characterize the likelihood of
4 conviction for Mr. Griggs?

5 A. Very likely.

6 Q. Okay. Now, going to sections 44-53 -470, during the
7 trial you, I believe, you misstated the section to which
8 you were referring for the second subsequent offenses as
9 370, is that correct?

10 A. Well, and I guess it's possible. I don't believe I
11 did. The reason I didn't is because 370 deals with, is
12 actually what he was charged with on the indictment because
13 he was charged under 370 whatever subsection, third
14 offense. And the reason that I was so sure about it is I
15 told the judge I don't want an indictment going back that
16 says third or subsequent on it because that would, of
17 course, taint the jury and the judge agreed. But 470 deals
18 with defining what would be a subsequent offense.

19 Q. And, in your opinion, what section of that's statute
20 applied to this case?

21 A. Okay it was 44-53-470 (a) subsection (4).

22 Q. And I know there was some confusion on direct about
23 your understanding of that statute and I agree again being
24 slightly confusing, but I'm going to state from my
25 understanding is that, and would you please tell me if you

1 agree with that, so Section 44-53 470 (a) subsection(4)
2 says, "that at any time there was a conviction for a second
3 non-marijuana drug offense then the offense, current
4 offense would be a subsequent offense"?

5 A. Exactly.

6 Q. Okay. So in this case the applicant's has already
7 testified that he had a 1984 trafficking cocaine charge and
8 a 1990 simple possession of cocaine which is the second
9 offense in 1990, that would qualify him with this charge as
10 a subsequent offense, is that correct?

11 A. Just those two would, that's right.

12 Q. Not to include a possession of cocaine that he claims
13 that was dismissed?

14 A. That's correct.

15 Q. Thank you. In the disparaging of sentencing, the
16 alleged disparity, do you know why the solicitor was
17 allegedly offering more time to Mr. Griggs than any other
18 person related with this drug bust?

19 A. He was the only person related to it. Like all --
20 that information, I may have been not clear about it, it
21 was only him on the video that was selling these pills. It
22 was never mentioned that it was some greater conspiracy or
23 that there was some other people involved.

24 Q. And there were no co-defendants in this case?

25 A. No.

Franklin Joyner- Cross Examination by Ms. Giovanoli: 75

1 Q. And you did a pretty thorough cross examination of the
2 analysts, the drug analyst in this case, about GCMS, can
3 you explain what your reasoning for that was? What was
4 your goal there?

5 A. Okay. If you look in the handbooks before, and it's
6 two separate machines, it's a gas chromatography and then a
7 mass spectrometer and they are separate machines that have
8 to be running conjunction. Okay, you can't test a pill --
9 okay, you have what's called a volatile organic compound
10 which is a compound that is volatile meaning that it's
11 gaseous or vaporous. Okay. Well, a pill is not a volatile
12 organic compound, at least not at room temperature. So it
13 has to actually be changed into a different state. It has
14 to become a volatile organic compound by going through a
15 flame, depending on what GCMS company or machine you're
16 using, they call it different things, but it, basically,
17 has to be heated up until it vaporizes and then the
18 vaporize matter is run through the machines, these ions,
19 are running through the machine and tested. Within the
20 machines there is a data library base and they typically
21 have, you know, one for marijuana. They'll have one for
22 cocaine. One, you know, one for whatever controlled
23 substances they're looking for and it registers on
24 chromatograph and the graph is just that, it's a chart with
25 peaks and valleys and it shows what exactly these ions that

1 were heated up and made into a volatile organic compound
2 from the drugs how they compare to what is in the database
3 and that is ---

4 Q. Well, what was your argument as far as the GCMS?

5 A. Again my argument was that, was arguing the truth
6 which is the thing that the machine test is not the same
7 thing that he sold because at that point it had been
8 changed.

9 Q. And what defense did Mr. Griggs put forth to you that
10 he wanted to present at trial?

11 A. Well, if there was one he was just, I mean, he
12 constantly went on and on about, you know, other people
13 have not been sentenced to as great amount of time as I
14 have and he was very adamant about his record having not
15 committing anything and, you know, in more than a decade
16 and that the ten (10) years had passed and it shouldn't
17 apply and that was, basically, it, I mean, and, ultimately,
18 the only defense he had was again, like I said, was
19 something that was still, that he technically would still
20 be guilty.

21 Q. Did he ever give you any potential leads or witnesses?

22 A. Yes.

23 Q. And who were those?

24 A. One was Ronald, his nephew. One was Blanche Ferguson
25 and one was Howle was his last name maybe, Bobby Howle, I

Franklin Joyner- Cross Examination by Ms. Giovanoli: 77

1 can't -- don't -- I can't remember, I think the last name
2 was Howle. I've got a paper where he faxed me.

3 Q. Okay. And what was -- what were they going to testify
4 to?

5 A. To my knowledge they were going to testify that they
6 were going to bolster his story that the pills that he was
7 holding that he sold to Gregory, the CI, were, in fact,
8 Gregory pills that Gregory had stolen from law enforcement
9 and given to him to hold for him. And again my whole issue
10 with that is that now he's involved with another person to
11 conspire against law enforcement which, in and of itself,
12 could be another crime in addition to the falling within
13 the 370 for deliver or ---

14 Q. Sure.

15 A. --- or distribute pills.

16 Q. Did you actually reach out to these witnesses and
17 speak to them?

18 A. I spoke to Ronald. The other two, every time I didn't
19 have a way to get in touch with them, so every time I
20 called Joey he said well I'm working on that person I'm
21 going to get that person and then finally I want to say
22 maybe the day before the trial when we spoke and he said I
23 don't have those people anymore. The only person that is
24 going to be willing to testify is Ronnie or Ronald.

25 Q. Was Joey -- was Mr. Griggs' story to you, during the

1 pendency of this trial, ever that he was selling his pain
2 pills that he was using for his personal use to a friend
3 who also had pain?

4 A. No.

5 MS. GIOVANOLI: May I approach, Your Honor, the
6 witness?

7 THE COURT: Yes, ma'am.

8 Q. I'm showing you what's been marked as State's Exhibit
9 Two, can you just read what's on this?

10 A. Billy Joe Griggs, 15-CP-13-0061, client called day
11 before trial. The date is 11-11-13.

12 Q. And what is that you're holding in your hand?

13 A. The phone conversation. That I ---

14 Q. But what format?

15 A. I'm sorry, it's a CD and the CD contains the phone
16 conversation that I had with Joey the day before the trial.

17 Q. Have you listened to what was on that CD?

18 A. Well, I brought a flash drive with a copy because it
19 was easier to listen to it out there but ---

20 Q. Okay.

21 A. But if it's what I sent to you, yes.

22 Q. Okay. So it's a true and accurate version of the call
23 that you actually had with Mr. Griggs the day before trial?

24 A. Yes.

25 MS. GIOVANOLI: And -- I would like to play this, it's

Franklin Joyner- Cross Examination by Ms. Giovanoli: 79

1 only five minutes. It's got some ---

2 THE COURT: Any objection?

3 MR. THOMAS: Your Honor, I'm not real sure about the
4 relevance of it ---

5 THE COURT: Nor I either but other than that it's
6 no privilege.

7 MR. THOMAS: No. It's no privilege. I would just
8 wondered what the relevancy of it would be to the post-
9 conviction.

10 THE COURT: Either these totalities, I guess.

11 MR. THOMAS: Sir?

12 THE COURT: I'm in the same position you are. I
13 don't know what the State's offering it -- what's the
14 purpose?

15 MS. GIOVANOLI: May I proffer?

16 THE COURT: Sure.

17 MS. GIOVANOLI: Well, the applicant has alleged
18 ineffective assistance of counsel ---

19 THE COURT: Right.

20 MS. GIOVANOLI: --- and one of those allegations was
21 failure to investigate and failure to follow up on those
22 people, the leads that he had provided to his counsel and
23 on this DVD it's a discussion and the applicant does
24 address those three people and informs counsel that two of
25 them are not going to be willing to testify and that he

1 only has his nephew that is going to testify and also where
2 he claims that he failed to put up a meaningful defense.
3 Once again is mostly a discussion about those witnesses and
4 that avenue what's pursued.

5 MR. THOMAS: Your Honor, we -- I talked to the
6 witnesses as well and two potential witnesses are here
7 which I've discussed with my client. I don't intend to
8 call them because I just don't think that they know of
9 their own knowledge anything that would be beneficial to
10 the Court. If he came to the same conclusion that I did in
11 the voice recording, I mean, I still don't see the
12 relevance of it. I don't see the relevance of it as it
13 goes to post-conviction ineffective assistance. I mean,
14 you could even say I think you did a great job but if that
15 is the day before the trial or the day after the trial, I
16 mean, a lot of things can change after that, opinions can
17 change. Again I just don't see the relevance of it.

18 THE COURT: Well, go ahead and play it, I may not
19 either but....

20 MR. THOMAS: Yes, sir. And that's fine.

21 MS. GIOVANOLI: Your Honor ---

22 THE COURT: If they don't have ---

23 MS. GIOVANOLI: Your Honor, would you like me to bring
24 my laptop up there so you can hear better and the court
25 reporter can hear better?

Franklin Joyner- Cross Examination by Ms. Giovanoli: 81

1 THE COURT: Well, the court reporter certainly
2 needs to hear better and I can hear pretty good.

3 MS. GIOVANOLI: How about on that ledge?

4 COURT REPORTER: That's fine.

5 THE COURT: Depending on what kind of speakers you
6 got.

7 MS. GIOVANOLI: Not the best.

8 MR. THOMAS: Your Honor, if I may, I'm coming off of
9 a cold so I'm may walk up so I can hear it.

10 MS. GIOVANOLI: I apologize, it's thinking.

11 (Whereupon, the video was played for the Court)

12 MS. GIOVANOLI: Thank you, Your Honor. The State would
13 move to admit as State's number two into evidence.

14 THE COURT: I'm sorry I didn't hear you.

15 MS. GIOVANOLI: The State would move to admit State's
16 Exhibit Number Two into evidence.

17 THE COURT: That's the disk you just played?

18 MS. GIOVANOLI: That I published.

19 THE COURT: Any objection other than ---

20 MR. THOMAS: Other than the previous objection, Your
21 Honor.

22 THE COURT: I don't find it very relevant but I'll
23 admit it.

24 MS. GIOVANOLI: Okay. Thank you, Your Honor.

25 (Whereupon, the DVD has been marked and entered into

1 evidence as State's Exhibit No. 2)

2 Q. And did you ever talk with the applicant after the
3 trial about appeals?

4 A. I think we spoke at the courthouse and I may have, I
5 think I might have went up to the jail the day after to
6 discuss an appeal with him because I ended up filing ---

7 Q. Yes.

8 A. --- a notice for him.

9 Q. Right. And did you, you didn't represent him on that
10 appeal?

11 A. No, I did not.

12 Q. Did you have any contact with Mr. Griggs after that,
13 after filing a notice of an appeal?

14 A. Just some letters that he sent me.

15 MS. GIOVANOLI: May I approach the witness, Your Honor?

16 THE COURT: Yes, ma'am.

17 Q. And I'm showing you now what's been marked as State's
18 Exhibit Number One and just take a glance at that.

19 A. Yes, ma'am.

20 Q. Okay. Do you recognize it?

21 A. I do.

22 Q. Okay. And what is it?

23 A. It's a letter that Joey sent me on March 6, 2014.

24 Q. Has it been changed or altered in any way?

25 A. No, it has not.

1 Q. Okay.

2 MS. GIOVANOLI: The State would move to admit State's
3 Exhibit Number One into evidence.

4 THE COURT: Has he seen it?

5 MS. GIOVANOLI: Yes, Your Honor, he has seen it. I can
6 provide him with another copy as well.

7 MR. THOMAS: I have a copy of it, Your Honor. I --
8 the only other -- the only -- I'd have the same objection
9 just as to the relevancy of the letter.

10 THE COURT: All right. Go ahead.

11 (Whereupon, the Letter dated March 6, 2014 has been marked
12 and entered into evidence as State's Exhibit No. 2)

13 Q. Okay. Would you please read what's on the letter?

14 A. Yes.

15 THE COURT: What's he going to do?

16 MS. GIOVANOLI: He's going to read the letter.

17 THE COURT: Go ahead.

18 A. "I hope this letter finds you in good health. I would
19 like to hire you to help me on my case. Being hardheaded
20 and angry is not getting me anywhere. You know more about
21 my case than anyone else. I believe that you would be more
22 help to me than any other lawyer. I'm going to inform dad
23 to retain you. Dad said I had some money in a trust fund
24 and I could use that or, excuse me, in a trust fund that I
25 could use. I have no idea what is going on with my appeal.

1 If you decide to take my case I would sure appreciate it.
2 I don't think there's much of a chance on an appeal. The
3 only mistake that I am aware of was they use was the wrong
4 name on my indictment papers and my sentencing sheet. They
5 use Joey Griggs. All the documentation that I have my name
6 Billy Joe Griggs. I'm more interested in a post-conviction
7 relief. Any reduction in my sentence would help a lot. I
8 don't really know everything that you would have to do to
9 get the ball rolling and I know it would take some time.
10 Please help me. This place I am in is terrible. I was
11 only here for a week when there was a big fight in our dorm
12 and five people were stabbed. Even though I had nothing to
13 do with the altercation my dorm was placed on lockdown. So
14 now I have been on lockdown for thirty (30) days with no
15 phone calls, no visits, and no canteen. If you could
16 please help me on a few things to make this time easier on
17 me. From my calculations I should be eligible for a Level
18 II in July. I would like to go to Darlington County
19 Detention Center or prison farm. I was at Darlington
20 County prison farm in 1987 for two years under Captain
21 Hatchell. I worked as a cook and had a clean record there.
22 Maybe on down the road you could help me on work release
23 and parole. JR, please help me if you can. I will contact
24 dad as soon as I can. I should be off lock-up soon.
25 Sincerely yours, Billy Griggs," and just the address on the

Franklin Joyner- Redirect Examination by Mr. Thomas: 85

1 back and it says, "I'm not sure about PO Box. It may be
2 better to deliver in person. Please hire JR back."

3 Q. Okay. Thank you. Do you recall what date you
4 received this letter?

5 A. Yes, ma'am.

6 Q. And when was that?

7 A. March 6, 2014.

8 Q. Okay. Thank you. And any other contact with the
9 applicant or his family after the trial?

10 A. Yes.

11 Q. And when was that?

12 A. Thursday, last Thursday, Mr. Griggs came to my dad's
13 store and gave him \$2000 in cash and said -- I'm sorry -- -

14 Q. And what was that cash for?

15 A. I'm not sure. My dad called and said that he had
16 dropped off some cash and that Joey had a hearing coming up
17 on Monday and wanted me to do whatever I could to help him
18 with it.

19 Q. Was that cash for you or for your father?

20 A. It was for me.

21 Q. Did you accepted it?

22 A. No.

23 Q. Did you return it?

24 A. I had -- I didn't even go down there. I told my dad
25 to take it back to him. My father owns a store may be a

1 quarter of a mile away from Mr. Griggs, the store, and he
2 came to my dad store and dropped that cash off and my dad
3 called and said this is here for you, this is what he said
4 and I told him, of course, I don't represent him. I don't
5 want that.

6 Q. Okay. And how much cash was it?

7 A. Two thousand dollars.

8 Q. All right. And just lastly, how long have you been
9 practicing criminal law?

10 A. Since November 17, 2003, I believe, almost, is it
11 fourteen years, something like that.

12 Q. A lot?

13 A. Yeah.

14 Q. I agree with that.

15 MS. GIOVANOLI: Okay. Thank you, Your Honor. I have
16 nothing further.

17 MR. THOMAS: Not as long as I have been practicing.

18 THE COURT: Do what?

19 MR. THOMAS: I said, not as long as I have been
20 practicing. That seems like not to long ago.

21 **Redirect Examination by Mr. Thomas:**

22 Q. Counsel, you talked about when you, I guess, went
23 through the process of determining the enhancement issue
24 and that thing, when were you notified or put on notice by
25 the solicitor's office as to when it was going to be

1 enhanced to a third?

2 A. It was, it was more than a month because Chesterfield
3 County being a rural small County ---

4 Q. Right.

5 A. --- we only have court once every month so they gave
6 me, this was a several month long process of negotiation
7 because I was continually trying to negotiate and work
8 something out on it and once that was, once Billy was very
9 clear that he was not going to accept any plea, I notified
10 the solicitor that he wasn't going to accept any offer that
11 he had made and at that point it was, I want to say it was
12 at least two months later prior to us having the jury
13 trial.

14 Q. And then they re-indicted him on a third offense?

15 A. Yes, sir.

16 Q. Okay. That was very shortly eight days I think prior
17 to trial?

18 A. Yes, sir.

19 Q. But they gave you adequate time to, from your
20 standpoint, to look into the enhancement issues?

21 A. Yes, sir. Yeah, because we -- that was the sort of
22 thing all along is that if, in fact, he didn't accept the
23 plea then he would have to face the enhancement.

24 Q. Okay. So no need to include any kind of continuous
25 motion in your pretrial motions?

1 A. No, sir.

2 Q. Okay. All right.

3 MR. THOMAS: Your Honor, if I beg the Court's
4 indulgence. I have no further questions, Your Honor.

5 THE COURT: All right.

6 MS. GIOVANOLI: The State has nothing else.

7 THE COURT: You may come down. Thank you very
8 much.

9 MR. JOYNER: Yes, sir.

10 MR. THOMAS: Your Honor, can I beg the Court's
11 indulgence for just a second?

12 (Whereupon, Mr. Thomas to a moment to speak with his
13 client)

14 THE COURT: Sure.

15 MR. THOMAS: Your Honor, that's the applicant's
16 case.

17 THE COURT: All right. Any witnesses on behalf of
18 the State?

19 MS. GIOVANOLI: No further witnesses, Your Honor.

20 THE COURT: All right. Thank you very much,
21 counsel. How much time you need for proposed orders?

22 MS. GIOVANOLI: Thirty (30) days, Your Honor.

23 THE COURT: Thirty (30)?

24 MR. THOMAS: I'm sorry, Your Honor, I couldn't hear
25 you.

1 THE COURT: Proposed orders? The State's
2 requesting thirty (30) days.

3 MR. THOMAS: That's fine, Your Honor. I can do that
4 within thirty (30). I was going to ask as well and I will
5 clarify that issue in regards to the conviction on that
6 drug charge.

7 THE COURT: All right. And I wish you would ---

8 MR. THOMAS: I will.

9 THE COURT: --- thoroughly address the enhancement
10 issue.

11 MR. THOMAS: Yes, sir. I will be more than happy
12 to.

13 THE COURT: It seems to be a matter of some concern
14 to the Court and same for the State. It seems to be a
15 central issue in this case.

16 MR. THOMAS: Yes, sir.

17 THE COURT: As far as I'm concerned.

18 MS. GIOVANOLI: Would, Your Honor, like oral argument
19 on that issue at this time or just some ---

20 THE COURT: No. Just in your brief or your final -
21 --

22 MS. GIOVANOLI: Okay.

23 THE COURT: --- order to the Court.

24 MS. GIOVANOLI: Thank you.

25 (CONCLUSION OF THE HEARING ON JANUARY 9, 2016)

CERTIFICATE

1
2
3 I, the undersigned Lisa S. Carter, Official Court
4 Reporter for the Fourth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete excerpt of
7 transcript of record of all the proceedings had and
8 evidence introduced in the hearing of the captioned
9 cause, relative to appeal, in the Fourth Circuit Court
10 for Marlboro County, South Carolina, on the 9th day of
11 January, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest in any party hereto.

14
15
16 Lisa S. Carter

17 Lisa S. Carter

18 Circuit Court Reporter

19
20 August 15, 2017
21
22
23

FORM 5

2015 CP13-061

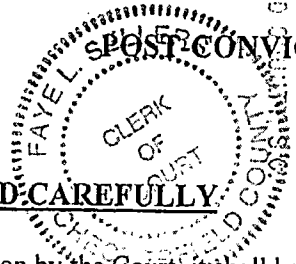
STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
BILLY DE GRIGGS, # 124783)
Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS

2015 FEB 13 9 06
FAYE SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SOUTH CAROLINA

APPLICATION FOR POST-CONVICTION RELIEF

v.
State of South Carolina)



INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention Lee Correctional Institution, Bishopville, SC
- Name and location of Court which imposed sentence Chesterfield County Court of General Sessions
- Name(s) of co-defendant(s) (if any) _____
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - 2013-95-13-00590; Possession with the Intent to Distribute Controlled Substances
 - _____
- The date upon which sentence was imposed and the terms of the sentence:
 - November 13, 2013; Thirteen (13) years
 - _____

A True Copy, Attest:
Faye Sellers
Clerk of Court
Chesterfield County, South Carolina

2015 FEB 2 AM 9 06

FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

- (d) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes, I did.

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. *South Carolina Court of Appeals*
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) *N/A*
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Faye L. Sellers
 Clerk of Court
 Chesterfield County, S.C.
 Original Copy
 Faye L. Sellers

- (a) Denial of Effective Assistance of Counsel
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed to investigate facts of case?
- (b) Counsel failed to put up a meaningful Defense?
- (c) Counsel deprived Applicant the Right to present relevant witnesses in his Defense.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

True Copy, Attest
 Clerk of Court
 CHESTERFIELD COUNTY, S.C.
 2015 FEB 2 AM 9 06
 FAYEL SELLERS
 CLERK OF COURT

iv. _____
 (d) the date of each such disposition: _____
 i. N/A _____

2015 FEB 2 AM 9 05
 FAYE L BELLEERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, OH

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 i. N/A _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, they have not.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:
 i. N/A _____

 (b) the proceedings in which each ground was raised:
 i. N/A _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) (10)(a); First Collateral Attack

17. Were you represented by an attorney at any time during the course of:

A True Copy, Attest

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes, I was.
- (c) your sentencing? Yes, I was.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes, I was.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Franklin Taylor, Jr.
- ii. Cowan & Jorgensen, P.O. Box 11584, Columbia, SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. South Carolina Court of Appeals
- iii. _____

19. State clearly the relief you seek in filing this application:

Conviction and Sentence Reversed and Remanded for a New Trial.

20. Are you now under sentence from any other court that you have not challenged?

No, I am not.

A True Copy, Attest
 Faye L. Sellers
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

2015 FEB 2 AM 9 06
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of CHESTERFIELD)

Billy Joe Briggs, #124983)

VERIFICATION

I, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Billy Joe Briggs (Joe Briggs)

SWORN to and subscribed before me this 29
day of Jan, 2015.

Delma Adams (L.S.)
Notary Public

My Commission Expires: 11-4-2015

2015 FEB 2 PM 9 06
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
[Signature]
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Revised 8/2003

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

Billy Joe Givings, # ~~231~~ 24983

I, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Billy Joe Givings (Joey Givings)
Applicant

SWORN or affirmed to and subscribed before me this
29 day of Jan, 2015.

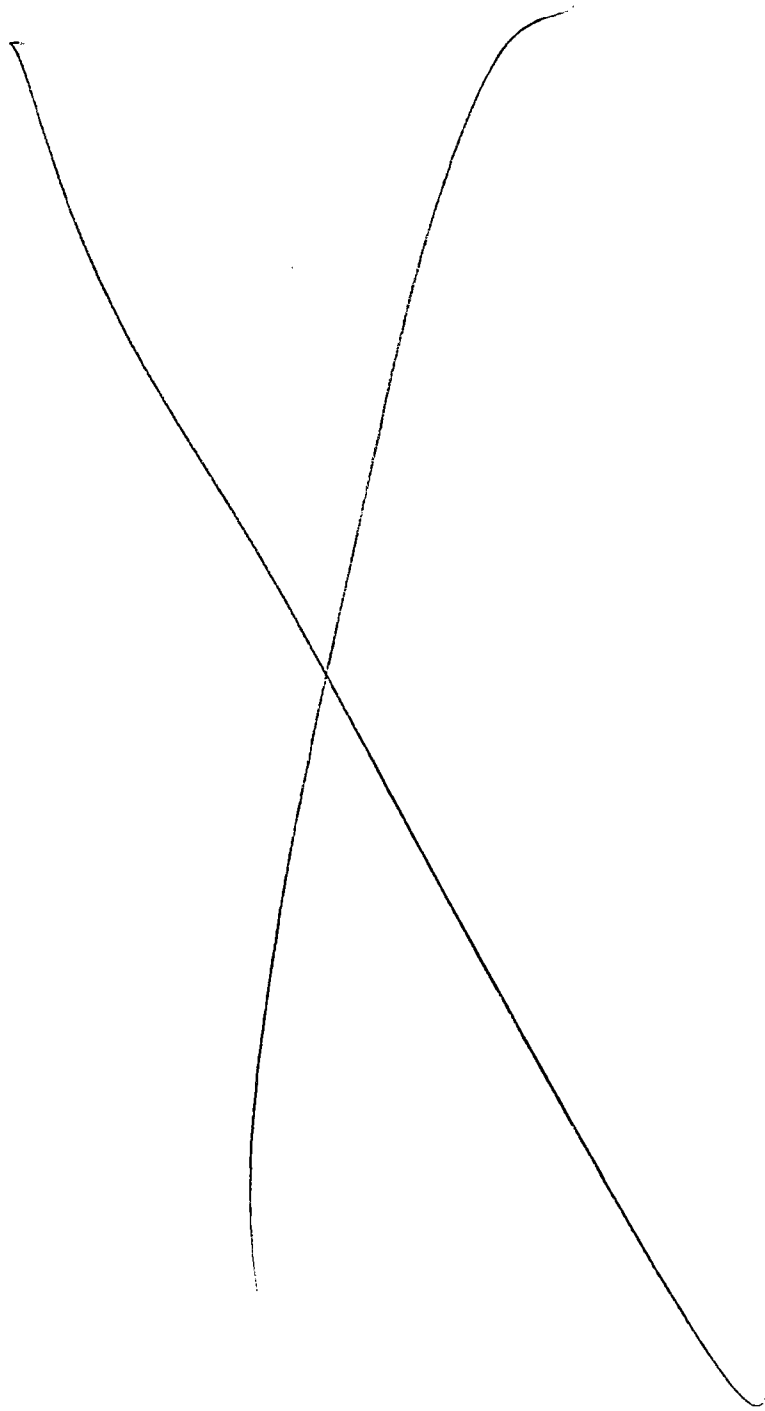
Debra Simon
Notary Public

My Commission Expires: 11-4-2015

2015 FEB 2 AM 9 06
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy, Attest
Steph L. Sullivan
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC
Revised 3/2003

00252



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

Billy Joe Griggs,)
S.C.D.C. No. 124983,)

2015-CP-13-0061

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

_____)

In response to Applicant's post-conviction relief (PCR) application filed February 2, 2015, Respondent would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted during the November 2013 term of the Chesterfield County Grand Jury for possession with intent to distribute a controlled substance (2013-GS-13-0591). Applicant proceeded to trial, and was found guilty as indicted. Franklin B. Joyner, Jr., Esquire represented Applicant. On November 13, 2013, the Honorable Clifton Newman sentenced Applicant to thirteen (13) years imprisonment.

Applicant filed a notice of appeal on March 13, 2014. Applicant later withdrew his appeal, and the South Carolina Court of Appeals dismissed the matter on January 13, 2015. The remittitur was issued on February 4, 2015.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to investigate the facts
 - b. Trial Counsel failed to put up a meaningful defense
 - c. Trial Counsel deprived Applicant the right to present adverse witnesses in his defense

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein by reference are the records of the Chesterfield County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records of this action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held on Applicant's allegations.

Respectfully submitted,

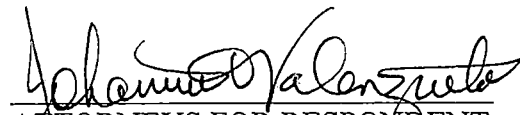
ALAN WILSON
Attorney General

J. ROBERT BOLCHOZ, JR.
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

CAITLIN B. HASTINGS
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 737-3737

December 2, 2016

STATE OF SOUTH CAROLINA)
 COUNTY OF CHESTERFIELD)
)
 Billy Joe Griggs, #124983,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

2015-CP-13-0061

**ORDER OF DISMISSAL
 WITH PREJUDICE**

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Billy Joe Griggs (Applicant) on February 2, 2015. The State (Respondent) made its return on December 2, 2016, requesting an evidentiary hearing be held.¹ An evidentiary hearing into the matter was convened on January 9, 2017 at the Marlboro County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Valerie Garcia Giovanoli, Esquire, represented Respondent.

At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Franklin B. Joyner, Jr. ("J.R."), Esquire, also testified. This Court had before it a copy of the Chesterfield County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's return, the trial transcript, and Applicant's direct appeal records.

¹ On May 15, 2015, Respondent filed its first return which included a motion to dismiss without prejudice based on a pending direct appeal. However, Applicant had already withdrawn his direct appeal. The Court of Appeals dismissed his appeal by order dated January 13, 2015, but the remittitur was not issued until February 4, 2015. Applicant filed this PCR application on February 2, 2015.

CHESTERFIELD COUNTY, S.C.
 CLERK OF COURT
 2017 APR - 2 PM 11:14

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted during the November 2013 term of the Chesterfield County Grand Jury for possession with intent to distribute a controlled substance (2013-GS-13-0591). Applicant proceeded to trial, and was found guilty as indicted. Franklin B. Joyner, Jr., Esquire, represented Applicant. On November 13, 2013, the Honorable Clifton Newman sentenced him to a term of imprisonment of thirteen years.

Applicant filed a notice of appeal on March 13, 2014. Applicant filed this PCR application on February 2, 2015, while his direct appeal was pending before the South Carolina Court of Appeals. Applicant withdrew his appeal, and the South Carolina Court of Appeals dismissed his appeal on January 13, 2015. The remittitur was issued on February 4, 2015.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Trial Counsel failed to investigate the facts
 - b. Trial Counsel failed to put up a meaningful defense
 - c. Trial Counsel deprived Applicant the right to present adverse witnesses in his defense

At the evidentiary hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel contained in his application and an additional claim that trial counsel failed to clarify the enhancement statute for the Court at the time of sentencing and as such, his sentence had been improperly enhanced.



SUMMARY OF TESTIMONY**I. Applicant testified to the following:**

Applicant is fifty-five (55) years old. He was arrested in 2010. At that time, he worked construction and helped at his dad's store. Before this arrest, he had not had a drug offense since 1989. After his arrest, he retained Franklin B. Joyner, Jr. ("J.R.") and got out on bond for over three (3) years. He met with J.R. during the summer of 2011 and the summer of 2012, but not in 2013. J.R. represented him on another, unrelated driving under suspension ("DUS") charge. He was sentenced in 2012 for DUS and claimed that J.R. told him that the drug charges would be dropped in exchange for his guilty plea on the driving under suspension. He believed he was entrapped by the confidential informant ("CI") in this case. He did not hire a private investigator, but he wanted to pursue the entrapment defense. The CI, who Applicant thought to be a friend, had begged him for pain pills that Applicant used for his hip pain because the CI was suffering from back pain. He believed the CI set him up because the CI had written a bad check to Applicant's father and his father turned the bad check into the courts. The CI also later propositioned Applicant to help with his brother's wife's traffic ticket in exchange for not testifying.

Applicant testified that J.R. told him before trial that he did not want to put up a defense. Applicant also felt that J.R. was only concerned with Applicant pleading guilty, not having a trial. Prior to trial, there was a plea offer from the Solicitor for three (3) years. Applicant did not accept offer. Applicant believed Judge used § 44-53-370 for enhancement, but the correct section was § 44-53-470(A)(3). Applicant also believes that J.R. was ineffective for not questioning State's witnesses about the color of the pills, when the CI said the pills were white

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and the SLED drug analyst said they were green. Applicant also believed J.R. was ineffective when he stipulated to the chain of custody because the pills he gave to the CI were white and the pills the analyst analyzed were green. Applicant and his nephew, Ronald, were willing to testify in Applicant's defense, but J.R. advised them not to testify and Applicant decided not to testify based on that advice. Applicant stated that it was his decision and J.R. did not "twist his arm." J.R. did not call any defense witnesses at trial.

J.R. filed a notice of appeal on behalf of Applicant. Then, J.R. wrote Applicant a letter saying he could not represent him on appeal because Applicant could not afford it, but Applicant testified that his father could have paid. J.R. told Applicant he was working on getting his sentence reconsidered, but he never filed a motion to reconsider. Applicant dropped his appeal because he thought he would be out on parole before his appeal came up. He felt comfortable with his parole date and he thought he would get out. He found out he was not parole eligible the month before he came up for parole.

Applicant recommended his friend to J.R. who had the same charges and same prior record, but J.R. was able to get him a better deal. Applicant claims he was the only one who got serious time.

On cross examination, Applicant admitted he had a DUI conviction in 1997. He denied a 1993 conviction for trafficking in cocaine, more than 10 grams and less than 28 grams, and stated that he had his lawyer's secretary get that expunged. He denied going to court on that charge and receiving a sentence of three years suspended upon the service of drug treatment and two years' probation. Applicant did admit to a 1991 unlawful drug conviction in which he received a sentence of three years suspended to eighteen months. Applicant admitted he had a

1984 trafficking cocaine conviction in which he received a sentence of ten years' imprisonment. He admitted he had a 1990 possession with intent to distribute cocaine charge that he insists was pled to a simple possession of cocaine conviction in which he received a four month sentence. He also admitted to a 1992 possession of cocaine conviction.

Applicant claimed that he has held drugs or helped skim some from law enforcement for the CI, but that did not occur in this case. He never told J.R. that he was only holding the pills for the CI. The pills he sold to the CI were white and they were prescription drugs. After he gave them to the CI, the CI paid him \$50 or \$60 in cash. There was conflicting evidence with regard to the color of the pills at trial. In video, the pills appeared white, but the law enforcement drug analyst said pills were green. Applicant believes J.R. was ineffective by not cross examining drug analyst specifically about color of pills. Instead, J.R. only raised the issue of color in his closing. He also believes J.R. was ineffective for stipulating to the chain of custody during trial.

II. Franklin B. Joyner, Jr. ("J.R.") testified to the following:

J.R. has practiced law since 2003, primarily criminal law. J.R. was retained to represent Applicant on these charges. He had represented Applicant previously several times. J.R. had ample time to put this case together for trial. Applicant was very difficult to get in touch with to discuss his case. J.R.'s office called him at least 10 times to schedule meetings. Applicant would also miss scheduled meetings with J.R. so they only met twice with regard to these charges.

J.R. represented him on a driving under suspension ("DUS") charge in which he recalls going to court for Applicant's guilty plea. J.R. does not recall any discussion of having the drug

charges dropped in exchange for Applicant's guilty plea to the DUS and it was never J.R.'s understanding that the drug charges would be dropped. The DUS was a habitual offender charge for something like a 7th-9th offense for Applicant, which carried five years' imprisonment. J.R. was able to negotiate a plea deal to less time.

Applicant had three separate drug sale charges pending during the time of this trial. This particular charge had a very damaging video as evidence against him, which is why J.R. thinks the Solicitor chose it to try and weren't more amenable to an offer of minimal time. The Solicitor's offer was three (3) years and Applicant had no interest in accepting it. The Solicitor's office turned over the video to J.R., but not until after giving him other discovery, because they did not want to reveal the identity of their CI. J.R. thought it was one of the best CI drug sale videos he had ever seen. The video clearly shows the CI handing Applicant money and Applicant handing him the pills. The pills were a very light green, almost white. They appeared white on the video. J.R. purposefully brought up the color issue in his closing argument because it was a weak argument and he agreed with the Solicitor's position regarding the hue/color being different between video and real life. He argued the color issue anyway, because there was not really any other argument. Also, he did not want to give the State the opportunity to explain why the pills appeared to be a slightly different color on the video. This was a trial strategy. J.R. believed that had he pointed that out during cross examination of the drug analyst, it would draw more attention to what he considered a slight variation in color due to the video. The solicitor would then be able to rebut the color distinction argument both via testimony from the drug analyst and in closing argument.



The case was a very difficult case to win and the likelihood of conviction was high. He did not want to reinforce the strength of the State's case by requiring them to call each of the six people on the chain of custody and instead stipulated so that the State need only call three witnesses. J.R. was aware the Solicitor was in compliance with Rule 6, SCRCrimP, and had subpoenaed every person contained in the chain of custody and each person was ready to testify.

J.R. discussed the three year plea offer with Applicant and explained that there was no parole eligibility because it was a third offense. J.R. studied the code section regarding sentencing enhancement and understood that § 44-53-370 of the South Carolina Code of Laws was what Applicant was indicted for and contained sentencing information. That section was also used by the Judge in sentencing. § 44-53-470, S.C. Code Ann., was the enhancement portion. J.R. explained that the section had been modified in 2016, but that he had a copy in his trial file of the section in effect at the time of this trial. J.R. testified that he spent a significant amount of time during his preparation studying the statute. J.R.'s understanding of the enhancement section was that even just two of Applicant's uncontested drug convictions, not including the contested conviction, would qualify him for enhancement under this statute.

With regard to Applicant's allegation that he was singled out in sentencing, Solicitor told J.R. that Applicant was a lifelong criminal. J.R. is unaware of other charges against other defendants because there was no conspiracy charge and no others were ever involved in Applicant's case. J.R. testified that he heard Applicant testify in the instant PCR hearing that the pills belonged to Applicant and that he sold them to the CI for back pain, but that Applicant told him that Applicant would hold the CI's pills to help CI skim some drugs from all of his undercover buys in exchange for money. J.R. testified that Applicant never told him the story of

selling his own prescription medication to a friend in pain. Applicant wanted J.R. to put that up as his defense, but J.R. advised him against it because that would still make him guilty under the broad statute. J.R. also did not understand the story given by Applicant today, that Applicant was holding CI's pills for him because CI would not have paid for something that was already his. (At this point, Respondent introduced State's Exhibit 2, disc with attorney/client call, into evidence.) The recording contained a phone call from the day before trial, in which Applicant told J.R. that only his nephew, "Ronald" was willing to testify and that their defense would be that Applicant was holding CI's pills because CI was buying more drugs than what he was telling law enforcement about. Applicant agreed to hold CI's pills in exchange for pay.

J.R. further testified that the State put together a good case and the evidence against Applicant was bad. J.R. advised Applicant that his testimony would do more damage than good, but left the ultimate decision up to Applicant, who decided not to testify. Applicant provided him a few names of people to call in his defense, but later informed J.R. that only one, his nephew, Ronald, would be willing to testify that Applicant was only holding CI's drugs for him for money.

J.R. filed a notice of appeal on Applicant's behalf, but did not represent him on appeal. Respondent introduced State's Exhibit 1, a letter written by Billy Griggs to J.R. asking him to help him in a post-conviction relief action. J.R. testified that the week prior to this PCR hearing, Applicant's father dropped off an envelope at J.R.'s father's store, for J.R., containing \$2,000 in cash to help out on the post-conviction relief. J.R. did not accept the money because he does not represent Applicant.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

As a matter of general impression, this Court finds the testimony of Counsel J.R. to be credible. This Court further finds that the testimony by Applicant is not credible, especially with regard to Applicant's version of the facts of the underlying conviction.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive



relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds that Applicant has failed to meet his burden in proving either prong of Strickland and that Counsel rendered effective assistance in his representation of Applicant. Applicant's claim that Counsel failed to investigate the case is contradicted by the record of the trial. Counsel was well-prepared at trial. His opening argument at the start of Applicant's trial coincided with the version of the facts as given to him by Applicant. He conducted a thorough cross examination of the CI regarding his past convictions and prior, extensive drug use, the benefit he received in pending criminal charges in exchange for his cooperation with law enforcement, and his knowledge about his sister-in-law having a traffic ticket with which she needed help. His cross-examination of the S.L.E.D. drug analyst was equally thorough. Counsel demonstrated an in-depth understanding of the science involved in drug analysis, including the molecular testing of gas chromatography and mass spectroscopy. Furthermore, Counsel testified that any lack of communication with regard to the case was the fault of Applicant because he was hard to get in touch with and he would fail to show up to scheduled meetings. Despite this difficulty, Counsel was well prepared to try Applicant's case and very familiar with the facts of the case.



This Court finds that Applicant's claim that failed to put up a meaningful defense also lacks merit. Counsel testified and the record shows that the State built a solid case against Applicant. Every possible argument, however weak, that could be made against the charges at trial were well-argued by Counsel. Applicant complains of trial counsel's failure to more thoroughly cross examine the drug analyst with regard to the color of the pills Applicant sold. Counsel testified that this was a purposeful trial tactic in order to preempt the State's ability to reply to the argument that the color was different in the video from what the drug analyst testified to. Counsel knew this was a weak argument because the actual color of the pills was a light green and they only appeared to be a white hue on the video. If the State was afforded the opportunity to dive into that issue and explain the discrepancy, Counsel would be left with little argument. Counsel testified that he had very few arguments given the strength of the State's case and evidence against the Applicant. This Court finds that Counsel's trial strategy was a sound one and very reasonable in light of prevailing professional norms.

This Court finds that Counsel's trial strategy in advising Applicant not to testify was also sound. Applicant's version of the facts prior to trial, as testified to from Counsel and as evidenced by the audio recording of a phone call between Counsel and Applicant prior to trial, and Applicant's changed version of the facts as testified to by Applicant at the PCR hearing both would have been more damaging than helpful to Applicant's defense. Both sets of facts support a guilty verdict under the possession with intent to distribute a controlled substance statute. As such, this Court finds that it was sound advice for Applicant not to testify.

This Court finds Counsel did not render ineffective assistance in failing to present adverse witnesses in Applicant's defense. Although Applicant claims that he could provide



witnesses that would corroborate his story of holding the pills that the CI skimmed from law enforcement from undercover buys in exchange for pay, the record shows that he ultimately only offered up one – his nephew, Ronald. Similar to the testimony Applicant wanted to give, the testimony that Ronald would have offered would be more damaging than helpful. This Court finds Counsel's decision to not call Ronald to testify on behalf of Applicant at his trial to be a prudent one.

Applicant's remaining claim that he was sentenced under the wrong statute and that Counsel should have corrected it at the time of his sentencing is merit-less. During sentencing, Counsel cited § 44-53-370(a) of the South Carolina Code of Laws when asked by the Court about enhancement. While § 44-54-470(a) is actually the enhancement statute and § 44-53-370(a) is the offense and penalty statute, Counsel defined the enhancement statute correctly to the Court at the time of sentencing. This Court finds that the enhancement statute was applied properly and Applicant was sentenced appropriately. Despite the dispute over prior drug convictions, even the convictions Applicant does not contest (1991 unlawful drug conviction in which he received a sentence of three years suspended to eighteen months, 1984 trafficking cocaine conviction in which he received a sentence of ten years' imprisonment, 1990 possession with intent to distribute cocaine charge that Applicant insists was pled to a simple possession of cocaine conviction in which he received a four month sentence) qualify him for enhancement under the statute. § 44-53-470(a)(4), S.C. Code Ann., says that if at *any time* there was a conviction for a "second" non-marijuana drug offense, then the offense would be a "subsequent" offense and enhanced as such. This Court finds Counsel was effective during the sentencing and enhancement phase of Applicant's trial.



This Court finds that Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove any prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. This Court also finds that Applicant failed to present evidence as to the other allegations, and thus, this Court deems the other allegations abandoned.

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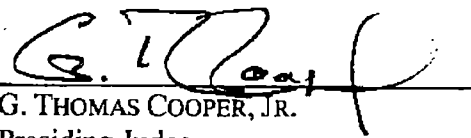
CE 415

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCR. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

- 1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
- 2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 31 day of March, 2017.


 G. THOMAS COOPER, JR.
 Presiding Judge
 Fourth Judicial Circuit

CALDEN, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

00271

COUNTY OF Chesterfield

STATE VS.

AKA: Joey Briggs

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: FWID Cont. Sub

in violation of § 44-53-370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0188

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor 76390 Defendant

Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 13 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 8.40
TOTAL		\$ 278.40

Clerk of Court/ Deputy Clerk
Court Reporter: _____

Ray J. Allen
Christie Bardo

INDICTMENT/CASE#: 2013-65-13-0591
A/W#: CHE 00166
Date of Offense: 10/19/13
S.C. Code § : 44-53-370(b)(2)
CDR Code #: 0188

SENTENCE SHEET

CONVICTED OF or PLEADS

PTUP _____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
Judge Code: 2127
Sentence Date: Nov 13, 2013

2013 NOV 13 PM 4:55
CLERK OF COURT
CHESTERFIELD COUNTY, SC
A True Copy, Attest
[Signature]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD) Drugs / Manuf., poss. of other sub. in Sch. I, II, III or
 flunitrazepam or analogue, w.i.t.d.-3rd offense

§44-53-0370(b)(2)

At a Court of General Sessions, convened on November 5, 2013, the Grand Jurors of Chesterfield County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE
A SCHEDULE I, II, III, FLUNITRAZEPAM OR A
CONTROLLED SUBSTANCE ANALOGUE

CDR: 0188 44-53-0370(b)(2)

That Joey Griggs did in Chesterfield County on or about October 19, 2010, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Lorcet, a Schedule III, under provisions of Section 44-53-0370, et. seq., S. C. Code of Laws, 1976, as amended, such possession not being authorized by law, in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

A True Copy, Attest
Joey S. Williams
 CLERK OF COURT C.P. & S.
 CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
 WILLIAM B. ROGERS, JR.
 SOLICITOR